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He is also a regular panelist for taxation issues on leading business channels such as CNBC, ET Now, Zee Business, etc. He has been a regular speaker & author for taxation topics on financial dailies & magazines and at major industry chambers, international conferences, professional forums as well as IIMs.

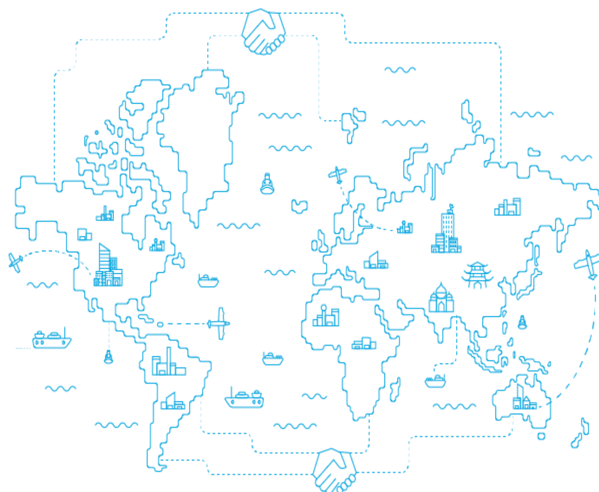
PREFACE

India is currently the third largest global economy with a GDP of US$ 11.321 trillion (purchasing power parity method) and US$ 3.202 trillion (exchange rate method). Since the start of the 21st century, annual average GDP growth has been 6% to 7% making it the second fastest growing large economy in the world next only to China. Due to Covid-19, the geo-political and economic outlook of the world has changed dramatically. While in the short term, the global economy and the Indian economy are likely to experience contraction, in the medium to long term, India has become a very attractive investment destination due to democratic values, trusted partner, large domestic market and the changed geo-political equations. It is expected that the US, European Union, Japan and other countries committed to common values would be investing heavily in India over the next 2 decades.

There are over 28 million non-resident Indians (NRIs) who have settled outside India primarily concentrated in the US, UK, UAE, Saudi Arabia, Canada, Singapore, Hong Kong and other countries. The NRIs have always played an enormous role in India's growth and economic progress. Several of the global giants ranging from Google to Microsoft and from PepsiCo to Hathway Berkshire are now led by NRIs. Google has recently committed to invest US$ 10 billion in India and the Indian telecom giant Reliance Jio has raised almost US$ 20 billion for a minority stake in the past 2 months.

The breakup of the certain country wise-NRIs population has been depicted tabulated wise below:

Country	Overseas Indian population (in Millions)
United States	4,460,000
UAE	3,425,144
Malaysia	2,987,950
Saudi Arabia	2,594,947
Myanmar	2,009,207
United Kingdom	1,764,000
Canada	1,689,055
Sri Lanka	1,614,000
South Africa	1,560,000
Kuwait	1,029,861



Gulf Nations and the United States continue to drive most of the remittances to India. There has been a steady increase in remittances from US$ 16.39 billion in 2002-03 to US$ 83 billion in 2019. According to a World Bank report, remittances to India are expected to drop by a massive 23% from US$83 billion in 2019 to US$ 64 billion this year as a result of the pandemic.

NRIs have significant financial interest in India evidenced by investment in business enterprises, listed shares, deposits with bank, immovable properties, etc. For instance, NRIs held more than US$ 131 billion as deposits with banks as at May-2020. Owing to their diversified portfolio; they straddle between two tax jurisdictions and may have a host of reporting and other obligations in addition to adherence to the tax laws in two countries.

There have been major changes in regulations in India regarding determination of tax status, scope of taxable income, cross border reporting obligations, tax treaties and other aspects which have great relevance for NRIs. There have also been changes in the exchange control regulations which are equally relevant. Understanding and complying with the requirements of the Indian tax system and other regulations especially foreign exchange law poses a challenge due to various complexities involved. This handbook provides an overview of the existing regime of tax laws, foreign exchange law and practices in India as well as the recent changes. The taxation of an individual is governed by Income Tax Act, 1961 ('ITA') and The Foreign Exchange Management Act, 1999 ('FEMA') regulates remittances and investments by NRI in India.

With a view to assist readers in basic understanding of basic legal framework, the important legal provisions have been presented in an easy to understand manner and simple language.

We hope this endeavor assists you in understanding the legal position and in taking appropriate steps towards ensuring compliance with the Income Tax Act, 1961 and FEMA.

We advise the reader to consult their tax and legal advisors before taking any decision due to inherent complexity and the situational exigencies.

Happy Reading!

August 2020

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Introduction

Global & Indian Economic Outlook

India is currently the third largest global economy with a GDP of US$ 11.321 trillion (purchasing power parity method) and US$ 3.202 trillion (exchange rate method). Since the start of the 21st century, annual average GDP growth has been 6% to 7% making it the second fastest growing large economy in the world next only to China. .Due to Covid-19, the geo-political and economic outlook of the world has changed dramatically. While in the short term, the global economy and the Indian economy are likely to experience contraction, in the medium to long term, India has become a very attractive investment destination due to democratic values, trusted partner, large domestic market and the changed geo-political equations. It is expected that the US, European Union, Japan and other countries committed to common values would be investing heavily in India over the next 2 decades.

Non-resident Indians (NRIs) – Key Role

There are over 28 million non-resident Indians (NRIs) who have settled outside India primarily concentrated in the US, UK, UAE, Saudi Arabia, Canada, Singapore, Hong Kong and other countries. The NRIs have always played an enormous role in India's growth and economic progress.

Several of the global giants ranging from Google to Microsoft and from PepsiCo to Hathway Berkshire are now led by NRIs. Google has recently committed to invest US$ 10 billion in India and the Indian telecom giant Reliance Jio has raised almost US$ 20 billion for a minority stake in the past 2 months.

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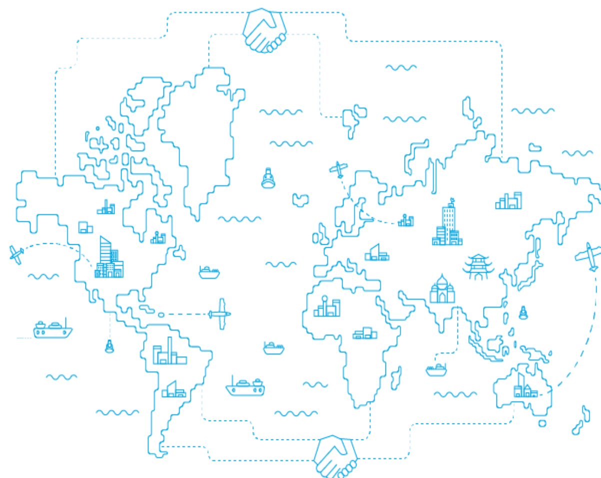
Kuwait	1,029,861



Gulf Nations and the United States continue to drive most of the remittances to India. There has been a steady increase in remittances from US$ 16.39 billion in 2002-03 to US$ 83 billion in 2019. According to a World Bank report, remittances to India are expected to drop by a massive 23% from $83 billion in 2019 to $64 billion this year as a result of the pandemic.

NRIs have significant financial interest in India evidenced by investment in business enterprises, listed shares, deposits with bank, immovable properties, etc. For instance, NRIs held more than US$ 131 billion as deposits with banks as at May-2020. Owing to their diversified portfolio; they straddle between two tax jurisdictions and may have a host of reporting and other obligations in addition to adherence to the tax laws in two countries.

Changing Tax & Exchange Control Landscape

There have been major changes in regulations in India regarding determination of tax status, scope of taxable income, cross border reporting obligations, tax treaties and other aspects which have great relevance for NRIs. There have also been changes in the exchange control regulations which are equally relevant. Understanding and complying with the requirements of the Indian tax system and other regulations especially foreign exchange law poses a challenge due to various complexities involved. This handbook provides an overview of the existing regime of tax laws, foreign exchange law and practices in India as well as

the recent changes. The taxation of an individual is governed by Income Tax Act, 1961 ('ITA') and The Foreign Exchange Management Act, 1999 ('FEMA') regulates remittances and investments by NRI in India.

The first part deals with income tax provisions as applicable to NRIs. Taxability of various incomes such as interest, income from securities, salary income, business income, dividend Income etc. have been discussed. Moreover, treatment of capital gains arising on sale of immovable property, jewellery, bullion and securities have also been covered. Though there are various countries that levy inheritance taxes, it may be noted that India presently does not levy any inheritance taxes. We have also discussed the financial planning measures and deductions available on making certain payments or investments to save tax. Special provisions relating to incomes of NRIs from specified assets have also been covered.

An individual may qualify as resident of more than one country. In such a scenario, same income could get taxed in both countries. In order to address this hardship and to provide relief to such tax payers, India has entered into double taxation avoidance agreements (DTAA) with more than 90 countries. The double taxation avoidance agreements provide for a tie-breaker rule to overcome a situation of dual residency.

The challenges and complexities in the global tax systems have led to nations coming together to curb tax evasion. India has entered into tax information exchange agreement with 20 countries and inter-government agreements (IGA) with US to implement Foreign Account Tax Compliance Act (FATCA). The government has also introduced a new law to curb black money practices which requires disclosure of foreign assets and income. Stringent penalties and prosecution are in place in case of failure to do so. Non-residents have been kept out of the purview of this law. However, this law becomes applicable to him once he becomes a resident and ordinary resident of India. In a nutshell, a series of steps including improved information exchange, expanded disclosure requirements have been taken to deter tax avoidance.

The second part of the books covers – Foreign Exchange Management Act,1999 (FEMA) which deals with the laws regarding the foreign exchange in order to facilitate and enhance the global trade and payment mechanism as well as foreign exchange market in India.

The government looks at the NRIs for the valuable foreign exchange brought in the country by them helping in augmenting the foreign exchange reserves. It may be pertinent to note that a person may qualify as a non-resident under the income tax laws but not necessarily under FEMA and vice-versa. In this handbook, various aspects related to permissible foreign exchange transactions, bank accounts and investment options available for the NRIs along with the remittances facilities and other compliances have been discussed in detail.

PART A
Income Tax

Chapter 1: Residency Rules in India and Scope of Income

Chapter 1: Residency Rules in India and Scope of Income

1.1 Residency Rules

1.1.1 The taxability of an individual is dependent on his/her residential status. India primarily follows a physical presence test as the criterion for determining the 'Residential Status' of an Individual for tax purpose. However, in the case of Indian citizens, there are certain relaxations and certain extended provisions. Residential status is ascertained for each financial year (1 April to 31 March) separately. The provisions, in this regard, are contained in section 6 of the Income-tax Act, 1961 (ITA).

1.1.2 An individual may fall in any one of the following categories depending upon his duration of stay in India:

- Resident and Ordinary Resident ('ROR')
- Resident but Not Ordinarily Resident in India ('RNOR')
- Non-Resident ('NR')

1.1.3 If an individual satisfies any one of the following **basic conditions**, he is treated as a Resident of India for that financial year:

i. He is in India for a period of 182 days or more in that financial year

OR

ii. He is in India for 60 days or more during that financial year and has been in India for 365 days or more during last 4 years.

However, the basic conditions mentioned above are relaxed in case of the following persons:

a) An Indian citizen who leaves India in any year for the purpose of employment or as a member of the crew of Indian Ship

b) An Indian citizen or a person of Indian origin1* who resides outside India and who comes to India on a visit

[1]**A person is said to be of Indian Origin if he or either of his parents or any of his grandparents was born in undivided India*

[2]https://tin.tin.nsdl.com/pan/

With respect to the abovementioned persons, he/she shall be treated as resident in India only if his/her total period of stay in India exceeds 182 days or more in the relevant financial year (60 days shall be replaced as 182 days in 2nd basic condition for determining whether a person is resident in India).

The Finance Act, 2020 has made certain amendments in section 6 of the Income Tax Act, 1961. As per the said amendment, with effect from 1 April 2020, in case of an Indian citizen or a person of Indian origin, being outside India and comes to India on a visit, and whose total Indian taxable income, other than income from foreign sources, exceeds Rs. 1.5 million, then for determining his/her residential status, 182 days limit shall be replaced to 120 days in the second basic condition i.e. under the second basic condition he will be considered as resident if he stays in India during the relevant financial year for 120 days or more and 365 days or more in the preceding 4 previous years.

1.1.4 The Finance Act, 2020 has inserted a new section 6(1A) i.e. **Deemed Resident which is applicable from financial year commencing from 1 April 2020.** If an Individual being a Citizen of India having total Indian Income (i.e. income other than income from foreign sources) exceeding Rs 1.5 million, shall be deemed to be resident of India in any previous year, if he is not liable to tax in any other country or territory by reason of his domicile or residence or any other criteria of similar nature. However, such a person shall be treated as Resident but Not Ordinarily Resident (RNOR) and his global income will not be subject to tax as discussed later. (Applicable from 1 April 2020)

1.1.5 If an individual fails to satisfy any of the basic conditions altogether, he will be treated as a non-resident of India (NR) for that financial year.

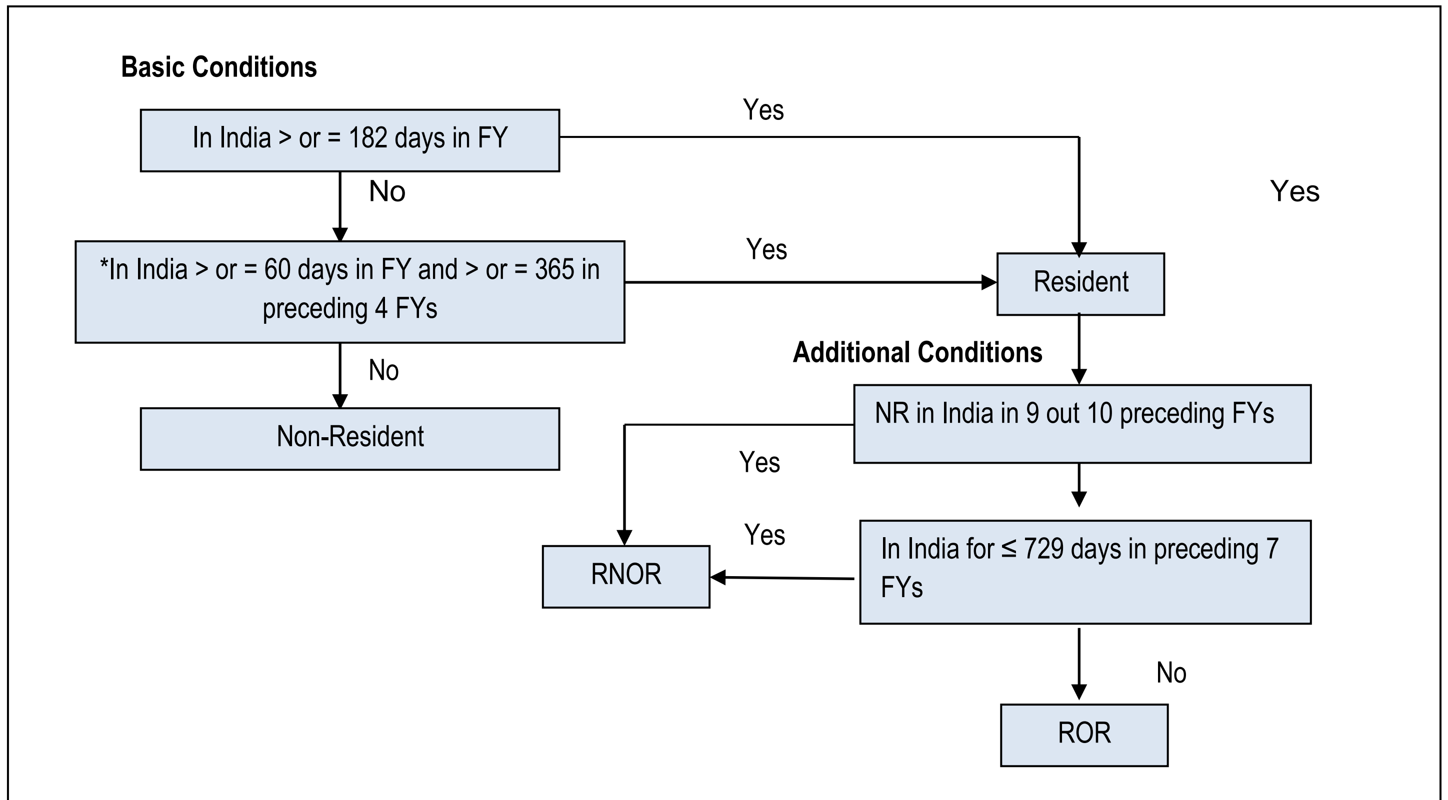
1.1.6 Further, once an individual satisfies any of the basic conditions and is treated as Resident, is necessary to determine whether he is a “Resident and Ordinary Resident (‘ROR’)” or “ Resident but Not Ordinarily Resident in India (‘RNOR’)” For this purpose, he is required to check if he satisfies any one of the **additional conditions** listed below:

- He has been a non-resident in India in 9 out of last 10 preceding previous years.
- He has been in India for a period of not more than 729 days in 7 preceding previous years.
- An Indian Citizen or a person of Indian origin whose total income (other than income from foreign sources) exceeds Rs. 1.5 million during the previous year and who has been in India for a period of 120 days or more but less than 182 days; (amended vide the Finance Act, 2020 and applicable from 1 April 2020)
- An Indian Citizen who is deemed to be resident in India as per new Section 6(1A) (discussed above) (amended vide the Finance Act, 2020 and applicable from 1 April 2020).

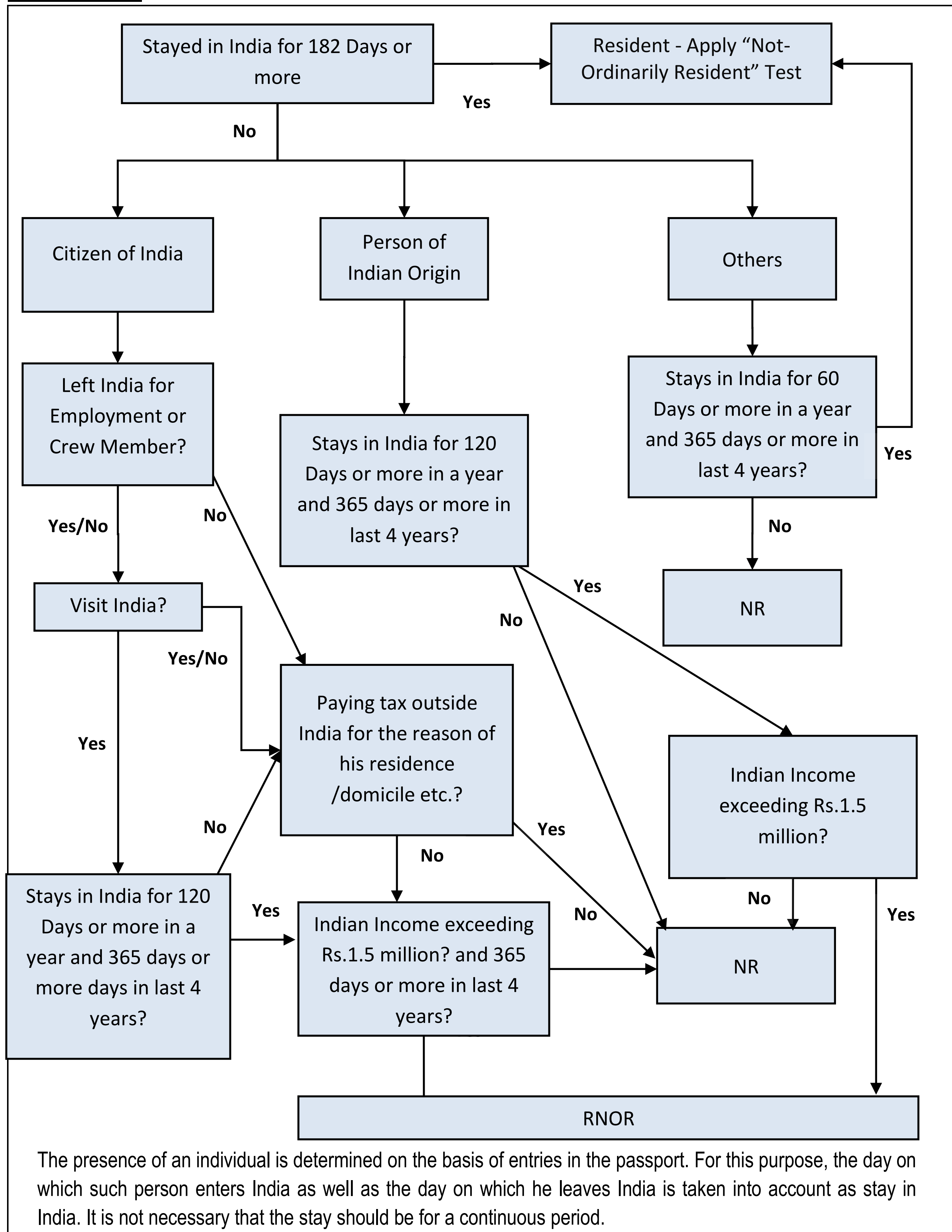
If he fulfills any of the above conditions, he will be considered to be RNOR. If he fails to satisfy all the above conditions, then he will be treated as ROR.

1.1.7 The conditions determining the residential status can be understood with the help of the following diagrammatic depiction:

Residential Status of an Individual (other than citizen of India/Person of Indian Origin Comes on visit to India)



Residential Status of an Individual (Citizen of India/Person of Indian Origin Comes on visit to India)



The presence of an individual is determined on the basis of entries in the passport. For this purpose, the day on which such person enters India as well as the day on which he leaves India is taken into account as stay in India. It is not necessary that the stay should be for a continuous period.

The following table provides classification of residential status for an Indian Citizen Visiting India:

Total income in India (excluding income from foreign sources)	Minimum no. of days stay in India during the relevant year to be considered as 'Resident in India'	Whether liable to pay tax in any other country ?	Residential Status if stay in India is less than no. of days mentioned in condition (b)	Interpretation
(a)	**(b)**	**(c)**	**(d)**	**(e)**
Not exceeding Rs. 1.5 million	182 days	Yes	Non-resident	If total income < Rs. 1.5 million, then Indian Citizen can stay up to 181 days in India to be classified as NR. This is irrespective of whether he is liable to pay tax in any other country or not.
Not exceeding Rs. 1.5 million	182 days	No	Non-resident	
Exceeding Rs. 1.5 million	120 days (and 365 days in last 4 years)	Yes	Non-resident	If total income > Rs. 1.5 million, then Indian Citizen can stay up to 119 days in India to be classified as NR provided he is liable to pay tax in any other country.
Exceeding Rs. 1.5 million	120 days (and 365 days in last 4 years)	No	Not Ordinarily Resident*	If total income > Rs. 1.5 million, then Indian Citizen who is not liable to pay tax in any other country, can stay up to 119 days in India to be classified as RNOR.

* The period of stay in India should be 120 days or more but less than 182 days

Illustration 1:

Mr. X, a US resident, arrives in India for the first time on September 10, 2019 and leaves back to US on January 22, 2020. What would be his residential status?

Mr. X was present in India for a period of 135 days in India. As he does not satisfy any of the basic conditions, he will qualify as a non-resident in India for the FY 2019-20.

Illustration 2:
Mr. Y, a person of Indian Origin, arrives in India on April 1, 2020. and went to UK back on 5 August 2020 and his total Income excluding foreign sources is Rs 1.8 million during the year and his stay exceeds 365 days preceding 4 PYs.

Year	Days present in India	Residential Status
2020-21	127	RNOR as his stay does not exceeds 182 days,

1.2 Basis of taxability

Income is either taxed on receipt or accrual basis. Under the accrual basis, income is taxed when right to receive the same becomes vested.

Income which is taxed once on accrual basis cannot be taxed again on receipt basis or vice-versa. Subsequent remittance of income which has been taxed earlier cannot be taxed again on remittance.

For example, Mr. X, a ROR, received interest income from a foreign bank account in FY 2018-19 and was accordingly offered for tax. Subsequently, this amount was remitted to India in FY 2019-20. This amount shall not be taxable again on remittance.

The scope of taxability of an individual depends on the residential status. A resident and ordinary resident is taxable in respect of his global income. However, non-residents are taxed only in respect of Indian income.

The taxability aspects have been elaborated in tabular form below:

Sr. No	Particulars	Taxability in case of		
		ROR	RNOR	NR
1	Income received or deemed to be received in India	✓	✓	✓
2	Income accruing or arising or deemed to accrue or arise in India.	✓	✓	✓

3	Income accruing or arising outside India from ➢ a business controlled in or a profession set up in India ➢ Other income	✓ ✓	✓ ×	× ×

Illustration (based on provisions of ITA and does not consider benefit of double taxation avoidance agreement):

Nature of income	Is it taxable?		
	ROR	RNOR	NR
Property Rental Income/Dividend Income in India /Interest Income	Yes	Yes	Yes
Professional fees is received outside India from a profession setup outside India	Yes	No	No
Business income is received outside India from a business setup in India	Yes	Yes	No
Salary income earned outside India	Yes	No	No

Important Case Law:

In ***CIT vs. Eli Lilly & Co (India) (P) Ltd. [2009] 178 Taxman 505 (SC)***, it was held that the home salary paid by the foreign company in foreign currency abroad shall be "deemed to accrue or arise in India" depending upon the in-depth examination of the facts in each case. If the home salary/special allowance payment made by the foreign company abroad in foreign currency is for rendition of services in India and no work is found to have been performed for foreign company then such payment would be covered under section 192(1) read with section 9(1)(ii).

Chapter 2: Global Perspective

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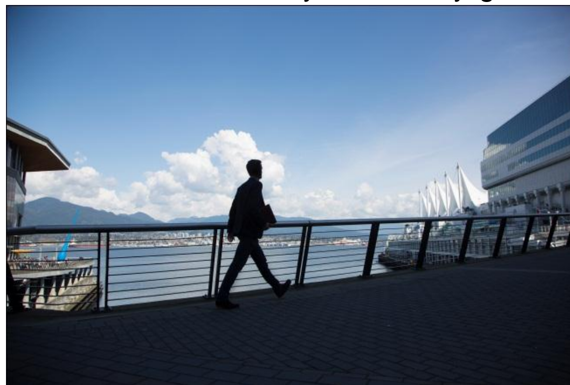
Chapter 2 Global Perspective

2.1 Residential status under the Double Taxation Avoidance Agreement (DTAA)

A non-resident may qualify as a resident of more than one country which may give rise to double taxation. In order to provide relief to a tax payer, India has entered into double taxation avoidance agreement with more than 90 countries including US, UK, UAE etc. The tax treaties in India are commonly based on Organization for Economic Co-operation and Development (OECD) or UN Model.



Article 4 of the OECD Model Tax Convention defines the term 'resident' as any who, under the laws of that country, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. However, if a person qualifies as a resident of more than one country, the tie breaker test must be applied.

The tie-breaker rules have been enumerated in the table below:

WHICH COUNTRY'S RESIDENT AM I?	
PERMANENT HOME	• In which country do you have a permanent home (Owned or Rented)available to you? • If you have permanent home in more than one country, move to the next question
CENTER OF VITAL INTEREST	• In which country are your personal and economic relations closer? • If the center of vital interest cannot be determined, move to the next question
HABITUAL ABODE	• In which country do you have an habitual abode? • If you have an habitual abode in neither of the countries, move to the next question
NATIONALITY	• In which country are you a national? • If you are a national of both countries or of neither of them, move to the next question
COMPETENT AUTHORITY	• The residency will be determined by mutual agreement between both the countries' 'competent authorities

> **Illustration:**
>
> Mr. A has a permanent home in Country A, where his wife and children live. However, he stayed for more than 7 months in Country B. However, he does not have a permanent home in Country B. As per the residency rules of Country A and Country B, he qualifies as a resident of both countries. There exists a double taxation avoidance agreement between Country A and B. In such a case, how will be the residency of Mr. A be determined?
>
> In order to determine the residency of Mr. A, the tie-breaker rule shall be applied. Mr. A shall be regarded as the resident of Country A as he has a permanent home available to him i.e. Country A in the present case.

The Supreme Court of India in case of ***CIT v. P.V.A.L. Kulandagan Chettiar [2004] 267 ITR 654 (SC)*** held that

"Reading the treaty in question as a whole, when it is intended that even though it is possible for a resident in India to be taxed in terms of sections 4 and 5 (Indian Income-tax Act, 1961), if he is deemed to be a resident of a Contracting State where his personal and economic relations are closer, then his residence in India will become irrelevant, the treaty will have to be interpreted as such and prevails over sections 4 and 5 of the Act." (Emphasis added)

2.2 Overview of Residency rules in certain countries

I. US TAX RESIDENCY

An individual is required to file a federal income tax return if he is a citizen or resident of U.S. and the same needs to be ascertained for the respective tax year (1 Jan to 31 Dec).

The definitions of U.S. citizen and resident for the calendar year 2020 are given below:

a) U.S. Citizen

Every person born or naturalized in the United States is a U.S. Citizen.

b) U.S. Resident for tax purpose

A person can qualify as a U.S. resident who meets either of two tests: the lawful permanent resident test or the substantial presence test.

Lawful permanent resident test: An alien individual is regarded as a resident of the U.S. if he is a lawful permanent resident of the U.S. at any time during the year (commonly referred to as a green card holder)

Substantial presence test: To meet this test, the individual must be physically present in the United States for at least:

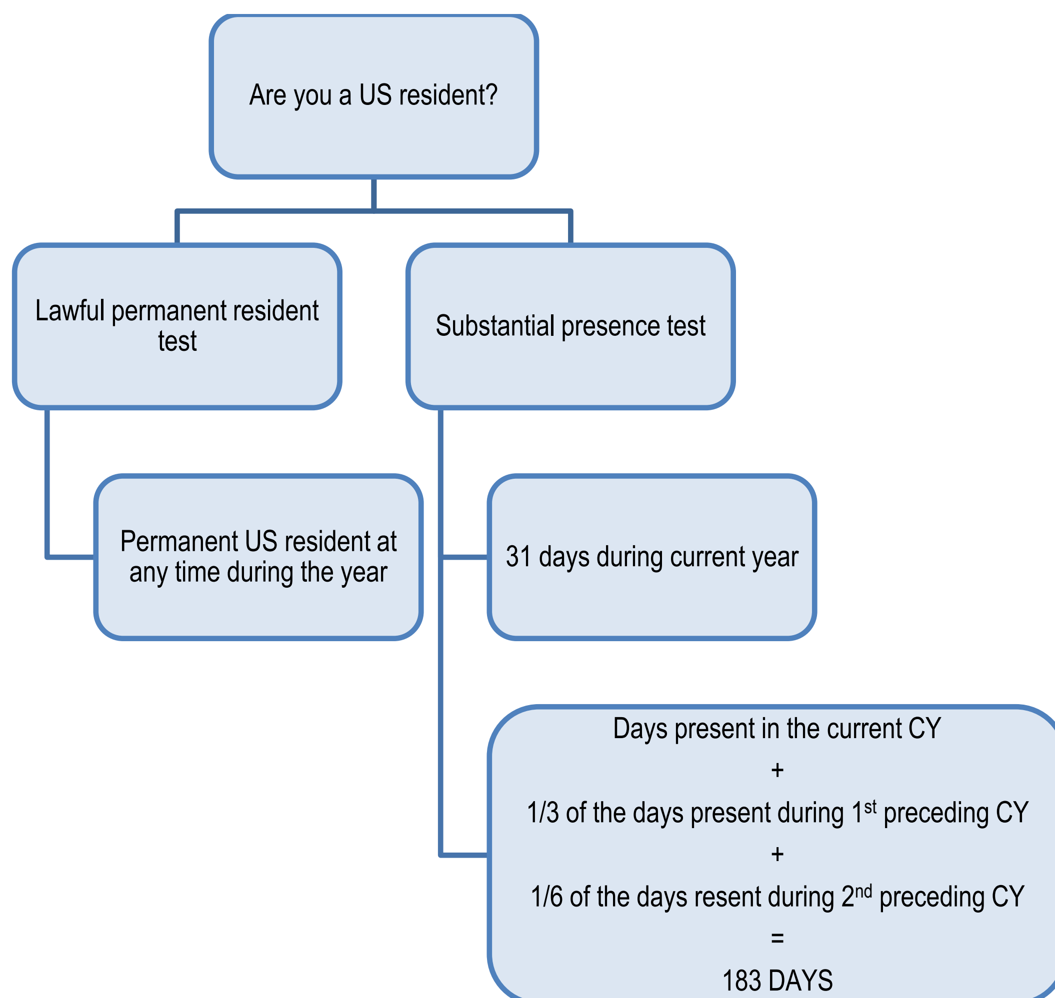
1. 31 days during the current calendar year, **AND**
2. 183 days in aggregate during the 3-year period elaborated below :
   i. The total number of days he was present in the current calendar year, and

ii. 1/3 of the days he was present during the 1st preceding calendar year, and
iii. 1/6 of the days he was present during the 2nd preceding calendar year

This definition applies only for purposes of determining an individual's U.S. income tax liability. For example, it does not apply for estate and gift tax purposes.

Non-resident alien: An individual will be a non-resident alien if he is neither a citizen nor a resident of the United States.

The indicative residency test flowchart is reproduced as under:



The Internal Revenue Service has issued guidance that provides relief to individuals and businesses affected by travel disruptions across the globe arising from the COVID-19 situation. As per the guidance, under certain circumstances, up to 60 consecutive calendar days of U.S. presence that are presumed to arise from travel disruptions caused by the COVID-19 emergency will not be counted for purposes of determining substantial presence test under U.S. tax residency rules.

II. UK TAX RESIDENCY

For individuals, the UK tax year runs from 6 April in one year and ends on 5 April in the following year. The UK operates as a system of independent taxation. In determining an individual's liability to UK tax it is first necessary to consider their residence and domicile status.

a) Residence: Statutory Residence Test (SRT)

The SRT is a comprehensive test to determine whether an individual is a UK resident. Broadly the SRT looks at a person's history of residence in the UK and level of connectivity with the UK.

b) Residence: Domicile

Domicile is a general law concept and is distinct from nationality and residence. In very broad terms, an individual is regarded as domiciled in the country they consider their 'home country' (often the country where they have their long term permanent home).

III. SINGAPORE TAX RESIDENCY

In Singapore, tax year runs from 1 January to 31 December. A person shall be regarded as a resident of Singapore if he is a

- A person who normally resides in Singapore except for temporary absences; **OR**
- A person who is physically present or who exercises an employment (other than as a director of a company) for 183 days or more in the previous year

Further, an individual will be treated as a resident in any of the below cases:

- He has entered Singapore on or after 1 January 2007 (excludes directors of a company, public entertainers or professionals) and is present for at least 183 days straddling over 2 years. In this case, he will be treated as a resident for both the years.

- He stays or works in Singapore for continuously 3 consecutive years (not necessarily complete 3 calendar years). In this case, he will be treated as a resident for all the 3 years.

Physical Presence / Employment Period in Singapore(Calendar Year Basis)	Resident status
60 days or less*	Non-Resident
More than 60 days but less than 183 days	Non-Resident
183 days or more	Resident
At least 183 days for a continuous period over two years	Resident for both years
Covers three consecutive years	Resident for all three years

*Does not include a director of a company, a public entertainer or a professional.

IV. UNITED ARAB EMIRATES (UAE)TAX RESIDENCY

UAE does not levy personal tax or capital gains or gift tax or estate tax or net worth tax.

2.3 Taxability under Key Countries

In order to provide an indicative overview of the prevailing personal tax rates in the key countries as discussed above, a brief comparative matrix is tabulated below:

Sr. No	Country	Personal Tax rate
1	USA	37%*
2	UK	45%
3	Singapore	22%
4	UAE	Nil
5	India	42.74%

* 37% (max federal[171]) + 13.3% (max state[172]) + 1.5% (city)

The above rates are maximum marginal rate (MMR) and inclusive of provincial or local taxes as may be applicable to resident individuals in respective countries.

The tax rates in respect of dividend, interest, royalty and FTS based on the DTAAs entered between India and various countries have also been tabulated below:

Sr. No.	Country	Rates as per DTAA			
		Dividend	Interest	Royalty	Fees for Technical Services
1	USA	15%/25% [Note 1]	10%/15% [Note 2 & 3]	10%/15% Note 4	10%/15% Note 4
2	UK	15%/10% [Note 5]	15%/10% [Note 6]	10%/15% Note 7	10%/15% Note 7
3	Singapore	10/15% [Note 8]	10%/15% [Note 9]	10%	10%
4	UAE	10%	5%/12.5% [Note 10 & 11]	10%	No separate provision

Notes:

Multilateral Instrument ('MLI')
It is pertinent to note that all the treaty rates mentioned would be subjected to the MLI provisions, if any, as adopted by the countries.

The MLI introduces a provision of Article 8 that requires shares to be held for a minimum of 365 days for the shareholder to be entitled to the reduced withholding tax (WHT) rates on dividends. This is to stop shareholders buying shares temporarily to access the reduced WHT rates and then immediately selling them. India has opted for the entirety of Article 8 to apply to all its Covered Tax Agreements (CTAs). However, if the other country to the treaty, on the other hand, has the option to reserve its right to apply the entirety of Article 8 to any of its CTA including India as the said provision is a non-mandatory provision.

In case of a non-mandatory provision, if a party makes a reservation that a certain provision shall not apply to certain CTA, it shall not be applicable to that CTA even if treaty partner has not made any reservation. Thus, in such a case, Article 8 of the MLI imposing threshold period limit in order to claim the WHT benefit under the Treaty would not be applicable to the Treaty.

Also, availment of any treaty benefit including that of any lower withholding rate is subject to satisfaction of India's domestic law requirements for tax treaty protection, which requires that there should not be case whereby creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in the said agreement for the indirect benefit to residents of any other country or territory) which is in line with the provision of Article 6 Purpose of a Covered Tax

Agreement under Multilateral Instrument (MLI). Thus, the NRIs should not plan such transactions/arrangements, which is mainly purposed towards obtaining treaty benefits, otherwise they may actually lose out on the said benefits.

USA

1. 15% tax on dividends if at least 10% of the voting stock is owned by company; in any other case, 25%.
2. Interest is taxable at 10% if the recipient is a bonafide bank or financial institution including an insurance company; in any other case 15%.
3. Interest derived and beneficially owned by the Government, a political sub-division or a local authority or certain institutions like the RBI or Central Bank of other State or any other institution as may be agreed upon, is exempt from taxation in the country of source.
4. Tax rate is 10% in case of royalties for equipment rental and fees for services ancillary or subsidiary thereto. For other cases, the tax rate is 15%. However for first 5 years of the agreement, the rate is 20% in case of payer other than Government or specified institution and 15% for the subsequent years.

UK

5. Dividend is taxable at 15% where dividend is paid out of income derived directly or indirectly from immovable property. In other case, 10%.
6. Interest is taxable at 10% if the recipient is a bank; in any other case 15%.
7. Tax rate is 10% in case of Royalties for equipment rental and fees for services ancillary or subsidiary thereto. For other cases, the tax rate is 15%. However for first 5 years of the agreement, the rate is 20% in case of payer other than Government or specified institution and 15% for the subsequent years.

Singapore

8. 10% tax on dividends if at least 25% of the shares are owned by company; in any other case 15%.
9. Interest is taxable at 10% if the recipient is bank or similar financial institution including an insurance company; in any other case 15%.

UAE

10. Interest is taxable at 5% if the recipient is bank or similar financial institution; in any other case 12.50%.
11. Interest derived and beneficially owned by the Government, a political sub-division or a local authority or certain institutions like the RBI or Central Bank of other State or any other institution as may be agreed upon, is exempt from taxation in the country of source.

Chapter 3: Taxation of Income in India

Chapter 3 Taxation of Income in India

3.1 Tax Rates

3.1.1 Existing Tax Regime-

India follows a progressive manner of taxation. The tax rates applicable to individuals for FY 2020-21 are given in the table below:

Income Slabs (Rs.)	Tax Rates	Surcharge on income-tax	Health & Education Cess (income-tax plus surcharge)	Effective Marginal Tax Rate (income-tax plus surcharge plus cess)
0 - 250,000	Nil	Nil	4%	Nil
250,001 - 500,000	5	Nil	4%	5.20%
500,001 – 1,000,000	20	Nil	4%	20.80%
1,000,001- 5,000,000	30	Nil	4%	31.20%
5,000,001-10,000,000 *	30	10%	4%	34.32%
10,000,001-20,000,000	30	15%	4%	35.88%
20,000,001-50,000,000	30	25%	4%	39.00%
50,000,001 and above	30	37%	4%	42.744%

3.1.2 New Tax Regime:

As per Section 115BAC of the IT Act 1961, the income-tax payable in respect of the total income of a person, being an individual or a Hindu undivided family, for any previous year relevant to the assessment year beginning on or after the 1st day of April, 2021, shall, at the option of such person, be computed at the rate of tax given in the following tabulated.

Income Slabs (Rs.)	Tax Rates	Surcharge on income tax	Health & Education Cess (on income-tax plus surcharge)	Effective tax rate (income-tax plus surcharge plus cess)
0 - 250,000	Nil	Nil	-	-
250,001 - 500,000	5	Nil	4%	5.20%
500,001 - 750,000	10	Nil	4%	10.40%
750,001- 1,000,000	15	Nil	4%	15.60%
1,000,001-1,250,000	20	Nil	4%	20.80%
1,250,001-1,500,000	25	Nil	4%	26.00%
1,500,001-5,000,000	30	Nil	4%	31.20%
5,000,001-10,000,000 *	30	10%	4%	34.32%
10,000,001-20,000,000	30	15%	4%	35.88%
20,000,001-50,000,000	30	25%	4%	39.00%
50,000,001 and above	30	37%	4%	42.744%

**Marginal relief is available to ensure that the additional income tax payable, including surcharge of 10%/15% on the excess of income over Rs. 5,000,000/10,000,000 is limited to the amount by which the income is more than Rs. 5,000,000/10,000,000. However, no marginal relief shall be available in respect of the cess.*

Following are the points to be kept in mind while selecting new tax rates regime:

- Any individual opting to be taxed under the new tax regime from FY 2020-21 onwards will have to give up certain allowance, exemptions and deductions as discussed in para 3.7.2 and chapter 4.
- In case of Individual having no business Income -Option can be exercised each year and shall be exercised at the time of furnishing return of Income
- In case of Individual having business Income- Option once exercised shall not be changed unless there is cessation of business income and at that point of time such individual can again exercise to choose option on-year to year basis .Period of Exercised in these case shall be before due date of filing income tax return.
- In case conditions are not fulfilled, ,option exercised shall become invalid for that financial year and for the subsequent financial years as well

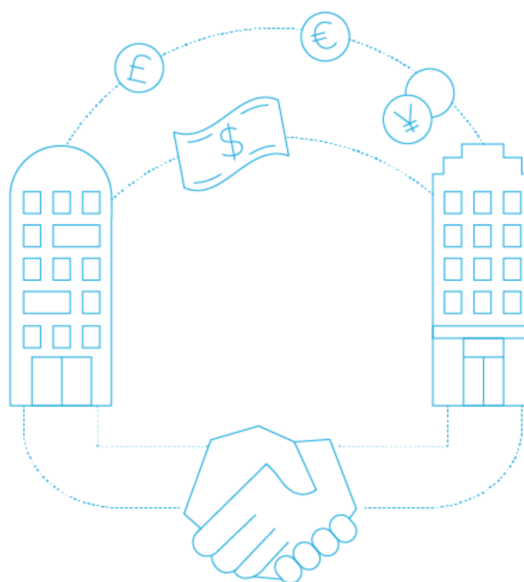
Comments: For Non-resident Individual who does not claim deduction under Chapter VI-A deduction and does not have salary income, new tax rates are beneficial.

In case of other NRI individual, one needs to compare his tax liability between Old Regime and new regime and accordingly exercise his options.

Note : Rebate under Section 87A is not applicable to Non-resident Individuals.

3.2 INCOME FROM IMMOVABLE PROPERTY

3.2.1 Rent Income



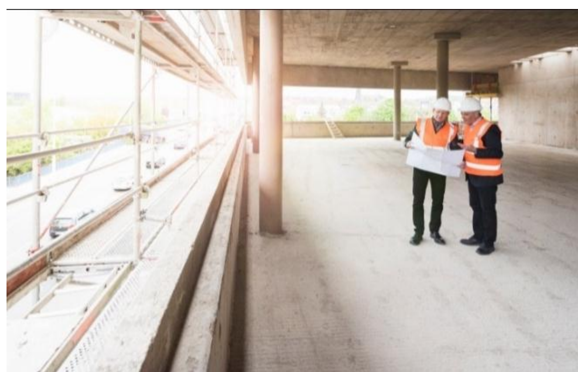
Non-residents prefer to invest in immovable property helps in getting regular income by way of rent and capital appreciation as well as a place to reside when they want to return back to India or in case of any contingencies.

NRI can rent out property purchased out of foreign exchange / rupee funds, if the same are not required for immediate use. Income arising out of any immovable property is taxable under the head "Income from house property". It covers residential as well as commercial property except for the property which an individual uses for his business or profession.

The annual value of the property is to be offered for tax. Annual value refers to the rent which an individual receives or which he is reasonably expected to receive. This amount is allowed to be reduced by municipal taxes paid by the owner during the year. Municipal taxes pertaining to more than 1 year can also be reduced from the annual value provided that they are paid during the year. Further, if the property is located in a foreign country, the municipal taxes levied by foreign local authority are deductible, if such taxes are paid by the owner.

The property may either be classified as self-occupied, let out or deemed to be let out.

(a) Self-occupied property



For residential house properties, an individual has the option to treat any two houses.

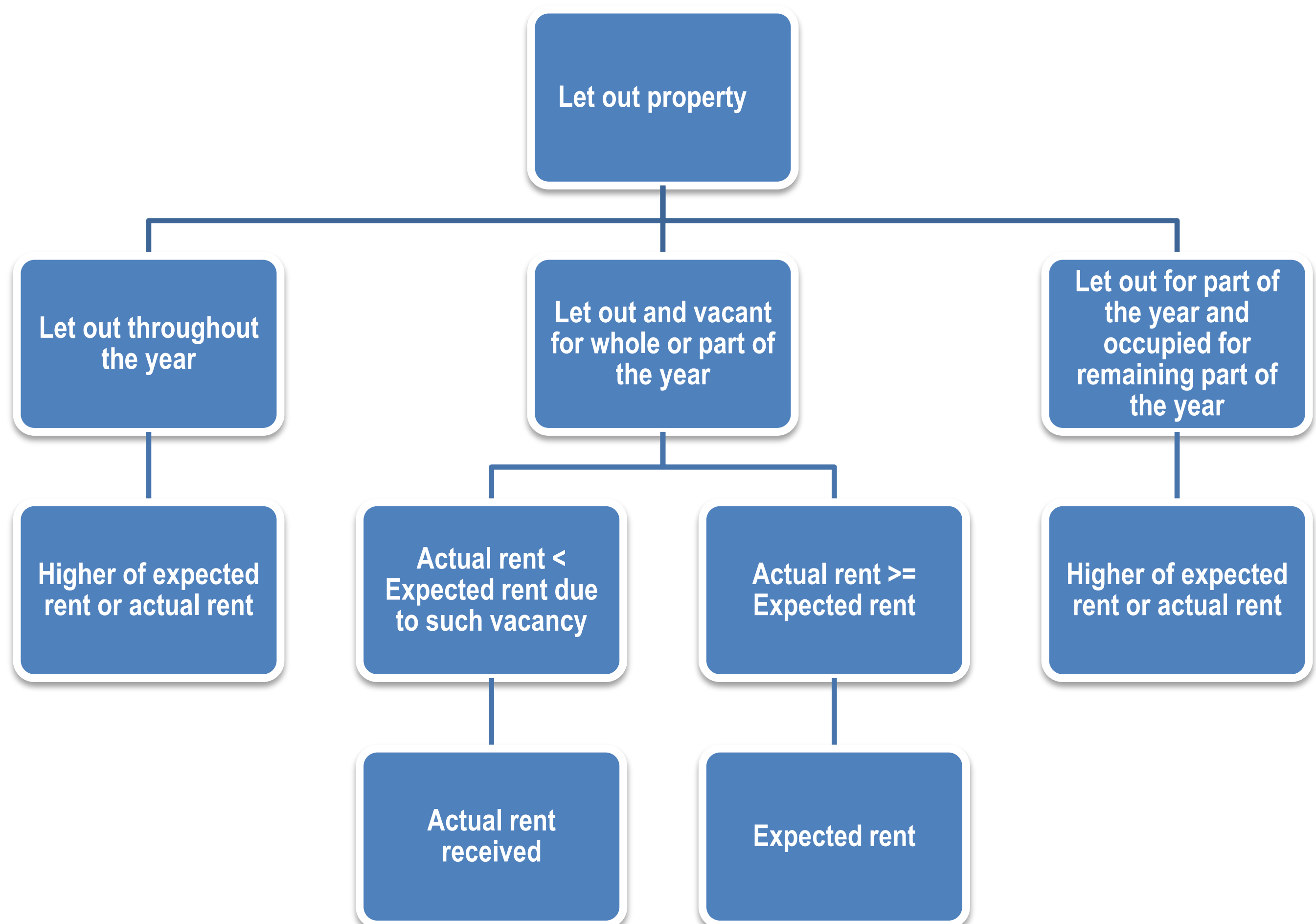
properties as self-occupied in case the same are not let-out and is used for his residence or remains vacant due to his stay in any house not owned by him at any other place. In this case, annual

value will be taken as nil and there will no tax liability arising out of holding that properties.

Further, if the tax payer owns a house property which has not been occupied by him by reason of the fact that owing to his employment, business or profession, carried on at any other place. Consequently, he has resided at any other place which is not owned by him. In such a case, the annual value of the house property not occupied by him shall be taken as Nil.

(b) Let out property

Generally speaking, when the property is let out, an individual is required to offer the rent on let out property for taxation. The taxability would depend on the occupancy of the let out property. The same has been depicted in the chart below:



(c) Deemed to be let out property

In case, an individual has more than two house property for self-occupation, he has the option to choose two of such properties as self-occupied and the remaining properties shall be treated as let out for the purpose of taxation. Accordingly, the annual value of the self-occupied property or properties will be taken as nil and the annual value in respect of the remaining properties shall be the rent that the property is reasonably expected to be earned and will be required to be offered for tax accordingly.

Deductions available

The following deductions are allowed from the annual value while calculating the income taxable under the house property head:

1. Municipal taxes paid

Any property taxes paid to the Government during the financial year (for which the income is being computed) on the property owned, , are allowed for deduction from the Gross Annual Value which is calculated on the basis of the total rent or deemed rent for the relevant financial year.

2. Standard deduction at 30%

A standard deduction at the flat rate of 30% of the annual value calculated as above as reduced by municipal taxes is allowed in respect of repairs, maintenance, etc. This deduction in respect of repairs is available irrespective of the fact whether the individual has actually incurred such expenditure. This deduction is not available in case of self-occupied house property whose annual value is taken at nil.

3. Interest on loan

Interest on loan taken to purchase or construct a house property and also repairs or reconstruction of existing property is allowed as a deduction. The loan can be taken from anyone including friends and relatives and not necessarily from financial institutions. The interest is allowable on "accrual" basis. It can be claimed on yearly basis, even if the interest is not actually paid during the year.

The amount of deduction allowable would depend on whether the property is self-occupied or let out.

- For one self-occupied property: the interest deduction is available upto Rs. 200,000 per year for loan taken on or after 1 April 1999 for acquiring or constructing a property. This is subject to the condition that the purchase or construction is completed within a period of 5 years from the end of the financial year in which capital is borrowed. In all other cases, the deduction is restricted to Rs. 30,000.

- For let-out property or any additional self-occupied property which is treated as deemed to have been let out, an individual can claim the entire interest cost without any monetary ceiling.

Pre-construction interest

An individual may be paying interest for a period prior to acquisition or construction in respect of the funds borrowed. For all the interest paid before completion of the acquisition/construction, an individual is allowed to claim the accumulated interest paid upto the year before completion of the acquisition/construction in five equal installments along with the regular interest for the year. This would be subject to the overall limit of Rs. 200,000 in case of self-occupied property.

Other Aspects

- **Allowability of interest in case of joint ownership**

  Taking a joint loan for buying a property is a common phenomenon as it allows a person to take a loan of a higher amount as income of both the co-owners is considered. A joint loan may be taken with an individual's spouse, parents or children. In such a case, the question arises regarding the allowability of interest in the hands of the co-owners. The ratio in which co-borrowers can claim tax benefits for interest will depend on the ratio in which the home loan is being serviced. However, it is necessary for both of them to be co-owners and co borrowers while servicing the loan.

Illustration: Interest entirely serviced by a single co-owner

Husband and wife have purchased a house property and they own the property equally. However, the interest payment is entirely being paid by the husband. In such a case, the deduction of interest would be available only to the husband subject to a maximum of Rs. 200,000/-.

Illustration: Ownership is a pre-requisite for claiming deduction

Husband is the sole owner of the property. However, loan has been taken jointly by husband and wife. In this case, only husband will be able to claim the deduction of interest as the wife is not the owner of the property.

3.2.2 Sale of Immovable Property

For non-resident individuals, particularly of Indian origin, investment in immovable property has been a popular choice. In this context, it would be pertinent to discuss taxability implications arising on sale of such property.

Profit on sale of property is taxable under the head 'Capital Gains'. However, sale of a property which is used for the purpose of carrying out any business or profession will not be covered under this head. Further, agricultural land in a rural area in India is not regarded as a capital asset and accordingly sale of agricultural land in rural area does not attract capital gains. Further, any exchange of property given up would also attract

capital gains tax liability. However, any property acquired under a will or an irrevocable trust does not attract capital gains tax liability.

The tax treatment of capital gains would depend on the type of asset and the period for which the asset is held.
The immovable property may either be classified as short-term or long-term depending on the period of holding. If the immovable property is held for more than 24 months then it is classified as a long-term capital asset otherwise it is classified as a short-term capital asset.

Illustration:

Mr. Z, a resident of Australia, purchased a residential house in Delhi on 8 April 2016. He sold this property on 31 August 2018.

In this case, residential house purchased by Mr. Z is a capital asset. This was held for a period of more than 24 months. Thus, it would qualify as a long term capital asset.

In case of a long term capital asset, a tax payer is entitled to enhance his cost of acquisition of capital asset to compensate for inflation. This is calculated on the basis of cost inflation index declared by Central Government for each year. [Refer Annexure I for cost inflation index] This process is called indexation. Indexation is also available for any additions/improvements to a capital asset.

Indexed cost of acquisition/improvement is computed in the following manner:

$$\frac{\text{Cost of acquisition/cost of improvement X Cost inflation index of the year of transfer}}{\text{Cost inflation index of the year of acquisition/improvement}}$$

The mode of computing capital gains is provided in a tabular format as follows:

I.	Full value of consideration	xxx
II.	<u>Less:</u> (i) Transfer expenses incurred wholly and exclusively for such transfer (ii) Cost of Acquisition / Indexed Cost of Acquisition (if long term) (Refer Note 1) (iii) Cost of Improvement / Indexed Cost of Improvement (if long term) (iv) Exemption claimed, if any	(xxx)
Capital Gain [I- II]		**xxx**

Note 1:

If the property is acquired/ constructed before 1 April 2001, an individual has the option to substitute it with the fair market value of the asset as on 1 April 2001 as the cost of acquisition but the same shall not exceed the stamp duty value as on 1 April 2001. He is also entitled to indexation on the property if the same is long term in nature.

(i) Stamp duty valuation

As per Section 50C of the ITA, in case the sale consideration as per the agreement is lower than the value considered for the purpose of stamp duty valuation, then the stamp duty valuation shall be treated as the sale consideration for the purpose of computing the capital gains.

However, if an individual claims that the stamp duty value is higher than the fair market value of the property, then the individual may request the tax officer to refer the valuation of property to the valuation officer. If the value of property as valued by the Valuation Officer is less than the stamp duty value then the value as per the Valuation officer shall be taken as the sale value for computing the capital gains. If the value is more than the stamp duty value, stamp duty shall be taken as the sale consideration.

As per Sec 50C of the ITA, in case variation between agreement value and stamp duty valuation does not exceed 10% of the agreement value then the agreement value shall be considered as Full value of consideration for computing capital gains.

(ii) **Taxability of capital gains**

- **Long term capital gains**

Long term capital gains (LTCG) are taxable at 20% (plus applicable surcharge and cess) as per section 112 of the ITA. In case of resident individual, relief from LTCG is available in respect of the amount by which the taxable income other than LTCG falls short of basic exemption limit. This relief is not available to a non-resident.

- **Short term capital gains**

Short term capital gains are included in the income of an individual and are taxed at the slab rates applicable. (Slab rates are provided below).

3.2.3 Reinvestment Avenues

Section	54	54EC	54F
Nature of assets transferred	**Residential house property**	**Land & building being long term capital asset**	**Any long term capital asset other than residential house**
Condition of utilization of consideration	Purchase of residential house in India within 2 years after or 1 year prior to date of transfer **OR** Construction of residential house in India within 3 years from the date of transfer.	Investment of whole or any part of capital gain in National Highways Authority of India (NHAI) / Rural Electrification Corporation Limited (RECL) bonds or any other bonds notified by CG in this regard. Investment should be made within 6 months from the date of transfer.	Purchase of residential house in India within 2 years after or 1 year prior to date of transfer **OR** Construction of residential house in India within 3 years from date of transfer
Condition of period of holding of original asset	3 years	5 Years	1 year for listed shares, listed securities, units of UTI/ Mutual fund specified u/s 10(23D), Zero-coupon bonds, 2 years for unlisted shares and 3 years for other capital asset
Exempt Amount	**Lower of:** Capital gain **OR** Cost of new asset	**Lower of** Capital gain **OR** Investment in specified assets during the financial year and subsequent financial year subject to a maximum of Rs. 5 million	Cost of new asset ≥ Net consideration: Entire capital gains are exempt. Cost of new asset < net consideration: Proportionate gains will be exempt i.e. Capital gain X cost of new asset / Net consideration on sale of asset
Other requirements	Refer Notes 1 and 2		Must not own more than 1 residential house other than the new asset on the date of transfer of original asset See Note 2 and 3

Section	54B	54D	54GB	54EE
Nature of assets transferred	Land used for agricultural purposes in urban area.	Land and building or any right therein used by an industrial undertaking compulsorily acquired under any law	Long-term capital asset being a residential property (a house or a plot of land)	Any Long-term capital asset
Condition of utilization of consideration	Purchase of agricultural land within 2 years from the date of transfer	Purchase/construction of land, building, or any right therein within 3 years from the date of transfer by way of compulsory acquisition for the purpose of shifting/ re-establishing/ setting up another industrial undertaking	Subscribe to equity shares of an eligible company before due date of return filing. The company within 1 year of subscription should utilize the amount for purchase of new asset (refer Note 6)	Units of such fund as may be notified by Central Government to finance start-ups within 6 months from the date of transfer of original asset.
Condition of period of holding of original Asset	2 years	2 years	Individual should hold shares for a period of 5 years and the company should hold new asset for 5 years. (Refer Note 4)	3 years
Exempt Amount	**Lower of:** Capital gain **OR** Cost of acquisition of new agricultural land	**Lower of:** Capital gain **OR** Cost of acquisition of new land and building	Refer Note 5	**Lower of:** Capital gain **OR** Investment in specified assets during the financial year and subsequent financial year subject to a maximum of Rs. 5 million
Other requirements	Individual or his parents must have used the land for agricultural purpose for preceding two years Refer Note 2	Must have been used for business of industrial undertaking for preceding 2 years (Refer Notes 1 and 2) Refer Notes 1 and 2	Refer Notes 2 and 6	

Notes:

1. Lock in period of 3 years from date of purchase/construction for the new asset. Otherwise, capital gains exempted earlier will be chargeable to tax in the year of transfer of new asset.

2. In order to avail the exemption, gains/net sale consideration are to be reinvested on or before the due date of filing the return. If the amount is not so reinvested, it is to be deposited before furnishing Income tax return

   in account of specified bank/institution under "Capital gains account scheme" and it should be utilized within specified time limit for purchase/construction of new asset. If the amount is not utilized within the specified time limit, the unutilized amount will become taxable as capital gains of the year in which the period of 3 years is completed from the date of sale of the original asset.

3. Under section 54F, Capital Gains exempted earlier shall be chargeable to tax if:

   - If the individual purchases within 2 years or constructs within 3 years any residential house other than the one in which reinvestment is made and
   - If the new asset is transferred within a period of 3 years from the date of its purchase/construction.

4. Under section 54GB, if the equity shares of the company or the new asset acquired by the company are sold or otherwise transferred within a period of five years from the date of their acquisition, the amount of capital gain arising from the transfer of the residential property which was not charged to tax, shall be deemed to be the income of the individual chargeable under the head "capital gains" of the previous year in which such equity shares or such new asset are sold or otherwise transferred, in addition to taxability of gains, arising on account of transfer of shares or of the new asset, in the hands of the individual or the company, as the case may be.

5. If cost of new asset is more than the net consideration of original asset, the whole of the gains is exempt. If cost of specified asset is less than net consideration, proportionate amount of the gains will be exempt i.e. Capital Gain X Cost of New Asset/Net consideration on sale of asset.

6. Exemption u/s 54GB is available in case of any transfer of residential property made on or before 31st March, 2021.

7. Due to Covid situation, an individual has the option to make the aforesaid investment s on or before 30 June 2020 in respect of the capital gains arising in FY 2019-20.

3.2.4 Sale of under construction property

A. <u>Sale before taking possession</u>

If an individual sells an under construction property before taking the possession, the profits arising out of such sale will be taxable under the head 'Capital Gains'. The holding period shall be calculated from the date of allotment letter of the property to the date of agreement to transfer the right in the under construction property. If the holding period is less than 36 months, the gains shall be treated as short term capital gains and will be added to his regular income and taxed at the applicable slab rates. However, if the holding period is more than 36 months, the difference shall be treated as long term capital gains.

The cost shall include the amounts paid to the builder over the period of time as well as the stamp duty and registration charges and if the asset sold is a long term capital asset, the individual will be entitled to take the benefit of indexation on the amounts paid to the builder as well as registration charges and stamp duty. The benefit of indexation shall be available in respect of each payment made.

<u>Reinvestment Avenues</u>

If the capital gains are long term in nature, the individual has two options under which he can avail the benefit of exemption. He can either invest in bonds under Section 54ECor invest in another residential house under Section 54F. (*as discussed in Para 3.2.3 above*). Exemption under section 54, individual will not be available as in case of an agreement for purchase of under construction property, the individual only has a right to acquire a residential house and not the residential house itself.

B. <u>Sale after taking possession</u>

If an individual sells an under construction property after taking the possession, profits arising out of such sale will be taxable under the head 'Capital Gains'. In such a case, a view can be taken that the holding period will be calculated from the date of booking of the property relying upon judicial pronouncements in the case of ***PCIT vs Vembu Vaidyanathan [ITA 1459 of 2019) Bombay HC***. However, for the purpose of exemption under section 54, the period of holding should be considered from the date of physical possession and occupation certificate.

<u>Reinvestment avenues</u>

The individual will be entitled to avail exemption by investing in a residential house under Section 54 or by investing in specified bonds under section 54EC only if he transfers the asset after 24 months from taking the possession of the asset. However, there is no provision for combining the holding period of both these assets, i.e. the right to acquire a house and a residential house. Therefore, both the holding periods shall be treated separately and even if the time interval between the date of booking of the property and

its sale after taking possession is more than 24 months, the profit shall still be treated as short term if case the house is sold within 24 months or less after taking possession.

3.3 INCOME FROM SECURITIES

In order to diversify their portfolio, non-residents invest in securities such as stocks, shares, debentures and bonds etc.

3.3.1 Dividend income

Following incomes are taxable under the residuary head "Income from other sources'.

- Dividend from an Indian company.
- Any distribution of income from mutual fund.

As per Section 57 of the ITA, interest expenses can be claimed as deduction against such dividend income but only to the extent of 20% of the Dividend Income.

TDS on dividend to NRI individual shall be deducted at the rate of 20% or DTAA rate whichever being lower subject to certain documentation.

3.3.2 Interest Income

Interest income is taxable under the residuary head “Income from other sources”. The taxability of interest would depend on the nature of interest. Interest from NRO account is fully taxable. However, following incomes are exempt under section 10 in the hands of NRI:

Nature of Income	Eligible person	Section
Interest on NRE Account	Non-Resident*	10(4)(ii)
Interest on Foreign Currency Deposit	Non-Resident & RNOR	10(15)(iv)(fa)
Interest, premium on redemption and other payments on securities, bonds, annuity certificates, saving certificates etc. as notified (refer table below)	All persons	10(15)(i)
Any interest received on a deposit in an Offshore Banking	Non-Resident & RNOR	10(15)(viii)

Name of Securities, Bonds, Annuity Certificates [Section 10(15)(i)]	
12-year National Saving Annuity Certificates	Treasury Savings Deposit Certificates (10 years)
Post Office Cash Certificates (5 years)	National Plan Certificates (10 years)
National Plan Savings Certificates (12 years)	Post Office National Savings Certificates (7 / 12 years)
Post Office Savings Bank Accounts	

* individual should be a person resident outside India as defined in clause (w) of section 2 of the FEMA or is a person who has been permitted by the Reserve Bank of India to maintain the aforesaid Account.

3.3.3 Income from sale of securities

Normally, the profits arising on sale or exchange of securities is taxed under the head 'Capital Gains'.

However, certain transfers would not attract capital gains as listed below:

- In a scheme of amalgamation, transfer of shares of amalgamated company by a shareholder in lieu of allotment of shares in amalgamating company. This is subject to the condition that the amalgamated company is an Indian Company
- Bonds and Global Depository Receipts transferred by a non-resident to another non-resident outside India
- Conversion of bonds or debentures or debenture stocks, deposit certificates into shares or debentures of that company

The tax treatment of capital gains would depend on the type of asset and the period for which the asset is held. The security may either be classified as short-term or long-term depending on the period of holding.

If listed equity shares / debentures / equity-oriented mutual funds / zero coupon bonds are held for more than 12 months then it is classified as a long-term capital asset otherwise it is classified as short-term capital asset. For all the other remaining securities, the period of holding required for it to be long term is more than 24 months.

Illustration:
Mr. X, a resident of Singapore, purchases 100 shares listed on a recognized stock exchange in India on 18 April 2020. He sold these shares on 18 August 2020.

In this case, listed shares purchased by Mr. X are a capital asset. As these shares were held for a period of less than 12 months, they would qualify as a short term capital asset.

Note: The benefit of indexation is not available in case of Shares, bonds, debentures (except capital indexed bonds) even if it qualifies as a long term capital asset.

Non-residents are not eligible for the benefit of indexation when he transfers shares of an Indian company acquired in foreign currency. Further, in case of transfer of shares or debentures of an Indian company purchased out of foreign currency, capital gains are computed by converting the sale consideration into the same foreign currency as was used at the time of purchase.

For example, NRI has invested US$ 1,000 in debentures at a rate of Rs. 55 per US$ in 2015 i.e. Rs. 55,000. He sells the debentures for Rs. 60,000 in 2018 at the rate of Rs 60 per US$. However, even he has earned Rs. 5,000 in Rupee terms, there is no capital gains in US$ terms. Accordingly, there will be no capital gains tax liability.

Taxability of capital gains

I. Long term capital gains

Long term capital gain arising on transfer on or after April 1, 2018 of equity shares or units of equity oriented mutual fund or Unit of a business trust are exempt from tax if STT is paid at the time of transfer and the gains does not exceed Rs. 100,000. In case the said gains exceed Rs. 100,000 then the same will be taxable @10% (without indexation) and benefit of grandfathering of gains up to 31 January 2018 shall be available. Cost of acquisition for computing capital gains would be higher of the following:

- Actual cost; and
- Fair Market Value as on 31 January 2018 or sale consideration, whichever is lower.

Long term capital gains on unlisted securities or shares of a closely held company are taxed at 10% (plus the applicable surcharge and cess). No indexation benefit is available for non-residents in respect of shares in or debentures of an Indian company held by them and acquired in foreign currency.

In case of resident individual, relief from LTCG is available in respect of the amount by which the taxable income other than LTCG falls short of basic exemption limit. This is not available for a non-resident.

II. Short term capital gains

Generally, short term capital gains are included in the income of the individual and are taxable at the rates applicable to such an individual. (Slab rates are provided in Chapter 7).

However, short term capital gain will be taxable at 15% in the following transactions on which securities transaction tax is paid:

- Equity shares of a company
- Unit of an equity oriented mutual fund (if 65% of total proceeds of the fund are invested in equity shares), and
- Unit of business trust

However, no deductions (*discussed in Chapter 4 Deductions*) shall be available on this income.

PAN is required needs to be quoted in case of investment in shares and mutual funds exceeding certain threshold. [*For details on procedure of application of PAN, refer Chapter 7*]

3.4 Income from Sale of Bullion / Jewellery

Indians, including non-residents, are known for their penchant for investment in gold be it form of jewellery or gold bars or coins. The term bullion would generally cover gold or silver bars, coins, plates or any other precious metal bars or ingots. It would not however cover Gold exchange traded fund (ETF) as it falls under securities (as discussed above).

Generally, movable assets held for personal use such as furniture, motor car are not capital assets. However, jewellery and bullion even if held for personal use is included in the definition of capital assets. The capital appreciation on bullion and jewellery, being notional in nature is not subject to tax. However, sale or exchange of such assets triggers taxability under the head 'Capital Gains'. Capital gains may either be classified as short-term or long-term depending on the period of holding of the capital asset. If the asset is held for more than 36 months, the capital gains shall be taxed at the rate of 20% (with indexation benefit). In any other case, the capital gain shall be taxable as per normal slab rates.

It is pertinent to note that while making a purchase of bullion or jewellery of exceeding Rs.200,000 per transaction, it is mandatory for the purchaser to quote his PAN. (For details on PAN, refer Chapter 7)

Reinvestment avenues

Please note that the reinvestment avenues under section 54EC (investment in specified bonds) and 54F (investment in residential house) as enumerated under para 3.2.3 are available.

3.5 Taxation of Gifts and Inheritance

3.5.1 Gifts

The taxability of gift would depend on the person from whom the gift is received, the occasion and the amount involved. Gifts received in the following cases are fully exempt from tax:

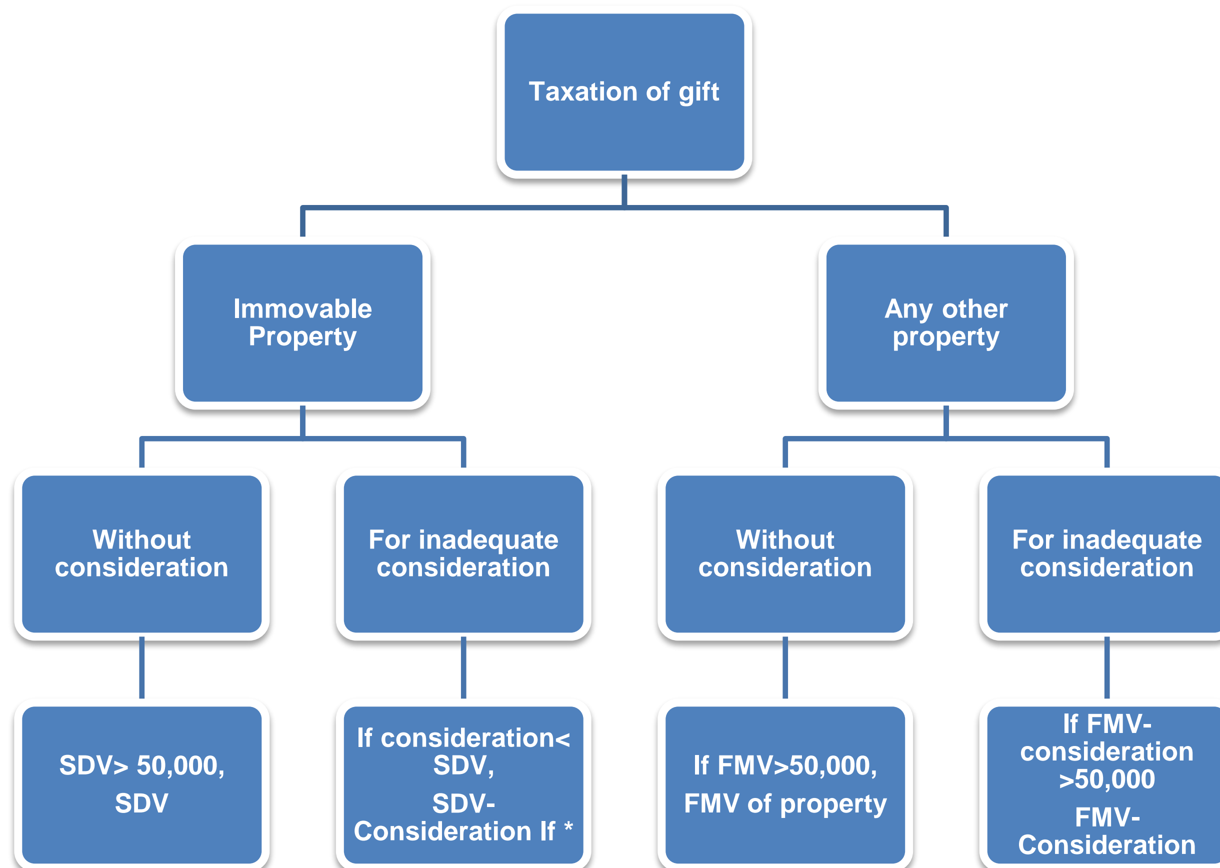
- From specified relatives (**Refer Annexure III**) or
- On the occasion of the marriage of the individual or
- Under a will or by way of inheritance or
- In contemplation of death of the payer orfrom an individual by a trust created or established solely for the benefit of relative of the individual.

In other cases, the gifts received in India or transfer of property for inadequate consideration, exceeding Rs.50,000 is deemed to be income in the hands of the recipient.

3.5.2 Deemed Gift :

Any sum of money paid or any property situated in India, transferred by a person resident in India to a person outside India (NRI), shall be chargeable to tax in India as per Section 9(1(viii) of the IT Act 1961 w.e.f. from 5th July 2019 as it would be deemed to accrue or arise in India.

The taxability provisions relating to gifts have been shown in the chart below:



FMV: Fair market value
SDV: Stamp duty value
* *W.e.f 1 April 2018, any transfer of immovable property for a consideration, the stamp duty value of which exceeds such consideration, if the amount of such excess is more than the higher of the following amounts, namely:—*
(i) Rs. 50,000; and
(ii) the amount equal to 5% of the consideration:

When a property is acquired by virtue of gift, the cost to the previous owner is adopted as cost of acquisition in the hands of the receiver. Further, the period of holding of the previous owner is also included for classifying the asset as short term or long term.

3.5.3 Inheritance

An NRI may inherit some property from his/her parents who may choose to spend their life in India. Any amount received under will or inheritance is fully exempt without any monetary limit. Further, there is no capital gains tax in the hands of the transferor as well.

However, capital gains will arise when the recipient of the property transfers such a property at a later stage. In reality, the receiver has not incurred any cost to acquire such

a property. However, for the purpose of computing capital gains, cost to the previous owner will be considered as the cost of acquisition for the receiver/inheritor as per section 49 of the ITA. If there are various co-owners of a property, each co-owner of the property shall be individually subject to capital gains tax based on their respective share in the property.

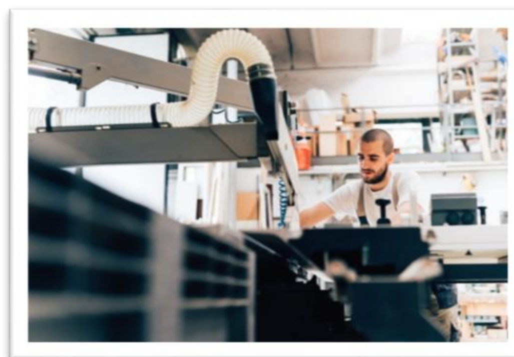
Further, the holding period of previous owner will also be included for determining whether an asset is short term or long term. However, while providing indexation benefit, there has been some controversy as the law provides that the indexed cost of acquisition has to be calculated by taking the cost inflation index for the first year in which the asset was held by the individual which was interpreted by the tax authorities that the indexation benefit is given only from the date of inheritance. The H'ble Bombay High Court set rest the controversy by holding that the indexation benefit shall be available even for the period of holding of such capital asset by the previous owner from whom the asset was obtained by inheritance.

Illustration:

Mr X purchased a property on 1st August 2004 for Rs 7.5 million. Ms. Y inherited this immovable property from her father, Mr. X in 2016. In May 2020, Ms. Y sold this house for Rs 20 million. What would the amount of capital gains for taxability purpose?

In this case, cost for calculating Ms. Y gain shall be the cost to Mr. X i.e. Rs 7.5 million. For the purpose of calculating the period of holding, period of holding by the previous owner shall be considered i.e. 1 August 2004 to May 2020. Since the period of holding is more than 24 months, it will qualify as a long term capital asset. For the purpose of indexation, the CII for 2004-05 shall be considered. Therefore, indexed cost for calculating capital gains for Ms. Y shall be Rs 7.5 million x CII of 2020-21/CII of 2004-05

3.6 Income from Business / Profession



Income from any business or profession carried out by the tax payer at any time during the year is taxable under this head. While arriving at this income, expenses which are incidental to the carrying out to such business (including depreciation) are generally allowable. However, there might be certain expenses which are expressly disallowable.

Taxation of royalty/technical fees

The taxability of royalty would depend whether the non-resident performs professional services through a fixed place of business in India. The royalty or fees for technical services income will be taxed at flat 10% as per section 115A of the ITA without deducting any expenses if the non-resident does not perform professional services through a fixed place of business in India. However, if the non-resident performs professional services through a fixed place of business in India, he shall be taxed at normal rates after deducting all related expenses from the income as per section 44DA of the ITA.

3.7 Other income- Taxability of Salary

3.7.1 Taxability

Salary is taxed based on due or receipt basis, whichever is earlier. Thus, advance salary is taxed when it is received. Relationship of employer-employee is essential for an amount to be taxed as salary income.

The term salary has been defined under section 17(1) of the ITA which includes wages, annuity or pension, fees, commission, perquisite, leave salary, etc. In a nutshell, the definition is wide enough to cover all the consideration arising in cash or kind for services rendered by an employee to an employer. A standard deduction of upto Rs. 50,000 or the amount of salary received, whichever is less, is allowed for the purpose of computing the income chargeable under the head Salaries.

3.7.2 Exemptions

In addition, there are certain exemptions available in respect of certain components of the salary. The most common are listed below:

i) House Rent allowance [Section 10(13A) & Rule 2A]

If the non-resident receives house rent allowance from his employer and the non-resident takes accommodation on rent in India, he can claim deduction of the rent paid subject to the lower of the following:

- Actual allowance received
- Excess of rent paid over 10% of salary (Basic and Dearness Allowances)
- 50% of the salary in case accommodation is situated in Mumbai, Delhi, Kolkata or Chennai, or 40% in all other cases

Illustration:

Mr. X has received following amounts during the previous year:

Basic Salary – Rs. (20,000*12)	–	Rs. 240,000/-
Dearness Allowance (DA) – Rs. (10000*12)	–	Rs. 120,000/-
House Rent Allowance (HRA) – Rs. (8000*12)	–	Rs. 96,000/-
Actual Rent Paid – Rs. (10,000*12)	–	Rs. 120,000/-

Accordingly, least of the following shall be exempt:

Actual HRA received (8000*12)	–	Rs. 96,000/-
Rent Paid in excess of 10% of salary (120,000-36,000)	–	Rs. 84,000
50% of Salary	–	Rs. 180,000/-

Therefore, Rs. 84,000 shall be exempt and the balance Rs. 12,000 shall be included in gross salary.

ii) Leave encashment [Section 10(10AA)]

Leave encashment while in service is fully taxable. However, leave encashment on retirement is fully exempt for employees of Central/State Government.

In other cases, exemption is available to the extent of least of:

- 10 months salary calculated on the basis of last 10 months average salary
- Rs. 300,000
- [Earned Leave# – Leave Availed] x Average monthly salary**
  (Note: If leave availed is more than earned leave then the entire amount of leave encashment shall become taxable), or
- Actual amount paid by the employer

Earned Leave shall not exceed 30 days for each completed year of service.
**For the purpose of this section salary means average of last ten months salary.

Important Case Law:

In ***CIT v D.P. Malhotra (1997) 142 CTR 325(Bom). (CIT v R.J. Shahney (1986) 159 ITR 160 (Mad.)***, it was held that the term "Retirement" includes resignation. What is relevant is retirement: how it took place is immaterial for the purpose of this clause. Therefore, even on resignation, if an employee gets any amount by way of leave encashment, S.10(10AA) would apply.

iii) Leave Travel allowance [Section 10(5)]

Exemption is available to an individual for travelling expenses to any place in India during employment or on retirement or on termination. Thus, travel to a place outside India is not covered.

The exemption is restricted to amount actually spent on travelling of employee and his family members. Family members include spouse, children and dependent parents, brothers and sisters. He can claim the exemption for upto 2 children for children born on or after 1 October 1998.

This exemption is allowed only twice in a block of four calendar years. (Current block - 2018-21).

If the individual is not able to utilise the exemption in a particular block, he can carry forward the exemption to the extent of one journey to the next year but not to the next block. For example, if a taxpayer has claimed exemption of only 1 journey in the block 2014-2017. He can carry forward the exemption to the next year i.e. 2018 and claim the exemption in respect of journey performed in 2018 itself. This would be in addition to the 2 exemptions available for the block 2018-21.

iv) Special Allowances [Section 10(14)]

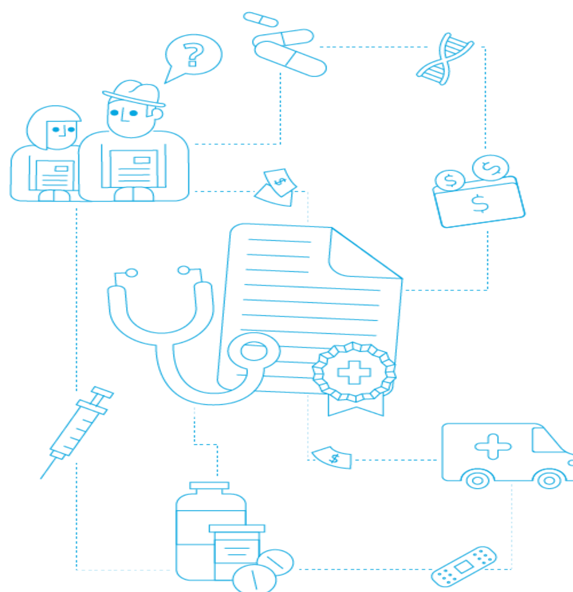
The following allowances are exempt to the extent they are actually spent for:

Type of allowance	Nature of allowance
Travelling/Transfer allowance	To meet the cost of travel on tour or on transfer
Uniform allowance	For purchase or maintenance of uniform
Helper allowance	To meet expenses on helper engaged for performance of office duties
Research allowance	For encouraging academic, research and training pursuits in educational and research institutions
Daily allowance	For ordinary daily charges on account of absence from normal place of duty on tour or for journey in connection with transfer
Conveyance allowance	For conveyance in performance of duties

The following allowances are not dependent on the actual expenditure incurred. Some of the common allowances are as below:

Type of allowance	Nature of allowance
Children educational allowance	Rs. 100 p.m. per child, maximum of two children
Children hostel allowance	Rs. 300 p.m. per child, maximum of two children

v) Medical benefits (Section 17)



Medical treatment provided to an employee or any member of his family (spouse, children and dependent brothers, sisters and parents) will be exempt in the following cases:

a) Treatment in a hospital (including dispensary or clinic or nursing home) maintained by the employer
b) Treatment in any hospital maintained by the Government, or any local authority or any other hospital approved by Govt.
c) Treatment in respect of prescribed diseases in a hospital approved by the Principal Chief Commissioner/ Chief Commissioner
d) Premium paid for approved health insurance scheme by the employer for the employee. This is restricted to the employee only and family members are not covered.
e) Reimbursement of health insurance premium paid by employee. Please note that this is not available for only himself but his family members,
f) Actual expenditure on medical treatment outside India, including expenditure on travel and stay abroad to the extent permitted by RBI. Expenditure on travel abroad will be exempt only if the gross annual total income of the employee excluding this perquisite is Rs. 0.2 Million or less.

vi) Short stay exemption

Section 10(6)(vi) of the ITA provides for a short stay exemption in case of individuals who have received remuneration as an employee of a foreign enterprise for services rendered by him during his stay in India if the following conditions are satisfied -

- The foreign enterprise is not engaged in any trade or business in India
- His stay in India is upto a maximum of 90 days

- The remuneration is not liable to be deducted from the income of the employer chargeable under ITA

vii) Other exemptions in respect of remuneration received by foreign citizens

Section under which income is exempt	Nature and condition of exemption
Section 10(6) (ii)	**Remuneration of officials of embassies, etc.** - Remuneration as officials or as member of the staff of Embassy, high commission, legation, commission, consulate or trade representatives of a foreign state is exempt from tax - Member of the staff of any of that official will be exempt if corresponding India official in that foreign country enjoys a similar exemption
Section 10(6) (vi)	**Salary of foreign employee** Remuneration received by a foreign national as an employee of foreign enterprises for services rendered during his stay in India is exempt if: - the foreign enterprise is not engaged in any trade or business in India; - his stay in the aggregate does not exceed 90 days in that previous year; **and** - Such remuneration is not liable to be deducted from the employer's income chargeable to tax in India
Section 10(6)(viii)	**Salary received by a ship's crew** Salary received by, or due to, a non-resident foreign national as a member of a ship's crew is exempt from tax if his total stay in India does not exceed 90 days in the previous year
Section 10(6)(xi)	**Training stipend** Remuneration received by an employee of foreign government in connection with his training in any undertaking owned by the Government or Government owned company or its subsidiary or a corporation or a government financed registered society, is exempt from tax

Section 10(8A),(8B)	**Remuneration or fees received by non-resident consultants and their foreign employees** ➢ Remuneration of a consultant engaged under a technical assistance program which is paid out of funds made available to an international organization under a technical assistance grant agreement between such organization and the foreign government is exempt from tax if the consultant is either not a citizen of India or is not ordinarily resident in India or is a non-resident and the technical assistance is in accordance with an agreement between the Government of India and that foreign organization ➢ Remuneration received by an employee of the consultant is exempt from tax provided the consultant is either not a citizen of India or is not ordinarily resident in India and the contract of his service is approved by the prescribed authority before the commencement of his service ➢ Any other income (apart from remuneration) of the consultant or the person employed by him or any income of their family members which accrues to them outside India is also exempt from tax if such income suffers tax in the country where it accrues

3.7.3 Social security schemes

The Indian social security system provides retirement and insurance benefits to employees working in factories or other establishments covered by the system, in India. The system is governed by the Employees' Provident Fund and Miscellaneous Provisions Act 1952 (PF Act) and the schemes made there under, namely, the Employees' Provident Fund Scheme (EPF) and the Employees' Pension Scheme (EPS). The Employees' Provident Fund Organisation (EPFO), a statutory body established by the government of India, administers the social security regulations in India.

In October 2008, the government of India made the social security scheme mandatory for cross border workers by introducing a new category of employee, 'international worker', within the ambit of the EPF and EPS.A foreign national qualifies as an 'international worker', if he/she is coming to work for an establishment in India to which the Indian social security regulations apply. An international worker is exempted from Indian social security regulations where he or she: is from a country with which India has a reciprocal SSA and is contributing to his/her home country's social security, either as a citizen or resident and he or she enjoys the status of 'detached worker' for the period.

India has entered into Social Security Agreements with the following countries so far:

Sr. No.	Countries with which agreement is in force
1	Belgium
2	Denmark
3	France
4	Hungary
5	Korea
6	Luxembourg
7	Netherlands
8	Switzerland
9	Norway
10	The Czech Republic
11	Sweden
12	Finland
13	Germany
14	Austria
15	Canada
16	Australia
17	Japan
18	Portugal

In absence of a social security agreement, the international worker is required to contribute 12% of his/her salary to the social security system. Similarly, employers are required to make a matching contribution of 12% from the employee's salary. There are certain restrictions on withdrawal of contribution for international workers.

3.8 Estate / Inheritance tax

An NRI on his return to India may decide to sell off his immovable property outside India. Inheritance tax (known as estate duty) was applicable in India from 1953 to 1985. While India does not levy any estate or inheritance tax presently, there are several countries such as US, UK, France, etc. that levy such taxes. Thus, he would be subject to estate taxes outside India depending on the laws of that country. The levy of inheritance tax in respect of immovable property is generally based on the domicile of the individual and the location of property.

The estate laws prevailing in few countries have been discussed in brief below:

3.8.1 Overview of estate tax in US

US Citizens and residents are subject to unified estate and gift tax which is generally based on the net value of transferred assets of the donor or decedent in excess of the basic exclusion amount i.e. US$ 11,580,000 in 2020. For non-resident / non-citizens, estate taxes are imposed only on property situated in the US in excess of US$ 60,000. Estate tax rate ranges from 18% to 40%.

Estate tax under the Internal Revenue Code of 1986

Upon the death of a U.S. citizen or resident, his or her taxable estate is subject to estate tax. The taxable estate includes the fair market value of all of the decedent's assets on the date of the death. The executor may choose to value the estate at an alternate date.

The alternate date will be as follows:

1. If the assets are sold, exchanged or otherwise disposed off within 6 months after the death of the decedent: Date of sale/exchange or disposal of the asset

2. If the assets are not sold, exchanged or otherwise disposed off: 6 months after the death of the decedent

Certain deductions shall be allowed from the market value such as funeral and administration expenses, debts and mortgages, Certain charitable contributions etc.

The most important estate tax deduction is the marital deduction, which generally permits all outright transfers of property to the decedent's spouse to be excluded from taxation. However, this deduction shall be allowed only if the spouse is a U.S. citizen. However, property passing to the spouse can qualify for marital deduction if the following conditions are satisfied:

- Surviving spouse becomes a U.S. citizen before the federal estate tax return of the decedent is filed and
- The surviving spouse was a U.S. resident at all times after the decedent's death and before becoming a U.S. citizen

3.8.2 Overview of estate tax in UK

Inheritance tax is payable by the following individuals:

1. **Individuals domiciled in the UK:** Inheritance tax applies on their worldwide assets
2. **Individual not domiciled in UK:** Inheritance tax broadly applies to UK located assets
3. **Individuals deemed to be UK domiciled:** In certain cases individuals who are non-UK-domiciled may be deemed to be UK domiciled for levy of inheritance. This includes individuals who have been resident in the UK in any 15 of the previous 20 UK tax years. In such a case, the exposure to UK inheritance tax extends to his world-wide assets.

The rates of inheritance tax is as under- Rates on death

Tax rate	2019-20	2020-21
Nil (all chargeable assets)	GBP 325,,000	GBP 325,000
Nil (a residence is passed on death to a direct descendant.)	GBP 150,000	GBP 175,000
40%	Excess	Excess

Inheritance tax is usually payable by the deceased's personal representative when probate (confirmation of the estate) is obtained.

Inheritance Tax is payable on the value of the net value estate upon death provided it exceeds the specified 'Inheritance Tax threshold'. The net value of an estate is arrived at after deducting debts and liabilities of the deceased, certain reliefs such as business relief, agricultural relief and reducing the exemptions. Exemptions include transfers on the death of the individual's spouse or civil partner provided transferee is domiciled in the UK. To prevent double taxation, the UK has entered into inheritance tax treaties with few countries including India, France and United States.

Transfers between spouses and civil partners are generally exempt. Certain lifetime transfers or transfer on death to the individual spouse or civil partner are also exempt, but if the donor spouse or civil partner is UK domiciled and the donee spouse or civil partner is non-UK domiciled, the exemption is limited to the nil-rate band that applies at the date of the transfer and the cumulative total of all transfers to a spouse or civil partner are taken into account when applying the restrictions. It is, however, possible for the recipient spouse or civil partner to elect to be UK domiciled for inheritance tax purposes, in which case the exemption is unlimited, but the recipient spouse/civil partner's worldwide estate would be within the scope of UK inheritance taxation.

Chapter 4: Eligible Deductions from Income

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Chapter 4 Eligible Deductions from Income

While arriving at the total income of an individual, deductions under sections 80C to 80U are allowed to be reduced from the gross total income. The manner of calculation is enumerated in **Annexure II**.

The common deductions are listed below:

4.1 Various investments and payments [Section 80C, 80CCD and 80CCD]

An individual will be eligible for a deduction up to a maximum of Rs. 150,000 in respect of some investments and expenses made. Some of the common investments and expenses have been enumerated below:

1. Life Insurance premium paid on life of himself, his, spouse or any of his children (married/ unmarried, minor/major). The premium amount must be less than 10% of sum assured.
2. Repayment of principal amount of housing loan from specified entities including stamp duty, registration fees and other expenses for purpose of transfer of such property to the NRI are allowed as deduction. However, loan taken from relative or friends is not eligible for deduction.
3. Contribution to public provident fund scheme by the individual himself, his spouse or any child. However, an NRI cannot open a fresh PPF account. However, he can use the funds in the NRE account or the NRO account to make investments in PPF.
4. Contribution by an employee to a recognized provident fund, approved superannuation fund or statutory provident fund
5. Contribution to ELSS (equity linked saving schemes) of mutual funds, popularly known as tax-saving schemes
6. Children's tuition fees for the purpose of full- time education of any 2 children. (including payments for play school, pre-nursery and nursery)
7. Fixed Deposit with Scheduled Bank for 5 years or more
8. Subscription to National Bank for Agriculture and Rural Development (NABARD) bonds.
9. Five year Post Office Time deposit
10. Contribution to Unit-linked Insurance Plan (ULIP) in the name of the individual himself or his spouse or his children in case of individual. E.g. Dhanraksha 1989 and contribution to other units -linked insurance plan of UTI.

In addition, an individual can also claim deduction under section 80CCC for amount paid for a contract for any annuity plan of LIC or any other insurer for receiving pension from a fund set up under a pension scheme.

These payments are also covered under the overall limit of Rs. 150,000 as discussed above

4.2 Pension scheme [80CCD]

Section 80CCD of the ITA allows deduction for contributions made by an individual or by his employer towards National Pension Scheme (NPS) and Atal Pension Yojana (APY) account. There are some restrictions on the contribution which you can make towards your NPS account.

The restriction up to which an individual can claim tax benefit under Section 80CCD is capped at 20% of gross total income from FY 2017-18.

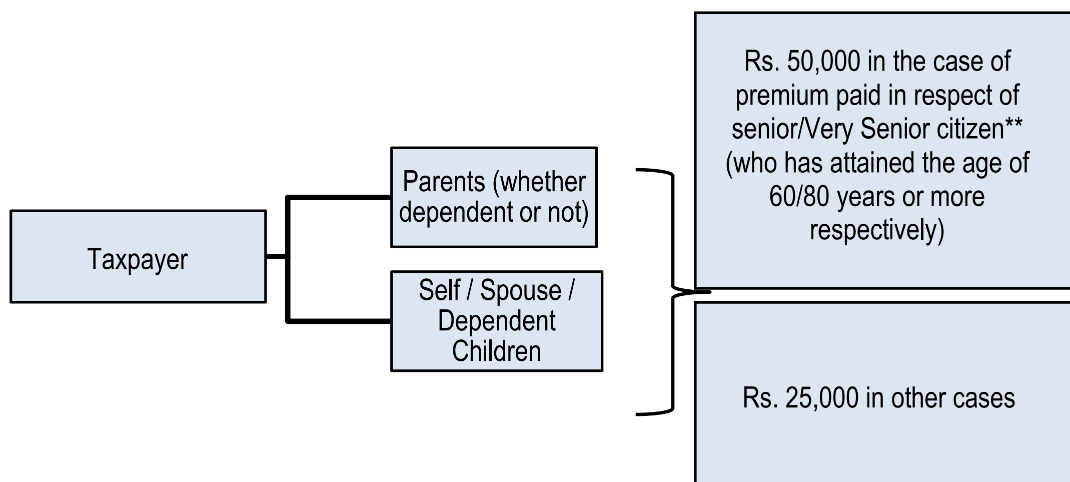
This is covered within the overall limit of Rs. 150,000 under section 80CCD (1) with an additional deduction upto Rs. 50,000/- under section 80 CCD (1B).

An NRI aged between 18-60 years can open NPS account. However, opening a joint account in NPS is not permissible. The contributions by NRIs can be from either of the following sources subject to normal foreign exchange conversion norms:

- NRE Account
- NRO Account/ Local sources

4.3 Health insurance premium [Section 80D]

Health insurance premium paid in respect of an individual, his spouse and dependent children is eligible for deduction under section 80D subject to the limits as enumerated below:



Senior citizen/ very senior citizen" means an individual **resident in India who is of the age of **sixty/ eighty** years or more respectively at any time during the relevant previous year;

A. <u>For taxpayer his/her spouse and dependent children</u>:

The entire premium amount paid subject to ceiling of:

- Rs. 50,000/- in the case of premium paid in respect of senior citizen/ very senior citizen.

And

- Rs. 25,000/- in other cases

B. **Additional deduction for parents of the taxpayer whether dependent or not,**

The entire premium amount paid subject to ceiling of:

- Rs. 50,000/- in case of premium paid in respect of senior citizen/ very senior citizen

  And

- Rs. 25,000/- in other cases

> Within the existing limit a deduction of up to Rs 5,000 for preventive health check-ups are also available.

4.4 Interest on education loan [Section 80E]

Interest paid by an individual in respect of education loan taken for pursuing higher education of his/her spouse, children and legal guardian of the individual shall be eligible for deduction without any monetary limit.

The deduction is allowed for 8 consecutive years or till the interest is paid, whichever is earlier. The first year for the purpose of the eight years term shall begin from the year in which an individual starts paying the interest on such education loan.

4.5 Donation [Section 80G]

Donations made to certain funds, charitable institutions etc. are eligible for deduction under this section. The amount of deduction would depend on the nature of donation and could fall under any of the categories given below:

Most of the donations are eligible for deduction at 50% (subject to limits). However, certain donations such as donation to National Defence Fund, Prime Ministers National Relief Fund, etc. enjoy 100% deduction without any limit.

Any donations made in cash exceeding Rs 2,000 will not be allowed as deduction. The donations above Rs 2,000 should be made in any mode other than cash to qualify as a deduction under section 80G.

The Finance Act 2020 proposes that deduction under this section to a donor shall be allowed only if a statement is furnished by the donee in respect of donations received Hence, a new reporting obligation has been imposed on the institutions receiving donation. Further, these institutions shall be required to issue a certificate to the donor and the claim for deduction to the donor may be allowed on that basis only.

4.6 Rent paid [Section 80GG]

Section 80GG provides tax benefits to the individuals who though are not in receipt of any HRA are still paying rent for the house occupied by them for their own residence.

An individual shall be allowed deduction in respect of the rent paid by him. The extent of deduction shall be:

Lower of:

- Rs. 5,000 per month, or
- 25% of the total income (after allowing all deductions except under this section), or
- Expenditure incurred in excess of 10% of the total income (after allowing all deductions except under this section).

Illustration:

Mr. A pays a rent of Rs. 10,000/- per month. His total income before deduction under section 80GG is Rs. 4, 80,000/-. The deduction that will be allowed to him under section 80GG will be as follows:

1. Amount calculated at Rs. 5,000/- per month = Rs. 60,000/-
2. Rs. 120,000/- (25% of Total Income)
3. Rs. 72,000/- (i.e. excess of rent paid over 10% of Total income Rs. 120,00- 48,000)

Lowest of the above i.e. Rs. 60,000 is allowed as a deduction under section 80GG.

4.7 Savings bank interest [Section 80TTA]

Section 80TTA allows to an Individual or HUF, not being a senior citizen, from his gross total income if it includes any income by way of interest on deposits (not being time deposits) in a savings account, **a deduction** amounting to Rs. 10,000/-

Due to Covid-19 situation, an individual had the option to make the aforesaid investments under Section 80C/ 80CCD/ 80D/ 80G –PM Cares fund, on or before 31 July 2020 in respect of the deductions to be claimed in the income tax return for FY 2019-20

Chapter 5: Special Chapter for NRIs – XII-A - Overview

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Chapter 5 Special Chapter for NRIs – XII – A - Overview

Chapter XII-A of the Income Tax Act lays down certain special provisions relating to long-term capital gains and investment income earned in India by NRIs. The Chapter allows certain benefits like reduced rate of tax, non-filing of returns of income in certain cases, etc. Further, the Chapter also states that the provisions of this chapter would apply even after the NRI becomes a resident of India in respect of specified assets.

A non-resident is eligible to opt for this chapter only if he has investment income and long term capital gains (LTCG) arising on transfer from the following specified assets provided that they are acquired out of convertible foreign exchange:

1. Shares of an Indian company
2. Debentures or deposits with an public limited Indian company
3. Any security of the Central Government

The provisions of computation of income are tabulated as under: **[Section 115E]**

Sr. No.	Particulars	Investment Income	LTCG
1	Tax rate	20%*	10% *
2	Deduction for expenses	Not allowed	Allowed as per normal provisions
3	Chapter VI-A Deductions	Not available	Not available

*Plus surcharge and cess as applicable

5.1 Exemption for long-term capital gains [Section 115F]

Long term capital gain arising on transfer of specified assets (as discussed above) is exempt, if the net sale consideration is reinvested in specified assets or in any savings certificates referred to in clause (4B) of section 10 within a period of 6 months from the transfer date. If only a portion of the net consideration is reinvested, then proportionate exemption is allowed. The new asset must be held for a minimum period of 3 years failing which the capital gains exempted earlier becomes taxable.

Illustration:

Mr. X, a non-resident Indian, acquired shares of a public limited company on 1 January 2017 for Rs. 100,000 in foreign currency. These shares were sold by him on 1 January 2019 for Rs. 300,000. He invested Rs. 300,000 in shares of a public limited company on 31 March 2019. What would be the tax liability?

Mr. X earned long term capital gains of Rs. 200,000 when he sold the shares on 1 January 2019. However, the entire amount received was re-invested in specified asset namely shares of a public limited company. Thus, he can claim exemption under section 115F and nothing shall be taxable under his hands.

5.2 Non filing of return [Section 115G]

An NRI may not be required to file a return of income if his income consists only of investment income or long-term capital gains or both and tax has been withheld on the same.

5.3 Continuance of benefits after the non-resident becomes a resident [Section 115H]

An NRI has the option of being continued to be governed by this Chapter even after he becomes a resident if he furnishes a written declaration along with his return of income to that effect.

5.4 Option to opt out of Chapter XII-A [Section 115-I]

An NRI may choose to opt out of the provisions of Chapter XII-A for any particular year. He would be required to submit a written declaration to this effect to the tax officer with his return of income. Accordingly, his total income for that particular year will be computed and taxed normally.

Chapter 6: Withholding Tax Rates and Foreign Tax Credit

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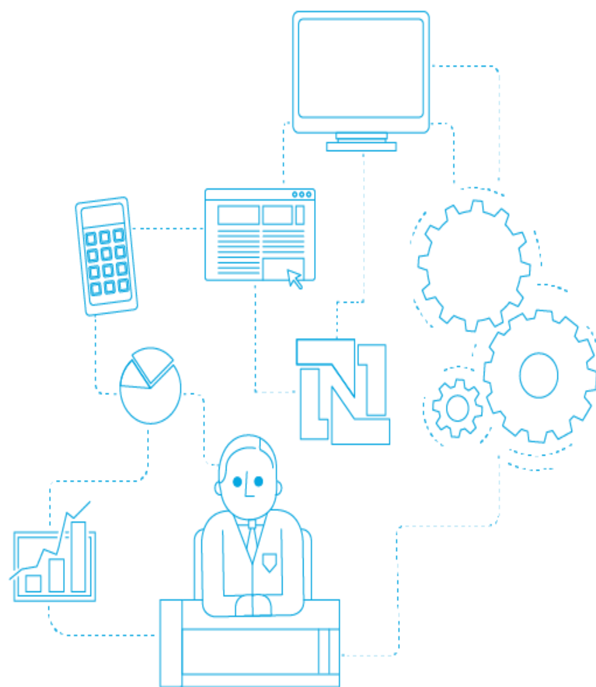
Chapter 6 Withholding Tax Rates and Foreign Tax Credit

6.1 Provision relating to withholding of tax



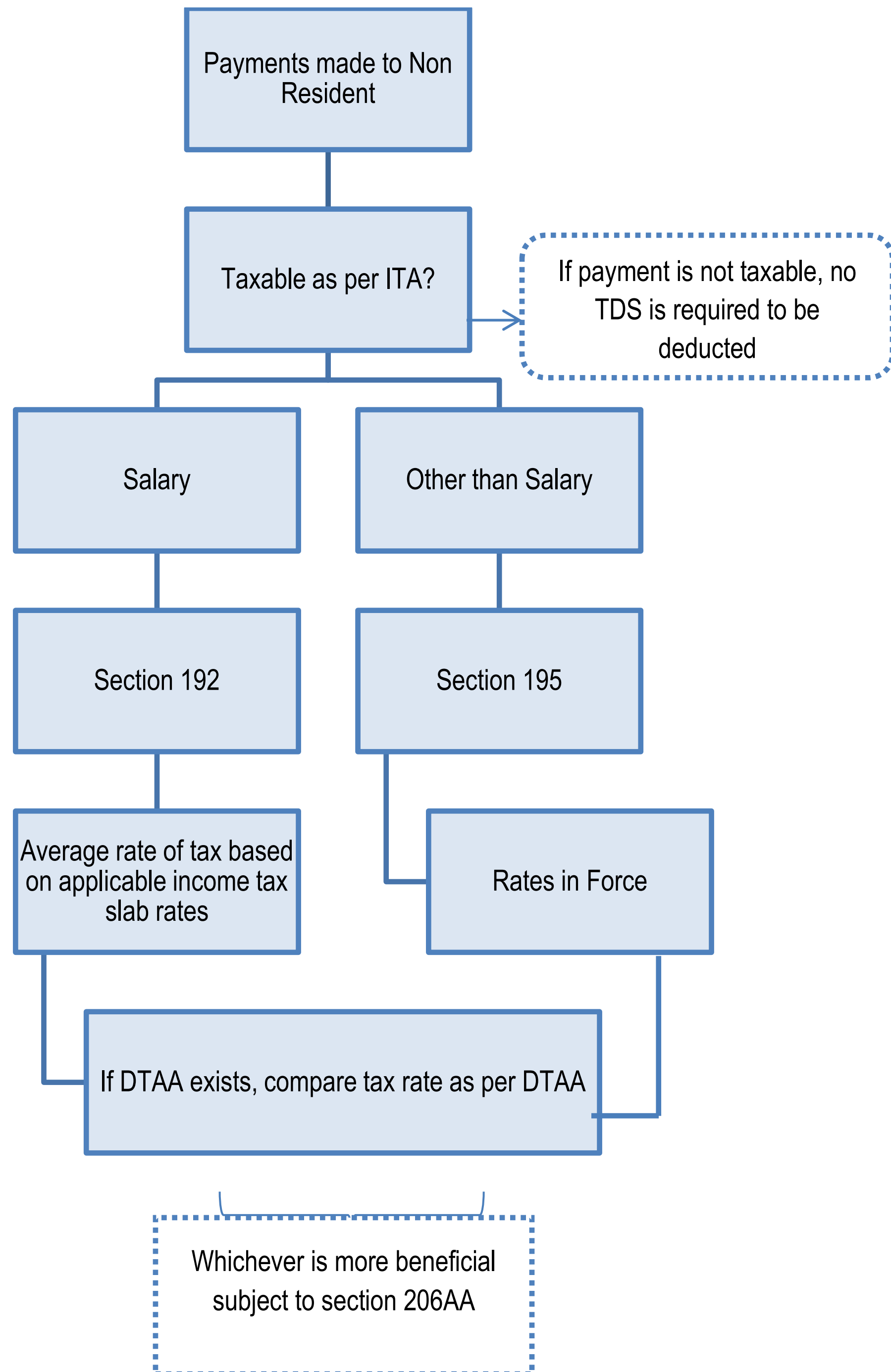
Tax is required to be withheld at source when any payment is made to a non-resident, if the amounts paid represent income of the non-resident chargeable to tax in India. There is no threshold limit and tax has to be withheld however small the payment may be.

The provisions pertaining to withholding taxes are different for salary and payments other than salaries.

Section 192 of the ITA governs the withholding tax provisions when payment is made by an employer to a non-resident. It requires the employer to pay salary after withholding tax calculated on the basis of average tax rates applicable to the employee.

Section 195 of the ITA governs the payments other than salaries. It requires the payer to deduct tax based on rates in force. Rates in force as specified in the Finance Act. Further, he is required to check the applicable provisions as per the double taxation avoidance agreement (DTAA). The income may not be chargeable to tax as per the DTAA or may be taxable at a lower rate. If the provisions of the DTAA are more beneficial, he can consider that rate while withholding taxes.

The same has been shown in a flow chart as follows:


Payments made to Non Resident
Taxable as per ITA?
If payment is not taxable, no TDS is required to be deducted
Salary
Other than Salary
Section 192
Section 195
Average rate of tax based on applicable income tax slab rates
Rates in Force
If DTAA exists, compare tax rate as per DTAA
Whichever is more beneficial subject to section 206AA

The rates in force have been given in the table below:

Particulars	TDS rates*
Salary income	Slab rates
Investment income	20%
Long-term capital gains referred to in Section 115E or Section 112(1)(c)(iii)	10%
Short term capital gains referred to in 111A	15%
Long-term capital gains (if not exempt)	20%
Tax on long-term capital gains arising from transfer of an equity share, or a unit of an equity oriented fund or a unit of a business trust.*	10%
Royalty income as per section 115A	10%
Fees for technical services as per section 115A	10%
Other income (if not covered above)	Slab Rates

*The same will be chargeable to tax if the capital gains exceeds Rs. 100,000

* These rates are to be increased by surcharge (if applicable) and Health & Education Cess. Further, section 206AA of the ITA makes it mandatory for payers from India to withhold tax at a higher rate if the payee (including non-resident) does not provide PAN or specified documents/ details (in the absence of PAN) viz. Tax Residency Certificate, form 10F &other specified details). Failure to obtain PAN or specified documents / details by the non-resident (payee) could result in a withholding tax rate at the higher of the following:

- Rate specified in the ITA **OR**
- Rates in force **OR**
- Rate of 20%

Taking a conservative view, this provision would override the rates as per DTAA in cases where PAN of non-resident / other specified documents are not available.

<u>Reporting requirements for remittances made to non-resident</u>

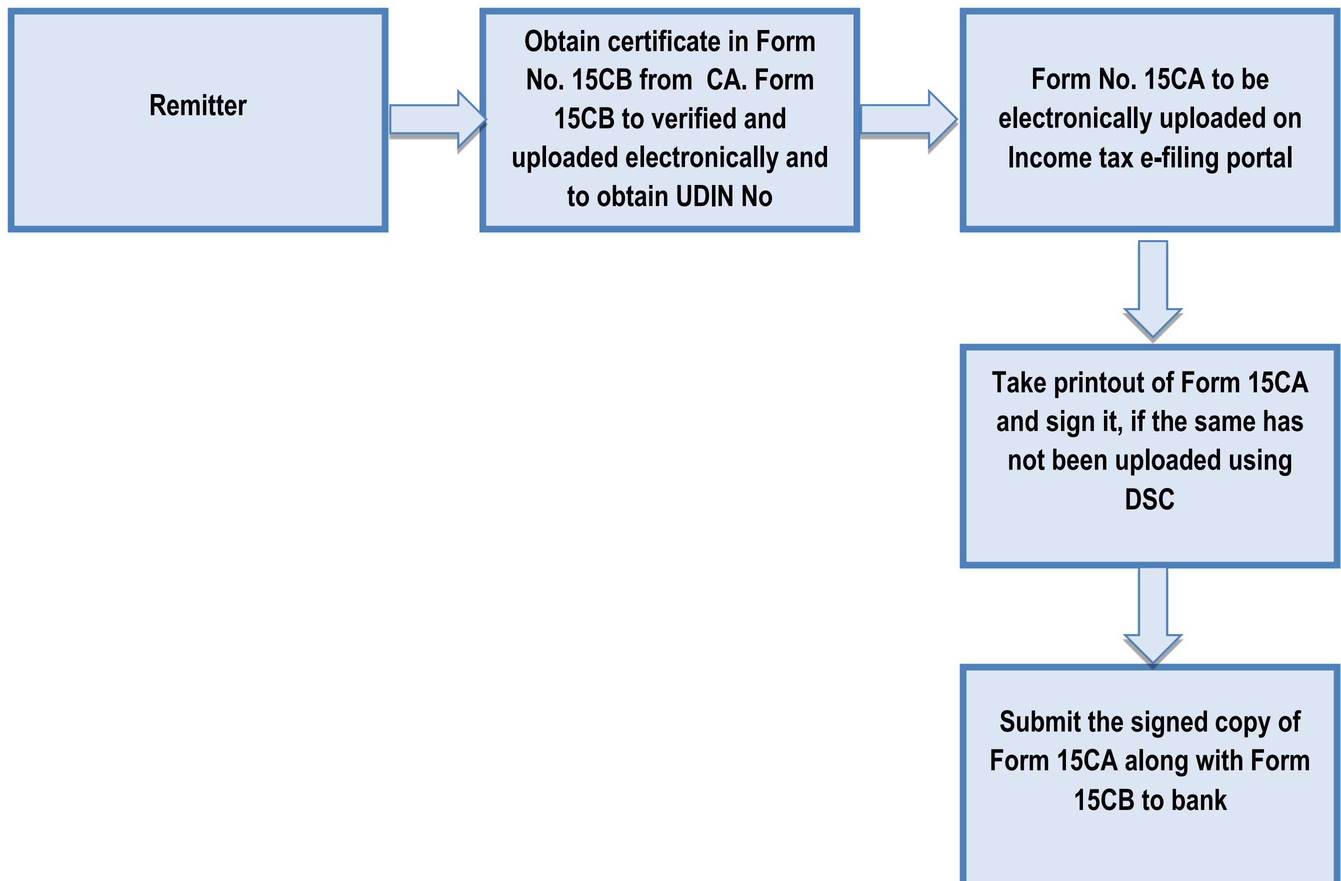
Any payment made to a non-resident irrespective of whether it is taxable in India or not is required to be reported in Form 15CA and 15CB. Form 15CA is a declaration by the remitter and Form 15CB is a certificate to be obtained from a Chartered Accountant. Form 15CA is divided into 4 parts.

Information in Part A of the Form 15CA is to be furnished if the remittance is chargeable to tax and the same does not exceed Rs. 500,000 in a financial year.

Where the payment exceeds Rs500,000, part B or part C of form 15CB is required to be filed.

For remittances which are not chargeable to tax, part D of form 15CA is required to be filed. Banks have been directed to obtain Form 15CA and 15CB before making any remittances to a non-resident.

The procedure to be followed by the remitter has been shown in the chart below:



Grossing up of tax

The tax would have to be borne by the payer if he is unable to recover it from the non-resident payee. In such a case, where tax is agreed to be borne by the payer, the tax has to be grossed up as per provisions of section 195A.Under grossing up, income would need to be increased to such an amount as would after deduction of tax be equal to the net amount payable.

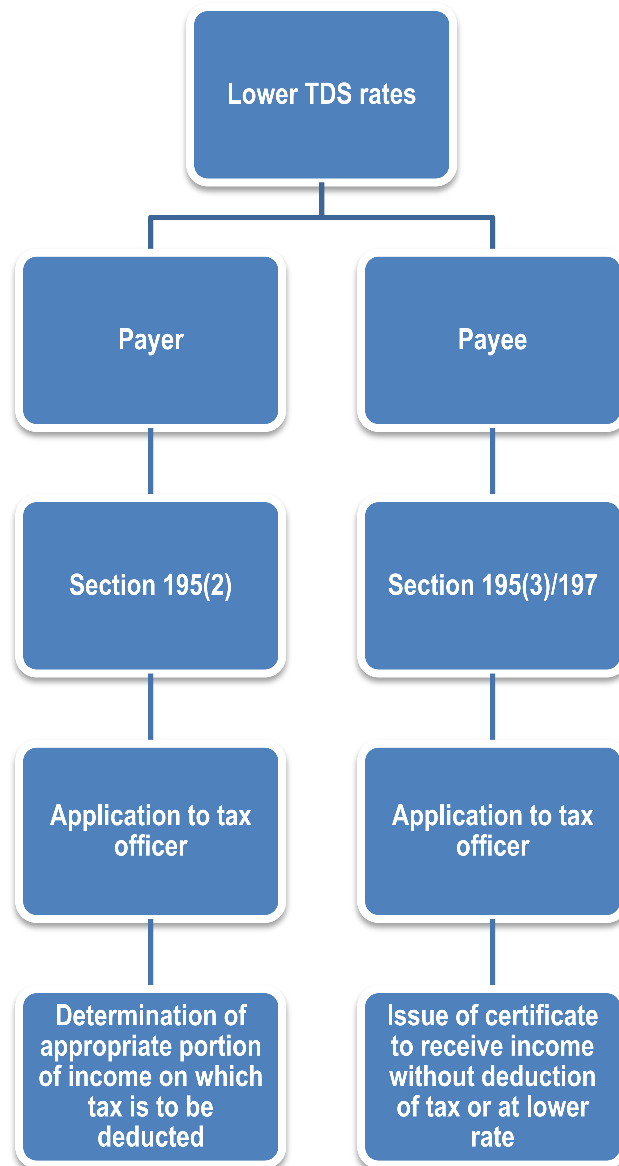
Illustration:

Mr. X wants to make a payment of Rs. 100,000 for fees for technical services rendered by a non-resident after grossing up. The withholding tax rate applicable is 10%.

Particulars	Amount
Net payment	Rs. 100,000
Withholding tax rate	10%
Grossed up amount	Rs. 1,00,000 X 100 / (100-10)= Rs. 111,111

Lower/nil withholding tax certificate

When a taxpayer believes that its total income justifies withholding of tax at a lower rate or nil rate, he has make an e-application to the tax officer under section 195(2) requesting lower or nil withholding tax certificate. The payer may also make an application to the tax officer under section 197 to determine an appropriate amount on which tax is to be deducted.



The non-resident will not be issued any certificate for no withholding or lower withholding of taxes under the application filed under section 197 if the application does not contain the PAN of the payee. The orders passed pursuant to these applications are not appealable.

Illustration:
Mr. X, an employee of an Indian company is deputed to the US for employment purpose during the year 2017-18. The salary for 2017-18 is paid by the Indian company after deducting tax at source. The salary is taxable in India as the source of income is in India. As per DTAA between India and US income is taxable in the country where services are rendered (Article 16). Thus, salary is taxable only in the USA and the employee has to claim a refund of the tax deducted by his employer. In cases where the amount of tax withheld is high, it might create cash flow issues. In such cases, he can make an application under section 197 for obtaining certificate from the department.

6.2 Foreign tax credit

When an individual has earned income from one country whereas he is a resident of another country, it may give rise to double taxation. This is because the country where an individual is a resident may have the right to tax his global income. In addition, the country where he has actually earned this income also has the power to tax such income. However, it is just and fair that such income is taxed only once. In order to remove hardship to tax payers, the ITA provides double taxation relief.

For this purpose, India has entered into double taxation agreements (DTAA) with more than 90 countries including US, UK, UAE etc. to provide relief against double taxation. The DTAA may provide for any of the following:

- A particular income may be taxed in only one country
- The country of residence of the tax payer would allow him credit of the taxes paid in the country of source.

Tax Credit Includes "Federal taxes" and "States taxes paid" on that income ***-Tata Sons Limited Vs DCIT-ITA 4978 Mum Tribunal.*** As Section 91 of the ITA does not discriminate between state and federal taxes, and in effect provides for both these types of income taxes to be taken into account for the purpose of tax credits against Indian income tax liability, the assessee is, in principle, entitled to tax credits in respect of the same. Tax credit in respect of foreign income tax is restricted to actual income tax liability in India, in respect of income on which taxes have been so paid abroad.

Under the Income-tax Rules, 1962, foreign tax credit claimed in the India tax return will be allowed only upon furnishing Form 67. This form is in addition to the income-tax return to be filed and to be filed before due date of furnishing Income tax Return.

Illustration 1

Mr. X is a resident of Greece. He has earned interest income in India. The DTAA provides that the interest income shall be taxable in India only.

Illustration 2

Mr. A is an Indian resident. He has received salary from a US company in respect of employment exercised in the US. Mr. A is a resident in India and hence his worldwide income will be taxable. In this case, source country is US (since the service has been rendered in US) and resident country is India. So at the time of computation of tax liability of Mr. A, the tax paid in US will be allowed as set off against his total tax liability in India but limited to the tax payable on such foreign income at Indian tax rates.

Tax Residency Certificate

A non-resident is required to produce a tax residency certificate (TRC) which states his country of residence from the home country, if he wishes to claim relief as per DTAA. The certificate must contain the following information:

- ✓ **Status** i.e. individual
- ✓ **Nationality** of the individual
- ✓ **Tax payers tax identification number** in the country in which he is a resident. In case, there is no such number, then, a unique number on the basis of which the person is identified in the country where he is a resident
- ✓ **Period** for which the residential status, as mentioned in the certificate is applicable; and
- ✓ **Address** of the tax payer in the country of which he is a resident

If these details are not contained in the TRC, Form 10F needs to be filed containing the above particulars. It requires the tax payer to keep and maintain the documents that are necessary to substantiate the above information provided in Form 10F. It authorizes the tax officer to ask the tax payer for these documents for verification.

Chapter 7: Reporting and Procedural Aspects

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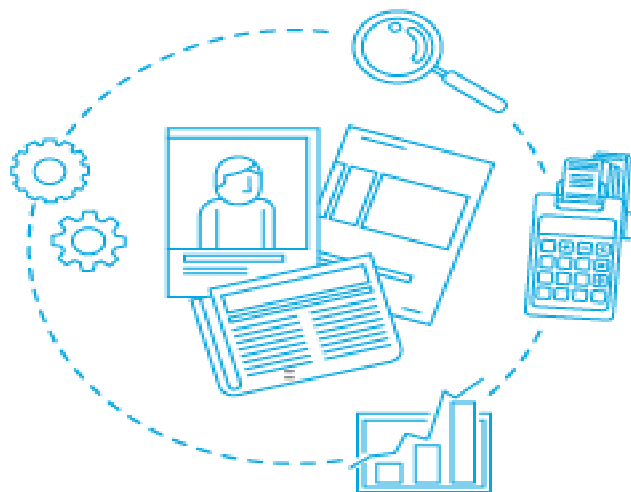
Chapter 7 Reporting and Procedural Aspects

7.1 Application for Permanent Account Number (PAN)

PAN number is similar to Income Tax registration number issued by the Income Tax Department. It is a unique 10 digit alpha-numeric code.



Every person who is liable to file income tax return is required to obtain a PAN. The application for PAN is to be made in Form 49AA in case of individuals who are not citizens of India to the National Securities Depository Limited (NSDL) / UTIITSL.

Application can be made in physical format or electronically. The application can be made online on the website of NSDL[2] / UTIITSL[3]. The application should be accompanied with the documents in support of proof of identity and address. The documents are required to be attested by Apostille or by the Indian Embassy or High Commission or Consulate in the country where the applicant is located.

PAN is required to be quoted on income tax return, correspondence with income-tax department and documents pertaining for certain transactions. Some of the common transactions are listed below:

[2] https://tin.tin.nsdl.com/pan/

[3] http://www.myutiitsl.com/PANONLINE/

Nature of transaction	Threshold requirement for quoting PAN
Payment in cash	Value exceeding Rs.50,000
Purchase/sale of immovable property	Value exceeding Rs. 1,000,000
Purchase/ sale of motor vehicle	No value prescribed
Purchase/ sale of securities	Value exceeding Rs. 100,000
Cash payment for foreign travel	Value exceeding Rs. 50,000
Purchase of mutual fund units	Value exceeding Rs. 50,000
Purchase of shares	Value exceeding Rs.100,000 per transaction
Purchases or sales of goods or services (includes purchase of jewellery or bullion)	Value exceeding Rs.200,000 per transaction
Payment of life insurance premium	Value exceeding Rs. 50,000
Opening of Bank/Demat Account	No value prescribed
Cash payment of Hotel/Restaurant Bill	Value exceeding Rs. 50,000

Failure to file, furnish obtain PAN or quote PAN or intimate false PAN can attract penalty of Rs. 10,000/- as per section 272B for each default,

7.2 Payment of advance tax

The concept of payment of advance tax is based on the principle - "Pay As You Earn (PAYE)". This is achieved by two modes. First, tax is withheld at source by the payer while making the payment of income. If there is any income remaining, the recipient of income is required to pay advance tax to the government if his net tax liability (after reducing tax deducted at source) is estimated to be Rs. 10,000/- or more during the year. An individual has to pay the advance tax in three installments on 15th June, 15th September, 15th December, and 15th March of the financial year in the ratio of 15%, 45%,75% and 100% respectively of their net tax liability for the year. An individual is required to pay advance tax in the following manner:

Installment	Due Date of installments	Advance tax payable
I	By 15th June	15% of estimated tax
II	By 15th September	45% of estimated tax
III	By 15th December	75% of estimated tax less earlier installment
IV	By 15th March	100% of estimated tax less earlier installments

Say an individual has an advance tax liability of Rs. 100,000 after reducing TDS. He is required to pay this by way of 4 installments of Rs. 15,000 by 15th June, Rs. 45,000 by 15th September, Rs. 75,000 by 15th December and Rs. 100,000 by 15th March.

If there is a default or short fall in payment of the above installments of advance tax, the shortfall can be covered up in the subsequent installment. Further, if a person fails to pay advance tax altogether or there is shortfall in advance tax paid, he can still pay the advance tax latest by 31st March of the same financial year.

However, for such default or shortfall, an individual is required to pay interest under section 234B and 234C of the ITA. For non-payment or short payment of advance tax, an individual will have to pay interest under section 234B at 1% for a month or part of the month from 1st April of the following year till the time an individual actually discharges the tax liability by way of payment of self-assessment tax. However, an individual would not be required to pay interest in case the short fall in payment of advance tax is not more than 10% of the tax liability.

In addition to the interest under section 234B, an individual will also have to pay interest for default for non-payment of each installment as explained above under section 234C at the rate of 1% per month for 3 months. The same has been illustrated in the table below:

Installment	Due Date of installments	Interest due
I	By 15th June	3% (1% interest x 3 months)
II	By 15th September	3% (1% interest x 3 months)
III	By 15th December	3% (1% interest x 3 months)
IV	By 15th March	1% simple interest

Illustration:

Consider that the total tax liability for the financial year is Rs. 100,000. A single payment of Rs. 20,000 has been made on 15 September. Thus, the interest under section 234C shall be calculated as follows:

Payment Dates	Advance Tax payable (Rs.)	Advance Tax paid (Cumulative) (Rs.)	Shortfall (Rs.)	234C interest (Rs.)
By 12th June	15,000	-	15,000	1% for 3 months = 450
By 15th September	45,000	20,000	25,000	1% for 3 months = 750
By 15th December	75,000	20,000	55,000	1% for 3 months =1200
By 15th March	1,00,000	20,000	80,000	1% for 1 month =800
Total				**Rs. 3,650**

7.3 Tax return filing

An individual is liable to file an income tax return in India u/s 139(1) of the ITA, if his total income (before allowing any deductions) is more than the basic exemption limit for a relevant financial year.

Categories under which filing of Income Return in India is mandatory even if income is not more than the basic exemption limit

a) Proviso to Section 139 (1) has been inserted vide Finance Act (No.2) 2019 and the scope of tax-return filing requirement has been widened by including following categories who were otherwise not required to file a tax return.

1. has deposited an amount or aggregate of the amounts exceeding Rs. 10 million in one or more current account maintained with a banking company or a co-operative bank; or
2. has incurred expenditure of an amount or aggregate of the amounts exceeding Rs. 0.2 million for himself or any other person for travel to a foreign country; or
3. has incurred expenditure of an amount or aggregate of the amounts exceeding Rs. 0.1 million towards consumption of electricity; or
4. fulfills such other conditions as may be prescribed
5. claims the benefits of tax exemption for long term capital gains under various provisions under section 54 of the ITA (i.e. Claims rollover benefit of capital gains, for investment in a house or a bond or any other asset under sections 54, 54B, 54D, 54EC, 54F, 54G, 54GA and 54GB).

b) The Government has also recently announced following circumstances under which filing of return is mandatory irrespective of any of the aforesaid provisions u/s 139. However, official notification in this respect is yet to be issued by the government:

- person having bank transactions over Rs. 30 lakh
- Payment of rent over Rs 40,000
- All professionals and businesses having turnover over Rs 50 lakh.

Categories under which filing of Income Return in India is not mandatory even if income is more than the basic exemption limit

a) An NRI may not be required to file a return of income in India if his income consists only of investment income or long-term capital gains or both and tax has been withheld on the same wherein benefit under section 115G of the ITA has been claimed

b) As per the amendment in section 115A of the ITA vide Finance Act, 2020, a non-resident whose total income (even if exceeding exemption limit) includes income by way of royalty or Fees for Technical Services (FTS) is not required to file income tax return in India provided taxes have been withheld on such income (in the nature of dividend, interest, royalty and FTS) at the rates prescribed under section 115A(1) of the Act.

It is pertinent to note that exemption from filing return of income would not be available in cases where income (in the nature of dividend, interest, royalty and FTS) is claimed as exempt as per the beneficial provisions of the relevant tax treaty or when the non-resident opts for the rate under the relevant tax treaty, which may be lower than the rate prescribed under section 115A(1) of the Act.

7.3.1 Joint filing of return

There is no concept of joint filing of the return of income in India. Moreover, the tax rates do not differ amongst individuals based on their marital status or having children or not.

7.3.2 Timelines

The due date of filing the tax return is 31 July of the following financial year. For example, Mr. X, a non-resident, has earned taxable income in India during the financial year 2019-20. (1 April 2019 to 31 March 2020) He is required to file the tax return by 31 July 2020. A tax return filed within the due date can be revised at any time and any number of times till the end of the relevant Assessment Year. In the above case, if the return is filed up to 31 July 2020, he can revise the return up to 31 March 2021.

If an individual misses filing the tax return by the due date, he can still file a belated return up to the end of the relevant Assessment Year. Continuing with the above example, in case Mr. X forgets to file his return by 31 July 2020, he can still file a belated return up to 31 March 2021. However, he would be required to pay penal interest under section 234A at 1% per month or part of the month on the tax due from the day after the due date up to the date of filing the return. Suppose, he files his income tax return on 7 December 2020, the tax due on his income was Rs. 10,000. Thus, total interest for 5 months i.e. August to December at the rate of 1% would be Rs. 500.

Further, it is also pertinent to note that if he fails to file his return of income of the FY 2019-20 by 31 March 2021, then the late filing fees as provided under will also be payable.

Late Filing Fee Details		
E- Filing Date	**Total income Below Rs 5,00,000**	**Total income Above Rs 5,00,000**
31 July 2020	NIL	NIL
Between 1 August 2020 to 31 December2020	Rs 1,000	Rs 5,000
Between 1 January 2020 to 31 March 2021	Rs 1,000	Rs 10,000

However, if a return in filed belatedly, he will not be able to revise his return if any error or omission is discovered later. Another consequence would be that if the individual has business loss or capital gains loss, he will not be able to carry it forward to subsequent years.

7.3.3 Procedure

An individual is required to file his income tax return electronically.

7.3.4 Tax clearance certificate

Section 230 of the ITA provides for obtaining a no-objection certificate to be followed by a person leaving India.

A person who is not domiciled in India, comes to India in connection with business, profession or employment and derives income from any source in India is required to furnish an undertaking in Form 30A to the tax authorities. This undertaking is furnished by the person paying such income stating that any future tax liability arising in respect of income earned during the period of engagement is derived shall be paid by the him. On receipt of the undertaking, the tax authorities will issue a non-objection certificate in Form 30B.

The above compliance is not applicable to a person who is not domiciled in India but visits India as a foreign tourist or for any other purpose not connected with business, profession or employment.

In case of foreign employees not domiciled in India, obtaining a tax clearance certificate every time they move out of India can be cumbersome. In order to alleviate this difficulty, the facility of one-time clearance certificate has been provided to a foreign employee who is not domiciled in India and has a fixed tenure of service in India up to five years. This allows the employee to travel abroad any number of times during the period of the contract of his service.

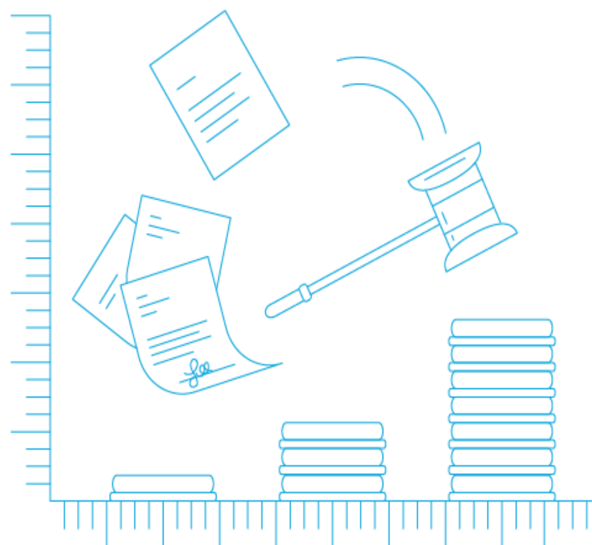
Chapter 8: Certain Significant Aspects

Chapter 8 Certain Significant Aspects

The Government has taken various measures to curtail tax evasion which includes introduction of a new law- The Black Money Act which penalizes for non-disclosure of foreign income and foreign assets in the income tax return. Further, it has entered into tax information exchange agreements with various countries for exchange of information with respect to taxes. The same has been discussed in brief as follows:

8.1 The Black Money and Imposition of Tax Act

The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 has been newly legislated in respect of non-disclosure of foreign assets and income.



8.1.1 Applicability

The Act is applicable only to a person who is a resident and ordinarily resident in India (ROR). **Thus, non-residents would come under the purview of this Act only in the year they become ROR.**

8.1.2 Coverage

The provisions of the Act shall be applicable in respect of the following:

- Income from source located outside India, which has not been disclosed in the return of income (original return/belated return/revised return) **AND**
- Income from source located outside India, in respect of which return is not furnished within the specified time (original return/belated return/revised return) **AND**
- Value of an undisclosed asset[4] located outside India

8.1.3 Tax rate

Undisclosed foreign income and assets shall be taxed at the flat rate of 30%. No exemption or deduction or set off of any carried forward losses shall be allowed. In addition to the same, penalty would be levied as mentioned in below table:-

Note: Previously assessed income will be reduced from the value of undisclosed asset.

[4] *Value of an undisclosed asset' means the fair market value of an asset (including financial interest in any entity) dete*mined in the prescribed manner

8.1.4 Penalties

Non compliance	Quantum of penalty
Non-disclosure of income or an asset located outside India (Note 1)	3 times the tax computed
Failure to file income tax return in respect of foreign income and asset (Note 2)	Rs. 1 million
Return of income is filed but the foreign income and asset are not disclosed or inaccurate particulars of income are furnished (Note 2)	Rs. 1 million

Note 1: This is in addition to the tax payable at 30%.

Note 2 : Penalty provisions will not be attracted in case of oversight or ignorance to report bank accounts with a maximum balance of upto Rs.500,000 at any time during the year.

8.1.5 Prosecution

Non compliance	Prosecution provision
Failure to file return in respect of foreign income or asset	6 months to 7 years with fine
Return of income is filed but the foreign income and asset are not disclosed or inaccurate particulars of income are furnished	6 months to 7 years with fine
Person resident willfully attempts to evade tax, penalty or interest in relation to a foreign income or an asset located outside India	3 years to 10 years with fine
Any person who willfully attempts to evade payment of tax, penalty or interest	3 years to 10 years with fine
Abetment or inducement of another person to make false return/ account/ declaration	6 months to 7 years with fine

8.2 Foreign Account Tax Compliance Act

India signed an inter-governmental pact called "Intergovernmental Agreement" (IGA) with USA on 9 July 2015 thereby making Foreign Account Tax Compliance Act (FATCA) applicable in India. FATCA is part of a comprehensive USA anti-tax evasion global reporting regime designed to locate income and assets held by USA persons in offshore accounts (either directly or indirectly through ownership of foreign entities) and ensure that it is reported to Internal Revenue Services (IRS).

FATCA requires US persons including individuals who live outside the United States, to report their financial accounts held outside of the United States, and requires non-US financial institutions to report details of their US clients to the relevant tax authorities.

In general, FATCA does not apply to non-US persons. A citizen or resident of the United States (including a green card holder) would be said to be a U.S. person.

However, if any one of the indicators mentioned below is found, a person would be required to provide additional information to determine if a person is a US Person under FATCA.

A questionnaire is tabulated below. Any "Yes" answer indicates that person would be required to provide additional information to determine applicability of FATCA.

Sr. No	Particulars	Yes	No
1	Are you a resident or citizen of the United States?		
2	Is your place of birth is USA?		
3	Do you have a USA telephone number?		
4	Do you hold any residence / mailing address / PO Box address in the US?		
5	Is your Power of attorney (POA) holder based out of USA or hold USA residence / citizenship?		
6	Do you hold an Identification Number or any identification that indicates USA residence / citizenship?		
7	Do you hold 'care of' or 'hold mail' address which is the sole address for the account holder?		

The following information needs to be maintained and reported with regard to reportable accounts:

- Name, address, U.S. taxpayer identification number (TIN), date and place of birth
- Account number
- Account balance at the end of the year

For this purpose, a joint account that has one US owner is treated as a US account and the entire account is subject to reporting as US person.

8.3 Advance Ruling

- Non-resident taxpayers can file applications with the Authority for Advance Rulings ('the AAR') to obtain advance rulings on income tax issues arising out of a transaction/proposed transaction. However, an advance ruling cannot be sought where the question is already pending in the case of the non-resident applicant before any income-tax authority, the Appellate Tribunal or any court; or involves determination of fair market value of any property; or relates to a transaction which is designed prima facie for avoidance of income-tax.

- AAR is mandated to pronounce its ruling within 6 months of receiving the application. An AAR ruling is binding on the taxpayer and the revenue authorities.

- Advance rulings are not binding upon any court for other matters and other enterprises. Advance rulings do have a persuasive value in other cases with relatable facts.

- Where the applicant does not agree with an advance ruling, the same can be appealed against before a High court and/or the Supreme court by way of special leave to appeal

ANNEXURE I – Cost Inflation Index Table

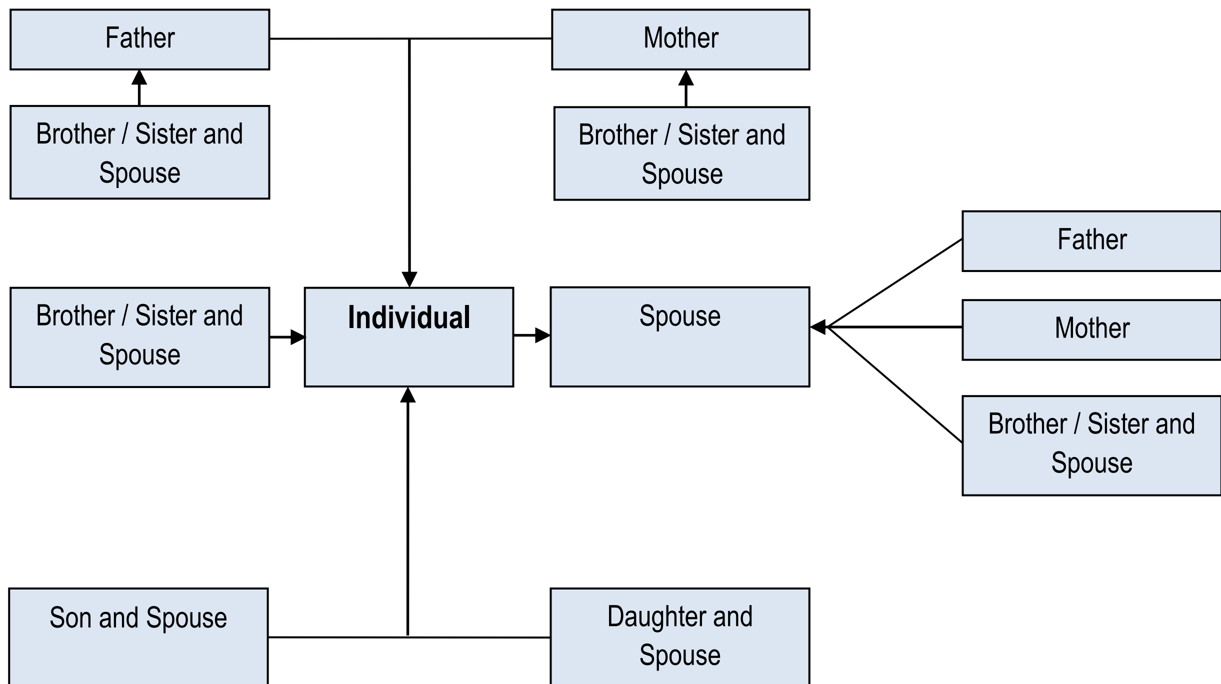
Financial Year	Cost Inflation Index
2001 – 02	100
2002 – 03	105
2003 – 04	109
2004 – 05	113
2005 – 06	117
2006 – 07	122
2007 – 08	129
2008 – 09	137
2009 – 10	148
2010 – 11	167

2011 – 12	184
2012 – 13	200
2013– 14	220
2014 – 15	240
2015 - 16	254
2016 - 17	264
2017 - 18	272
2018-19	280
2019-20	289
2020-21	301

ANNEXURE II– Computation of net total income

Particulars	**Amount**
Income from Salary	xxx
Income from House Property	xxx
Income from Business or Profession	xxx
Capital Gains	xxx
Income from Other Sources	xxx
Gross Total Income (GTI)	**xxx**
Less : Deductions (subject to a maximum of GTI)	(xxx)
Net total Income	**xxx**

ANNEXURE III– Specified Relatives



PART B
FEMA Aspects

Chapter 9: Determination of Residential Status

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Chapter 9 Determination of Residential Status

9.1 Important Definitions

9.1.1 Non Resident Indian (NRI)

a) **'**Non-Resident Indian (NRI)' means an individual resident outside India who is citizen of India;

b) 'Overseas Citizen of India (OCI)' means an individual resident outside India who is registered as an Overseas Citizen of India Cardholder under Section 7(A) of the Citizenship Act, 1955;

c) Indian Students Studying Abroad

- RBI has clarified that when students leave India for taking up studies or further advance courses, students may have to take up job or seek scholarships to supplement income to meet their financial requirements abroad and as such their stay for educational purposes gets prolonged than what is intended while leaving India.

- In view of the above, RBI has clarified that on both counts viz., their stay abroad for more than 182 days in the preceding financial year and their intention to stay outside India for an uncertain period when they go abroad for their studies, they can be treated as Non-Resident Indians (NRIs) and accordingly be eligible for foreign investments and NRE / FCNR accounts. Refer A.P.(DIR Series) Circular No. 45 issued by RBI on 8 December 2003, wherein it has been stated that when a students go abroad for their studies, they can be treated as Non-Resident Indians (NRIs).

9.1.2 **A 'Person of Indian Origin**' ('PIO') is a person resident outside India who is a citizen of any country other than Bangladesh or Pakistan or such other country as may be specified by the Central Government, satisfying the following conditions:

a) Who was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (Who at any time held Indian Passport); or
b) Who belonged to a territory that became part of India after the 15th day of August, 1947; or
c) Who is a child or a grandchild or a great grandchild of a citizen of India or of a person referred to in clause (a) or (b); or
d) Who is a spouse of foreign origin of a citizen of India or spouse of foreign origin of a person referred to in clause (a) or (b) or (c)

Explanation: PIO will include an 'Overseas Citizen of India' cardholder within the meaning of Section 7(A) of the Citizenship Act, 1955.

9.1.3 Person Resident in India means a person residing in India for more than 182 days during the course of the preceding financial year but does not include:

(A) A person who has gone out of India or who stays outside India, in either case -

a. For or on taking up employment outside India, or
b. For carrying on business or vocation outside India, or
c. For any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period.

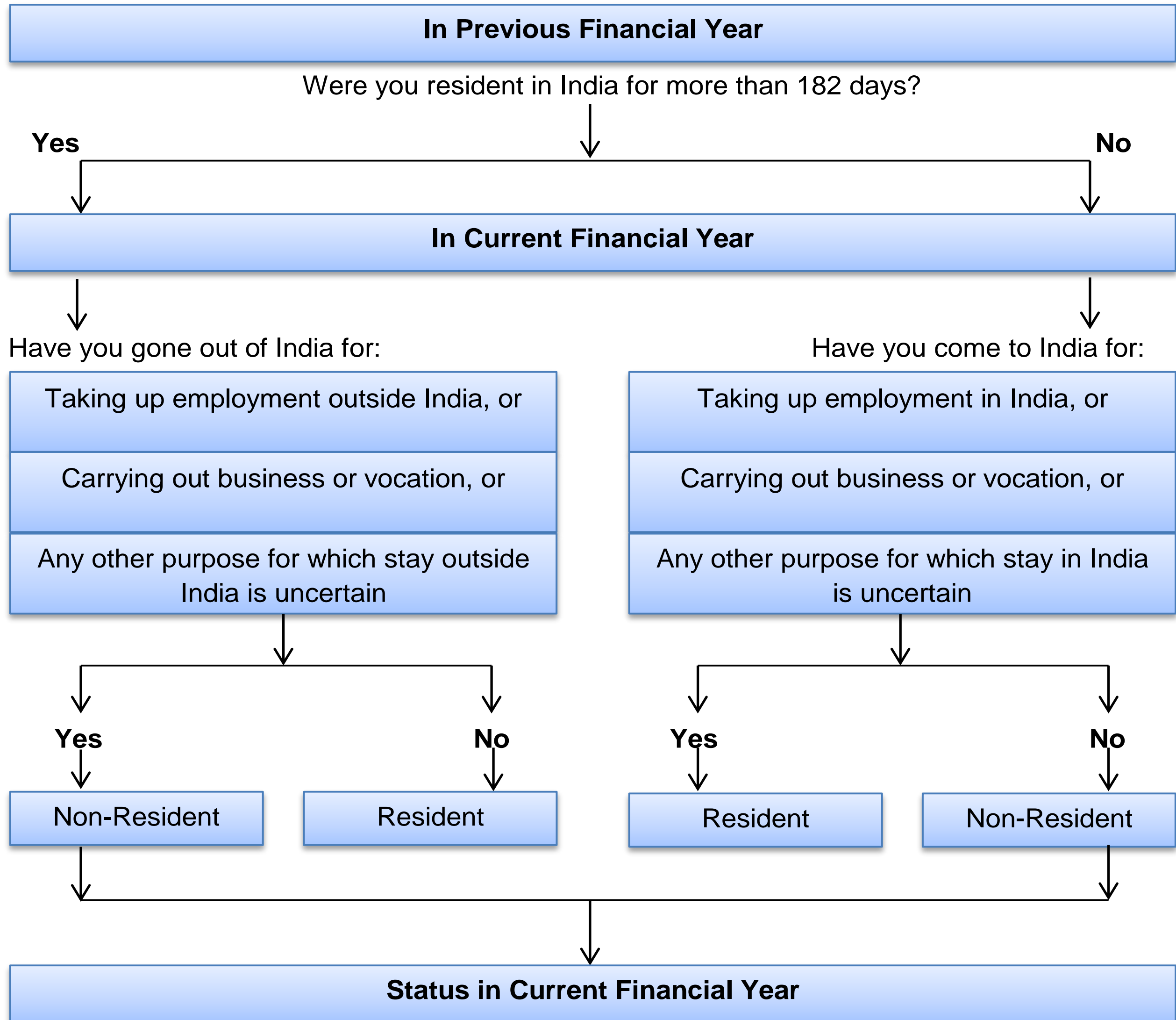
(B) A person who has come to or stays in India, in either case, otherwise than –

a. For or on taking up employment in India, or
b. For carrying on in India a business or vocation in India, or
c. For any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period.

9.1.4 **Person resident outside India** means a person who is not resident in India.

9.1.5 **Not Permanently Resident** means a person resident in India on account of his employment / deputation of a specified duration (irrespective of length thereof) or for a specific job or assignment, the duration of which does not exceed 3 years. She / he can retain currency without limit, travelers cheques etc. acquired / owned when he was a resident outside India and brought into India.

Flow-Chart For Determination of Residential Status



Illustrations:

1. Mr. X came to India on 1st September 2018 for taking up an employment in India. For the FY 2017-2018, he was not in India. As such, for the FY2018-19 he will be considered as Non-resident in India. For the FY 2018-19, he was in India for more than 182 days. As such, he will be resident in India for the FY2019-2020.

2. Mr. X came to India on 1st September 2018 as a tourist and since then he is in India till today. For the FY 2017-2018, he was not in India. As such, for the FY 2018-2019 he is Non-resident in India. For the FY 2018-19, he was in India for more than 182 days. However, he is not in India for any of the purposes listed in the second condition. As such, he is a Non-resident in India for the FY 2019-2020 too.

3. Mr. X, born and brought up in India, goes to the USA for taking up an employment on 15th May 2019. Determine his residential status under the Act for the FY 2019-2020.

   Ans: Mr.X shall be treated a Resident of India till 14th May 2019. But, w.e.f. 15th May 2019, he shall be treated a Non-Resident as he is covered by one of the exceptions listed in sub-clause (A) to section 2(v)(i).

4. Mr. X is going to USA (on 10 April 2019) neither for employment nor for business nor for any purposes which indicate his intention to stay there for an uncertain period. Thus, his physical presence in India during the preceding FY 2018-2019 shall have to be considered and as he was in India for 365 days during the FY 2018-2019 he would be treated as Resident in India for the FY 2019-2020. If he continues to stay in USA, say, till 31st March 2020, his stay in India during the preceding FY 2019-2020 would be less than 183 days and hence he would be treated as Non-Resident for the financial year 2020-2021 as the first condition of the physical stay in India is not fulfilled.

5. **Example on different residential status under Income Tax and FEMA**

   As the definition of residential status under the Income Tax Act and FEMA are different, there could arise a situation, where person could be a resident under Income Tax Act, and non-resident under FEMA, or vice-versa:

   Mr. X, who is an Indian resident, takes up a job in the USA in November 2019. From November, 2019, he will become a non-resident under FEMA. He will be free from FEMA as far as transactions abroad are concerned. However under Income Tax Act, the person will be a resident for the FY 2019-20 as the number of days of stay in India exceeds 182 days. Accordingly, his US Salary from November, 2019 to March, 2020 will be liable to tax in India – subject to DTAA relief.

6. **Difference between the definition of "Resident " as per ITA Act and FEMA Act**

   - “Financial Year" is not defined under FEMA, but by convention it is assumed to refer to 1st April to 31st March.

   - Income-tax Act considers the physical presence of a person in the Current Financial Year, whereas FEMA considers physical presence of a person in the Preceding Financial Year

   - Income-tax Act requires physical presence of 182 days (120 and 60 days in certain cases) or more, whereas, FEMA requires more than 182 days.

   - As per Income tax Act, you are either resident or non-resident for the entire financial year i.e. you cannot be resident for part of the year and non-resident for rest of the year. However; the aforesaid limitation does not apply to FEMA.

Chapter 10: Various Card Schemes for Non-Residents

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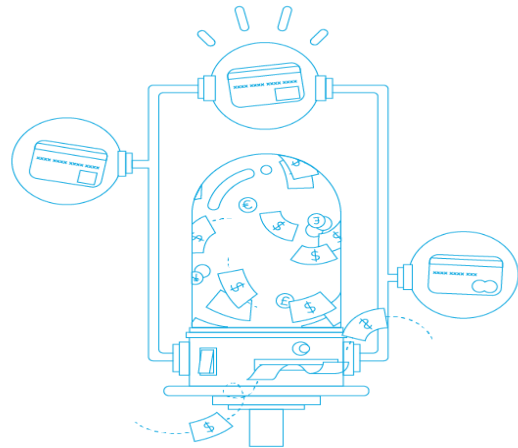
Chapter 10: Various Card Schemes for Non-Residents

10.1 Overseas Citizenship of India (OCI) Card



i) In response to persistent demands for "dual citizenship" particularly from the Middle East, North America and other countries and keeping in view the Government's deep commitment towards fulfilling the aspirations and expectations of Overseas Indians, the Overseas Citizenship of India (OCI) Scheme was introduced by amending the Citizenship Act, 1955 in August 2005.

ii) A foreign national, who was eligible to become a citizen of India on 26.01.1950; or was a citizen of India on or at anytime after 26.01.1950; or belonged to a territory that became part of India after 15.08.1947; or is a child or a grandchild or great grandchild of such a citizen; or Minor child of such persons is eligible for registration as Overseas Citizen of India (OCI). Minor children and whose both parents or one of the parents are citizens of India; or Spouse of foreign origin of a citizen of India or spouse of foreign origin of an Overseas Citizen of India Cardholder registered under section 7A of the Citizenship Act, 1955 and whose marriage has been registered and subsisted for a continuous period of not less than two years immediately preceding the presentation of the application are also eligible for OCI.

However, if the applicant or either of whose parents or grandparents or great grandparents is or had ever been a citizen of Pakistan or Bangladesh, he/she will not be eligible for OCI.

iii) **Benefits for OCI Cardholders: -**

a) Multiple entry lifelong visa for visiting India for any purpose (However OCI Cardholders will require a special permission to undertake research work in India for which they may submit the application to the Indian Mission/ Post/ FRRO concerned).

b) Exemption from registration with Foreigners Regional Registration Officer (FRRO) or Foreigners Registration Officer (FRO) for any length of stay in India.

c) Parity with Non-Resident Indians (NRIs) in respect of all facilities available to them in economic, financial, and educational fields except in matters relating to the acquisition of agricultural or plantation properties.

d) Registered Overseas Citizen of India Cardholder shall be treated at par with Non-Resident-Indians in the matter of inter-country adoption of Indian children.

e) Registered Overseas Citizen of India Cardholder shall be treated at par with resident Indian nationals in the matter of tariffs in air fares in domestic sectors in India and shall be charged the same entry fee as domestic Indian visitors to visit national parks and wildlife sanctuaries in India.

iv) It is to be noted that being an OCI cardholder does not mean the person is an Indian Citizen with all the rights and benefits as are provided to any regular Indian Citizen since Constitution of India does not allow Dual Citizenship. The person with OCI card cannot vote or hold constitutional posts such as President, Vice President and Judge of Supreme Court etc. Further he cannot be a candidate for federal Parliament (Lok Sabha / Rajya Sabha) or state Legislative Assembly / Council etc. and cannot acquire agricultural or plantation properties in India (however he can inherit such properties).

v) Government of India vide Official Gazette Notification No. 26011/01/2014IC.I dated 9th January 2015 withdrew PIO Card Scheme and all the Persons of Indian Origin cardholders registered under the scheme will be deemed to be Overseas Citizens of India cardholders.

Chapter 11: Compliances by a Resident Person becoming Non-Resident and a Non-Resident becoming Resident

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Chapter 11 Compliances by a Resident Person Becoming Non-Resident and Non-Resident Becoming Resident

11.1 Immigrating Indians - Compliances Required Upon Change of Residential Status from 'Non-Resident Indian' To 'Resident'

Sr. No.	Nature of Assets / Liabilities	Action required under FEMA
1.	Surrender of Foreign Exchange	ANY PERSON can at ONE TIME get the following amounts to India: – US$ 5,000 of foreign currency – US$ 10,000 in currency and traveller's cheques including the currency mentioned above (Amounts in excess of above: Currency Declaration Form), Person resident in India needs to surrender foreign exchange held in excess of US$ 2000. (For currency notes and traveller's cheque - 180 days) It is recommended that the foreign currency may be deposited in Resident Foreign Currency Account ('RFC'). An RFC account is a foreign currency bank account in India that can be maintained by a NRI who has returned home for permanent settlement in India without any regulatory approval from RBI.
2.	Bank accounts held outside India	One can continue to hold the bank account outside India. A resident individual can open a foreign currency account with a bank outside India for the purpose of sending remittances under the Liberalized Remittance Scheme upto US$ 250,000 per financial year.

3.	Bank Accounts held in India and FDR with Banks	• Intimate respective banks about change of residential status as resident and ask banks to re-designate bank account in India as resident account. • NRO account, if held, would be designated as saving / current accounts as the case may be. • NRE saving and current accounts, should be re-designated as resident account or the fund held in such account may be transferred to RFC account. • Money kept in RFC account can be used to buy or invest in properties and securities abroad without RBI permission. • NRE account held jointly by person now resident with a non-resident is not permissible under FEMA. Either the name of person (who was earlier non-resident) will be deleted from NRE account or the NRE account will be re-designated as resident account. • FCNR(B) account -it is fixed deposit account-it shall be continue till maturity of such deposit and maturity proceeds on such shall be remitted to resident account.
4.	Investment in shares outside India	One can Continue to hold investment in shares outside India. No specific approval of RBI is required for same. The companies whose shares are held may be informed about change in residential status as per laws prevailing in that country. It is advisable that any income or sales proceeds from sale of such shares can be deposited in RFC account in India, so that same can be utilized to invest any other permissible assets abroad as per FEMA regulations without prior approval of RBI. Such Investment shall be further subject to LRS Scheme.
5.	Investment held as shares / Debentures of Indian companies on non-repatriation basis	One can continue to hold such investment in Indian company / firm as it is considered as domestic investment under FEMA laws The change of residential status from NRI to residents shall be intimated to respective company if the shares are held in physical form. If shares are held in DEMAT account with designated institution, one needs to intimate to change the residential status and re-designate DEMAT account accordingly.

6.	Immovable property out-side India	One can continue to hold immovable property outside India. It is advisable that any income received from such immovable property shall be transferred to RFC account in India.
7.	Movable assets outside India	One can hold such movable assets outside India or bring such assets like Jewellery, Car, computer etc. in India by paying appropriate custom duty.
8.	Loans given to person outside India	Under FEMA a resident individual cannot lend any money to a person resident outside India without approval of RBI. However, there is no clarity in case of continuity of loan given by a person resident outside India on becoming resident. Hence, an approval / clarification may be required from RBI.
9.	Loan taken from a person outside India	• A resident individual will be permitted to service loans taken overseas earlier as a person resident outside India subject to terms and conditions and limit as specified by the Reserve Bank from time to time. • In terms of existing FEMA regulations under Liberalized Remittance Scheme permits an Individual who has availed loan abroad while as NRI to repay the same on return to India under LRS scheme. The repayment shall be subject to LRS limit of US$ 250,000 per person per financial year. • In addition to above, resident individual may borrow a sum not exceeding US$ 250,000 or its equivalent from his/her relatives outside India subject to such terms and conditions as specified by the Reserve Bank from time to time.

11.2 Migrating Indians - Compliances Required Upon Change of Residential Status from 'Resident' To 'Non-Resident Indian'

Sr. No.	Nature of Assets / Liabilities	Action required under FEMA
1.	Assets in India	A person resident outside India can hold, own, transfer or invest in any immovable property situated in India if such property was acquired, held or owned by him/ her when he/ she was resident in India or inherited from a person resident in India. In case of restricted property like plantation property or agriculture land and farm house such property to be immediate sold to the person resident in India.

Sr. No.	Nature of Assets / Liabilities	Action required under FEMA
2.	Bank Accounts held in India and FDR with Banks	Bank Account held in India prior to leaving India for carrying out business or vocation outside India or with intention to stay outside India for uncertain period, bank account held in India should be converted into Non-Resident Ordinary Rupee ('NRO') Account. NRO accounts may be held jointly with residents on 'former of survivor' basis.
3.	Investment held as shares / Debentures of Indian companies	Person resident in India, holding shares and debentures of Indian companies at the time of becoming NRI, should intimate to the concerned company or the broker / bank in case of shares held in DEMAT form, to record the change of status as 'Non-resident' in their record. To record the said changes, following documents/details should be submitted to the Indian Companies or broker/bank, such as: • Nationality • Foreign address • Date of leaving India • Number of shares / debentures held and their face value • Bank details
4.	Deposit with the Indian companies, Units of UTI and Government Bonds	• No permission of RBI is required by emigrating Indian for continuing to hold deposit with the Indian companies, units of UTI and Government bonds after becoming NRI. • Amount received as interest or on sale/maturity of such deposits, units or bonds must be credited to NRO account of NRI. • Intimate about changes in residential status to the concerned companies where deposits are held or to concerned authorities where units and bonds are held.
5.	Immovable property, movable property and gold and jewellery in India	• No permission is required for continuing to hold immovable property (other than agricultural land/ plantation property/ farm house), movable property and gold and jewellery in India by an emigrating Indian. • No restriction on sale of immovable property, movable property and gold and jewellery in India. However, sale proceeds of these assets can be repatriated up to US $ 1 million from NRO account in a financial year, subject to the satisfaction of the Authorized Dealer ('AD') bank.
6.	Insurance policies in India	• No permission of the RBI is required to hold and continue the insurance policy. • There are no restrictions on payment of insurance premium and no approval for the same is required from the RBI. • All proceeds on surrender or maturity of life insurance

Sr. No.	Nature of Assets / Liabilities	Action required under FEMA
		policies should be credited to the NRO account. • It is advisable to intimate to concerned insurance companies about changes in residential status along with details of bank accounts maintained in India.
7.	Continuation of loan / Deposits and Advances given to another resident in India	Resident in India may, upon change in residential status to NRI, continue the rupee loan given to another resident in India without prior approval of the RBI. It is advisable to intimate the borrower regarding change in residential status, as: • It is necessary on the part of borrower to make credit for repayment of loan to the NRO account or any other account of the lender maintained with a bank in India as specified by the Reserve Bank from time to time, at the option of the lender. • Same may be useful while deducting tax on the interest payable as TDS rate of NRI shall apply instead of resident. • Continue with deposits & advance given to resident person, however need to inform about change of Residential status.
8.	Repatriation of income	NRI can repatriate current income like rent, dividend, pension, interest based on an appropriate certification by a CA, certifying that the amount proposed to be remitted is eligible for remittance and that applicable taxes have been paid / provided for.
9.	Other remittance facilities	• NRI having NRO account, may remit up to US$ 1 Million per financial year out of the balance held in NRO Account, subject to the satisfaction of the AD bank • NRI may remit, out of the balances held in the NRO account, sale proceeds of asset (including immovable property) purchased out of rupee fund or assets (including immovable property) acquired by way of inheritance or legacy or settlement • NRI may remit sale proceeds of residential property (maximum 2) provided the amount was paid for acquisition of the property in foreign exchange received through banking channels or out of the funds held in foreign currency non-resident account or out of the funds held in non-resident external account. Any other amount can be credited to NRO Account and can be repatriated up to US$ 1 million.
10.	Others	• NRIs can acquire immovable property (other than agricultural land / plantation property / farm house) in India without approval of RBI • NRI can set up joint venture/Wholly Owned subsidiary abroad out of earnings abroad

Sr. No.	Nature of Assets / Liabilities	Action required under FEMA
		• NRI can acquire movable and immovable properties abroad out of earnings abroad, subject to local laws abroad • NRI can make investment in Indian companies on repatriation and non-repatriation basis without approval of RBI • NRI can make investment in Indian firm, LLP or proprietary concern on non-repatriation basis without approval of RBI

Chapter 12: Foreign Exchange Transactions

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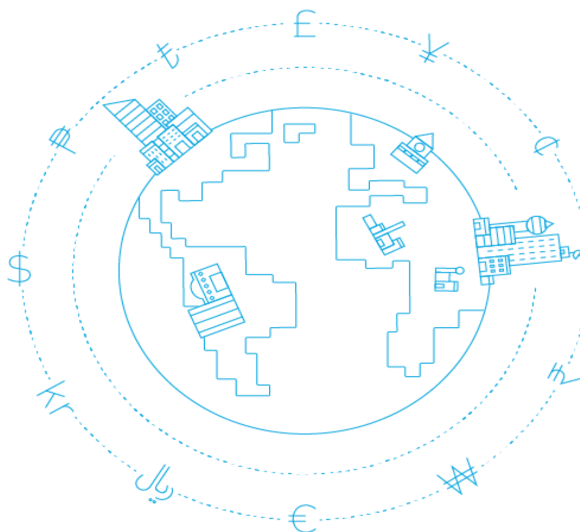
Chapter 12 Foreign Exchange Transactions

Section 3 of Foreign Exchange Management Act, 1999 provides that no person can without general or special permission of the RBI –



(a) Deal in or transfer any foreign exchange or foreign securities to any person not being an authorized person.

(b) Make any payment to or for the credit of any person resident outside India in any manner.

(c) Receive otherwise than through an authorized person, any payment by order or on behalf of any person resident outside India in any manner.

(d) Enter into any financial transaction in India as consideration for or in association with acquisition or creation or transfer of a right to acquire any asset outside India by any person.

12.1 Current Account Transaction

- Current Account Transaction means a transaction other than a capital account transaction and without prejudice to the generality of the foregoing provisions such transaction includes:
  a) Payments due in connection with foreign trade, other current business, services and short-term banking and credit facilities in the ordinary course of business,
  b) Payments due as interest on loans and as net income from investments (dividends after deduction of tax),
  c) Remittances for living expenses of parents, spouse and children residing abroad, and
  d) Expenses in connection with foreign travel, education and medical care of parents, spouse and children.

- **The below mentioned transaction are prohibited for Drawal of Foreign Exchange**

  - Remittance out of lottery winning
  - Remittance of income from racing/riding etc, or any other hobby
  - Remittance for purchase of lottery ticket, banned/prescribed magazines, football pools, sweepstakes etc.

- Payments of commission on exports made towards equity investment in Joint ventures/wholly owned subsidiaries abroad of Indian companies.
- Remittance of dividend by any company to which the requirement of dividend balancing is applicable.
- Payments of commission on exports under Rupees State Credit Routes except commission up to 10% of invoice value of export of tea and tobacco,
- Payment related to " Call back Services" of telephones
- Remittance of interest income on funds held in non-resident Special Rupees Scheme a/c. (NRSR Account)

12.2 Capital Account Transaction *(for persons resident outside India)*

Capital account transaction means a transaction which alters the assets or liabilities, including contingent liabilities outside India, of persons resident in India or assets or liabilities including contingent liabilities, in India, of people resident outside India and includes following classes of capital account transactions of persons resident outside India:

Particulars	Reference
a. Investment in India by a person resident outside India , that is to say:	
i. Issue of security by a body corporate or an entity in India and investment therein by a person resident outside India; and	Not. No. S.O.3732 (E) dated 17 October 2019
ii. Investment in India by way of contribution by a person resident outside India to the capital of a firm or a proprietorship concern or an association of persons in India.	Not. No. S.O.3732 (E) dated 17 October 2019
b. Acquisition and transfer of immovable property in India by a person resident outside India.	Not. No. S.O.3732 (E) dated 17 October 2019
c. Guarantee by a person resident outside India in favour of, or on behalf of, a person resident in India.	Not. No. FEMA 8/2000-RB
d. Import and export of currency/currency notes into/from India by a person resident outside India.	Not. No. FEMA 6(R)/2015-RB
e. Deposits between a person resident in India and a person resident outside India.	Not. No. FEMA 5(R)/2016-RB

Particulars	Reference
f. Foreign currency accounts in India of a person resident outside India.	Not. No. FEMA 5(R)/2016-RB
g. Remittance outside India of capital assets in India of a person resident outside India.	Not. No. FEMA 13(R)/2016-RB
h. Borrowing and Lending by a person resident in India	Not. No. FEMA. 3(R)/2018-RB

12.3 Acquisition and Transfer of Immovable Property in India by Non-Resident Indians (NRI) or an Overseas Citizen of India (OCI)

FEMA empowers the Central Government to frame rules to prohibit, restrict or regulate the acquisition or transfer of immovable property in India by person resident outside India. **The Ministry of Finance vide its notification dated 17 October 2019 issued the Foreign Exchange Management (Non-debt Instrument) Rules, 2019 (hereinafter referred to as "Non-debt Instrument Rules"), in supersession of the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2018.**

Chapter IX of the Non-debt Instrument Rules governs the acquisition and transfer of property in India by a NRI or an OCI.

A. NRI & OCIs

i) Acquisition of immovable property by NRI & OCI

NRI or an OCI are permitted to acquire immovable property (Residential or commercial) in India under following circumstances-

- acquire by way of purchase any immovable property in India other than agricultural land/ farm house/ plantation property:
- acquire any immovable property in India other than agricultural land/ farm house/ plantation property by way of gift from a person resident in India or from an NRI or from an OCI, who in any case is a relative as defined in section 2(77) of the Companies Act, 2013.

- acquire any immovable property in India by way of inheritance from a person resident outside India who had acquired such property (a) in accordance with the provisions of the foreign exchange law in force at the time of acquisition by him or the provisions of these Regulations or (b) from a person resident in India;

As per section 6(5) of FEMA, a person resident outside India can hold, own, transfer or invest in any immovable property situated in India if such property was acquired, held or owned by him/ her when he/ she was resident in India or inherited from a person resident in India.

ii) Transfer of immovable property

A NRI or an OCI is permitted to transfer the immovable property in India under following situation-

- transfer any immovable property in India to a person resident in India;
- transfer any immovable property other than agricultural land/ farm house/ plantation property to an NRI or an OCI. In case the transfer is by way of gift, the transferee should be a relative as defined in section 2(77) of the Companies Act, 2013.

iii) Payment for Acquisition of Immovable Property

NRIs or OCIs may make payment, if any, for transfer of immovable property out of funds received in India through banking channels by way of inward remittance from any place outside India or by debit to their NRE/ FCNR (B)/ NRO account;*(Such payments cannot be made either by traveller's cheque or by foreign currency notes or by other mode except those specifically mentioned.).*

iv) Compliances

NRI who has purchased residential / commercial property under general permission is not required to file any documents with the Reserve Bank.

v) Joint acquisition by the spouse of an NRI or an OCI

A person resident outside India, not being a NRI or an OCI, who is a spouse of a NRI or an OCI may acquire one immovable property (other than agricultural land/ farm house/ plantation property), jointly with his/ her NRI/ OCI spouse subject to the following conditions:

- Consideration for transfer shall be made out of funds received in India through banking channels by way of inward remittance from any place outside India or by debit to non-resident account of the person concerned maintained in accordance with the Act or the rules framed thereunder.

- Payments cannot be made either by traveller's cheque or by foreign currency notes or by other mode except those specifically permitted.
- The marriage should have been registered and subsisted for a continuous period of not less than 2 years immediately preceding the acquisition of such property.
- The non-resident spouse should not otherwise be prohibited from such acquisition.

B. Repatriation of sale proceeds of immovable property

In the event of sale of immovable property other than agricultural land/ farm house/ plantation property in India by an NRI or an OCI, the authorised dealer may allow repatriation of the sale proceeds outside India, provided the following conditions are satisfied, namely:

i. the immovable property was acquired by the seller in accordance with the provisions of the foreign exchange law in force at the time of his acquisition or the provisions of these Regulations;
ii. the amount for acquisition of the immovable property was paid in foreign exchange received through banking channels or out of funds held in Foreign Currency Non-Resident Account or out of funds held in Non- Resident External account;
iii. in the case of residential property, the repatriation of sale proceeds is restricted to not more than two such properties.

In case of NRI/OCI, who is director in a company outside India and has mortgaged his property of India for availing business loan and his such loan is utilized for its core business purposes and there is no invocation of charge by overseas lender else Indian banks subject to RBI directive shall sell the property and remit the amount to the overseas lender directly if conditions are violated.

A person acquiring property in accordance with section 6(5) of FEMA (as provided above) or his successor cannot repatriate outside India the sale proceeds of such immovable property without the prior permission of the Reserve Bank.

An NRI or a OCI, can repatriate up to US$ 1 million per financial year, sales proceeds of assets, assets acquired in India by way of inheritance & balance in NRO Account under the Foreign Exchange Management (Remittance of Assets) Regulations, 2016, as amended from time to time.

C. Prohibition on acquisition or transfer of immovable property in India by citizens of certain countries

Citizens of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal, Bhutan, Macau, Hong Kong and Democratic People's Republic of Korea cannot acquire or

transfer immovable property in India (other than on lease, not exceeding five years) without prior permission of the Reserve Bank. For this purpose the term "citizen" shall include natural persons and legal entities. **The said prohibition shall not apply to an OCI.**

12.4 Provisions for gifts received and given by NRIs

1. Gifts send by NRIs to Indian relatives / Non relatives

   There are no restrictions on maximum limit of remittances by NRIs to their relatives or non relatives as per the FEMA Act. However there are certain limits on gifts transferred under the Income Tax Act, 1961 as discussed in Part A under the heading Taxation of Gifts.

2. Gifts send to NRIs by Resident Indians

   A resident individual is permitted to make a rupee gift to an NRI / PIO who is a **relative** of the resident individual (relative as defined in Section 2(77) of the Companies Act, 2013) under the Liberalised Remittance Scheme. As per the scheme, the maximum amount a resident individual can transfer is US$ 250,000 per financial year by way of crossed cheque or electronic transfer. The amount should be credited to the Non-Resident (Ordinary) Rupee Account (NRO) a/c of the NRI / PIO and credit of such gift amount may be treated as an eligible credit to NRO a/c.

   The term relative includes: -

Father (including step-father)	Daughter
Mother (including step-mother)	Daughter's husband
Son (including step-son)	Brother (including step-brother)
Son's wife	Sister (including step-sister)

3. Gift of shares of Indian company from resident individual to an NRI

   A resident individual holding Equity instruments (equity shares, debentures, preference shares and share warrants) in an Indian company may transfer such equity instruments to an NRI/OCI by way of a gift subject to a **prior approval from the Reserve Bank of India** and fulfillment of the following conditions:

   a. The recipient is eligible to hold such a security under relevant Regulations;
   b. The gift does not exceed 5% of the paid-up capital of the Indian company/each series of debentures/ each mutual fund scheme;
   c. The applicable sectoral cap in the Indian company is not breached;
   d. The donor and the recipient are 'relatives' within the meaning in section 2(77) of the Companies Act, 2013; and

e. 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 US$ 50,000.

12.5 Summary table showing FEMA implication on Gifts and Inheritances received by NRIs

Assets	Permissibility under FEMA		
	Gift from Resident Relative	**Gift from Resident Non-Relative**	**Inherited/ held in own capacity**
Liquid Funds	Yes - in foreign currency as well as Indian Rupees; restricted to US$ 250,000 per financial year	Yes - only in foreign currency; restricted to US$ 250,000 per financial year	Yes - remittance restricted to US$ 1 million per financial year
Immovable Property	Yes - remittance of sale proceeds restricted to US$ 1 million per financial year	Yes - remittance of sale proceeds restricted to US$ 1 million per financial year	Yes - remittance of sale proceeds restricted to US$ 1 million per financial year
Shares and securities	Yes - several restrictive conditions applicable	No	Yes - remittance of sale proceeds restricted to US$ 1 million per financial year
Interest in LLP	No	No	Yes - remittance of transfer proceeds restricted to US$ 1 million per financial year

12.6 Borrowings & Lending by an individual in Foreign Currency/ Indian Rupee – Loans

A. Borrowing in Foreign Exchange by a person Resident in India

- An individual resident in India may borrow a sum not exceeding US$ 250,000/- or its equivalent from his/her relatives outside India subject to such terms and conditions as may be specified by the RBI India.

- An individual resident in India **studying abroad** may raise loan outside India not exceeding US$ 250,000/- or its equivalent, for the purposes of payment of education fees abroad and maintenance subject to terms and conditions as may be specified by the RBI.

B. Borrowing in Indian rupees by a person Resident in India

- A person resident in India, not being a company incorporated in India, may borrow in Indian Rupees from an NRI/Relatives who are OCI Cardholders outside India, subject to such terms and conditions as may be specified by the RBI. The borrower should ensure that the borrowed funds are not used for restricted end uses.

C. Lending in foreign currency

- Branches outside India of AD banks may extend foreign exchange loans against the security of funds held in NRE/ FCNR deposit accounts or any other account as specified by the Reserve Bank from time to time, maintained in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016, notified vide Notification No. FEMA 5(R)/2016-RB dated April 1, 2016, as amended from time to time (herein referred as ('Deposit Regulations').

- Authorised Dealers/ banks in India can grant loans against the security of the funds held in NRE accounts to the account holder/ third party in India, without any limits, subject to the usual margin requirements. The loan cannot be repatriated outside India and shall be used for the following purposes:

  a. personal purposes or for carrying on business activities except for the purpose of relending or carrying on agricultural/ plantation activities or for investment in real estate business;
  b. making direct investment in India on non-repatriation basis by way of contribution to the capital of Indian firms/ companies subject to the provisions of the relevant Regulations made under the Act;
  c. acquiring flat/ house in India for his own residential use subject to the provisions of the relevant Regulations made under the Act.

D. Lending in Indian rupees

- An AD in India may grant loan to a NRI/OCI Cardholder for meeting the borrower's personal requirements/own business purposes/acquisition of a residential accommodation in India/ acquisition of motor vehicle in India / or for any purpose as per the loan policy laid down by the Board of Directors of the AD and in compliance with prudential guidelines of Reserve Bank of India.

- A registered NBFC in India or a registered housing finance institution in India or any other financial institution as may be specified by the Reserve Bank from time to time, may provide residential housing loan, as the case may be, to a NRI/ OCI Cardholder subject to such terms and conditions as prescribed by the Reserve Bank from time to time.

- An Indian entity may grant loan in Indian Rupees to its employee who is a NRI/OCI Cardholder in accordance with the Staff Welfare Scheme subject to such terms and conditions as prescribed by the Reserve Bank from time to time.

- A resident individual may grant Rupee loan to a NRI/OCI Cardholder relative within the overall limit under the Liberalised Remittance Scheme subject to such terms and conditions as prescribed by the Reserve Bank from time to time.

  The funds borrowed must not be utilised for restricted end uses as mentioned under.

E. Restricted end uses

a) In the business of chit fund or Nidhi Company;
b) Investment in capital market including margin trading and derivatives;
c) Agricultural or plantation activities;
d) Real estate activity or construction of farm houses; and
e) Trading in Transferrable Development Rights (TDR)

F. **Continuation of loan in the event of change in the residential status of the lender/borrower**

- An authorised dealer/authorised bank, may allow continuance of loans granted to a resident individual who subsequently becomes a person resident outside India, subject to such terms and conditions as specified by RBI.

- In case a loan was granted by a resident individual to another resident individual and the lender subsequently becomes a non-resident, the repayment of the loan by the resident borrower should be made by credit to the NRO account or any other account of the lender maintained with a bank in India as specified by the Reserve Bank from time to time, at the option of the lender.

- In case a loan was granted by a NRI/OCI cardholders to a person resident in India in accordance with the provisions contained in these regulations and the lender subsequently becomes a resident, the repayment of the loan may be made to the designated account of the lender maintained with a bank in India as specified by the Reserve Bank from time to time, at the option of the lender

- A resident individual is permitted to service loans taken overseas earlier as a person resident outside India subject to terms and conditions and limit as specified by the Reserve Bank from time to time.

Chapter 13: Permissible Bank Accounts

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Chapter 13 Permissible Bank Accounts

NRIs / PIOs are permitted to open bank accounts in India out of funds remitted from abroad, foreign exchange brought in from abroad or out of funds legitimately due to them in India. Such accounts can be opened with banks specially authorised by the Reserve Bank in this behalf [Authorised Dealers].

There are three types of Non-Resident accounts:

13.1 Non- Resident (External) Rupee Accounts (NRE Accounts)

NRIs and PIOs are eligible to open NRE Accounts with authorised dealers and with banks (including cooperative banks) in India. These are rupee denominated accounts. Accounts can be in the form of savings, current, recurring or fixed deposit accounts. Accounts can be opened by remittance of funds in free foreign exchange. Foreign exchange brought in legally, repatriable incomes of the account holder, etc. can be credited to the account. Joint accounts may be permitted to be opened with two or more NRIs and / or PIOs by an NRI/PIO with a resident relative(s) on 'former or survivor' basis.

Power of attorney can be granted to residents for operation of accounts for limited purposes. The deposits can be used for all legitimate purposes. The balance in the account is freely repatriable. Interest lying to the credit of NRE accounts is exempt from tax in the hands of the NRI. The debits allowed from this account are local disbursements, transfer to other NRE/ FCNR(B) and investments in India.

Credits permitted to this account as inward remittance are interest accruing on the account, interest on investment, transfer from other NRE/ FCNR(B) accounts, maturity proceeds if such investments were made from this account or through inward remittance.

13.2 Ordinary Non-Resident Account (NRO Accounts)

NRO account can be opened by any person resident outside India. These are Rupee dominated non-repatriable accounts and can be in the form of savings, current, recurring or fixed deposits. These accounts can be opened jointly with residents in India on 'former of survivor' basis. NRI and PIOs may hold NRO account jointly with other NRIs and PIOs.

When an Indian National/ PIO resident in India leaves for taking up employment etc. outside the country, other than Nepal or Bhutan, his bank account in India gets designated as NRO account. The deposits can be used to make all legitimate payments in rupees. Interest income from NRO accounts is taxable. Interest income, net of taxes is repatriable. Authorised dealers may allow remittances upto US $1 Million, per financial year, out of balances held in NRO account for any bonafide purpose

13.3 Foreign Currency Non Resident (Bank) Accounts (FCNR (B) Accounts)

NRIs/PIOs are permitted to open such accounts in such permissible currencies as may be designated by Reserve Bank from time to time i.e. US dollars, Sterling Pounds, Japanese Yen, Euro, Canadian Dollars and Australian Dollars.

The accounts may be opened in the form of term deposit. Interest income is tax free in the hands of the NRI until he maintains a non-resident status or a resident but not ordinarily resident status under the Indian tax laws.

FCNR (B) accounts can also be utilised for local disbursement including payment for exports from India, repatriation of funds abroad and for making investments in India, as per foreign investment guidelines.

Chapter 14: Investment Options in India

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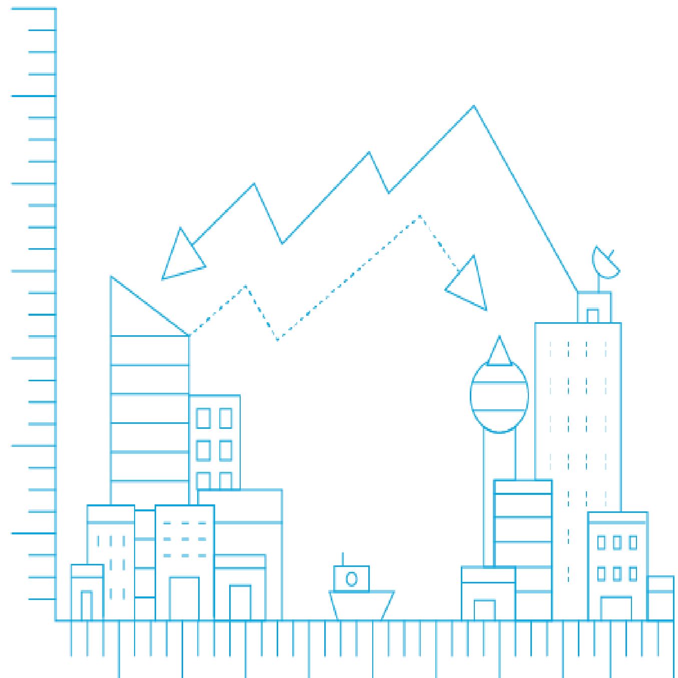
Chapter 14 Investment Options in India

14.1 Introduction

A person resident outside India or an entity incorporated outside India can invest in India, subject to the FDI Regulations of the Government of India. A person who is a citizen of or an entity incorporated in Bangladesh/ Pakistan can invest in India under the FDI Scheme with the prior approval of the Government of India. Foreign Exchange Management (Non-debt Instrument) Rules, 2019 (hereinafter referred to as "Non-debt Instrument Rules") issued by the Ministry of Finance vide its notification dated 17 October 2019 regulates the investment made by non-resident in Indian entities.



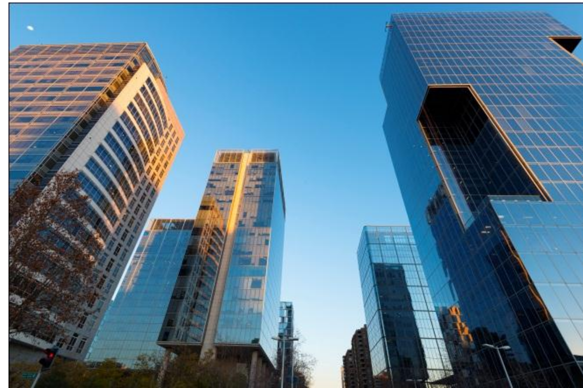
Overseas Corporate Body (OCB) means a company, partnership firm, society and other corporate body owned directly or indirectly to the extent of at least 60% by Non-Resident Indians and includes overseas trust in which not less than 60% beneficial interest is held by Non-resident Indians, directly or indirectly, but irrevocably. OCBs have been de-recognized as a class of investors in India with effect from September 16, 2003.

Erstwhile OCBs which are incorporated outside India and are not under adverse notice of Reserve Bank can make fresh investments under the FDI scheme as incorporated non-resident entities, with the prior approval of Government of India if the investment is through Government Route and with the prior approval of Reserve Bank if the investment is through Automatic Route. A one-time certification shall be required to be obtained from the RBI through the AD Bank, that it is not in the adverse list being maintained with the RBI.

Ministry of Finance vide notification dated 22 April 2020 has amended the rule 6 of the Non-debt Instrument Rules wherein it has been stated that an entity of a country, which shares land border with India or the beneficial owner of an investment into India who is situated in or is a citizen of any such country, shall invest only with the Government approval. Key countries covered within this restriction include China, Pakistan, Nepal, Bangladesh, Myanmar, Bhutan and Afghanistan (Restricted Countries). Hong Kong, and Macau should also be covered as Restricted Countries, given these areas are under the Chinese administration.

14.2 Prohibited Sectors

RBI has put certain prohibitions on investments in India for person resident outside India in any form, in any company, partnership firm or any other entity engaged or proposes to engage: -

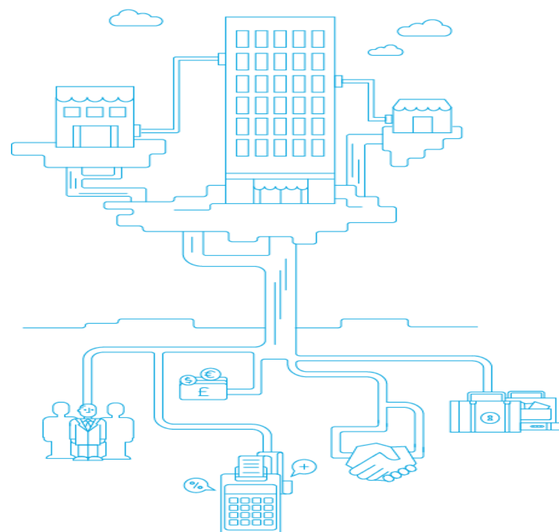


- Lottery Business including Government/ private lottery, online lotteries etc.
- Gambling and betting including casinos, etc.
- Chit funds
- Nidhi Company
- Trading in Transferable Development Rights (TDRs)
- Real Estate business or construction of farm houses
- Manufacturing of Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes
- Activities/ sectors not open to private sector investment e.g. (I) Atomic energy and (II) Railway operations (other than permitted activities)
- Foreign technology collaboration in any form including licensing for franchise, trademark, brand name, management contract is also prohibited for Lottery Business and Gambling and Betting activities

Note: Real Estate Business shall not include development of townships, construction of residential / commercial premises, roads or bridges and Real Estate Investment Trusts (REITs) registered and regulated under the SEBI (REITs) Regulations 2014

14.3 Investments by NRIs /OCIs on Repatriation and Non – Repatriation basis

A. Investment in equity instruments or convertible notes or units or contribution to the capital of a LLP on Non-Repatriation basis (Investment in non-debt instrument under Schedule IV)



(i) NRIs / OCIs including a company, a trust and a partnership firm incorporated outside India and owned and controlled by NRIs or OCIs may purchase/ contribute, as the case may be, on non-repatriation basis the following:

(a) Any equity instrument issued by a company without any limit either on the stock exchange or outside it.
(b) Units issued by an investment vehicle without any limit, either on the stock exchange or outside it.
(c) The capital of a Limited Liability Partnership without any limit.
(d) Convertible notes issued by a startup company in accordance with Non-debt Instrument Rules.

The investment made by NRI/OCI on non-repatriation basis will be deemed to be **domestic investment** at par with the investment made by residents. No reporting compliance required for investment made under the said schedule

(ii) Mode of Payment

The amount of consideration shall be paid as inward remittance from abroad through banking channels or out of funds held in NRE/ FCNR(B)/ NRO account maintained in accordance with the Deposit Regulations.

(iii) Prohibition on purchase of equity instruments of certain companies

NRI or an OCI including a company, a trust and a partnership firm incorporated outside India and owned and controlled by NRIs or OCIs, shall not make any investment, under this Schedule, in equity instruments or units of a Nidhi company or a company engaged in agricultural/ plantation activities or real estate business or construction of farm houses or dealing in TDRs.

(iv) Sale/ maturity proceeds

The sale/maturity proceeds (net of applicable taxes) of equity instruments or units or disinvestment proceeds of a LLP shall be credited only to the NRO account of the investor, irrespective of the type of account from which the consideration was paid;

The amount invested in equity instruments of an Indian company or the consideration for contribution to the capital of a LLP and the capital appreciation thereon shall not be allowed to be repatriated abroad.

(v) Other Investments:

- An NRI / OCI may without limit purchase or sell units of domestic mutual funds on non-repatriation basis which invest more than 50% in equity.

- **Investment in a firm or a proprietary concern:**

An NRI or an OCI may invest, on a non-repatriation basis, by way of contribution to the capital of a firm or a proprietary concern in India provided such firm or

proprietary concern is not engaged in any agricultural/ plantation activity or print media or real estate business.

B. Investment in other than equity instruments (debt instruments) on Non - Repatriation basis

RBI has issued Foreign Exchange Management (Debt Instruments) Regulations, 2019 ('Debt Instruments Regulations') to regulate investment in India in debt instruments by a Person Resident Outside India.

(i) An NRI or an OCI may, without limit, purchase on non-repatriation basis, dated Government securities (other than bearer securities), treasury bills, units of domestic mutual funds or Exchange-Traded Funds (ETFs) which invest less than or equal to 50% in equity, or National Plan/ Savings Certificates.

(ii) An NRI or an OCI may, without limit, purchase on non-repatriation basis, listed non-convertible/ redeemable preference shares or debentures issued in terms of Regulation 6 of these Regulations (i.e. issued on account of Merger or demerger or amalgamation of Indian companies).

(iii) An NRI or an OCI may, without limit, on non-repatriation basis subscribe to the chit funds authorised by the Registrar of Chits or an officer authorised by the State Government in this behalf.

The amount of consideration for purchase of instruments by NRIs or OCIs on non-repatriation basis shall be paid out of inward remittances from abroad through banking channels or out of funds held in NRE/ FCNR(B)/ NRO account maintained in accordance with the Deposit Regulations. Net sale/ maturity proceeds (net of taxes) of instruments may be credited to the NRO account.

C. Investment in Non-debt Instrument on Repatriation basis

(i) NRI / OCI can make investment in equity instrument of Indian entities (Other than listed securities) subject to sectoral cap, pricing guidelines and other conditions specified in the Non-debt Instrument Rules.

(ii) Investment in Indian Depository Receipts (IDRs)

A NRI or an OCI may purchase, hold, or sell IDRs of companies resident outside India and issued in the Indian capital market, subject to the following terms and conditions.

(a) the mode of payment and attendant conditions for remittance of sale or maturity proceeds shall be as specified by the Reserve Bank;

(b) limited two way fungibility of IDRs shall be permissible subject to the terms and conditions stipulated by the Reserve Bank in this regard;

(c) IDR shall not be redeemable into underlying equity shares before the expiry of 1 year from the date of issue;

(d) Redemption or conversion of IDRs into underlying equity shares of the issuing company shall be in compliance with the Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004.

(iii) **Investments by an NRI / OCI in Equity Instruments of a listed Indian company on a recognised stock exchange in India**

NRI or an OCI is allowed to purchase or sell equity instruments of a listed Indian company on repatriation basis, on a recognised stock exchange in India, subject to the following conditions:

- The purchase and sale is done through a branch designated by an Authorized Dealer

- The total holding by any individual NRI or OCI should not exceed 5% of the total paid-up equity capital on a fully diluted basis or should not exceed 5% of the paid-up value of each series of debentures or preference shares or warrants issued by an Indian company

- The total holdings of all NRIs and OCIs put together should not exceed 10% of the total paid-up equity capital on a fully diluted basis or should not exceed 10% of the paid-up value of each series of debentures or preference shares or warrants. The aggregate ceiling of 10% can be raised to 24% if a special resolution to that effect is passed by the General Body of the Indian company;

- The amount of consideration shall be paid as inward remittance from abroad through banking channels or out of funds held in a NRE account. The NRE account will be designated as an NRE (PIS) Account and the designated account shall be used exclusively for putting through transactions permitted under Schedule III.

The sale proceeds (net of taxes) of equity instruments may be remitted outside India or may be credited to NRE (PIS) account.

(iv) Purchase or sale of units of domestic mutual funds

NRI/OCI may without limit purchase or sell unit of Domestic Mutual Funds which invest more than 50% in Equity. Investment in units of domestic mutual fund shall be paid as inward remittance from abroad through banking channels or out of funds held in NRE/FCNR(B) account. The sale proceeds (net of taxes) may be remitted outside India or may be credited to NRE(PIS)/FCNR(B)/NRO account at the option of the NRI/OCI investor.

(v) Purchase or sale of shares in public sector enterprises

NRI/OCI may, without limit purchase or sell shares in public sector enterprises being disinvested by the Central Government, provided the purchase is in accordance with the terms and conditions stipulated in the notice inviting bids.

(vi) Subscription to National Pension System

A NRI or an OCI may subscribe to the National Pension System governed and administered by Pension Fund Regulatory and Development Authority (PFRDA), provided such person is eligible to invest as per the provisions of the PFRDA Act. The annuity/ accumulated saving will be repatriable.

NRIs or OCIs may offer such instruments as permitted by the RBI from time to time as collateral to the recognised Stock Exchanges in India for their transactions in exchange traded derivative contracts as prescribed in these Rules.

Subscription to National Pension System shall be paid as inward remittance from abroad through banking channels or out of funds held in NRE/FCNR(B)/NRO account. The sale proceeds (net of taxes) may be remitted outside India or may be credited to NRE (PIS)/FCNR(B)/NRO account at the option of the NRI/OCI investor.

D. Investment in Debt Instrument on Repatriation basis

(i) A NRI or an OCI may, without limit, purchase the following instruments on repatriation basis

a. Government dated securities (other than bearer securities) or treasury bills or units of domestic mutual funds (which invest less than or equal 50% in equity);
b. Bonds issued by a Public Sector Undertaking (PSU) in India;
c. Bonds issued by Infrastructure Debt Funds;
d. Listed non-convertible/ redeemable preference shares or debentures.

(ii) An NRI may subscribe to National Pension System governed and administered by PFRDA, provided such person is eligible to invest as per the provisions of the PFRDA Act. The annuity/ accumulated saving will be repatriable.

Chapter 15: Remittance Facilities for Non-Resident Indians / Persons of Indian Origin / Foreign Nationals

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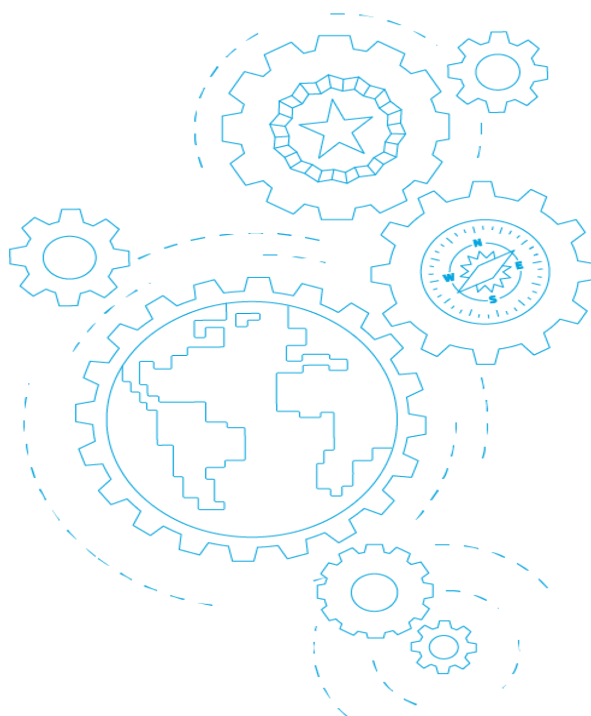
Chapter 15 Remittance Facilities for Non-Resident Indians / Persons of Indian Origin / Foreign Nationals

15.1 Remittance of Funds / Assets outside India

Non Resident Indians are permitted to remit outside India almost all incomes arising in India. Income such as rent, dividend, pension, interest from NRO, share of partnership firms, interest from loans / deposits / debentures, etc. are allowed to be repatriated out of NRO account and / or credit of such income into NRE account and in case of NRIs who may not be maintaining NRO account, the RBI has prescribed for the bankers to obtain:



- Appropriate certificate of Chartered Accountant certifying eligibility of proposed remittance, and
- Further, certifying that applicable taxes have been paid / provided for.

In case of sale of residential house property irrespective of period of holding will be eligible for repatriation benefits - restrictions to not more than 2 such properties.

15.2 Repatriation of balance upto US$ 1 Million:

i) An NRI or a PIO may remit an amount up to US$ one million, per financial year, out of the balances held in his Non- Resident (Ordinary) Rupee (NRO) account / sale proceeds of assets (inclusive of assets acquired by way of inheritance or settlement), for all bona fide purposes, subject to payment of applicable taxes in India, if any.

ii) NRIs seeking repatriation are required to apply through the Authorised Dealer in prescribed forms together with documents as regards source of NRO balances and payment of tax being in place and also Chartered Accountant's certificate certifying tax applicable and payment thereof.

iii) In respect of remittance of sale proceeds of assets acquired by way of inheritance or legacy or settlement for which there is no lock-in period, NRI / PIO may submit to the Authorised Dealer documentary evidence in support of inheritance or legacy of

assets, an undertaking by the remitter in the prescribed formats. Settlement is also a mode of inheritance from the parent, the only difference being that the property under the settlement passes to the beneficiary on the death of the owner/parent without any legal procedures/hassles and helps in avoiding delay and inconvenience in applying for probate, etc. If the property is received by NRI/PIO by way of settlement without the settler retaining life interest, it may be reckoned as transfer by way of gift and the remittance of sale proceeds of such property would be guided by the extant instructions on remittance of balance in the NRO account.

iv) The facility of remittance of sale proceeds of other financial assets is not available to citizens of Pakistan & Bangladesh.

v) Remittances exceeding US $ 1,000,000 in any financial year requires prior permission of the Reserve Bank.

vi) Where the remittance as above is made in more than one instalment, the remittance of all such instalments shall be made through the same Authorized Dealer.

15.3 Remittance of Assets by a Foreign National of Non-Indian Origin

i) A foreign national of non-Indian origin who has retired from an employment in India or who has inherited assets from a person referred to in section 6(5) of the FEMA or who is a widow of an Indian citizen who was resident in India, may remit an amount not exceeding US$ 1 million, per financial year, subject to the satisfaction of the Authorised Dealer bank, on production of documentary evidence in support of acquisition/ inheritance of assets and payment of applicable taxes in India, if any.

ii) These remittance facilities are not available to citizens of Nepal or Bhutan or PIO.

iii) The debit to the account should be only for the purpose of repatriation to the account holder's account maintained abroad.

iv) There should not be any other inflow / credit to this account other than that mentioned at point (i) above.

v) The account should be closed immediately after all the dues have been received and repatriated as per the declaration made by the account holder mentioned at paragraph (i) above.

vi) Further, AD bank also may allow remittance of balances held in a bank account in India by a foreign student who has completed his/ her studies, provided such balance represents proceeds of remittances received from abroad through normal banking channels or rupee proceeds of foreign exchange brought by such person

and sold to an authorised dealer or out of stipend/ scholarship received from the Government or any organisation in India.

15.4 Remittance of Salary

i) A person who is resident but not permanently resident in India and

- is a citizen of a foreign State other than Pakistan; or
- is a citizen of India, who is on deputation to the office or branch of a foreign company or subsidiary or joint venture in India of such foreign company,

may make remittance up to his net salary (after deduction of taxes, contribution to provident fund and other deductions).

For the aforesaid purpose **a resident but not permanently resident** is a person resident in India on account of his employment or deputation of a specified duration (irrespective of length thereof) or for a specific job or assignments, the duration of which does not exceed 3 years.

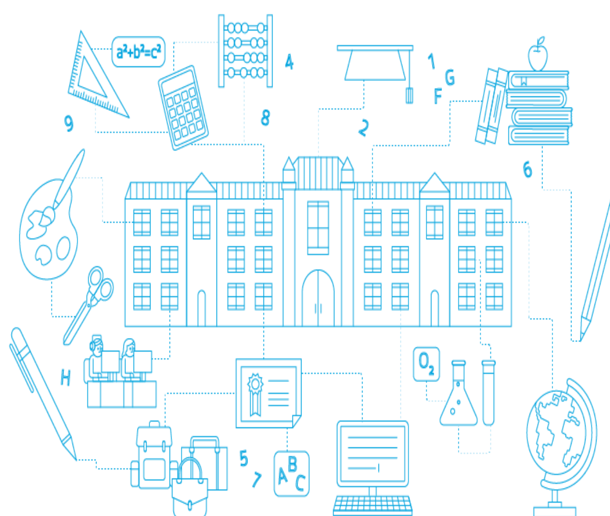
ii) A citizen of a foreign state resident in India being in employment with a company incorporated in India may open, hold and maintain a foreign currency account with a bank outside India and remit the whole salary received in India in Indian Rupees, to such account, for the services rendered to the Indian company, provided that income-tax chargeable under the Income-tax Act, 1961 is paid on the entire salary accrued in India.

iii) Foreign nationals who come to India on employment and become residents in terms of section 2 (v) of FEMA, 1999, and are eligible to open/ hold a resident savings bank account, are permitted to re-designate their resident account maintained in India as NRO account on leaving the country after their employment to enable them to receive their legitimate dues subject to certain conditions.

15.5 Facilities for Indian Students Studying Abroad

i) Students going abroad for studies are treated as Non- Resident Indians (NRIs) and are eligible for all the facilities available to NRIs under FEMA.

ii) As non-residents, they will be eligible to receive remittances from India up to (a) limits prescribed under the Liberalized Remittance Scheme which would include remittances from close relatives in



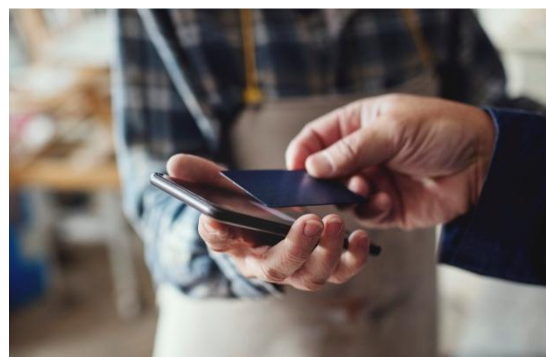
India towards maintenance and remittances towards their studies. However, for the purpose of studies, the limits would be as demanded by the university abroad; and (b) US$ 1 million per financial year, out of sale proceeds of assets / balances in their NRO account maintained with an Authorised Dealer bank in India.

iii) All other facilities available to NRIs under FEMA are equally applicable to the students.

iv) Educational and other loans availed by them as residents in India will continue to be available as per FEMA regulations.

15.6 Income-tax clearance

The remittances will be allowed to be made by the Authorized Dealer banks on production of an undertaking by the remitter in the formats prescribed by the Central Board of Direct Taxes, Ministry of Finance, and Government of India from time to time. Reserve Bank of India will not issue any instructions under FEMA, 1999 clarifying tax issues. It shall be mandatory on the part of Authorised Dealers to comply with the requirement of tax laws, as applicable.



15.7 International Credit Cards

Authorised Dealer banks have been permitted to issue International Credit Cards to NRIs/ PIO, without prior approval of the Reserve Bank. Such transactions may be settled by inward remittance or out of balances held in the FCNR / NRE accounts. Use of ICC for payment in foreign exchange in Nepal and Bhutan is not permitted.

15.8 Miscellaneous

A. Repatriation of income and sale proceeds of assets held abroad by NRIs who have returned to India for permanent settlement and repatriation of income and sale proceeds of assets acquired abroad through remittances under Liberalised Remittance Scheme.

(a) In terms of sub-section 4 of Section (6) of FEMA, a person resident in India is free to hold, own, transfer or invest in foreign currency, foreign security or any immovable property situated outside India if such currency, security or property was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India.

(b) Sub-section 4 of Section (6) of FEMA covers the following transactions:

- Foreign currency accounts opened and maintained by such a person when he was resident outside India;
- Income earned through employment or business or vocation outside India taken up or commenced while such person was resident outside India, or from investments made while such person was resident outside India, or from gift or inheritance received while such a person was resident outside India;
- Foreign exchange including any income arising therefrom, and conversion or replacement or accrual to the same, held outside India by a person resident in India acquired by way of inheritance from a person resident outside India.
- A person resident in India may freely utilise all their eligible assets abroad as well as income on such assets or sale proceeds thereof received after their return to India for making any payments or to make any fresh investments abroad without approval of Reserve Bank, provided the cost of such investments and/ or any subsequent payments received therefor are met exclusively out of funds forming part of eligible assets held by them and the transaction is not in contravention to extant FEMA provisions.

Abbreviations

Abbreviation	Particulars
ROR	Resident and ordinary resident
RNOR	Resident but not ordinarily resident
NRI	Non Resident Indian
NR	Non resident
AY	Assessment year
ITA	Income Tax Act, 1961
AAR	Authority for Advance Rulings
PE	Permanent Establishment
RI	Rigorous Imprisonment
AO	Authorized Officer
GTI	Gross Total Income
FMV	Fair market value
SDV	Stamp duty value
MMR	Maximum marginal rate
DTAA	Double Taxation Avoidance Agreement
FEMA	Foreign Exchange Management Act, 1999
FDI	Foreign Direct Investment

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6. UTIITSL Portal
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8. Various Double Tax Avoidance Agreements
9. Internal Revenue Service Portal

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31 August 2020

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