REAL LIFE SITUATIONS OF TAXATION & REGULATIONS FACED BY NON – RESIDENT INDIANS (NRI)





Income in India and it's compliance in India & abroad for NRI



✓ Under Section 6(1) of the Income Tax Act :

An individual is <u>resident</u> in India, if he is in India for a period of 182 days or more in the previous year.

This definition applies to:

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

All other persons are Non Resident



✓ Under Section 6(1) of the Income Tax Act:

An individual is resident in India:

He is in India for a period of <u>60 days or more</u> during the relevant <u>previous</u> year

and

365 days or more during the four years preceding that previous year.

This definition does not apply to:

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

All other persons are Non Residents



For persons who are residents

Resident & Ordinarily Resident (R & O R)

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

AND

Has been in India for a period of 730 days or more during 7 years immediately preceding the relevant previous year.

Resident but not Ordinarily Resident (R but N O R)

 Has been a Non Resident in India in 9 out of 10 previous years preceding that previous year

OR

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

✓ Person who are Non Residents do not have any reason to go into the above, bifurcation of residents.



Indian Income

✓ Income received or accrued or arised in India.

Foreign Income

✓ Income not received nor accrued nor arises from India.

Exceptions:-

- 1 CBDT Circular-Income received in Indian Bank Account for Seafarers working on ships - Foreign Income.
- 2 Pramod Kumar Sapra VS ITO 87 Taxmann 98 (Del. ITAT)



	Resident and	Resident but	Non-resident
	ordinarily	not ordinarily	in India
Particular	resi <mark>dent in Ind</mark> ia	resident in	(NR)
	(R & OR)	India (R but	(IVIV)
	A Comment	not OR)	
Indian income	Taxable	Taxable	Tax able
Foreign Income	Taxable	Non Taxable	Non Taxable
Income from business or			
profession accruing or			
arising outside India, but		1 1 1 1 1	1.1.1.1.1.1.1.1
business controlled from	Taxable	Taxable	Non Taxable
India or a professional			
setup in India.			



Incomes from more than one country

Residence Rule

Under this rule, the country can tax persons if they are residents or domiciled in the country, regardless of the source of income. The principle of residence – based taxation of income envisages the taxation of global income.

Source Rule

Under this rule, importance is to the source (country) where income is generated. The principle of source – based taxation is to pay tax in country which provide opportunity for income generation.



What is a 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.
- ✓ India has <u>DTAA with at least 90 countries</u> such as the US, the United Kingdom, the UAE, Canada, Australia, Saudi Arabia, Singapore and New Zealand, Kenya, Tanzania, South Africa, Sudan etc.



Computation of tax liability in India & Abroad

For Instance...

- √ Financial Year in India is 1st April to 31st March.
- √ Financial Year (Tax Year) in US is 1st January to 31st December.



Computation of tax liability in India & Abroad

Segregating transactions in the following form:

- ✓ From 1st January to 31st December from the bank statement / investment statement.
- ✓ If more transactions have been <u>undertaken</u>, pass entries in <u>computerised accounting software</u>, then segregate it on <u>start & end</u> date basis.
- ✓ We are clear about the income to be aggregated in US tax return.



Computation of tax liability in India & Abroad

Tax Credit of the incomes taxed in India:

- ✓ For Indian incomes between 1st January to 31st March, taxes & Returns would have been filed, credit of taxes (not any interest or penalty) on that basis.
- ✓ For Indian incomes between 1st April to 31st

 <u>December</u>, credit on the basis of withholding tax in India (TDS) or advance tax paid. These advances taxes should be towards final tax liability.



Data for Tax Compliance Abroad

Deadline Chart:

Sr. No.	Jurisdiction	Financial Year	Due date of return filing	Deadline for our report
01	USA	01st January to 31st December	15th March	31st January
02	Australia	01st July to 30th June	15th October	31st August
03	UK	06th April to 05th April	31st October	31st July



Data for Tax Compliance Abroad

Data supplied by us:

- ✓ Details of all the different types of <u>incomes</u>, <u>date wise</u>, as per <u>respective financial year</u>.
- ✓ Name & Address of the source of income.
- Conversion of each income in respective foreign currencies as per prescribed reference rates.
- √ Tax withheld (TDS) / Advance Tax (Prepaid Taxes).
- ✓ Finally tax liability on that income and tax paid on the income for which credit is to be claimed.

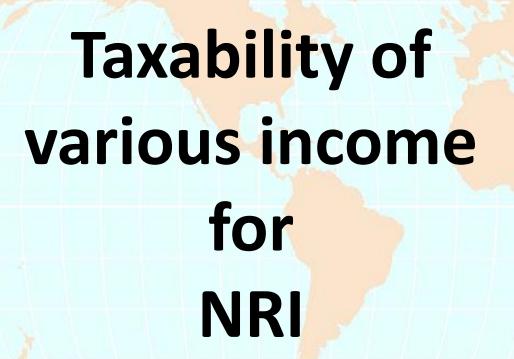


Data for Tax Compliance Abroad

Data supplied by us:

- Details of assets held at the end of the respective year in respective currencies.
- Details of investments made during the respective year in respective currencies.
- Closing balance of Mutual Fund units at the end of the year, (for USA), in prescribed format.







Sr. No.	Type of Income	Taxation levy for NRI *	TDS rate (withholding tax rate) *
01	Salaries.	At normal rate,	
	The state of the s	after all deductions	At normal rates
		- including standard	(U/s. 192).
	5	deduction.	
02	Rental Income		
	Received or Annual		
	Letting Value (ALV)	At normal rate,	30%
	on all the house	after deduction of	(U/s. 19 <mark>5 - a</mark> ny other
	property - other	30%.	income).
	than one self		
	occupied property.		



Sr. No.	Type of Income	Taxation levy for NRI *	TDS rate (withholding tax rate) *
03	Remuneration in Partnership Firm / LLP. Interest on Capital.	At normal rate.	30% (U/s. 195 - any other income).
7	Share in profits of partnership Firm / LLP.	Exempted U/s. 10(2A).	NIL
04	Professional Fees, Business Income.	At normal rate.	30% (U/s. 195 - any other income).



Sr. No.	Type of Income	Taxation levy for NRI *	TDS rate (withholding tax rate) *
05		Period of holding less than 1 year - Short Term	15%
4,5	paid.	Capital Gain. Capital gain @ 15%.	(U/s. 195 - STCG U/s 111A).
10	K-3	Period of holding more than 1 year - Long Term	10%
		Capital Gain. Capital gain @ 10%.	(U/s. 19 <mark>5 – income by way of LTCG referred to</mark>
		Exempted up to Rs. 1,00,000.	in Section 112A).



Sr. No.	Type of Income	Taxation levy for NRI *	TDS rate (withholding tax rate) *
06	Mutual Fund Investments. • Equity Oriented.	Period of holding less than 1 year – Short Term Capital Gain. Short Term Capital Gain @15% (U/s. 111A).	15% (U/s. 195 - STCG U/s 111A).
		Period of holding more than 1 year – Long Term Capital Gain. Capital gain @ 10%. Exempted upto Rs. 1,00,000.	10% (U/s. 195 – income by way of LTCG referred to in Section 112A).



Sr. No.	Type of Income	Taxation levy for NRI *	TDS rate (withholding tax rate) *
07	Investments.	Period of holding less than 3 years - Short Term Capital Gain. At normal rates.	30% (U/s. 195 – Any other income).
	Other than equity oriented.	Period of holding more than 3 years – Long Term Capital Gain. Capital gain @ 20% with Indexation (<u>Listed</u>) U/s.	20% (U/s. 195 – Other LTCG not covered U/s 10(33), 10(36) and 112A).
		Period of holding more than 3 years – Long Term Capital Gain. Capital gain @ 10% without Indexation (Unlisted). (U/s. 112(1)(C)(iii)).	10% (U/s. 195 – income by way of LTCG referred in Section 115E or Section 112(1)(c)(iii)).



Sr. No.	Type of Income	Taxation levy for NRI *	TDS rate (withholding tax rate) *
08	Interest income on Bank Deposits		
	(NRO A/c).		30%
09	Interest on Private Deposits	At normal rates.	(U <mark>/s. 19</mark> 5 - any other income).
10	Interest Income on Small Savings Schemes.		



- * Additional levis to the above tax rates:
 - For Incomes Rs. 50 lakh or less.

For Incomes more than Rs. 50 lakh but less than Rs. 1 Cr.

■ For Incomes more than Rs. 1 Cr but less than Rs. 2 Cr

Health and Education Cess
(HEC) @ 4%.

Effective Rate: 31.20 %

: First add Surcharge @ 10% and then on the total of tax and surcharge a <u>further levy</u> of 4%.

Effective Rate: 34.32 %

First add Surcharge @ 15% and then on the total of tax and surcharge a <u>further levy</u> of 4%.

Effective Rate: 35.88 %



* Additional levis to the above tax rates:

- For Incomes more thanRs. 2 Cr but less thanRs. 5 Cr
- First add Surcharge @ 25% and then on the total of tax and surcharge a <u>further levy</u> of 4%.

Effective Rate: 39.00 %

- Incomes more than Rs. 5 Cr
- First add Surcharge @ 37% and then on the total of tax and surcharge a further levy of 4%.

Effective Rate: 42.74 %

The <u>additional levies on TDS</u> shall be on the basis of payments made which are liable to TDS in the above slabs. For Example – on sale of immovable property of Rs. 40 lakh (HEC @ 4%) while as on sale value of Rs. 60 lakh (Sur 10% + HEC 4%).



Incomes which are <u>completely exempted</u> from Income Tax and there is no Tax Deduction at Source (TDS) on these incomes.

Sr. No.	Type of Income	Income exempted under the provision
01	Interest income on NRE A/c	U/s. 10 (4)
02	Interest income on PPF A/c	U/s. 10 (11)
03	Agricultural Income	U/s. 10 (1)
04	Dividend Income on Mutual Funds	U/s <mark>. 10 (3</mark> 5)
05	Share in profits of a Partnership Firm	U/s <mark>. 10</mark> (2A)



Incomes which are <u>completely exempted</u> from Income Tax and there is no Tax Deduction at Source (TDS) on these incomes.

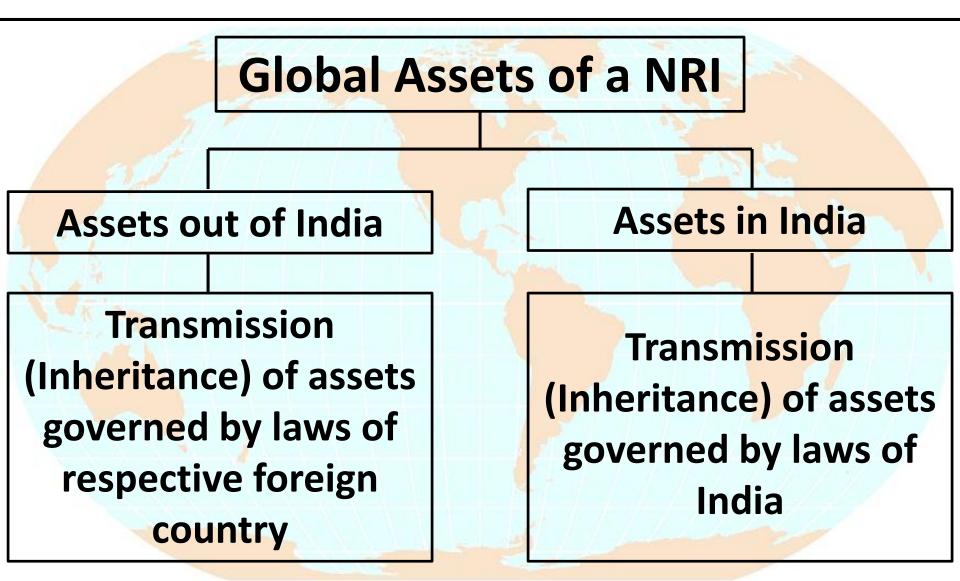
Sr. No.	Type of Income	Income exempted under the provision	
06	Dividend on Shares.	Exempted U/s. 10(34).	
		However, companies are	
16		required to pay Dividend	
		Distribution Tax @15%.	
		Additional tax liability of 10%	
		where Dividend exceeds	
		Rs. 10,00,000 is not applicable	
		to NRI.	



Practical planning for Inheritance of Assets in India

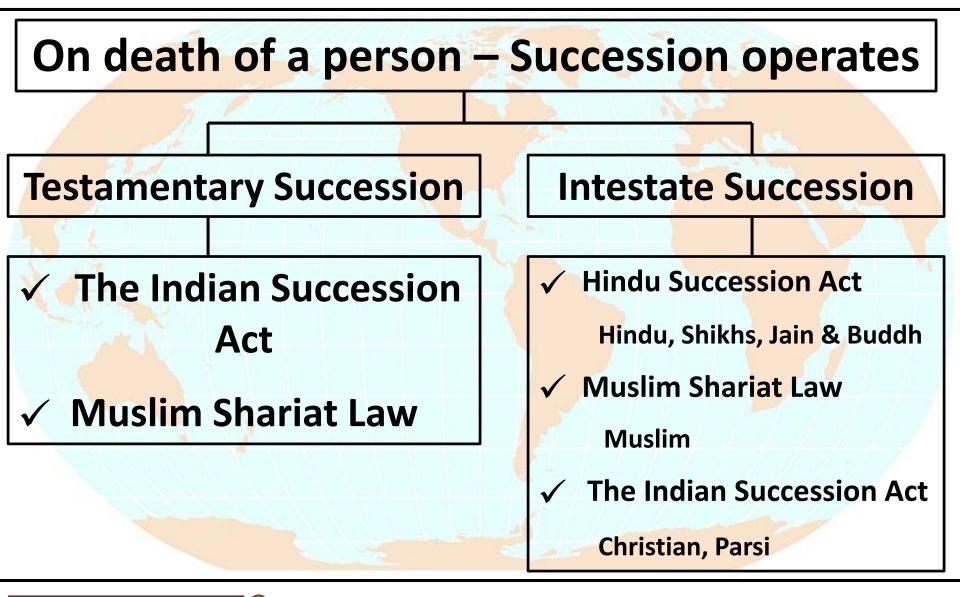


NRI Assets Scenario – Assets in India & Assets outside India





Law of Succession in respect of Indian Assets





Testamentary Succession – in case of NRI

- ✓ When assets are bequeathed on the basis of a Will, it is called as testamentary Succession.
- A Will valid under the Indian Succession Act, has to be made in respect of Indian Asset.
- ✓ A Will in respect of Gobal Assets (Foreign + Indian Assets) is valid in India for Indian Assets, if it contains all the essential elements of a valid Will.



Intestate Succession – in case of NRI

- ✓ When a person dies without executing a Will, the process by which the assets of the deceased are bequeathed is called Intestate Succession.
- ✓ There are specific provision applicable according to the religion followed by the deceased.

Hindu Succession	Muslim	The Indian
Act	Shariat Law	Succession Act
Hindu, Sikhs, Jain,	Muslim	Christian,
Buddh	iviusiim	Parsi



Intestate Succession – in case of NRI

Distribution of assets where Hindu dies without executing a Will:

- ✓ Hindu Male : Class I heirs

 Mother, Widow, Daughters, Sons, Heirs of the predeceased Son / Daughter. (Father not included).
- ✓ Hindu Female : Class I heirs

 Sons, Daughters, Children of predeceased Son /

 Daughter and the Husband. (Father, Mother,

 Father-in-law, Mother-in-law not included).

All the assets are to be evenly distributed amongst all the heirs.



Effect of Nomination / Joint Holder (E or S)

- ✓ On death of the holder of such assets <u>transmission of</u> <u>assets needs</u> to be done in favour of the Nominee / Joint Holder (E or S).
- Nominee / Joint Holder (E or S) is not the owner of the assets, he is merely a Custodian / Trustee. The real owner of the asset is the one who is the beneficiary, under the Will in case of Testamentary Succession (where Will is made) or as per the respective law of succession of Intestate Succession (where Will is not made).
- **✓** Nomination is important in case of <u>movable</u> assets.



Different aspects on sale of **Immovable Assets** in India



Sale of Immovable Assets by POA

- ✓ If giver and receiver of POA holder both are in India POA should be <u>registered</u> with respective Registrar where the property is located in India.
- ✓ If giver and / or receiver of POA are out of India

POA should be executed & signed before Indian Embassy abroad and thereafter should be submitted in 90 days to registrar where the property is located. It will be stamped & verified by Stamp Duty Collector Office & District Collector Office. Giver & Receiver of POA both can execute and sign out of India.



Sale of Immovable Assets by POA

- ✓ Appropriate stamp duty has to be paid, which is Rs. 300/= for POA to <u>close relatives</u> (father, mother, brother, sister, wife, husband, son, daughter, grandson, granddaughter).
- ✓ When POA given to any person other than close relative, market value based stamp duty will be liable on the POA.
- ✓ It is advisable to give a <u>Letter of Authority to a lawyer</u>, to represent the parties before authorities in India, when the giver & receiver of POA is out of India.



Taxation on sale of Immovable Assets

Type of Income	Taxation levy for NRI *	TDS rate (with <mark>holding tax rate</mark>) *	
Sale of	Period of holding more than	1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	
Immovable	2 years - Long Term Capital	20%	
Asset s including	Gain.	(U/s. 195 - Other LTCG not	
Agricultural Land		covered U/s 10(33), 10(36)	
located within	20% Tax after indexation on	and 112A).	
specified area.	Capital Gain		
WK-3	Period of holding less than 2		
	years - Short Term Capital	30%	
	Gain.	(U/s. 195 <mark>- any</mark> other	
		inco <mark>me</mark>).	
	At normal tax rates.		

TDS to be made on entire sale consideration, unless certification U/s. 195(2) (Payer) or U/s. 197 (Payee) is obtained.



Taxation on sale of Immovable Assets

Type of Income	Income exempted under the provision	
Gain on sale of Agricultural	Not considered as a Capital	
land situated beyond the	Assets U/s. 2(14)(iii), hence	
below limits	exempted	
Population of a city / town et	<u>Arial Distance</u>	
10,000 to 1,00,000	2 kms.	
1,00,000 to 10,00,000	6 kms.	
Above 10,00,000	8 kms.	



Tax Deduction at source (TDS) for NRI

Operation of Sec. 195 of the Income Tax Act:

- ✓ Sec. 195 (1) :
 - Payer : Any person.
 - Payee : A NRI, not being a company or foreign company.
 - Payment : <u>Any sum</u>, <u>other than salaries</u> and some other payment chargeable under the provision of Income Tax Act.
 - Rate of TDS : At the prescribed rates.

Section 195 does <u>not apply</u> to sums paid to Non Residents which are <u>exempt from tax</u>, as it applies to only <u>"any sum chargeable to tax."</u>



Tax Deduction at source (TDS) for NRI

Operation of Sec. 195 of the Income Tax Act:

- ✓ Sec. 195 (2):
 - Application by <u>Payer</u> for determination of such sum on which TDS to be deducted.
 - Tax payable on a <u>particular transaction</u> can be determined. Example - Sale of immovable property.
 - Application can be made in <u>online</u> mode.

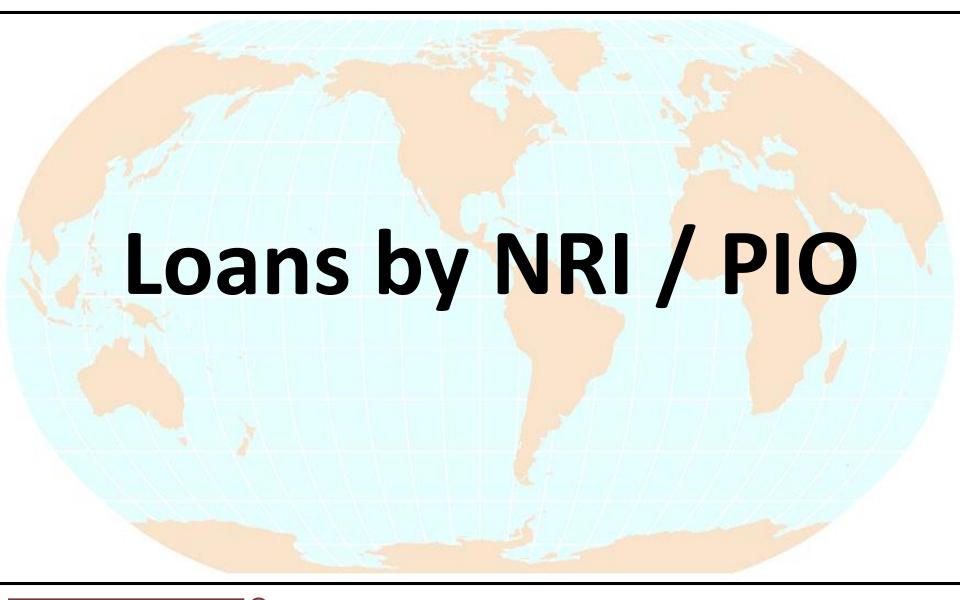


Tax Deduction at source (TDS) for NRI

Operation of Sec. 195 of the Income Tax Act:

- ✓ Sec. 197:
 - Application by <u>payee</u> for obtaining <u>lower or Nil TDS</u> <u>Certificate.</u>
 - This certificate is useful for <u>payments across a period</u>. Example Rental income across the year. It can be availed for <u>specific transactions also</u>. Example Sale of immovable property.
 - Application can be made in <u>online</u> mode.







Loans by NRI / PIO

On Repatriable Basis In Foreign Currency:

RBI Regulation No - RBI/FED/2015-16/15 FED Master Direction No. 5/2015-16

As per the above mentioned RBI Regulation, Loan can be given by NRI/PIO to their close relative* in Foreign Currency subject to below mentioned condition:

- √ The amount of the loan should not exceed US\$ 250,000.
- ✓ Loans can be from remittances, NRE, FCNR A/cs in Foreign Currency.
- ✓ Minimum maturity period of loan is 1 Year.
- ✓ Loan is <u>free of interest</u>.

* Definition of Relative / Close Relative as per Companies Act for FEMA & RBI regulations



Definition of Relative

As per Companies Act for FEMA & RBI regulations:

- ✓ Husband & wife.
- ✓ Father & Mother.
- Brother & Sister.
- ✓ Son, Daughter & their Spouse.
- ✓ Members of HUF.



Loans by NRI / PIO

On Non Repatriable Basis in Indian Rupees:

RBI Regulation No – RBI/FED/2015-16/2 FED Master Direction No . 6/2015-16

As per the above mentioned RBI Regulation, Loan can be given by NRI/PIO to their Resident "Persons" in INR subject to below mentioned condition:

- ✓ 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 (Repo Rate).



Loans by NRI / PIO

On Non Repatriable Basis in Indian Rupees:

RBI Regulation No – RBI/FED/2015-16/2 FED Master Direction No . 6/2015-16

Repayment in NRO A/c.

✓ However, the funds lying in NRO Account can be remitted up to US\$ 1 Million abroad or to NRE Account.





<u>Implications under FEMA, 1999</u>:

Gift by NRI /PIO from NRO & NRE Account

- ✓ NRI/PIO can gift to Resident from their NRO / NRE account, by remittance, in India.
- ✓ However, the <u>POA holder is not authorised</u> to sign the cheque for the transaction relating to gift. Cheque is to be signed by the account holder only.
- ✓ NRI/PIO can even gift cash to Residents (Sec. 9 FEMA). Resident cannot retain currency more than US\$ 2000 or equivalent.



Implication under the Income Tax Act, 1961:

Section 56(2) of the IT Act, 1961

- ✓ There is no gift tax in India. However gift is taxable in the hands of recipient in certain conditions.
- √ The amount of gifts in aggregate is in excess of Rs. 50,000/- per financial year.
- ✓ If the amount of gift exceeds Rs. 50,000, entire amount is taxable under the head "Income from other sources".
- √ The exceptions to it is, gifts received from relatives (as defined under the Income Tax Act Sec. 56(2)) is exempted.



Definition of Relative

As per Income Tax Act:

- ✓ Spouse of the individual.
- ✓ Brother or sister of individual or of spouse.
- ✓ Brother or sister of either parents.
- ✓ Lineal ascendant / descendant of individual or of spouse.
- ✓ Spouse of relatives mentioned above.



Implication under the Income Tax Act, 1961:

Section 68 of the IT Act, 1961

- ✓ Section 56 & 68 are independent in operation.
- ✓ Though the gift is exempted under Section 56, Section 68 of Income Tax act, has still to be satisfied.
- As per Section 68, "any sum of fund is credited in the books of assesse maintained for any previous year and the assesse offers no explanation about the nature and source thereof or the explanation offered by him is not in opinion of the Assessing officer satisfactory the sum so credited may be charged to income tax as the income of the assesse of that pervious year."



Implication under the Income Tax Act, 1961:

How to comply with Section 68 of the IT Act, 1961

- ✓ An assesse is required to prove the below mentioned details from whom gift is received
 - <u>Identity</u> of the person.
 - Creditworthiness of the person.
 - Genuineness of the transaction.
- √ The <u>documents</u> required to prove the above mentioned details <u>vary from case to case</u> basis.



Implication under the Income Tax Act, 1961:

- ✓ Rate of tax for incomes made taxable U/s. 68 has been prescribed U/s. 115 BBE.
- ✓ The prescribed rate U/s. 115 BBE are:
 - 60% + 25% Surcharge = 77.25% (If disclosed in the Return of Income).
 - 77.25% + 10% of tax payable (Penalty U/s. 271AAC) = 83.25%. (In case of detection during the Assessment Proceedings).
- ✓ Can invite <u>prosecution</u> (Imprisonment & Fine) U/s. 276C(1),
 277, 277A of the Income Tax Act.



Final Summary

Tabular presentation of Gifts & Loan by NRI to Resident Indian

Particulars	Relatives	Others
Loan in Indian Rupees	Permitted	Permitted
Gifts in Indian Rupees	Permitted	Permitted (Taxable)
Loans in Foreign Currency	Permitted	Not Permitted
Gifts in Foreign Currency	Permitted	Permitted (Taxable)



Rule 6 of Foreign Contribution Regulation Act (FCRA):

- ✓ Intimation on Form FC 1 required :
 - Incase of gift from <u>relative</u> in <u>currency</u>, <u>article</u> or <u>security</u> from a <u>foreigner</u> (non Indian citizen).
 - Intimation to be made within 30 days. Intimation can be done online on From FC 1.
 - Limit for intimation is Rs. 1 lakh more. Article of personal use exempted.
- ✓ Intimation on Form FC 1 not required :
 - Incase a gift from <u>relative</u> holding <u>Indian passport</u>.
 - Incase a gift from non relative foreigner.



Repatriation (Transfer) of Funds



Transfer of Funds from NRO A/c to NRE A/c or Out of India

Transfer of NRO Funds to a NRE A/c or out of India: (RBI/2011 – 12/536 AP. (DIR Series) Circular No. 117.

NRI can avail the benefit of transferring funds from NRO A/c to the extent of US\$ 1 million per person per year to NRE A/c or out of India.

Requirements:

- Taxes due on funds supposed to be transferred should be paid.
- ✓ <u>Simple procedure</u> need to be followed for the transfer.



Transfer of Funds from NRO A/c to NRE A/c or Out of India

Benefits of Fund Transfer from NRO A/c to NRE A/c:

- ✓ Amounts in NRE Account is Tax Free.
- ✓ TDS would not be applicable on the interest income from NRE Account.
- ✓ The balances in the NRE Account are fully repatriable.
- ✓ Repatriation can be done at the ease of Account holder to avail the benefit of comfortable exchange rate.



Transfer of Funds from NRO A/c to NRE A/c or Out of India

Benefits of Fund Transfer from NRO A/c to NRE A/c:

- ✓ The circular of Government for transfer of funds from NRO to NRE or abroad is just relaxation given to NRI. It is not an obligation of the government to allow such transfer. However, the transfer of money from NRE to abroad is an obligation of the government.
- ✓ The funds lying in <u>NRE Account can be easily</u> remitted to the country of residence without any limits and formalities.



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