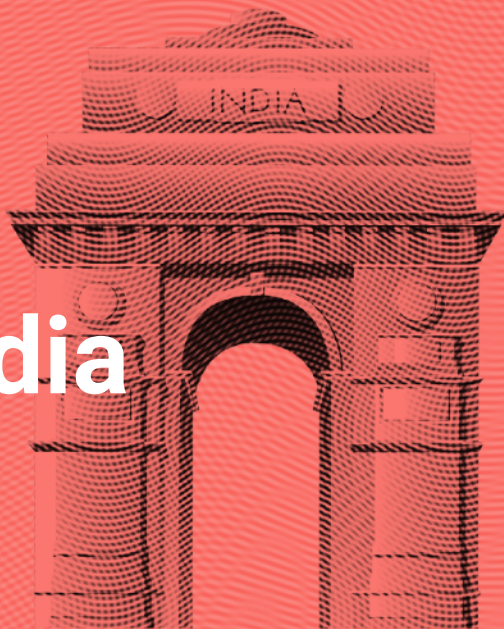




Expatriate taxation in India



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This document has been developed to simply provide a quick overview in simple terms of the manners or models under which a company could setup an establishment in India; and the tax and regulatory frameworks that could preside over such an entity.

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The materials contained in this publication were assembled in April 2021 and were based on the law enforceable and information available at that time.











Abbreviations

AD Bank-1	Authorized Dealer Bank -1	HO	Head Office
AE	Associated Enterprises	JV	Joint Venture
ALP	Arm's Length Price	LLP	Limited Liability Partnership
AMT	Alternate Minimum tax	LO	Liaison Office
APA	Advance Pricing Agreements	MAT	Minimum Alternate Tax
BEPS	Base Erosion Profit Shifting	MCAA	Multilateral Competent Authority Agreement
BO	Branch Office	MNC	Multi-National Company
BOD	Board of Directors	OECD	Organization for Economic Co-operation and Development
CBDT	Central Board of Direct Taxes	PE	Permanent Establishment
CFS	Consolidated Financial statements	PO	Project Office
DDT	Dividend Distribution Tax	POEM	Place of Effective Management
DTAA	Double Taxation Avoidance Agreement	RBI	Reserve Bank of India
ECB	External Commercial Borrowings	ROC	Registrar of Companies
ED	Executive Director	ROI	Return of Income
FCCB	Foreign Currency Convertible Bond	R&D	Research & Development
FDI	Foreign Direct Investment	SHR	Safe Harbor Rules
FTS	Fee for Technical Services	The Act	Income Tax Act 1961
FY	Financial Year	TP	Transfer Pricing
GAAR	General Anti Avoidance Rules	TRC	Tax Residency Certificate
GDR	Gross Depository Receipt	WOS	Wholly-Owned Subsidiary
GOI	Government of India		





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This document covers the six major aspects for doing business in India, which companies need to understand in order to successfully initiate and sustain operations in the Indian market. These aspects have been divided into a multitude of sub-topics which have been carefully evaluated and collated to provide an insight on maintaining a fruitful business presence in India.

The first two chapters cover the initial phase, where we discuss how to setup a business in India and how to structure the funding of that new business. The third chapter focuses on understanding corporate taxes in India which is then followed by the fourth chapter, which emphasizes on transfer pricing methods and regulations in India. The fifth chapter discusses the Goods and Services Tax implications in India, which is proving to be a ground-breaking tax regime and finally, the sixth chapter discusses the concept of expatriate taxation in India.

The inherent demand of quality advisory and financial services in the mentioned topics, coupled with our expertise in these six critical touch-points makes this document an important tool to analyze, evaluate and ease the decision-making process of companies looking to do business in India.

Click to jump to the respective pages





Expatriate taxation





The concept of tax residency

The Indian fiscal year runs from 1st April to 31st March. An individual is liable to pay taxes in India based on his/her tax residency during a fiscal year. Tax residency is dependent on the stay of the individual in India, irrespective of the purpose of such stay. An individual can be a Resident and Ordinarily Resident (ROR), Resident but not Ordinarily Resident (RNOR) or Non-Resident (NR) in a year. If he arrives in India for the first time, he will be a NR/RNOR for the first two fiscal years. Generally, a person who spends more than 182 days in India during a fiscal year and more than 729 days in India in the previous 7 years will be a ROR for that fiscal year. The tax residency of an individual will determine the scope of income liable to be taxed in India.

SOURCE OF INCOME	ROR	RNOR/NR
RECEIVED IN INDIA	TAXABLE	TAXABLE
SOURCED IN INDIA	TAXABLE	TAXABLE
SOURCED AND RECEIVED OUTSIDE INDIA	TAXABLE	NOT TAXABLE





The concept of tax residency



1.2 TAX REGISTRATION NUMBER OR PERMANENT ACCOUNT NUMBER

An individual who is liable to pay taxes or enters into a financial transaction in India must apply for a tax registration number, i.e., PAN, with the Indian income tax authorities via Form 49AA/Form 49A, as applicable together with the prescribed documents. PAN is generally allotted within 15 days of submitting prescribed documents. It is recommended that an individual arriving in India with an intention of working in India should apply for PAN on or before arrival in India. PAN can be applied online by the individual on submission of relevant documents with an option of receiving E-PAN (i.e. PAN on e-mail) or at his home country by payment of the prescribed fee.

1.3 INDIVIDUAL TAX RATES

India follows progressive rates of taxation for individuals. From the Financial year 2020-21 (1 April 2020 to 31 March 2021), individuals have an option either to pay taxes at existing slab rates by availing benefits of exemptions and deductions or pay tax at new / reduced rates by forgoing certain exemptions/deductions.

Considering that expatriates coming to India on employment have to abide with the minimum salary restriction and thus have an estimated tax liability of 30%- 35%, the quantum of benefit of the new tax regime would have to be analyzed on a case-to-case basis.





The concept of tax residency

INDIVIDUAL TAX RATES

Existing Slab Rates

Income Slab (INR)	Rate
<i>Up to 2,50,000*</i>	NIL
<i>250,001 - 500,000</i>	5
<i>500,001 – 1,000,000</i>	20
<i>1,000,001 or above</i>	30

Rebate under section 87A is available to a resident individual if quantum of total income does not exceed INR 500,000. Rebate available shall be the lower of amount of tax on total income or INR 12,500.



New Regime (Optional)

Income Slab (INR)	Rate
<i>Up to 2,50,000</i>	Nil
<i>250,001 - 500,000</i>	5
<i>500,001 – 750,000</i>	10
<i>750,001 – 1,000,000</i>	15
<i>1,000,001 – 1,250,000</i>	20
<i>1,250,001 – 1,500,000</i>	25
<i>1,500,001 or above</i>	30



The concept of tax residency

1.4 ADDITIONAL TAXES

Surcharge is levied on the amount of tax computed on the total income at following rates if the total income exceeds specified limits.

NATURE OF INCOME		RANGE OF TOTAL INCOME (AMOUNTS IN INR & MILLIONS)				
		Up to 5	5 to 10	> 10 up to 20	> 20 up to 50	>50 up to 10 and >10
CAPITAL GAIN ON LISTED EQUITY SHARES AND UNITS	LTCG	Nil	10%	15%	15%	15%
	STCG	Nil	10%	15%	15%	15%
DIVIDEND AND INTEREST		Nil	10%	15%	15%	15%
ANY OTHER INCOME		Nil	10%	15%	25%	37%

Further, an education cess at 4% shall be levied on the amount of income tax and surcharge in all cases.





The concept of tax residency

1.5 TAX PAYMENT

Taxes on the income earned will be payable through the following mechanisms.

Withholding Tax (TDS)

- Estimation of total income
- Monthly deduction and remittance of taxes

Advance Tax

- Triggered only if tax payable exceeds INR 10,000.
- Determination of tax on estimated personal income
- Payment of tax in installments due by 15th June/September/December and March of every fiscal year in proportion of 15%/45%/75% and 100% respectively

Self-Assessment Tax

- Determination of tax on actual income
- Payment of tax on or before filing return of income





The concept of tax residency



1.6 TAX RETURN

The due date for filing tax returns in India is 31st July, following the end of every fiscal year. The return has to be filed electronically. There is no system of joint filing of tax return with one's spouse. The return may be subjected to scrutiny by revenue authorities. An individual who qualifies as ROR in a fiscal year has to report moveable and immovable assets held overseas along with any financial interest or signing authority abroad and trusteeship in offshore trusts in the Indian tax returns. This requirement is independent of the individual having taxable income for the fiscal year.

1.7 INCOME TAX CLEARANCE CERTIFICATE (ITCC)

An individual who is returning to his home country permanently should obtain an ITCC, i.e., a No-Objection Certificate from the income tax authorities, which certifies that the individual has no income tax dues in India. This certificate is required to be presented to the immigration authorities at the time of departure from India.





Taxation principles



2.1 SALARY INCOME

Remuneration earned by an individual for services rendered in India during the assignment period is taxable in India (irrespective of where the payment has been received). This will include salary for any holiday period during the assignment. In addition, any sum that is relatable to the Indian service period and received preceding/succeeding the assignment period will also form a part of salary income. Perquisites/fringe benefits such as accommodation, car, employee stock option, education benefits (subject to calculation) provided by the employer are also liable to be taxed as a part of the salary. However, contribution to Provident Fund in India is eligible for deduction from total income up to INR 1,50,000, subject to specified conditions.

2.2 DOUBLE TAXATION AVOIDANCE AGREEMENT (DTAA)

India has entered into 94 Double Taxation Avoidance Agreements and 10 Tax Information Exchange Agreements. An individual who is a resident of a country which India has entered into a DTAA with could avail the treaty benefits to either eliminate taxation in one of the countries or avail credit of taxes paid in the country of residence.





Taxation principles



Commencing from Indian fiscal year 2012-13, individuals would require a Tax Residency Certificate (TRC) from the tax authorities of the resident country to avail treaty benefits in the Indian tax return. In addition, prescribed details are to be submitted in Form 10F, if not already mentioned in the TRC.

Individuals rendering services in India for a shorter span may be eligible to claim short stay exemption under the Indian Income Tax Act, 1961 or the relevant DTAA, subject to satisfaction of certain conditions.

2.3 SOCIAL SECURITY OBLIGATIONS IN INDIA

Foreign nationals, i.e., International Workers (IWs) working in establishments in India to which Employees' Provident Fund (PF) regulations apply are required to contribute to PF except those who have been specifically exempted under the regulations.

Social Security Agreements (SSA): Individuals from countries with which India has signed an SSA, contributing towards the social security of the home country and holding Certificate of Coverage (COC) from the home country will not be required to contribute towards the Indian social security. The COC needs to be filed with the PF authorities.





Taxation principles



Bilateral Comprehensive Economic Agreement (BCEA): India has entered into BCEAs with various countries. Individuals from countries whom such agreements have been entered into with before 1st October 2008 and contributing to their home country's social security would also be exempt from Indian social security contributions on satisfaction of specified conditions. India has entered into a BCEA with Singapore prior to 1st October 2008. Hence, individuals from Singapore can avail exemption under the BCEA, subject to fulfilling the conditions specified therein.

Mandatory Contribution: As per the provisions of the PF scheme, both employer as well as employee will contribute 12% of monthly pay (as defined). Out of the employer's contribution, 8.33% of monthly pay will be towards the pension fund and the balance 3.67% will be towards Provident Fund. An employer needs to deposit the PF by the 15th of the next month. The details of the individuals also need to be provided on a monthly basis in a prescribed form.

Withdrawal/Benefits: The amount deposited in the scheme can be withdrawn by an individual under specific circumstances. Further, the amount withdrawn shall be payable to the credit of the individual's bank account or to the employer's bank account in India.





Taxation principles



PF Withdrawal:

- In case an SSA exists, then as per the provisions of the SSA
- In case no notified SSA exists, then:
 - *On retirement from services after attainment of 58 years*
 - *On retirement on account of permanent and total incapacity for work due to bodily or mental infirmity, as certified by a specified medical practitioner*

Pension Withdrawal:

- Withdrawal benefit as per the provisions of the SSA, where SSA exists
- Annuity – after 58 years of age, subject to satisfaction of certain conditions.





VISA and registration requirements



A foreign national visiting India needs to obtain an appropriate visa before entering India. The type of visa to be obtained depends upon the purpose of the visit to India. The visa may be issued only by the Indian Missions from the country of origin or from the country of domicile of the foreign national, provided that the period of permanent residence of the foreign national in the country of domicile is at least two years.

3.1 BUSINESS VISA AND EMPLOYMENT VISA

The guidelines provide that a business visa may be issued to a foreign national visiting India for a short duration and restrict the nature of activities for which it can be issued.

The activities that fall under the business visa include establishing or exploring the possibility of set-up of businesses, attending meetings, liaising with potential business partners or function as partner/director, negotiating supplies, conducting trade of goods and providing high-level technical guidance on ongoing projects, including monitoring the progress of such projects, etc.

Similar guidelines are provided for employment visa. Illustratively, an employment visa may be issued to a foreign national visiting India for the purpose of taking employment in India, executing projects or contracts, including installation and commissioning of machinery under a contract for supply, providing technical support or services, transfer of know-how for which royalty is paid and consulting on contract basis in the areas of highly skilled services.



VISA and registration requirements



An employment visa may be granted only to the following individuals:

- ***Skilled or qualified professionals visiting India for employment in companies in India or in foreign companies***
- ***Executing projects in India and having salary in excess of INR 1,625,000 per annum (approximately at USD 25,000) (this threshold is not applicable to certain categories of individuals)***

An employment visa may not be issued if a considerable number of qualified Indians are already available to fill the position. No change of employer will be permitted during the duration of the employment visa within India, except under specified circumstances and on satisfaction of specified conditions. An employment visa can be extended in India on an annual basis for a period of five years starting from the date of initial issuance of the visa.

3.2 PROJECT VISA

The Government of India has introduced project visas for foreign nationals coming to India for the “execution of projects in the power and steel sectors”. A specific endorsement will be made on the visa sticker indicating the name of the project, the location of the project and the employment/working of foreign national will be restricted to the location of the project. The period of visa will be determined by the Indian Missions in each case and will have a validity of a period of one year or the actual duration of the project, whichever is less with multiple entry facility. The visa can be extended only with the approval of the Ministry of Home Affairs.





VISA and registration requirements



3.3 RESIDENTIAL PERMIT

All foreign nationals holding Employment Visa must register with the police authorities (FRRO and/or FRO) at the local registration office within 14 days of after their date of arrival if their visas are valid for longer than 180 days or if the visa stamp specifically requires this registration, while the same holding a business visa with a stipulation specifically requiring a registration, they must register with FRRO and/or FRO at the local registration office within 14 days of their arrival in India. Further, foreign nationals holding business visa, must obtain registration with FRRO and/or FRO at the local registration office, if their aggregate stay in India exceeds 180 days in a calendar year.

Prescribed documentation must be presented to registrar and the same may vary based on the location of the registration office. The foreign nationals are issued with a residential permit upon completion of the registration process.

The application for registration is to be applied online at www.indianfrro.gov.in. The requisite documents including scanned copy of passport and visa also need to be submitted in soft along with application for registration. Usually, personal visit to registration office is not required, however, the authorities may call the individual in person, if deemed necessary by them. Registration is generally valid for the term of the visa or for one year, whichever is less, and may be extended upon application.





VISA and registration requirements



3.4 FAMILY AND PERSONAL CONSIDERATIONS

Entry visas (X visa) are issued to accompanying family members of individuals visiting India on business or for employment. However, this visa is issued to legal spouses and dependents only. India does not recognize “common law” partners. Under the guidelines, the visa of the spouse of an employee on an intra company transfer may be converted from an X visa to an employment visa, subject to specified conditions.

Spouses or dependents of working expatriates must obtain separate work permits to be employed in India. Family members intending to reside with a working expatriate must register separately at the local registration office. X visa can also be extended up to the validity of the employment visa of the expatriate.



Other immigration matters

4.1 RESTRICTED AREAS/PROTECTED AREAS

Advance permission is required from Indian diplomatic missions abroad or from the Ministry of Home Affairs (MHA) in New Delhi to visit certain states or areas within these states. The areas which require prior approval are the states of north-east India, parts of Himachal Pradesh, Jammu and Kashmir, Uttarakhand, Rajasthan and the Andaman and Nicobar Islands.

4.2 PERSON OF INDIAN ORIGIN (PIO) AND OVERSEAS CITIZENS OF INDIA (OCI) CARD HOLDERS

Visa and Registration requirements for Person of Indian Origin (PIO) and Overseas Citizens of India (OCI) card holders are as follows:

PARTICULARS	PIO CARD	OCI CARD
VISA	NOT REQUIRED	NOT REQUIRED
REGISTRATION WITH FRRO	REQUIRED IF STAY EXCEEDS 180 DAYS	NOT REQUIRED





Other immigration matters

4.3 REGISTRATION

Foreign nationals working in India need to obtain registration with the FRRO within 14 days of their arrival in India. This registration needs to be renewed periodically during their service tenure in India.

4.4 EXCHANGE CONTROL

India has liberalized its Exchange Control provisions to allow expatriates to freely repatriate their remuneration back to the home country after payment of appropriate taxes and social security and submission of appropriate documents. The norms also permit employers to make direct payments to the employees' foreign bank accounts, net of appropriate taxes and social security.



Requirements in a snapshot

REQUIREMENTS	TO BE COMPLETED BY	PERIODICITY
FRRO Registration	Within 14 days of arrival	To be renewed periodically
PAN application	Prior to FRRO registration	One time
TAX PAYMENTS		
Personal Income	15 June, 15 September, 15 December and 15 March	Quarterly
Tax return	July	Annual
ITCC	Before departure	One time
Social security	On a monthly basis by the employer	Monthly





Annexures for compliance matters





Company law

Secretarial Compliance(s) With Respect To Meetings, Minutes And Other Related Registers And Records For Companies

- Board Meeting – Quarterly or event-based
 - Annual General Meeting – Annual
 - Extra-Ordinary General Meetings – Event-based
 - Registers (Register of Members, Register of Director & Key Managerial Personnel & their Shareholding, Register of Contracts with Related Parties & Contracts in which Directors are interested) – Permanent
-

Annual Secretarial Compliance for Companies

- Disclosure of interest by directors – Annual or event-based
 - Disclosure of non-qualification – Annual or event-based
 - Filing of financials with the Registrar of Companies (“ROC”) – Annual
 - Filing of Annual Return with ROC – Annual
 - Appointment of Auditor – Annual
 - DPT – 3 – Annual
 - MSME Returns – Half yearly
 - DIR-3 KYC – Annual
-





Company law

Annual Compliance For LLPs

- Filing of Annual Return
 - Filing of statement of annual accounts
-

Annual FEMA Compliance for Companies and LLPs

- Filing of Foreign Assets and Liabilities ('FLA') Return
-

Annual Compliance for BO/LO/PO

- Filing of Annual Return
 - Filing of statement of annual accounts
 - Filing of annual activity certificate
-



Direct tax, Indirect tax and Transfer pricing



Direct Tax

- Withholding Tax Computation & Deposit of tax withheld on Salaries and other payments – Monthly
- Withholding Tax Returns – Quarterly
- Advance Tax Payment – Quarterly
- Return Of Income Tax – Annual
- Tax Audit Report – Annual



Transfer Pricing

- Transfer Pricing Report & Accountant's Report – Annual
- Accountant's Report - Annual
- TP Report – Annual
- Master File – Annual
- CbCR – Annual



Indirect Tax

- GST Returns – Monthly
- GST Payment – Monthly
- GST Audit – Annual





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