

NRI Financial Planning – Taxation & Regulation aspects

Non Resident Indians

**Tax
Deduction
at Source -
TDS**

Banking

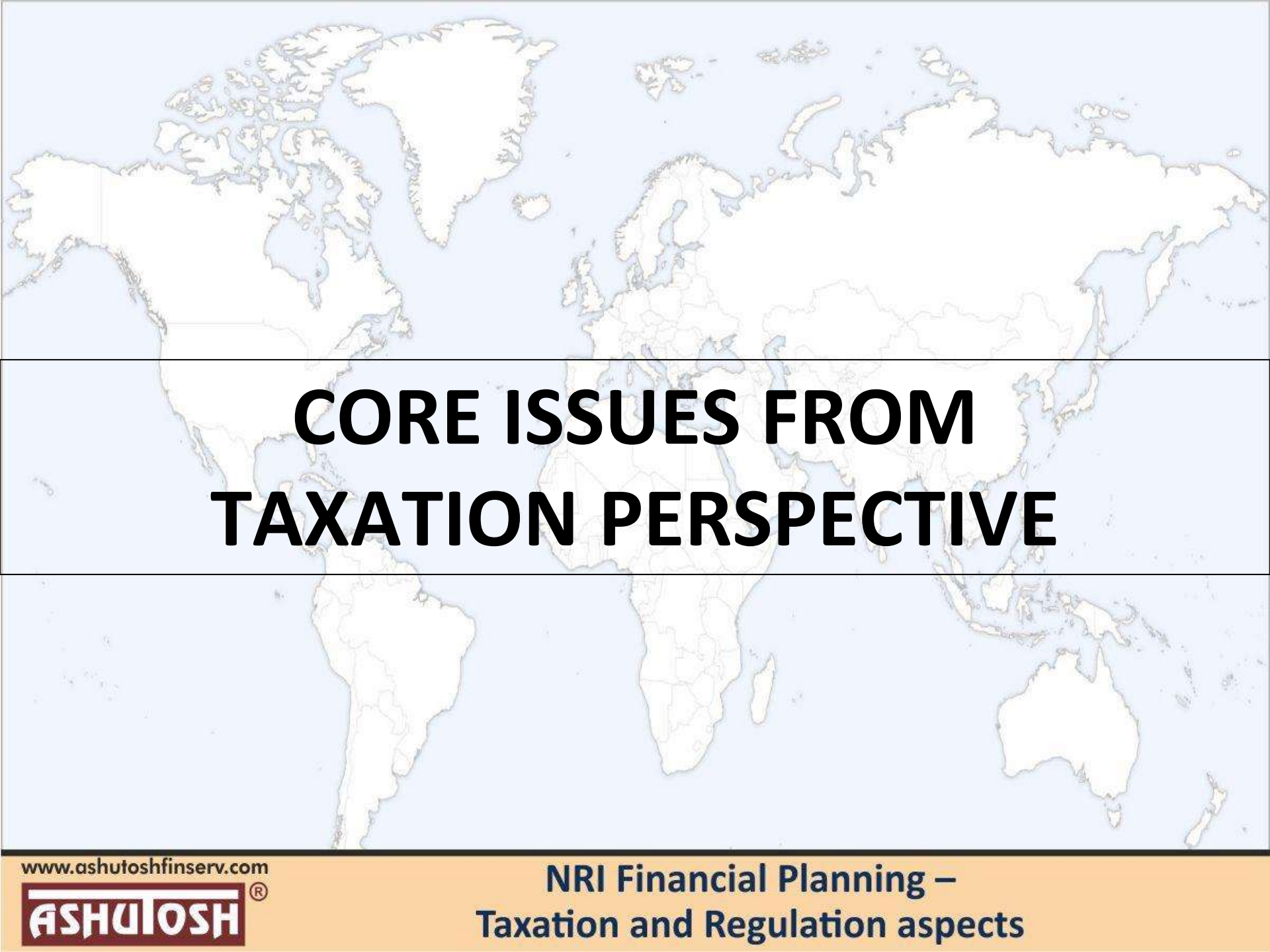
Accounting

**Transfer
of
Funds**

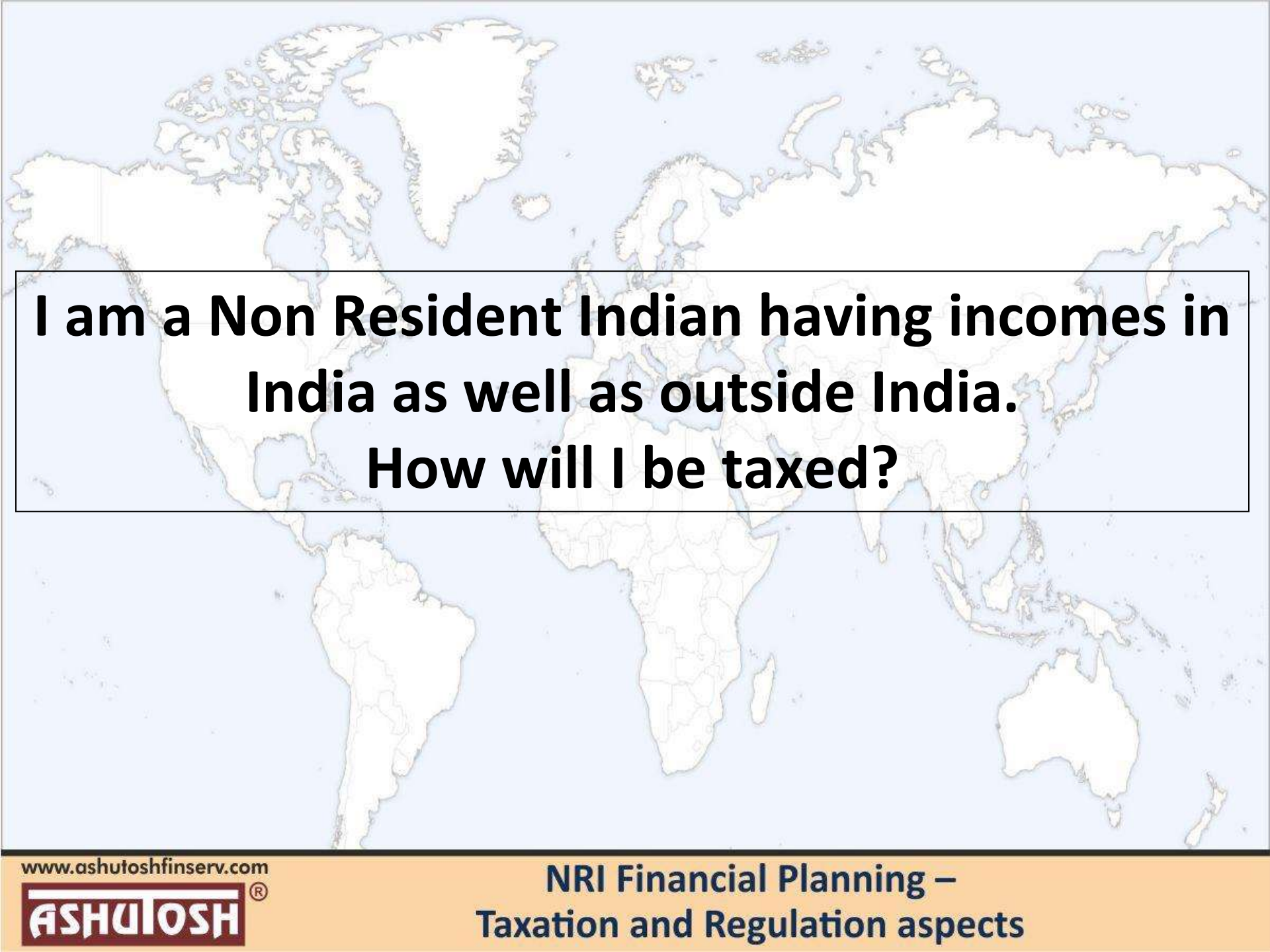
**DTAA -
Tax
Reliefs**

**Indian
Income
Tax**

**NRI
FINANCIAL
CONCLAVE
2022**

A light blue world map with white landmasses serves as the background for the slide. The map shows the outlines of continents and major islands.

CORE ISSUES FROM TAXATION PERSPECTIVE

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**I am a Non Resident Indian having incomes in
India as well as outside India.
How will I be taxed?**

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How will I be taxed?

Basic of Taxation

(When income 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, 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.

**I am a Non Resident Indian having incomes in India as well as outside India.
How will I be taxed?**

Which Incomes of NRI are taxable in India ?

Particular	Resident and ordinarily resident in India (R & OR)	Resident but not ordinarily resident in India (R but not OR)	Non-resident in India (NR)
Indian income	Taxable	Taxable	Taxable
Foreign Income	Taxable	Non Taxable	Non Taxable
Income from business or profession accruing or arising outside India, but business controlled from India or a profession setup in India.	Taxable	Taxable	Non Taxable

I am a Non Resident Indian having incomes in India as well as outside India.
How will I be taxed?

Indian Income

✓ Income received or accrued or arised in India.

Foreign Income

✓ Income not received nor accrued nor arises from India.

I am a Non Resident Indian having incomes in India as well as outside India.
How will I be taxed?

What is a Double Taxation Avoidance Agreement (DTAA)?

- ✓ Double Taxation Avoidance Agreement (DTAA) is an agreement entered into between countries, with the basic objective 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 94 countries such as the US, the United Kingdom, the UAE, Canada, Australia, Saudi Arabia, Singapore and New Zealand, Kenya, Tanzania, South Africa, Sudan etc.

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Are there any concessional tax rates and treaty benefits available to NRI?

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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.**

Are there any concessional tax rates and treaty benefits available to NRI?

Rates under Indian Income Tax	Type of income in India	
	Dividend	Interest
	20% + Surcharge (If applicable)	Slab rates

Rates in DTAA

S.No.	Country of tax residence	Type of income in India	
		Dividend	Interest
1	USA	25%	15%
2	UK	10%	15%
3	Australia	15%	15%
4	UAE	10%	12.50%
5	Canada	25%	15%

Are there any concessional tax rates and treaty benefits available to NRI?

S.No.	Country of tax residence	Type of income in India	
		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%

Are there any concessional tax rates and treaty benefits available to NRI?

Tax concessions in DTAA with U.A.E., Oman, Malaysia & African countries (Tanzania, Kenya, Uganda, South Africa, Sudan & Ethiopia)

- ✓ Under respective Article of DTAA 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 Tax residents of above stated countries (E.g. stay in UAE exceeds 183 days in the relevant calendar year for the person to become a tax resident).
- ✓ Capital Gains on sale of Mutual Funds (Debt based or Equity based being short term or long term) and bonds cannot 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*

Are there any concessional tax rates and treaty benefits available to NRI?

Tax concessions in DTAA

- ✓ DTAA's are entered in accordance with section 90 (Double Taxation Relief) and T.D.S. on income taxable at such concessional rates is deducted as per section 195 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] 116 taxmann.com 408 (Delhi - Trib.)

Are there any concessional tax rates and treaty benefits available to NRI?

Special tax regime for NRI – Chapter XII-A

- ✓ **Tax rates of Income from Specified assets purchased in convertible foreign exchange under section 115E -**

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

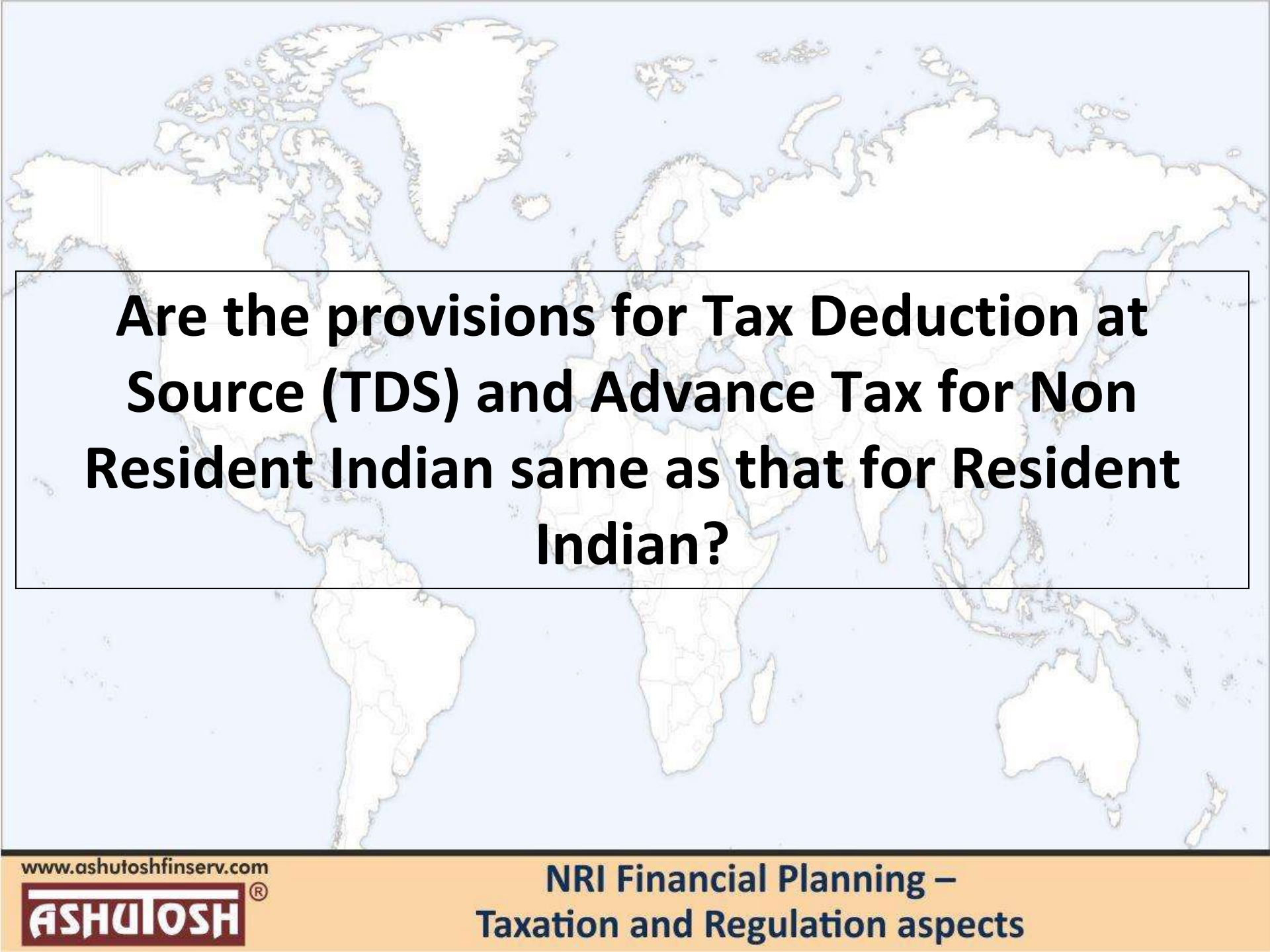
- ✓ **Meaning of Specified assets under the regime (section 115C) –**
- **Shares of an Indian company**
 - **Debentures of or deposits with a Public Limited Indian company (Includes Bank/NBFC deposits as per AAR New Delhi ruling of V. Ravi Narayanan [2008] 168 Taxman 65)**
 - **Government Securities.**

Are there any concessional tax rates and treaty benefits available to NRI?

Special tax regime for NRI – Chapter XII-A

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 held for 3 years.
- ✓ Loan cannot be availed against such “new specified assets.”
- ✓ If consideration is partially invested, proportionate deduction is allowable.

A light blue world map with white landmasses serves as the background for the slide. The map shows the continents of North America, South America, Europe, Africa, Asia, and Australia.

Are the provisions for Tax Deduction at Source (TDS) and Advance Tax for Non Resident Indian same as that for Resident Indian?

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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 provision 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 not apply to sums paid to Non Residents which are exempt from tax, as it applies to only “any sum chargeable to tax.”

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Tax Deduction at source (TDS) for NRI :

Basic Provisions - 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 appealable.

✓ Sec. 195 (3) :

Application by Payee for NIL TDS.

✓ Sec. 197 :

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

Are the provisions for Tax Deduction at Source (TDS) and Advance Tax for Non Resident Indian same as that for Resident Indian?

Advance Tax liability for Non Resident Indians:

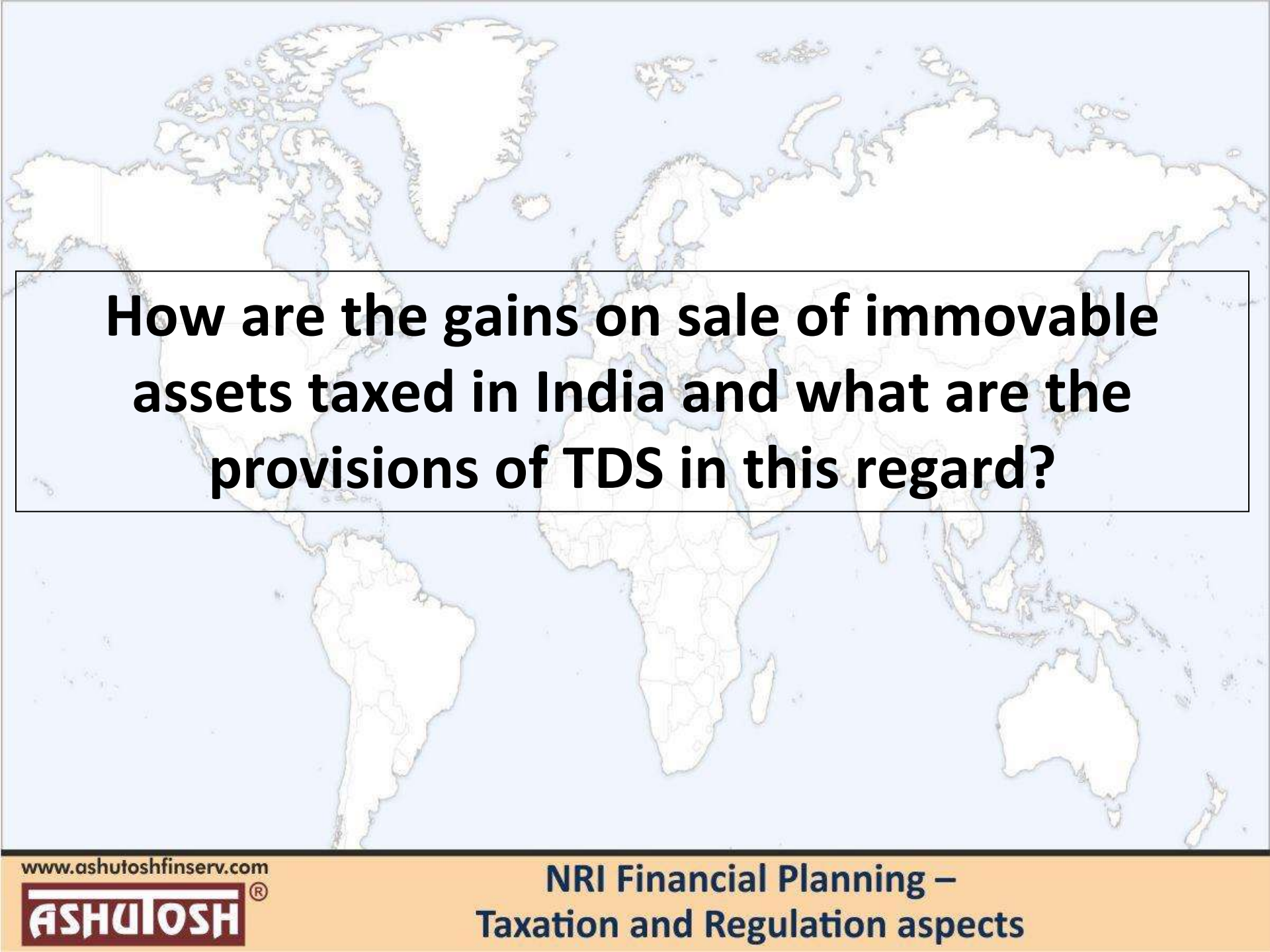
- ✓ All Non Residents whose net tax liability on the estimated net tax liability exceeds INR 10000 are liable to advance tax in four installments.
- ✓ Total Tax Liability :
- Less: Tax Deducted at Source/Collected at source :
- Payable by way of advance tax :

Installment	Percentage of estimated tax to be deposited	Due date
First	15%	15 th June
Second	45%	15 th September
Third	75%	15 th December
Fourth	100%	15 th March

Are the provisions for Tax Deduction at Source (TDS) and Advance Tax for Non Resident Indian same as that for Resident Indian?

Advance Tax installments for Non Resident Indians:

- ✓ Advance tax on taxes on capital gains are payable in immediate next installment after the capital gain arises.
- ✓ There are interest implications on late payment or short payment or non payment of advance taxes.
- ✓ Only Resident Indian Senior Citizens are exempted from payment of Advance Tax.

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How are the gains on sale of immovable assets taxed in India and what are the provisions of TDS in this regard?

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Type of Income	Taxation levy for NRI *	TDS rate (withholding tax rate) *
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. (U/s. 112)	20% on the capital gains (U/s. 195)
	Period of holding less than 2 years – Short Term Capital Gain. At slab rates. (U/s. 112)	30% (U/s. 195)

How are the gains on sale of immovable assets taxed in India and what are the provisions of TDS in this regard?

* Additional levies to the above tax rates

- For Incomes more than Rs. 50 lakh but less than Rs. 1 Cr. : Surcharge @ 10% on the total of tax.
- For Incomes more than Rs. 1 Cr but less than Rs. 2 Cr. : Surcharge @ 15% on the total of tax.
- For Incomes more than Rs. 2 Cr but less than Rs. 5 Cr. : Surcharge @ 25% on the total of tax.

How are the gains on sale of immovable assets taxed in India and what are the provisions of TDS in this regard?

* Additional levies to the above tax rates

- Incomes more than Rs.5 Cr : Surcharge @ 37% on the total of tax.
- On final tax liability, after surcharge (if applicable) : Health and Education Cess (HEC) @ 4%.
 - If total income includes an income by way of dividend or income arising from transfer of capital asset being an equity share, or a unit of equity oriented fund or a unit of business trust i.e. REIT and InvIT (Chargeable to tax under the provisions of Section 111A or 112A), the rate of surcharge in respect of that part of income shall not exceed 15%.
 - The additional levies on TDS shall be on the basis of payments made which are liable to tax in the above slabs. Ex- In a sale of immovable property with income of Rs. 40 lakh (HEC @ 4%) while on income of Rs. 60 lakh (Sur 10% + HEC 4%).

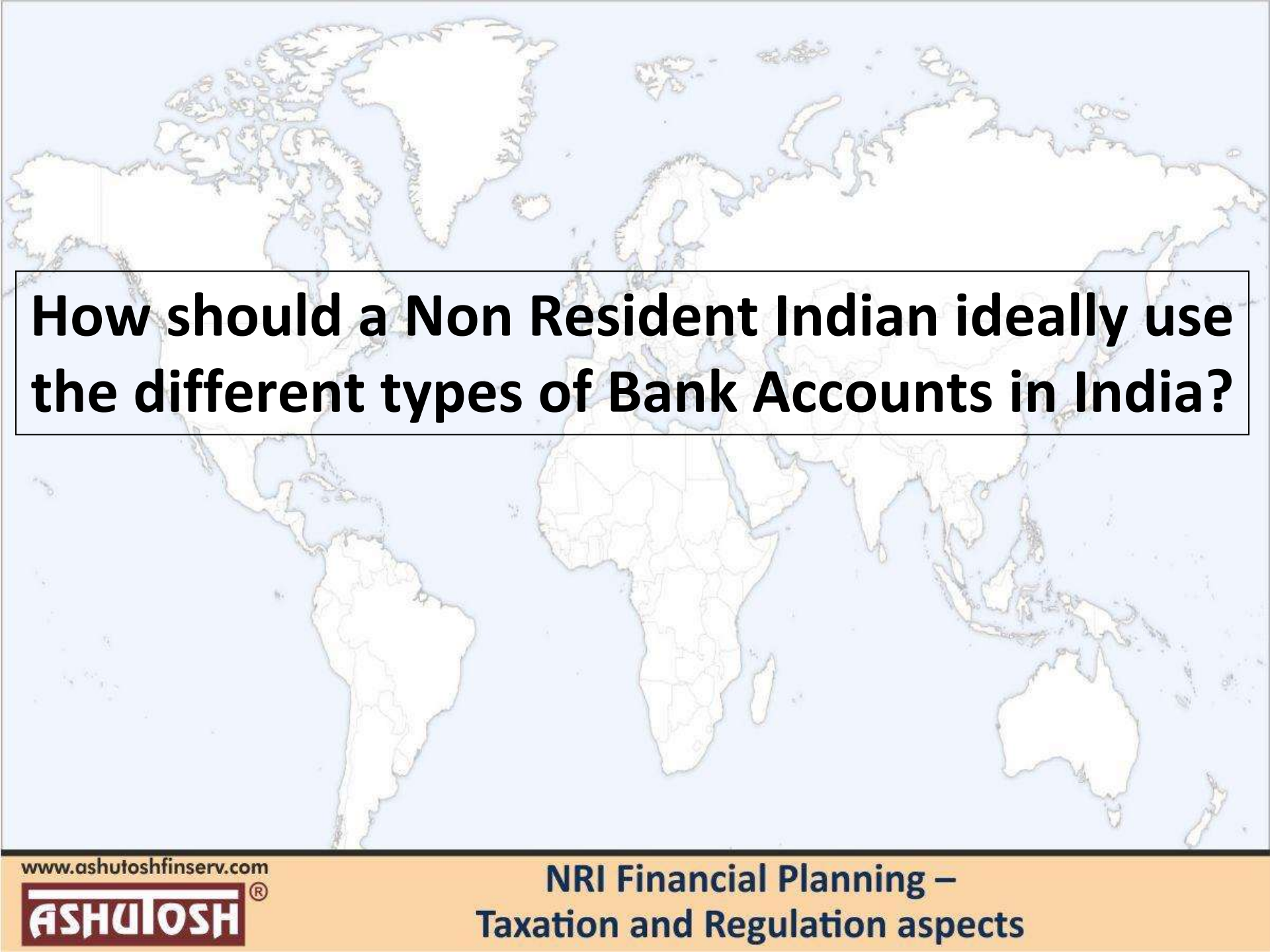
How are the gains on sale of immovable assets taxed in India and what are the provisions of TDS in this regard?

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

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CORE ISSUES FROM REGULATION PERSPECTIVE

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How should a Non Resident Indian ideally use the different types of Bank Accounts in India?

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Sr. No.	Type of bank account	Piece of advice
1.	NRO bank account	The account should not have any substantial balances since they are <u>non-repatriable</u> and the interest is <u>taxable</u> .
2.	NRE bank account	The account should be mapped for <u>permissible investments</u> - equity (mutual funds, shares, etc.), NPS (National Pension Scheme) as well as immovable property so that the proceeds on sale are freely repatriable. Deposits can be parked in this account on which interest is <u>tax free</u> and borrowings can be made against the same which can be invested commercial activity on which <u>interest deduction</u> can be availed against respective incomes.

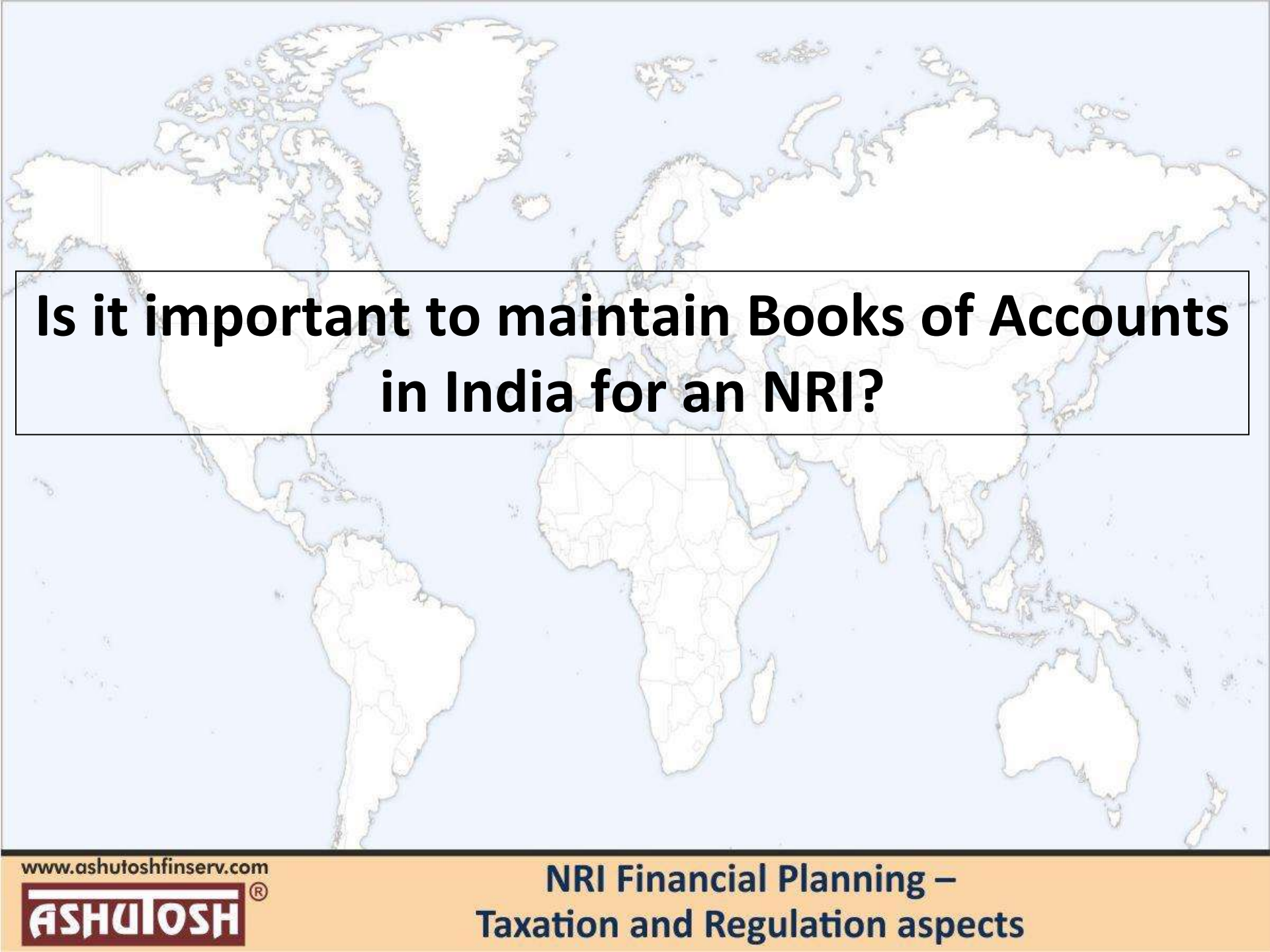
How should a Non Resident Indian ideally use the different types of Bank Accounts in India?

Sr. No.	Type of bank account	Piece of advice
3.	FCNR account	The account can be used to park funds if <u>unfavourable exchange rate</u> fluctuation is anticipated in form of term deposits (short term or long term) which are foreign currency denominated. Moreover, one can <u>borrow</u> in INR against the deposit. Deposits can be parked in this account on which interest is <u>tax free</u> and borrowings can be made against the same which can be invested commercial activity on which <u>interest deduction</u> can be availed against respective incomes.
4.	RFC account	The account can be utilized to park foreign funds for returning NRI in foreign currency to avoid <u>foreign currency fluctuations</u> and avail tax exemption in interest for Non-Resident and Resident But Not Ordinarily Resident persons.

How should a Non Resident Indian ideally use the different types of Bank Accounts in India?

Sr. No.	Type of bank account	Piece of advice
5.	Resident savings account	The account needs to be <u>discontinued</u> to avoid <u>violation of FEMA</u> .

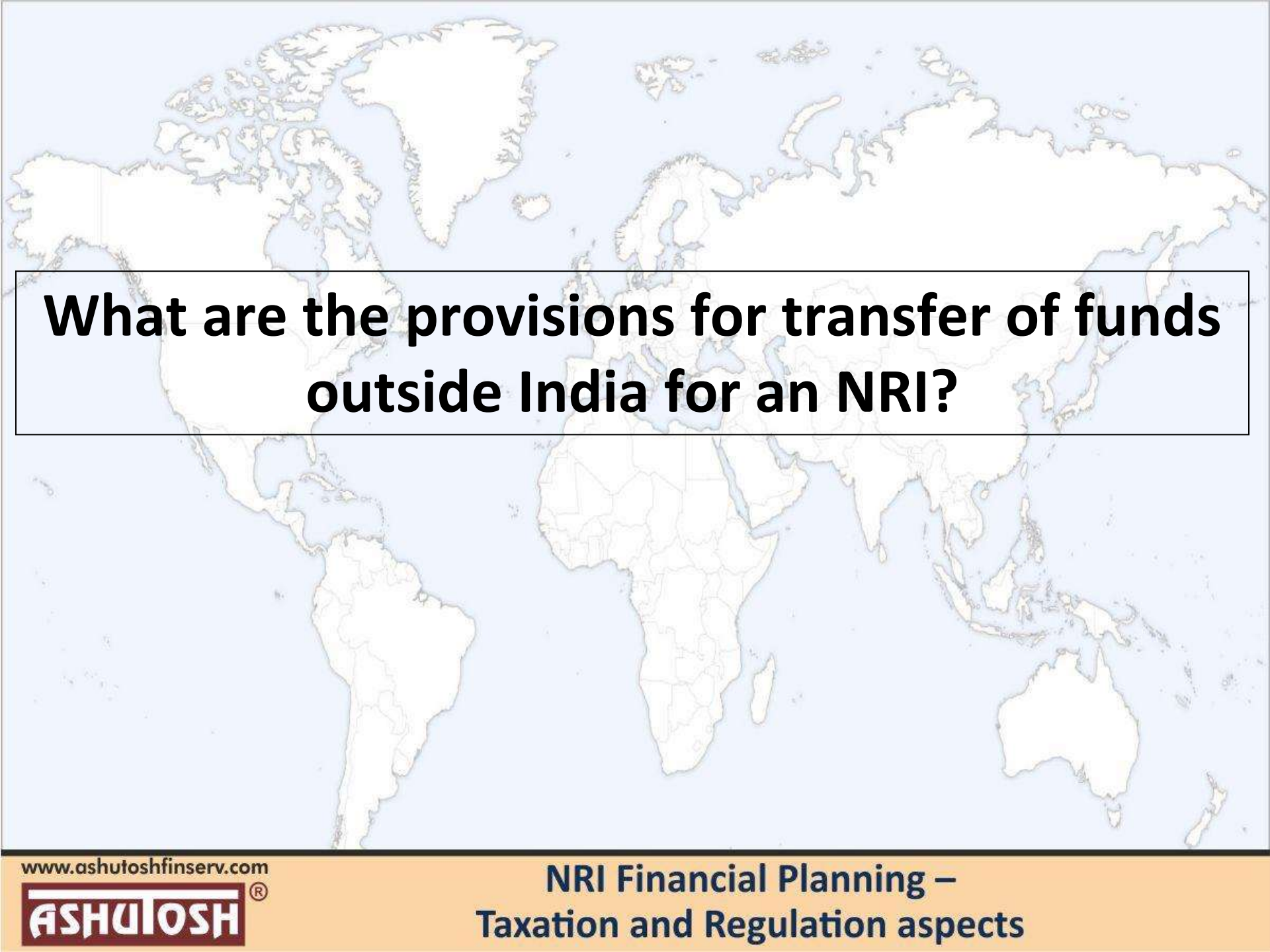
- ✓ It is ideal to maintain need based bank accounts and close unwanted accounts to avoid any hassle of maintenance.
- ✓ All accounts should be updated with the latest information (email address, contact number, nominations, etc.).

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Is it important to maintain Books of Accounts in India for an NRI?

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- ✓ Maintain an organised track of the trail of all financial transactions – repatriable or non-repatriable.
- ✓ Real time tracking of the latest financial position – incomes, expenses, assets and liabilities.
- ✓ Assistance in filing of return of income as well as in case of tax assessments.
- ✓ Ease and convenience in case of succession of assets in events of death, incapacitation, etc.

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**What are the provisions for transfer of funds
outside India for an NRI?**

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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.**
- ✓ **Simple procedure has to be followed for the transfer.**
The funds shall not be from any borrowed sources or from transfers 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 same authorised dealer (bank).**

What are the provisions for transfer of funds outside India for an NRI?

- ✓ A person who desires to make a remittance of assets exceeding USD 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 legacy, bequest or inheritance to a citizen of foreign state, resident outside India; and
 1. 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 hardship will be caused to such a person if remittance from India is not made.

What are the provisions for transfer of funds outside India for an NRI?

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 balances in the NRE Account are fully repatriable to the country 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.

What are the provisions for transfer of funds outside India for an NRI?

- ✓ 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 any immovable property acquired from NRE/FCNR A/c balance or remittance, direct repatriation of sale proceeds (Subject to CA certification for payment of appropriate taxes) for NRI is allowed. However, the same is restricted to maximum two such properties in case of residential houses.

What are the provisions for transfer of funds outside India for an NRI?

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 taxes must have been paid or deducted from such incomes to execute the transfer.

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**Are there any restrictions on investment in
Real Estate in India as an NRI?**

Are there any restrictions on investment in Real Estate in India as an NRI?

- ✓ NRI can acquire any number of residential houses, commercial properties, apartments, plots of land, etc.
- ✓ NRI cannot buy agriculture land / plantation property or a farm house. However, can receive the same by inheritance.
- ✓ NRI cannot engage in real estate business directly or through any partnership/company.
- ✓ NRI can enter into construction or real estate development business.

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