

## BENEFITS **FOR NRI** UNDER INDIAN TAXATION & OTHER REGULATIONS





Basic of Taxation

(When income from more than one country)

#### **Residence Rule**

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

#### **Source Rule**

Under this rule, the taxation is at the source country where the income is generated. The principle behind source based taxation is to pay taxes in the country which provides opportunity for generation of that income.



- ✓ Double Taxation Avoidance Agreement (DTAA) is an <u>agreement</u> entered into between countries, with the basic objective to <u>avoid</u>, taxation of income in <u>both the countries</u> (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 over 89 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.

## Taxation of same income in two countries

Types of Relief

U/s. 90 where DTAA exists.

Unilateral Relief

U/s. 91 where DTAA does not exist.

Exemption Method

Tax Credit Method

Exemption method of relief is applicable in DTAAs with very few countries for certain incomes only. For remaining all countries, Tax Credit Method prevails for all incomes.



Basic principle under Double Taxation Avoidance Agreement (DTAA)

The Non Resident can select the provisions or rates of taxes, whichever are beneficial under

DTAA or the Income Tax Act.



(DTAA) Type of income in India				
Rates und	der Indian Income	Dividend	Interest	
	Tax	20% + Surcharge (If applicable)	Slab rates	
		Rates in DTAA	N. A. Off	
S. No. Country of tax resid			pe of income in India	
3. NO.	Country of tax residence	Divide	nd Interest	
1	USA	25%	15%	
2	UK	10%	15%	
3	Australia	15%	15%	
4	UAE	10%	12.50%	
	Canada	25%	15%	



	Rale	RTAAA	
S. No.	Country of tax residence	Type of inco	me in India
3. 140.	Country of tax residence	Dividend	Interest
6	Singapore	15%	15%
7	South Africa	10%	10%
8	Tanzania	10%	10%
9	Uganda	10%	10%
10	Kenya	10%	10%
11	Sudan	10%	10%
12	Ethiopia	7.50%	10%
13	Oman	12.50%	10%
14	Saudi Arabia	5%	10%
15	Malaysia	5%	10%
16	Hong Kong	5%	10%



# Tax concessions in DTAA with U.A. (Tanzania, Kenya, Uganda, South Africa, Sudan & Ethiopia)

- ✓ Under respective <u>Article of DTAA</u> with above stated countries (E.g. Article 13 of India-UAE DTAA), only capital gains on sale of immovable assets, movable assets of business (PE), and shares are liable to tax in India for persons who are <u>Tax residents of above stated countries</u> (E.g. stay in UAE <u>exceeds 183 days</u> in the relevant calendar year for the person to become a tax resident).
- ✓ Capital Gains on sale of <u>Mutual Funds</u> (Debt based or Equity based being short term or long term) and bonds <u>cannot</u> be subjected to tax in India for tax residents of UAE.
  - ITO (IT) 2(1) Mumbai vs. Shri Satish Beharilal Raheja ITA NO.4627/Mum/2009
  - The Dy. Commissioner of Income-tax (International Taxation) Kochi vs. Sri. K .E.Faizal ITA No.423/Coch/2018



#### Tax conces Dans An DTAA

DTAAs are entered in accordance with <u>Section 90 (Double Taxation Relief)</u> and T.D.S. on income taxable at such concessional rates is deducted as per <u>Section 195</u> of the act, at the "rates in force".

As per section 2(37A) (iii), "rates in force" means the "rate or rates of income-tax specified in an agreement entered into by the Central Government under section 90". This entitles deduction of tax on such incomes at concessional rates.

Hence the concessional rate mentioned in the DTAA shall also be the rate of T.D.S. (withholding tax) in India.

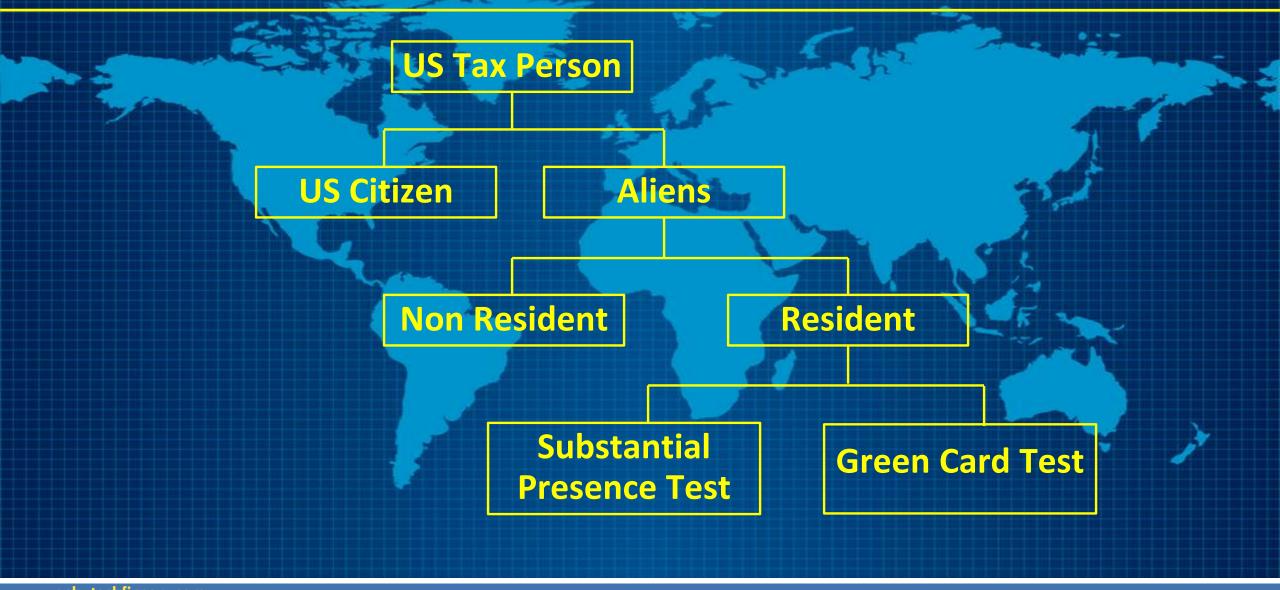
The concessional rates are inclusive of all surcharges and cess which is affirmed by the following judicial decisions:

- 1. Deputy Director of Income-tax (IT)-1(1), Kolkata v. BOC Group Ltd.
- 2. R.A.K. Ceramics, UAE v. Deputy Commissioner of Income Tax, International Taxation(2), Hyderabad
- 3. JC Decaux S.A. v. Assistant Commissioner of Income Tax, IN THE ITAT DELHI BENCH, [2020]











#### Resident

**Green Card Test** 

No matter where you live

A privilege is given by USCIS as a Lawful Permanent Resident

**Substantial Present Test** 

Based on the time you spent in the US

At least 31 days in the current year AND 183 days during last 3 years



## A person can be Tax resident of both the countries:-

A person acquires Green Card of USA (A special status accorded by a country) and a "Tax Resident" in India.

✓ A person satisfies <u>Substantial Presence Test of US</u> Tax Law (Length of stay in a country) makes an individual Tax resident of US and he/she <u>would be Tax "Resident" in</u> <u>India also.</u>



#### **Remedies:**

- If an individual is an tax resident of more than one country, then TIE BREAKER RULE in the DTAA between both the countries will apply.
- The test specified in DTAA between US and India are as follows:
  - Place of Permanent Home, if not determinable, then Center of Vital Interest.
  - If Centre of Vital Interest cannot be determined, then Habitual Abode.

## Remedies:

- ✓ The <u>test specified in DTAA between US and India</u> are as follows:
  - If <u>Habitual Abode</u> is not possible, then the <u>State of</u>
     <u>Nationality</u> will be applicable.
  - If Nationality is not determinable, then <u>competent</u> <u>authorities of the Contracting States</u> shall settle the question by mutual agreement.



Compliance to be done in each respective countries for application of TIE BREAKER RULE, when a person "Tax Resident" of two countries at the same time.

#### **Particular**

If person <u>adjudged to be</u>

<u>tax resident of India</u> and
non resident of U.S.A.

#### Disclosure to be made

In India – Global Income Taxable

In <u>USA</u> – <u>Source</u> Income Taxable

(While filling return in USA along with Tax Return Form 1040 NR + Form 8833 Treaty - Based Return Position Disclosure to be filed and apply on Form no. 10FA and to obtain Tax Residency Certificate from India on Form 10FB

Only if <u>U.S.A. sourced income crosses standard deduction plus</u>
 <u>exemption.</u>)

Compliance to be done in each respective countries for application of TIE BREAKER RULE, when a person "Tax Resident" of two countries at the same time.

Particular	Disclosure to be made
If person adjudged to be	In <u>USA</u> – <u>Global</u> Income Taxable
tax resident of U.S.A.	In <u>India</u> – <u>Source</u> Income Taxable
and non resident of India	
	(Tax Residency Certificate to be obtained from USA by applying
	on Form 8802 and obtain Tax Residency Certification Form No.
	6166 and submit it to Income Tax Department along with
	Income Tax Return in India)







#### Tax Deduction at source (TDS) for NRI:

Basic Provisions - Sec. 195 of the Income Tax Act.

- Sec. 195 (1): Any person responsible for paying to a Non Resident...any other sum chargeable under the provisions of this Act...deduct income tax thereon at the rates in force.
  - Payer Any person.
  - Payee : An NRI, not being a company or foreign company.
  - Payment : Any sum, other than salaries chargeable under the provision of Income Tax Act.
  - Rate of:
    - TDS At the prescribed rates of tax.
- 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:

**Basic Provisions** - Sec. 195 of the Income Tax Act.



 Application by <u>Payer</u> (no prescribed format) for <u>determination of such sum</u> on which TDS to be deducted. Rejection is appealable.

```
/ Sec. 195 (3):
```

Application by <u>Payee</u> for <u>NIL TDS</u>.

#### **Sec. 197:**

It can be obtained by the payee (Form No. 13) for <u>lower or Nil TDS</u>, for TDS to be made U/s 195. Rejection is not appealable.

Judgements where TDS u/s 195 to be done on entire sale consideration

- ✓ The following two rulings clearly establish the fact that TDS on sale of immovable property of NRI has to be made on the entire sale consideration:
  - [2012] 26 taxmann.com 6 (Bangalore Trib.) Syed Aslam Hashmi v. Income-tax Officer, (International Taxation), Ward 2(1), Bangalore.
  - [2013] 38 taxmann.com 123 (Bangalore Trib.) R. Prakash v. Income-tax Officer, International Taxation, Ward -2(1), Bangalore.

#### **Comments:**

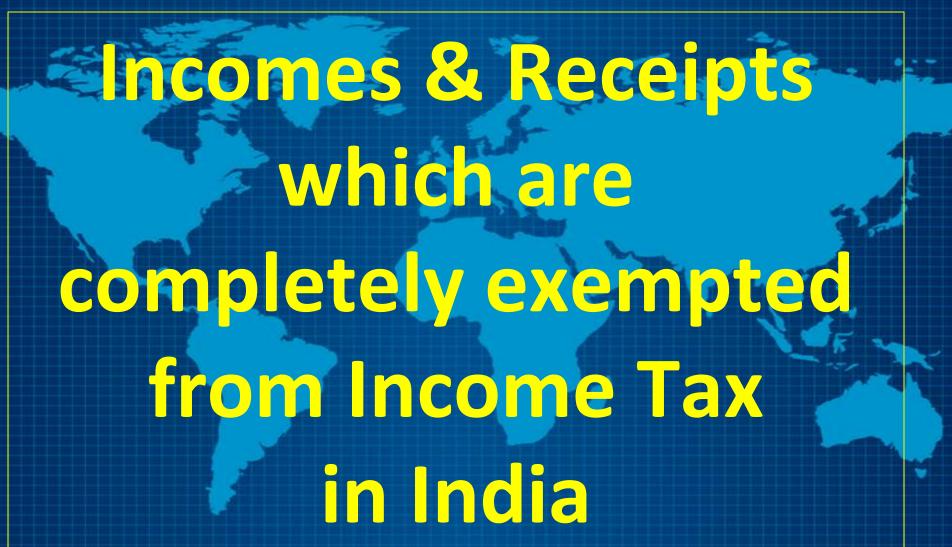
- The above two rulings are <u>direct</u> and <u>straightforward</u> on this matter as compared to the other rulings.
- Therefore, we can conclusively establish the fact that <u>TDS</u> on sale of <u>immovable</u> <u>property</u> of NRI has to be made on the <u>entire sale consideration</u>.



#### Our opinion for the amount on which tax is to be deducted u/s 195(1)

Sr. No.	Type of Asset sale	Provision for tax deduction	Deductor	
01	Immovable property	Entire sale consideration unless lower tax deduction certificate is obtained u/s 197 or 195(2).	Property buyer	
	i) It purchase details are unavailable with	term capital gain.	'	
	ii) If purchase details are available with broker	On the nortion of the canital gains as a	Share broker	
03	Equity mutual funds	llong or short term capital gain, as the	Asset Management Company	







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	Gain on sale of Agricultural land situated beyond the below limits	Not considered as a Capital Assets U/s.
		2(14)(iii), hence exempted
	Population of nearest city / town etc.	Aerial Distance Limit
	10,000 to 1,00,000	2 kms.
	1,00,000 to 10,00,000	6 kms.
	Above 10,00,000	8 kms.
05	Share in profits of a Partnership Firm	U/s. 10(2A)
06	Maturity proceeds under a life insurance policy where the sum	
	assured is 10 times of the premium or death claim under the	
	insurance policy. Unit Linked Insurance Plan (ULIP Policies) with	U/s. 10(10D)
	premium above Rs. 2.5 lakhs are taxable.	
	All death claims of any insurance policy.	



#### Incomes taxed at concessional rates

Sr. No.	Type of Income	Taxation levy for NRI *	TDS rate
			(withholding tax rate) *
01	Dividend income	20 %	20 %
	from Shares	U/s 115A (1) (a) (i)	(U/s. 195)
02	Dividend income	20 %	20 %
	from units of Mutual	U/s. 115A (3)	(U/s. 196A)
	Funds		



### Capital gain related exemptions

Sr. No.	Exemption	<b>Relevant Provision</b>
01	Investment of Capital gain in Capital Gain	
	Bonds to the extent of Rs. 50 Lakhs - gain	54 EC
	from land & building	A. SIE
02	Investment of capital gain in residential	
	house on sale of a residential house	
03	Investment of consideration in	
	residential house on sale of any other	54 F
	asset other than residential house	

#### Following receipts in cash or kind are tax free U/s. 56 (2) of the Income Tax Act:

- 1. Any amount to the extent of Rs 50,000
- 2. From following persons without any upper limit: In case of an individual:
  - A. Spouse of the individual.
  - B. Bother or Sister of the individual.
  - C. Bother or Sister of the spouse of the individual.
  - D. Bother or Sister of either of the parents of the individual.
  - E. Any lineal ascendant or descendant of the individual.
  - F. Any lineal ascendant or descendant of the spouse of an individual.

    Spouse of the person referred to in items (B) to (F).
- 3. On the occasion of the marriage of an individual.
- 4. Under a Will or by way of inheritance.



# Special tax regime for NRI - Chapter XIIA

Relief from Foreign Currency Fluctuation



## Special tax regime for NRI - Chapter XIIA

Tax rates of Income from <u>Specified assets</u> purchased in <u>convertible foreign</u> <u>exchange</u> under <u>section 115E</u> -

Income from Specified assets	Tax Rate
• Investments Income	20%
Long Term Capital Gains (without indexation)	10%

- Meaning of Specified assets under the regime (section 115C) -
  - Shares of an Indian company
  - Debentures of or deposits with a Public Limited Indian company (Includes Bank/NBFC deposits as per AAR New Delhi ruling of V. Ravi Narayanan [2008] 168 Taxman 65)
  - Government Securities.



## **Special tax regime for NRI - Chapter XIIA**

- Long term capital gain not liable to taxation If (U/s. 115F) -
- Consideration on sale of specified assets (acquired from Convertible Foreign Exchange) invested in new specified assets within 6 months.
- ✓ New specified assets has to be <u>held for 3 years</u>.
- ✓ Loan cannot be availed against such "new specified assets."
- **✓** If consideration is <u>partially invested</u>, <u>proportionate</u> deduction is allowable.

## Relief from Foreign Currency fluctuations

Computation of capital gain on sale of <u>unlisted shares and debentures</u> of Indian company (<u>Proviso 1 to Section 48 & rule 115A</u>) for foreign currency fluctuations.

- No indexation allowed because benefit of Foreign Currency Fluctuations is allowed.
- Mandatory manner of computation for <u>all Non Residents</u> (not just NRI) who have invested in foreign currency.
- Applicable only on the sale of <u>Unlisted Shares & Debentures</u> acquired in <u>foreign</u> <u>exchange</u>.
- ✓ The above method is applicable for <u>short term</u> as well as <u>long term capital gains</u> calculations.

## Relief from Foreign Currency fluctuations

#### METHOD OF COMPUTATION OF CAPITAL GAINS u/s 48 for NRI

	Sale consideration	Received in INR	Converted by foreign currency used in purchase.  Avg. of Buy & Sell TT Rate on the date of Sale	Sale consideration in foreign currency
<u>Less</u>	Purchase consideration	Paid in INR	Converted by foreign currency used in purchase.  Avg. of Buy & Sell TT Rate on the date of  Purchase	Purchase consideration in foreign currency
<u>Less</u>	Cost of Improvement	Paid in INR	Converted by foreign currency used in cost of Improvement. Avg. of buy & Sell TT Rate on the date of Improvement	Cost of Improvement in foreign currency
<u>Less</u>	Expenditure on transfer	Paid in INR	Converted by foreign currency used in cost of Transfer.	Cost of expenditure in foreign currency
	Net Gain	Gain in foreign currency	Converted in Indian Rupees Buying Rates on date of TT of <u>Transfer</u>	Net gain in Indian Rupees







## **Transfer & Repatriation of Funds**

RBI/2015-16/ 384

A.P. (DIR Series) Circular No. 64/2015-16 [(1)/13(R)]4
Foreign Exchange Management (Remittance of Assets) Regulations, 2016

NRI can avail the benefit of transferring funds (other than borrowed funds) from NRO A/c to the extent of US\$ 1 million (since 2005) 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> has to be followed for the transfer. The funds shall <u>not be from any borrowed sources</u> or from <u>transfers</u> from any other NRO accounts.
- ✓ Where the remittance is made in more than one instalment, the remittance of all instalments shall be made through the <u>same authorised dealer (bank)</u>.



## **Transfer & Repatriation of Funds**

- ✓ A person who desires to make a <u>remittance of assets exceeding USD</u> 1,000,000 (US Dollar One million only) per financial year in the following cases, may apply to the Reserve Bank if the remittance is:
  - 1. On account of <u>legacy</u>, <u>bequest</u> or <u>inheritance</u> to a <u>citizen of foreign</u> <u>state</u>, resident outside India; and
    - 2. By a Non-Resident Indian (NRI) or Person of Indian Origin (PIO), out of the balances held in NRO accounts/ sale proceeds of assets/ the assets acquired by way of inheritance/ legacy.
- The Remitter shall have to prove that <u>hardship will be caused to such a person</u> if remittance from India is not made.



# **Transfer & Repatriation of Funds**

Advantages of Fund Transfer from NRO A/c to NRE A/c or outside India:

NRE Account Interest is Tax Free.

- **✓ TDS would not be applicable on the interest income from NRE Account.**
- √ The <u>balances</u> in the NRE Account are <u>fully repatriable to the country</u>
  of residence without any limits and formalities.
- ✓ Repatriation can be done at the ease of Account holder to avail the benefit of comfortable exchange rate.



# **Transfer & Repatriation of Funds**

✓ 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.

As per Foreign Exchange Management (Non-debt Instruments) Rules, 2019 (clause 29), in case of <u>residential property</u> acquired from <u>NRE/FCNR</u> A/c balance or <u>remittance</u>, direct <u>repatriation</u> of sale proceeds (Subject to CA certification for payment of <u>appropriate taxes</u>) for NRI is restricted to maximum <u>two</u> such <u>properties</u>.



# **Transfer & Repatriation of Funds**

#### Repatriation of Current Incomes

- As per section 5 of FEMA, any person can enter into Current Account transactions (as defined under section 2(j)) without seeking any prior approvals, unless restricted by RBI.
- Therefore, there is no limit (Of \$1 million or any limit) up to which Current incomes (rent, interest, business & profession income, etc.) can be transferred directly outside India or from NRO to NRE bank account by an NRI.
- ✓ Appropriate <u>taxes</u> must have been <u>paid</u> or <u>deducted</u> from such incomes to execute the transfer.







**Assets out of India** 

Transmission
(Inheritance) of assets
governed by laws of
respective foreign
country

**Assets in India** 

Transmission
(Inheritance) of assets
governed by laws of
India



# On death of a person – Succession operates

**Testamentary Succession** 

- Muslim Shariat Law

**Intestate Succession** 

- **✓ Hindu Succession Act** 
  - Hindu, Shikhs, Jain & Buddh
- Muslim Shariat Law
  - Muslim
- The Indian Succession Act
  - **Christian, Parsi**



# Testamentary Succession

- ✓ 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 <u>Will</u> in respect <u>of Gobal Assets</u> (Foreign + Indian Assets) is valid in India for Indian Assets, if it contains all the essential elements of a valid Will.

# **Testamentary Succession**

- ✓ It is advisable to execute a <u>Separate Will</u> for Indian Assets.
- √ There is no unnecessary disclosure of Foreign Assets to which Indian Laws do not have jurisdiction.
- The Will should clearly mention that this Will is in respect of Indian Asset only.
- ✓ A Will can be in respect of <u>all the India Assets</u> or the Will can be a <u>Specific Will</u> in respect of certain specific asset.

# Essential of a valid WILL Testamentary Succession

- Will has to be in writing.
- Identification of the person executing the Will.
- Details of the assets to be bequeathed under the Will.
- Names and details of the beneficiaries under the Will, to whom assets are to be bequeathed.
- ✓ Signature of the person executing the Will, with date.
- / Signature of two adult witness with their identification.
- It is advisable to execute the Will in English, unless the testator does not fully understand English.



# **Testamentary Succession**

Care to be taken when Will executed out of India

- ✓ Person signing the Will is advised to sign before Notary Public in the country where the Will is to be executed.
- ✓ It is advisable to execute declaration of the two witnesses confirming the fact that they are the witness of the Will. This can be filed in court at the time of obtaining the probate.





# Absolute change on the Tax compliance front

- ✓ All filings with the Income Tax Authorities are <u>E-filling</u>.
  Complete change on the Tax compliance front.
- ✓ Scrutiny of all <u>Filings</u>, <u>Assessments</u>, <u>Appeals</u>, <u>are faceless</u>.
- ✓ All financial transactions are <u>mapped</u> with Permanent Account Number (PAN).

# Absolute change on the Tax compliance front

- ✓ No scope of any personal interaction with / by any Income Tax authorities for any reasons.
- √ Functioning of the Income Tax Department undergoes major changes. A landmark reform going unnoticed.
- ✓ A march towards ending a <u>parallel economy</u> and making India a <u>cashless</u> & <u>compliant</u> economy.



#### Information available with the Income Tax Department in the new scenario

Annual Information Statement (AIS) with Income Tax Department, has <u>all the</u> <u>information</u> of the financial transactions fetched by PAN.

- **AIS** has information like:
  - Incomes Expenditures Deposits & Withdrawals of cash from Bank All <u>transactions</u> of ;
  - Scrip wise Sale & Purchases of Mutual Funds and Shares
  - Short Term & Long Term Capital Gains bifurcations
  - Credit Card Transactions aggregating Rs. 2 lakh & above
  - Sale / Purchase of Immovable Properties
  - Investments in Fixed Deposits etc.
- Assessee can give a response with evidence if the information in AIS is incorrect / inaccurate.



# Benefits of faceless operations of Indian Income Tax Department In the new scenario what NRI should be particular about:

- ✓ <u>AIS information</u> needs to be considered while filing annual Income Tax Return and pay tax accordingly.
- ✓ NRI should <u>share complete information</u> with the Tax Advisor, filing return in India, without fail.
- ✓ Contact <u>details</u> like Mobile Number & E-mail id with <u>Income Tax</u> records should be <u>same</u> as registered with <u>Bank</u> Account and should be regularly updated.

## Details for which NRI should be very particular about:

In India, the 1st Account holder is to considered as the owner of a bank account and for other financial assets.

The 2nd & 3rd holders are merely for E OR S purpose or for signing / operating the bank account.

Do not route the transactions of 2nd / 3rd holder in the same account.

Open separate account for all persons having financial transactions in India.

Refrain from opening multiple bank accounts of the same person.



### **Disclaimer**

This Presentation aims to tell the General Views and Laws related to Non Resident Indian (NRIs).

This Presentation is the personal view of Speaker Mr. Daxesh D. Kothari on the said subject, which should not be relied or acted upon without due Professional advice.

This Presentation may contain references, website links, regulations or other policy materials. This Information provided, is only intended to be a general summary. All information in this presentation, including charts, examples and other website references, may be used for any purpose only after Professional advice.

### We are available on...





Stay connected with us for regular updates



# **Questions?**





#### ASHUTOSH FINANCIAL SERVICES PVT. LTD.

INVESTMENTS - INSURANCE - NRI SERVICES - INCOME TAX & ESTATE PLANNING

#### **OUR SERVICES**



#### Ashutosh Investment Services

- Mutual Funds PMS AIF Unlisted Shares
- Foreign Equity Advisory Stock Portfolios
- Bonds FDs Precious Metals

Email: relationship@ashutoshfinserv.com

Mo.: +91 73835 30919 / +91 93773 35959



#### Ashutosh NRI Services

- Investments Insurance
- Indian Tax & Estate Planning
- •FEMA regulations •Foreign Tax Compliance

Email: nris2@ashutoshfinserv.com

Mo.: +91 70435 93388 / +91 72288 48181



#### Ashutosh Insurance Services

- Insurance for your Life, Health, Assets & Liabilities
- Retirement Planning
- Investment through Life Insurance

Email: rm.insurance@ashutoshfinserv.com Mo.: +91 70438 93388 / +91 63587 55770



#### Kothari & Co.

 Income Tax & Estate Planning Services

Email: lawserve@ashutoshfinserv.com

Mo.: +91 93769 62244 / +91 70435 24242

www.ashutoshfinserv.com



