



Expatriate taxation in India

February 2025

Disclaimer



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 August 2023 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 followed by the fourth chapter, which emphasizes on transfer pricing 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 provisions 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.



Expatriate Taxation



Expatriate Taxation

- 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 |

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.



Expatriate Taxation

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 must 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.

Old Regime (Optional)

| Income Slab (INR) | Rate (%) |
|---------------------|------------|
| Up to 2,50,000* | NIL |
| 250,001 - 500,000 | 5 |
| 500,001 – 1,000,000 | 20 |
| 1,000,001 or above | 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 (By default)

| Income Slab (INR) | Rate (%) |
|-----------------------|------------|
| Up to 3,00,000 | Nil |
| 300,001 - 600,000 | 5 |
| 600,001 – 900,000 | 10 |
| 900,001 – 1,200,000 | 15 |
| 1,200,001 – 1,500,000 | 20 |
| 1,500,001 or above | 30 |

Rebate under section 87A is available to an eligible individual if quantum of total income does not exceed INR 700,000. Rebate available shall be the lower of amount of tax on total income or INR 25,000.

Expatriate Taxation



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.

Range of Total Income (Amount in INR Millions)

| Nature of Income | | Upto 5 | 5 to 10 | > 10 upto 20 | > 20 upto 50 | >50 upto 100 and >100 |
|--|------|--------|---------|--------------|--------------|-----------------------|
| Capital Gain on Listed Equity Shares and Units | LTCG | Nil | 10% | 15% | 15% | 15% |
| | STCG | Nil | 10% | 15% | 15% | 15% |
| Any other LTCG (Apart from mentioned above) | | Nil | 10% | 15% | 15% | 15% |
| Dividend Income | | Nil | 10% | 15% | 15% | 15% |
| Any other Income (old tax regime) | | Nil | 10% | 15% | 25% | 37% |
| Any other Income (new tax regime) | | Nil | 10% | 15% | 25% | 25% |

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

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

Expatriate Taxation



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 concept 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 immoveable 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.
- If the income is more than INR 5 million a year, the individual must disclose the assets and liabilities.

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



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 (only in old tax regime).

DOUBLE TAXATION AVOIDANCE AGREEMENT (DTAA)

- India has signed double tax avoidance agreements (DTAAs) with a majority of the countries and limited agreements with eight countries. 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.
- 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.

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.

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

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.

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.

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.

VISA and Registration Requirements



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.

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

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.

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 |

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.

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 | 31 st 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
- Separate minute books for the board meeting and general meetings
- 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

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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This helps us take on global mandates in transfer pricing, accounting, global audits etc., since this alliance helps us better understand cultural aspects of cross border businesses.

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Our service offerings are undertaken by dedicated service lines:

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- **International Tax**
- **Advisory Services**
- **Corporate Secretarial**
- **Tax and Regulatory**
- **Corporate Finance**
- **Financial Accounting**

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Co-Founder and Partner



nitin garg

Partner



amit pandey

Co-Founder and Partner



vikrant suri

Data Security



As a firm, we're acutely aware of our responsibilities to client and third-party data. Data protection protocols are in place for avoiding any potential threats.

- DNS scan and verification
- Network Protection, including authentication protocols
- Data encryption across data storage devices
- CASB (Cloud Access Security Broker) safeguards to avoid data leakages, including protocols against potential attacks and breaches*
- Automatic multiple back ups at remote site
- Routine trainings and acceptance of policy by employees
- Optional cloud-based data storage and access with select and limited privileges
- User access control with 2FA (two factor authentication) for secure login

* under implementation

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