



# **NON RESIDENT INDIAN**

**Taxation,  
Laws  
&  
Investment**

# Who is a NRI?

# Who is a NRI?

## As per Income Tax Act :

Under Section 6(1), an individual is said to be resident in India in any financial year if he satisfies any one of the following basic conditions:

- (a) He is in India in the previous year for a period of 182 days or more  
or,
- (b) He is in India for a period of 60 days or more during the relevant previous year and 365 days or more during the four years preceding that previous year.

### Exceptions:-

- i) An Indian citizen leaves India for employment abroad for the purpose of employment or
- ii) An Indian citizen leaving India as a member of the crew of an Indian ship, or
- iii) An Indian citizen or a person of Indian origin, who has settled abroad, comes on a visit to India.

# Who is a NRI?

## As per Income Tax Act :

If Resident as per IT Act,1961

### Resident and Ordinarily Resident

Resident in India in at least 9 out of 10 previous years preceding the relevant previous year;

and

In India for a period of 730 days or more during 7 years preceding the relevant previous year.

### Resident but Not Ordinarily Resident

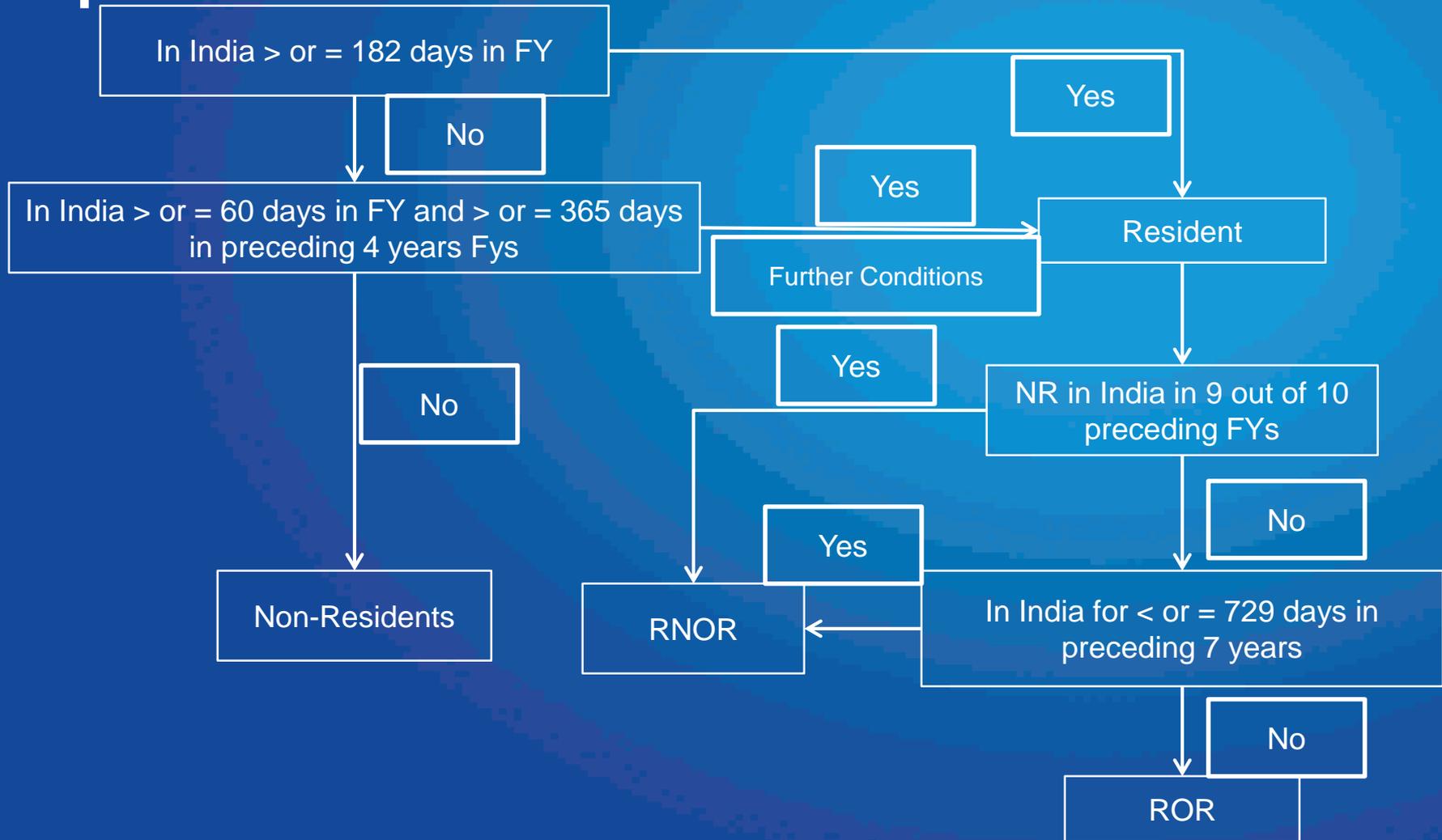
Has not been resident in India in 9 out of 10 previous years preceding the previous year;

or

Has been in India for 729 days or less in 7 immediately preceding the relevant previous year.

# Who is a NRI?

As per Income Tax Act :



# Who is a NRI?

## As per FEMA :

A person residing in India for more than 182 days during the course of preceding financial year but does not include:-

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

for or on taking up employment outside India; or

for carrying on a business or vocation outside India; or

for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period.

A person who has come to or stay in India, in either case, otherwise than-

for or on taking up employment inside India; or

for carrying on business or vocation in India, or

for any other purpose in such circumstances as would indicate his intention to stay in India for an uncertain period.

Students going abroad are considered NRI under FEMA.

# Who is a NRI?

## As per Citizenship Act

1. Citizenship by Birth.
2. Citizenship by Decent.
3. Citizenship by Registration.
4. Citizenship by Naturalisation.

Citizen under the Citizenship Act makes him / her eligible for passport of that country.

# Who is a NRI?

## Conflict between the Provisions

### Residential status

- |                        |    |  |
|------------------------|----|--|
| As per IT Act          | :- | based on the number of days.               |
| As per FEMA            | :- | on the intention of the person.            |
| As per Citizenship Act | :- | based on birth & applying for citizenship. |

# Who is a NRI?

**Advantages / Disadvantages for becoming a Resident / Non Resident under :**

- 1. Income Tax.**
- 2. FEMA.**
- 3. Citizenship Act.**

# Taxation for NRI's

# Taxation for NRI's

## Basics of taxation

- ➡ Residence Rule
- ➡ Source Rule

# Taxation for NRI's

## Double Taxation Avoidance Agreement (DTAA)

Double Taxation Avoidance Agreement (DTAA) is agreements entered into between countries, between India and another foreign state. The basic objective is to avoid, taxation of income in both the countries (i.e. Double taxation of same income) and to promote and foster economic trade and investment between the two countries.

# Taxation for NRI's

## Double Taxation Avoidance Agreement (DTAA)

Section 91 provides relief to tax payers who have paid tax to a country with which India has not signed a DTAA. India has DTAA with over 80 countries such as the US, the United Kingdom, the UAE, Canada, Australia, Saudi Arabia, Singapore and New Zealand.

# Taxation for NRI's

## Indian Income

- ➡ Income received & accrued or arised in India.
- ➡ Income received in India but accrues or arises outside India.
- ➡ Income received outside India but accrues or arises in India.

## Foreign Income

- ➡ Income not received nor accrued or arise in India.

# Taxation for NRI's

	Resident and ordinarily resident in India (R & OR)	Resident but not ordinarily resident in India (R but not OR)	Non-resident in India (NR)
<b>Indian income</b>	<b>Taxable in India</b>	<b>Taxable in India</b>	<b>Taxable in India</b>
<b>Foreign income</b>			
<ul style="list-style-type: none"> <li>▪ If it is business income which is controlled wholly or partly from India</li> </ul>	<b>Taxable in India</b>	<b>Taxable in India</b>	<b>Not Taxable in India</b>
<ul style="list-style-type: none"> <li>▪ If it is income from profession which is setup in India</li> </ul>	<b>Taxable in India</b>	<b>Taxable in India</b>	<b>Not Taxable in India</b>
<ul style="list-style-type: none"> <li>▪ If it is business income which is controlled from outside India</li> </ul>	<b>Taxable in India</b>	<b>Not Taxable in India</b>	<b>Not Taxable in India</b>
<ul style="list-style-type: none"> <li>▪ If it is income from profession which is set up outside India</li> </ul>	<b>Taxable in India</b>	<b>Not Taxable in India</b>	<b>Not Taxable in India</b>
<ul style="list-style-type: none"> <li>▪ Any other foreign income (like salary, rent, interest, etc.)</li> </ul>	<b>Taxable in India</b>	<b>Not Taxable in India</b>	<b>Not Taxable in India</b>

# Taxation for NRI's

## Income Tax Relief / Deductions & NRIs

### ➡ U/s. 80 – C & 80 CCC

Deduction available upto the ceiling of Rs.1,50,000/- akin to RI's. Investment in Life Insurance, ELSS, Housing Loan, Education Fees can be made in India.

### ➡ Section 10(6)(vi), 10(6)(viii), 10(6)(xi), 10(7), 10(8), 10(8A), 10(8B), 10(9)

Provides for relief to NR's drawing salaries and remuneration in special cases.

### ➡ Relief to Senior Citizen and Super Senior Citizen Tax Payers not available to NRI's.

# Taxation for NRI's

## Taxation of Immovable Properties & NRI's

- When an Immovable property is brought from a NRI – TDS @20.60% (LTCG) & 30.90% (STCG) should be deducted by Resident Indian from the consideration paid to NRIs.
- NRIs can claim following exemptions :
  - U/s 54 EC : Investment in Capital Gain Bonds.
  - U/s 54 : Exemption from capital gain in buying new house against sale of house.
  - U/s 54 F : Exemption on sale of any capital asset (Plot of Land etc) and buying a house.

# Taxation for NRI's

## Special Provisions of taxation for NRI's

- ▶ For investments made in specified assets in Foreign Exchange Assets.
- ▶ Income taxed at @ 20% flat rate. Long Term Capital Gain taxed @ 10% flat rate.
- ▶ Basic exemption limit & Deduction U/s 80 C or 80 D not available.
- ▶ Listed shares to be taxed U/s 10 (38). Long Term Capital Gain – Nil. Short Term Capital Gain @ 15%.
- ▶ Shares / Debentures, which are specified Foreign Exchange Asset can get relief of forex depreciation U/s 48 Provision – 1.
- ▶ Reinvestment in specified assets within 6 months can made, then Capital Gain – Tax Free
- ▶ Exemption from filing of Return if due taxes have been collected as TDS on Foreign Exchange Assets

# Taxation for NRI's

## Tax Deduction at Source for NRI's

Section	Nature of payment	TDS Rate
<u>Section 192</u>	Payment of Salary	Normal Slab Rate
<u>Section 195</u>	Payment of any other sum to a Non-resident	
	a) Equity oriented Schemes - Short Term Capital Gains	15
	b) Equity oriented Schemes – Long Term Capital Gains	NIL
	c) Other than equity oriented Schemes - Short Term Capital Gains	30
	d) Other than equity oriented Schemes - Long Term Capital Gain - For unlisted	10
	e) Other than equity oriented Schemes - Long Term Capital Gain - For listed	20
	f) Investment income from Foreign Exchange Assets	20
	g) Any other income	30

Education Cess @3% is applicable in all cases

# Taxation for NRI's

## Residential Status & Tax Planning

- ➔ Where a NRI intends to stay beyond a period of 60 days or 182 days – divide the stay in two financial years.
- ➔ Remittance is tax free receipt U/s. 5 of Income Tax Act but if income is directly received in India then it would become taxable.
- ➔ Any person who is employed (incl. Self employed) can take advantage of the relaxed definition for Indians employed.
- ➔ Make investments in different entities in India – self, spouse, parents, children, HUF.

# Taxation for NRI's

## Representative Assessee – Agent of Non Resident (NR)

- Section 163 of the IT Act states – agent in relation to non-resident (NR) is one who is employed by NR, having business connection with NR, from or through whom NR receives income directly or indirectly, trustee of a NR. A broker dealing with NR through NR broker is not an agent.
- An agent of NR is a representative assessee U/s. 160 of the IT Act.
- A representative assessee's liability, duties, responsibilities are at par with his own, as if it were his own assessment proceedings.

# Transactions by NRIs

# Transactions by NRIs

## Loans by NRIs – on non repatriable basis

- ➡ Loans can be from remittances, NRO, NRE, FCNR A/cs.
- ➡ Loan period not to exceed 3 years.
- ➡ Rate of Interest not to exceed 2% over the bank rate.
- ➡ Repayment in NRO A/c.

# Transactions by NRIs

## Insurance & NRIs

NRI's can avail insurance by paying premiums from foreign currency (repatriable funds) or from non repatriable funds.

On maturity / surrender proceeds will be paid in foreign currency in the proportion to the amount of premium paid in the foreign currency.

# Transactions by NRIs

Liberalized Remittance Scheme (LRS) for resident Indian to benefit NRI's

A Resident Individual can avail US \$ 2,50,000 per person per year :

- ➡ Investments, Opening Bank account, buying property abroad.
- ➡ Medical Treatment abroad.
- ➡ Gift to relatives abroad.
- ➡ Maintenance of relatives abroad.
- ➡ Studies abroad.

# Transactions by NRIs

## Transfer of NRO Funds abroad or to a NRE A/c

- ➔ NRO Funds to the extent of US \$ 1 million per person per year can be remitted abroad or transferred to NRE A/c.
- ➔ Taxes due on funds supposed to be transferred should be paid.
- ➔ Simple procedure need to be followed for the transfer.

# Transactions by NRIs

## Important clauses of Power of Attorney to manage their affairs to be given by NRIs

- To carry out all the operations of Depository Account including instruction for debit & credit to the demat account.
- To carry out operation of Government supported savings schemes with specific mention of names.
- To carry out the affairs of a Hindu Undivided Family (HUF) where the NRI is the Karta of his HUF.
- To carry out the affairs of Partnership or Proprietorship Concern.
- To carry out functions as a Director of a Company.
- To make and accept all claims under a WILL or under succession.
- To encash fixed deposits even before maturity and close bank accounts (subject to acceptance by the bank).

# Transactions by NRIs

## Power of Attorney (POA) – Legal formalities

### For Movable properties :

- ➔ Should be notarised in India or Abroad.
- ➔ Should be stamped as per local Stamp Act, in Gujarat Rs. 100/= .

### For Immovable properties :

- ➔ Should be registered with respective Registrar where the property is located in India

OR

Should be executed & signed before Indian Embassy abroad and thereafter should be submitted to registrar where it will be stamped & verified by the local collector office.

- ➔ Appropriate stamp duty has to be paid, which is Rs. 100/= for POA to close relatives and market value based stamp duty when POA given to any person other than close relative will be liable to regular stamp duty.
- ➔ Do not mention about power to collect consideration & give possession.

# Transactions by NRIs

## Facilities to Returning NRI's

**Foreign Assets:** All kind of foreign assets such as properties, bank deposits, stocks and securities, life insurance policies, loans, company deposits, debentures, bonds etc. acquired, held or owned by an NRI while he was abroad can be continued to be so held and dealt in any manner even after the NRI's return to India for permanent settlement.

**Indian Assets:** The entire amount of foreign exchange brought to India at the time of their return to India for permanent settlement as well as the balances standing to the credit of their NRE and FCNR accounts at the time of return can be credited to their RFC accounts.

# Transactions by NRIs

## Restrictions on transactions with citizen of certain countries

Name of function	Pakistan	Bangladesh	Sri Lanka	Nepal
Does he / she become a NRI even when he / she is a <u>Person of Indian Origin</u>	No	No	Yes	Yes
Opening <u>Bank Account</u> in India	Individuals/ Entities with prior approval of RBI	Should hold a valid visa and valid residential permit	No restrictions	No restrictions
Acquiring / transfer <u>immovable property</u> in India	Not without the prior permission of the RBI Lease not exceeding five years for leased property	Not without the prior permission of the RBI Lease not exceeding five years for leased property	Not without the prior permission of the RBI Lease not exceeding five years for leased property	Not without the prior permission of the RBI Lease not exceeding five years for leased property
Investment in <u>Shares</u>	Prior approval of FIPB	Prior approval of FIPB	General permission	General permission
Investment in <u>Mutual Fund</u>	Prior approval of FIPB	Prior approval of FIPB	General permission by RBI	General permission by RBI

# Investment Opportunities for NRIs

# Investment Opportunities for NRIs

## 1. Equity Investments

- 
1. Direct investment in stock market.
  2. Investment through Equity oriented Mutual Funds.
  3. Investment under Portfolio Management Services (PMS).

## 2. Real Estate Investments

## 3. Fixed Income Investments

- 
1. Fixed deposit with banks.
  2. Debt based Mutual Funds.

# Investment Opportunities for NRIs

## Equity Investments

Direct Investment in Stock Market		Equity based Mutual Fund		Equity based PMS	
1.	Only through NRO – PIS or NRE – PIS Account	1.	No requirement of any Account	1.	Operations by a Portfolio Manager through PIS Account
2.	Shares acquired as resident Indian by gift or under IPO can be held in NON PIS Account	2.	Taxation only when units transferred	2.	Tax implication on each transaction
3.	Taxation : Tax implication of each transaction Short term gain : 15% Long term gain : Tax Free	3.	Taxation : Tax implication of each transaction Short term gain : 15% Long term gain : Tax Free	3.	Taxation : Tax implication of each transaction Short term gain : 15% Long term gain : Tax Free

# Investment Opportunities for NRIs

## Real Estate Investments

- NRI / PIO may acquire / transfer immovable property in India other than agriculture land / plantation property or a farm house out of repatriable and / or non – repatriable funds.
- The payment of purchase price, if any, should be made out of  
funds received in India through normal banking channels by way of inward remittance from any place outside India or  
funds held in any non-resident account maintained in accordance with the provision of the Act and the regulations made by the Reserve Bank.

# Investment Opportunities for NRIs

## Fixed Income Investment

Various type of savings & fixed deposits accounts with banks

### NRE Account :

- Remittance from abroad or other NRE or FCNR Accounts.
- Balance held in rupees but are repatriable.
- Proceeds on maturity of repatriable assets can be credited.
- Foreign exchange can be credited by NRI himself.

### FCNR Accounts :

- Deposits in specified foreign currencies.
- Different Interest rates for holding deposits in different currency. Swap between Currencies possible.
- Transfer to NRE and viceversa possible.

# Investment Opportunities for NRIs

## Fixed Income Investment

Various type of savings & fixed deposits accounts with banks

### NRO Account :

- ▶ Non-repatriable rupee account.
- ▶ When Resident Indian becomes NRI his existing account changes to NRO, banks need to be informed.
- ▶ Credits and debits of Non-repatriable funds.

### RFC Account :

- ▶ This account can be maintained by returning NRIs.
- ▶ This account can be opened and maintained in any convertible foreign currency.
- ▶ Credits of foreign exchange assets, NRE & FCNR balances.

# Investment Opportunities for NRIs

Account type	Domestic / Resident Account	Non Resident Ordinary (NRO) Account	Non Resident External (NRE) Account	Foreign Currency Non Resident (FCNR - B) Account
NRI	Not Permitted	Permitted	Permitted	Permitted
Foreign Nationals on employment in India	Permitted	Not Permitted	Not Permitted	Not Permitted
Foreign Students studying in India	Not Permitted	Permitted	Not Permitted	Not Permitted
Foreign Tourists on short visit to India	Not Permitted	Permitted	Not Permitted	Not Permitted

# Investment Opportunities for NRIs

## Bank Rates for NRE, NRO & FCNR Deposits

as on 11/03/2016 for State Bank of India

Duration	NRE	NRO	FCNR GBP	FCNR USD	FCNR EURO	FCNR YEN
1 year to 455 days	7.25%	7.25%	1.35	1.49	0.57	0.67
456 days to less than 2 years	7.50%	7.50%	1.73	1.84	0.8	0.84
36-60 Months	7.00%	7.00%	1.82	2.02	0.9	0.84

# Investment Opportunities for NRIs

## Investment in LLP and Companies

Invest in LLP and Companies can be made through Foreign Direct Investment route (FDI scheme), which includes Automatic Route or Government Route, depending upon the sector of investment.

## Investment in Proprietorship and Partnership Concern

Invest in Proprietorship and Partnership Concern can be made by NRIs on non repatriable basis except agriculture & real estate.

# Understanding on FBAR, FATCA & CRS

# Understanding on FBAR, FATCA & CRS

## FBAR (Report of Foreign Bank and Financial Accounts)

United States Persons are required to File Form 114 if :

- ▶ the United States person had a Financial Interest in or signature authority over at least one financial account located outside the United States and
- ▶ the aggregate value of all foreign financial accounts exceeded US \$ 10000 at any time during the calendar year reported.

# Understanding on FBAR, FATCA & CRS

## FATCA (Foreign Account Tax Compliance Act)

- ▶ FATCA targets tax non – compliance by US tax payers with Foreign Accounts.
- ▶ FATCA requires US Tax payers to file Form 8938 on Foreign Financial Assets.
- ▶ FATCA requires Foreign Financial Institutions (FFI's) to report to the IRS, information about financial accounts held by US tax payers.

# Understanding on FBAR, FATCA & CRS

## FATCA Compliance by Indian (FFI's)

- ➡ Determination date for FATCA : 30<sup>th</sup> June, 2014.
- ➡ All new accounts opened after the determination date.
- ➡ Pre existing accounts electronic search of information in the system.
- ➡ High value accounts (US\$ 1 mn +) paper record search + inquiry of Relationship Manager, additional requirement.
- ➡ Closed accounts also subject to the above process.

# Understanding on FBAR, FATCA & CRS

	FATCA	FBAR
	Form 8938, Statement of Specified Foreign Financial Assets	FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR)
Reporting <u>Threshold</u> (Total Value of Assets)	\$50,000 on the last day of the tax year or \$75,000 at any time during the tax year (higher threshold amounts apply to married individuals filing jointly and individuals living abroad)	\$10,000 at any time during the calendar year
What is <u>Reported</u> ?	Maximum value of specified foreign financial assets, which include financial accounts with foreign financial institutions <u>and certain other foreign non-account investment assets</u>	<u>Financial interest</u> : you are the owner of record or holder of legal title; the owner of record or holder of legal title is your agent or representative; you have a sufficient interest in the entity that is the owner of record or holder of legal title. <u>Signature authority</u> : you have authority to control the disposition of the assets in the account by direct communication with the financial institution maintaining the account. See instructions for further details.
Where to <u>File</u> ?	File <u>with income tax return</u> pursuant to instructions for filing the return	File <u>electronically</u> through FinCENs <a href="#">BSA E-Filing System</a> . The FBAR is not filed with a federal tax return.

# Understanding on FBAR, FATCA & CRS

Types of Foreign Assets and Whether They are Reportable		
	FATCA	FBAR
Financial (deposit and custodial) accounts held at foreign financial institutions	Yes	Yes
Foreign stock or securities held in a financial account at a foreign financial institution	The account itself is subject to reporting, but the contents of the account do not have to be separately reported	The account itself is subject to reporting, but the contents of the account do not have to be separately reported
Foreign partnership interests	Yes	No
Foreign mutual funds	Yes	Yes
Foreign-issued life insurance or annuity contract with a cash-value	Yes	Yes
Foreign <u>real estate</u> held directly	No	No
Foreign real estate held through a foreign entity	No, but the foreign entity itself is a specified foreign financial asset and its maximum value includes the value of the real estate	No
Foreign currency held directly	No	No
<u>Precious Metals</u> held directly	No	No
Personal property, held directly, such as <u>art, antiques, jewelry, cars</u> and other collectibles	No	No

# Understanding on FBAR, FATCA & CRS

## CRS – Common Reporting System

- ▶ FATCA version of OECD (Organisation for Economic Co-operation & Development) countries.
- ▶ Platform to exchange financial information in respect of residents of 112 countries.
- ▶ Countries include – India, United Kingdom, UAE, Singapore, Hong Kong, China, Australia, Canada, Germany, Switzerland etc.
- ▶ Determination date : 31<sup>st</sup> December 2015.

# Understanding on FBAR, FATCA & CRS

## CRS – Common Reporting System

CRS has a broader scope than FATCA

- ➡ All Accounts supposed to be reported (without minimum balance exclusion).
- ➡ Income to be reported under CRS over & above the accounts and investments.
- ➡ Transactions with all entities are to be reported. FI with local client base, retirement funds etc. not exempted in CRS.

# Understanding on FBAR, FATCA & CRS

## FBAR, FATCA & CRS Planning from Indian context

- ➔ Assets in the name of close (trusted) Resident Indians.
- ➔ A specific WILL to protect the interest of NRI's.
- ➔ Assets held by HUF. Are they taxable in Foreign country? Should they be reported in foreign country?
- ➔ Take benefit of voluntary compliance scheme. It has to be done before detection.
- ➔ US version of voluntary compliance scheme – wilful & non wilful incompliance differently treated.

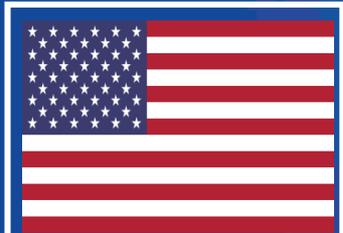
# Why India is a destination for investment in present times?

**Why India is a destination for investment in present times?**

**Developed Economies  
Vs.  
Emerging Economics**

# Why India is a destination for investment in present times?

## Developed Economies



**U. S. A.**

**2.60%**



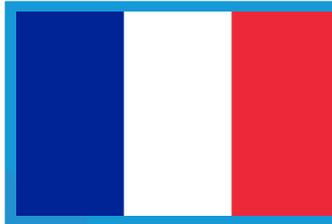
**Japan**

**0.60%**



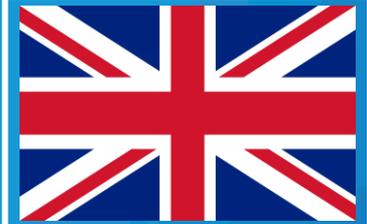
**Germany**

**1.50%**



**France**

**1.20%**



**U. K.**

**2.50%**

Source : [www.wikipedia.org](http://www.wikipedia.org)

Why India is a destination for investment in present times?

# Major Emerging Economics India in a Sweet Spot



**Why India is a destination for investment in present times?**

# How do we participate in India Growth Story?

**Why India is a destination for investment in present times?**

# **Fixed Income Investment? Not exactly !!**

# **Growth Assets in India**

- ➔ **Real Estate.**
- ➔ **Equity Markets.**

# Why India is a destination for investment in present times?

## Real Estate – Prospects & Operational Comforts

- ➡ Presently stagnated.
- ➡ Present valuation expensive.
- ➡ Cash component in transactions.
- ➡ Liquidity.
- ➡ Lack of transparency.

# Why India is a destination for investment in present times?

## Equity Market

- ➡ Direct Proxy to India Growth Story.
- ➡ Attractive valuations.
- ➡ India a major beneficiary of soft commodity prices.
- ➡ Transparent operations.
- ➡ Long term capital – tax free.

# Why India is a destination for investment in present times?

## Participating in Equity Markets through Mutual Funds

- ➔ Substantial out performance of benchmark returns.
- ➔ Diversification in equity exposure.
- ➔ Ease of operations.
- ➔ Long term capital – tax free.
- ➔ Tax effect only on transfer of units. Change in underlying assets not impacted.

# Thank You...

# Questions ?

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## NRI – Taxation, Laws & Investment