Funding of NRI
in
Indian LLP &
Companies.

Implications and
Planning under
FEMA & Income Tax.

Who is a NRI ?

Who is a NRI ?

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

✓ An individual is resident 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 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.

All other persons are Non Resident

Who is a NRI ?

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

✓ **An individual is resident in India :**

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.

This definition does not apply to :

i) **An Indian citizen leaves who 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 Indian citizen or a person of Indian origin, who has settled abroad, comes on a visit to India.**

All other persons are Non Residents

Who is a NRI ?

For persons who are residents

Resident & Ordinarily Resident (R & O R)	Resident but not Ordinarily Resident (R & N O R)
Resident in India 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.	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 immediately preceding the relevant previous year.

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

Who is a NRI ?

I) As per FEMA (Foreign Exchange Management Act)

A) **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.**

Who is a NRI ?

I) As per FEMA

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.

Person other than the above is a Non Resident

B) Students going abroad are treated as NRI under RBI Circular : AP (DIR Series) Circular No. 45 December 8, 2003.

Who is a NRI ?

II) Overseas Citizens of India (OCI)

Following categories of Foreign National can be considered as "OCI" and can apply for OCI Card.

1. For person who are of full age.

- **A.** **Citizen of India on or after 26.01.1950, or**
- **B.** **Eligible to became citizen of India on 26.01.1950, or**
- **C.** **Belonged to a territory that became part of India after 15.08.1947, or**
- **D.** **Child or a grandchild or a great grandchild of such a citizen, or**

2. Minor child of such persons mentioned above.

Who is a NRI ?

II) Overseas Citizens of India (OCI)

3. Who is a <u>minor child</u> and whose <u>both parents</u> are citizens of India <u>or one</u> of the <u>parents</u> is a citizen of India, or
4. <u>Spouse of</u> foreign origin of a <u>citizen of India</u> of spouse of foreign origin of an <u>OCI Card holder</u>. The marriage has to be <u>registered</u> and <u>subsisted</u> for a continuous period of not less than two years

However persons who have ever been citizens of <u>Pakistan & Bangladesh</u> cannot be considered as OCI & cannot apply for OCI Card.

Who is a NRI ?

- ✓ For the purpose of banking in India, all who are covered by definition under FEMA and all who are eligible for OCI Card, are considered as NRIs.

- ✓ There are different definitions of NRI & PIO in the various regulations issued by RBI under the FEMA Act, 1999.

Who is a NRI ?

As per Citizenship Act

1. Citizenship by Birth : Birth in India
2. Citizenship by Descent : Birth outside India & parents of Indian origin.
3. Citizenship by Registration : Person of Indian origin returning to India.
4. Citizenship by Naturalisation : Foreign Nationals who wants to acquire citizenship.

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

Who is a NRI ?

Conflict between the Provisions

Residential status…

1. As per Income Tax : based on the number of days.

1. As per FEMA : based on the conduct & intention of the person.

1. Eligibility for OCI : based on conclusive tests for claiming oneself as PIO.

1. As per Citizenship : applying for citizenship.

Basics of NRI Taxation

Basics of NRI Taxation

Basic of Taxation

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 DTAA with over 89 countries such as the US, the United Kingdom, the UAE, Canada, Australia, Saudi Arabia, Singapore and New Zealand, Kenya, Tanzania, South Africa, Sudan etc.

Basics of NRI Taxation

Principle of (DTAA)

Treaty overrides the local law. Local law or terms of the treaty whichever is beneficial shall apply to the assessee.

Examples

Tax Resident of Country	TDS Rate under DTAA on Interest income	Regular TDS Rate on Interest income
Australia	15%	30% + Surcharge
Singapore	15%	
UAE	12.5%	
United Kingdom	15%	
United States	15%	

Basics of NRI Taxation

Taxation of same income in two countries

Types of Relief

- **Bilateral Relief** — U/s. 90 where DTAA exists
  - Exemption Method
  - Tax Credit Method
- **Unilateral Relief** — U/s. 91 where DTAA does not exist

- Indian Tax Residents are supposed to pay tax on foreign incomes in India.
- If the said income is taxed in foreign country and there is no DTAA, then credit of taxes paid in foreign country is available in India.
- Only credit can be availed, no refund of foreign taxes is available in India.

Basics of NRI Banking

Basics of NRI Banking

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 in LLP by NRI

Investment in LLP by NRI – on Non Repatriable basis

RBI / FED / 2017 – 18/60 FED Master Direction No. 11/2017 – 18. Annex. 4.

- ✓ Investment in LLP can be by NRI or OCI.
- ✓ Capital contribution without any limit.
- ✓ Business of LLP should not be into banned sectors.
- ✓ Investment through NRE / NRO / FCNR / Remittance.
- ✓ Disinvestments receipts from LLP to be credited in NRO A/c.

Investment in LLP by NRI – on Repatriable basis

RBI / FED / 2017 – 18/60 FED Master Direction No. 11/2017 – 18. Annex. 6.

- ✓ **Investment in LLP can be by 'Person' resident outside India.**
- ✓ **LLP should be in business activities, which are under automatic route of FDI.**
- ✓ **No restriction on Capital Contribution.**
- ✓ **Investments through Remittance / NRE / FCNR.**
- ✓ **Disinvestments receipts from LLP can be remitted out of India or can be credited in NRE / FCNR A/c.**

Investment in Unlisted Companies By NRI

Investment in Unlisted Companies by NRI

RBI / FED / 2017 – 18/60 FED Master Direction No. 11/2017 – 18. Annex. 1.

- ✓ **Investment in Indian companies can be by 'Person' resident outside India.**
- ✓ **Companies should be in business activities, which are under automatic route of FDI or after appropriate approvals.**
- ✓ **Investment through Remittance / NRE / FCNR.**
- ✓ **Sale proceeds (net of taxes) can be remitted out of India or can be credited in NRE / FCNR A/c.**

Loans by NRI/PIO

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 free of interest.

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

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 <u>Resident Individual in INR</u> subject to below mentioned condition :

- ✓ **Loans can be <u>from remittances, NRO, NRE, FCNR A/cs.</u>**
- ✓ **Loan period not to <u>exceed 3 years.</u>**
- ✓ **Rate of Interest <u>not to exceed 2%</u> 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.

Gifts by NRI/PIO to Residents in India

Gifts by NRI/PIO to Residents in India

Implications under FEMA, 1999

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 POA holder is not authorised 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.

Gifts by NRI/PIO to Residents in India

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.

Gifts by NRI/PIO to Residents in India

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 assese maintained for any previous year and the assese 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 assese of that pervious year."**

Gifts by NRI/PIO to Residents in India

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

- Identity of the person.
- Creditworthiness of the person.
- Genuineness of the transaction.

✓ The documents required to prove the above mentioned details vary from case to case basis.

Gifts by NRI/PIO to Residents in India

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 prosecution (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
Loans in Foreign Currency	Permitted	Not Permitted
Gifts in Foreign Currency	Permitted	Permitted

Taxation of various Indian Incomes
&
Tax Deduction at Source (TDS)
for NRI

Computation of gain on sale of Shares and Debentures (Proviso 1 to Section 48). Relief for foreign currency fluctuations.

- ✓ **No indexation allowed after benefit of Foreign Currency Fluctuations.**
- ✓ **Relief available to all Non Residents.**
- ✓ **Applicable to investment in Shares & Debentures acquired in foreign exchange.**
- ✓ **These provisions are not applicable on sale of listed shares and equity oriented mutual funds.**

Computation of gain on sale of Shares and Debentures (Proviso 1 to Section 48). Relief for foreign currency fluctuations.

	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
Less	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
Less	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
Less	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 Transfer	Net gain in Indian Rupees

Special provisions relating to certain incomes of NRI – Chapter XIIA

✓ Applicable to "specified assets" :

Shares, Debentures, Deposits (including bank deposits) & Government Securities.

✓ Acquired from "Convertible Foreign Exchange" :

✓ Applicable to "Non Resident Indians".

Non Resident Indian means an individual being a citizen of India or a person of Indian Origin who is not a "resident".

Explanation – A person shall be deemed to be of Indian origin if he or either of his parents or any grandparents was born in undivided India.

If a NRI opts for these provisions, against the incomes from these specified assets –

- ✓ **No deduction of any expenditure or allowance is allowed (U/s. 115D(1)).**
- ✓ **No deduction under Chapters VI and Indexation U/s. 48 (Proviso 2) not applicable. (U/s. 115D(2).**
- ✓ **No return of Income required to be filed, if income only from specified assets & appropriate TDS has been deducted. (U/s. 115G).**

Special rates of taxes under these provisions U/s. 115 E.

- ✓ Investment Income : 20%

  (Does not include dividend U/s. 115 – O).

- ✓ Long term Capital Gain : 10%

Long term capital gain not liable to taxation if (U/s. 115F) –

- ✓ Consideration on sale of specified assets invested in new specified assets within 6 months.
- ✓ New specified assets has to be held for 3 years.
- ✓ Loan cannot be availed against such "new specified assets."
- ✓ If consideration is partially invested, proportionate deduction is allowable.

Special provisions relating to certain incomes of NRI – Chapter XIIA

- ✓ Relief under these provisions available even when NRI becomes Resident (U/s. 115 H).

- ✓ A NRI has to opt not to be governed by these special provisions, under chapter XII – A (U/s. 115 I).

Taxation of various Indian Incomes & TDS for NRI

Sr. No.	Type of Income	Taxation levy for NRI *	TDS rate (withholding tax rate) *
01	Salaries.	At normal rate, after all deductions - including standard deduction.	At normal rates (U/s. 192).
02	Rental Income Received or Annual Letting Value (ALV) on all the house property - other than one (two w.e.f 01/04/2019) self occupied property.	At normal rate, after deduction of 30%.	30% (U/s. 195 - any other income).

Taxation of various Indian Incomes & TDS for NRI

Sr. No.	Type of Income	Taxation levy for NRI *	TDS rate (withholding tax rate) *
03	Remuneration in Partnership Firm / LLP.	At normal rate.	30% (U/s. 195 - any other income).
	Interest on Capital.		
	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).

Taxation of various Indian Incomes & TDS for NRI

Sr. No.	Type of Income	Taxation levy for NRI *	TDS rate (withholding tax rate) *
05	Sale of Immovable Assets including Agricultural Land located within specified area.	Period of holding more than 2 years – Long Term Capital Gain. 20% Tax after indexation on Capital Gain	20% (U/s. 195 – Other LTCG not covered U/s 10(33), 10(36) and 112A).
		Period of holding less than 2 years – Short Term Capital Gain. At normal tax rates.	30% (U/s. 195- any other income).

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

Taxation of various Indian Incomes & TDS for NRI

Sr. No.	Type of Income	Taxation levy for NRI *	TDS rate (withholding tax rate) *
06	Sale of Shares – Unlisted	Period of holing less then 2 years. Short Term – Normal tax rate Long term – 10% (without indexation)	Short Term – 30% (U/s. 195 – any other income) Long term – 10%
07	Interest on Private Deposits	At normal rates.	30% (U/s. 195 - any other income).

Taxation of various Indian Incomes & TDS for NRI

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

Type of Income	Income exempted under the provision
Dividend on Shares.	Exempted U/s. 10(34). However, companies are required to pay Dividend Distribution Tax @15%. Additional tax liability of 10% where Dividend exceeds Rs. 10,00,000 is not applicable to NRI.

* Additional levis to the above tax rates

For Incomes Rs. 50 lakh or less.	:	Health and Education Cess (HEC) @ 4%.
For Incomes more than Rs. 50 lakh but less than Rs. 1 Cr.	:	First add Surcharge @ 10% and then on the total of tax and surcharge a further levy of 4%.
For Incomes more than Rs.1 Cr but less than Rs.2 Cr	:	First add Surcharge @ 15% and then on the total of tax and surcharge a further levy of 4%.

* Additional levis to the above tax rates

- For Incomes more than Rs.2 Cr but less than Rs.5 Cr : First add Surcharge @ 25% and then on the total of tax and surcharge a further levy of 4%.

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

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 : Any sum, other than salaries and some other payment chargeable under the provision of Income Tax Act.
- Rate of TDS : At the prescribed rates.

Tax Deduction at source (TDS) for NRI :

Operation of Sec. 195 of the Income Tax Act.

✓ **Sec. 195 (2) :**

- Application by Payer (no prescribed format) for determination of such sum on which TDS to be deducted. Rejection is applicable.
- A certificate U/s. 197 can be obtained by the payee (on Form No. 13) for lower or Nil TDS, for TDS to be made U/s. 195. Rejection is not applicable.

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

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

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.
- ✓ Simple procedure 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.

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 NRE Account can be easily remitted to the country of residence without any limits and formalities.

Thank you…