

TAX PLANNING FOR NON - RESIDENTIAL INDIANS

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NON- RESIDENTIAL INDIANS IN TAX LAWS

Before defining who an NRI is, it is important to define who a resident of India is. A person would be a RESIDENT of India for income tax purposes if-

- He/she is in India for 182 days or more during the financial year. Or
- If he/she is in India for at least 365 days during the 4 years preceding that year AND at least 60 days in that year.

The Income Tax Act, Chapter X-II A deals with special provisions on tax law on the incomes of Non-Residential Indians. Section 115 (C) (e) of the Income Tax Act defines who an NRI or s Non- Residential is for the purposes of taxing them.

“Non-Residential Indian means an individual, being a citizen of India or a person of Indian origin who is not a resident.”ⁱ

In case a person is an Indian Citizen and leaves the country for employment outside of India or as a member of the crew on an Indian ship, that is, if the person takes up a job outside India the 60 days minimum period required to be a resident will be increased to 182 days. A person employed on a foreign ship for 182 days or more, would be considered as a NRI irrespective of where the ship has travelled or traded.

For Indian Citizens or persons of Indian Origin (PIO) who stay abroad but are on a **visit** to India. the period of 60 days in Condition 2 is replaced by 182 days.ⁱⁱ

In case these conditions are not fulfilled then, the person is considered as a Non – Residential Indian.

Another category that is used for the purposes of taxation is RNOR i.e. Resident but Not Resident of India. The two conditions to be fulfilled for a person to be under this category are-

1. The person has been an NRI for 9 out of 10 financial years preceding the year, OR,
2. The person has during the 7 financial years preceding the year been in India for a period of 729 days or less, OR,
3. An Indian Citizen and are not a tax-resident in any other country and your Indian Income (income other than income from foreign source) exceeds Rs 15 lacs.ⁱⁱⁱ
4. The person is a citizen of India or Person of Indian Origin (PIO) AND your Indian Income exceeds Rs 15 lacs in the previous year AND your period of stay in India in the previous year ranges from 120 days to 181 days.

The third and fourth conditions have been brought up in the Financial bill of 2020 and will be implemented as of the Financial year of 2021.

FEMA which means the Foreign Management Act defines a NRI under the section 2 of the act. FEMA refers to the term Resident Outside India for addressing Non-residents.

FEMA has provided two classes of residential status for the purposes of taxation.

1. Resident in India
2. Resident outside India (NRI)

Non-resident Indian (NRI) means a person resident outside India who is a citizen of India or person of Indian origin (PIO).

TAXES PAYABLE BY A NON - RESIDENTIAL INDIAN

In simple words, A Non – Residential Indian (NRI) would only be taxed for the income they earn in India and won't be taxed for any income that they have earned outside of India.

The Salary of a non-resident seafarer for services outside India on a foreign ship will not be included in the total taxable income of the seafarer, even though such salary is credited in the NRE account of the seafarer with an Indian bank.

A Non-Resident is obligated to pay taxes just on that income which is acquired by him in India. Income that is acquired outside India isn't taxable in India.

Income is acquired in India if –

1. It is directly or indirectly received in India; or
2. It accrues or arises in India or the law believes that it has accrued or arisen in India.

“The importance of builds or emerges in India has been set down in Section 9 of the Act which is characterized as:

- Income from a business association in India.
- Income from any property, resource or kind of revenue in India.
- Capital gain on the exchange of a capital resource available in India.
- Income from salary if the administration is rendered in India.
- Income from salary which is payable to the person by the Government of India for services rendered outside of India when he/she is an Indian resident.
- Dividend paid by an Indian organization despite the fact that this may have been paid outside of India.
- Interest, royalty, or specialized charges got from the Central or the State Government or from determined people in specific conditions.”^{iv}

“An NRI in receipt of income in India is taxable in India on such income for example India as a source state has the privilege to tax such income. Nonetheless, the nation of which such NRI is an inhabitant, will likewise reserve an option to assess such income as it is the habitation state. This circumstance often prompts Double Taxation. All the while, the NRI will wind up getting burdened twice on the same income. To conquer this, India has gone into DTAA's with different nations which gives exclusion or credit of foreign taxes paid while filing their return of income in the nation of origin.”^v

“If the tax liability exceeds Rs 10,000 in a financial year, then it is required to pay advance tax. Interest under Section 234B and Section 234C is applicable when the advance tax is not paid on time.”^{vi}

TAX PLANNING FOR NON- RESIDENTIAL INDIANS

NRI, similar to some other individual citizens, must file his return of income in India if his Gross Total Income that has been received in India surpasses Rs 2,50,000 for any given financial year.

The due date for filing a return for an NRI is likewise 31st July of the Financial Year.

Likewise, from FY 2019-2020 and onwards, Individuals are needed to file their profits compulsorily for the underneath referenced cases (in any event, when their gross absolute pay is beneath as far as possible): -

- Total sum stored in current account(s) kept up with a financial organization or a co-operative bank is Rs 1 crore or more OR
- Has spent Rs 2 lakh or more on unfamiliar travel for himself or some other individual OR
- Acquired power bills of Rs 1 lakh or more in a year

Accordingly, if the NRI's available pay is under the maximum sum not chargeable to tax in India (i.e. Rs 2,50,000) and they are not covered under the predetermined conditions referenced above, they are not needed to file their tax returns.

Under Section 80C, the following deductions can be made by NRIs: -

- “Life Insurance Premium Payments

The insurance policy has to be in the name of the NRI – or, if applicable, in the name of the spouse/children. For it to be deducted, the premium will have to be less than 10% of the sum that was assured.

- Children Tuition Fee Payments

The educational expenses for any type of full-time child education (school, college, school) that is situated in India will get deductions. This will likewise apply if the NRI decides on education loans.

- Principal Loan Repayments from Buying a House

NRI's are allowed deductions while reimbursing/repaying a home loan (regardless of on the off chance that you are purchasing or wanting to develop the home). The deduction is considered for enrolment charges, stamp duty, and different costs important to move the property into the ownership of the NRI.

- ULIPS (Unit Linked Insurance Plan)

ULIPS is ordinarily sold with deductible life coverage cover under Section 80C. This incorporates the commitment to the insurance plans that are connected through a mutual fund.

- ELSS Investments

ELSS is turning into a mainstream choice as of late, as it permits deductions under Section 80C, offering EEE (Exempt-Exempt-Exempt) benefits. It offers a brilliant opportunity to citizens since the earnings will come straight from the funds invested in the equity market.”^{vii}

“In certain cases, some deductions will not be allowed to an NRI. Some of the investments found under Section 80C include:

- Investments in the PP are not allowed for an NRI. Non-resident Indians may not open a new PPF account. However, they are allowed to maintain PP accounts that have been opened while they were residents.
- Deductions are not allowed with NSC investments.
- The senior citizen saving schemes do not allow for NRI deductions.
- The post office 5-year deposit scheme does not allow for NRI deductions.”^{viii}

Under Section 80 D of the Income Tax Act, 1961 the following deductions can be made for NRIs-

“NRIs are allowed to claim a deduction for premium paid for health insurance. This deduction is available up to Rs 30,000 (increased to Rs 50,000 effective 1 April 2018) for senior citizens and up to Rs 25,000 in other cases for insurance of self, spouse, and dependent children. Additionally, an NRI can also claim a deduction for insurance of parents (father or mother or both) up to Rs30,000 (raised to Rs 50,000 effective 1 April 2018) if their parents are senior citizens, and Rs 25,000 if the parents are not senior citizens. Beginning FY 2012-13, within the existing limit a deduction of up to Rs 5,000 for preventive health check-ups are also available.”^{ix}

Under Section 80 G of the Income Tax Act, Non – Residential Indians can avail deductions for donations or payments made for social causes.

Under FEMA, an NRI returning to India is free to hold, own, transfer or invest in assets situated outside India. However, the provision is only applicable if the asset was acquired when the individual was resident outside India or was inherited from a person resident outside India.

“The NRIs can hold foreign earnings and make foreign asset transactions through the following accounts:

- Exchange Earners Foreign Currency Accounts

Exchange Earners Foreign Currency Account is a facility that resident Indians can use to credit 100 percent of their foreign exchange earnings to the account. The earning may include professional income – including director’s fees, consultancy fees, lecture fees, and honorarium received by a professional, in addition to payments received by exporters, and several other categories of income.

- Resident Foreign Currency (RFC) Accounts

Indian residents may maintain a Resident Foreign Currency (RFC) account for foreign currency assets, which were held outside India at the time of their return. Foreign exchange amounts

received as pension or benefits from employers outside India, gifts, or proceeds of life insurance policies in foreign currency may also be credited to this account.

- Treatment of Indian assets held during non-residency

During the period that an individual is an NRI, they may hold assets, investments, and bank accounts in India. Special accounts exist for NRIs who hold investments in India.

Generally, an Indian bank account held by an NRI would be either a Foreign Currency Non-Resident (FCNR) account or a Non-Resident External Rupee (NRE) account.

- Treatment of foreign assets under the ITA

NRIs returning to India can save tax on their global income for up to three FYs by taking advantage of their RNOR status; however, they are still liable for tax on their Indian sourced income as an RNOR.

- Tax on conversion to Resident Foreign Currency Accounts

When NRIs return to India, they must re-designate their NRE/FCNR bank account to an RFC account. Interest on NRE and FCNR accounts is exempt in the hands of NRIs and RNORs.

However, once the individual becomes a ROR, interest on the RFC accounts becomes taxable.

- Wealth tax

Money and assets brought into India by an NRI who was ordinarily residing in a foreign country, and who has returned to India with the intention of permanently residing, is generally exempt for wealth tax purposes for a period of seven successive assessment years, although certain restrictions apply.

- Customs duties

Another area not to be overlooked by NRIs returning to India is customs duties on the importation of goods following overseas assignments.

The Customs Act provides 'transfer of residency' rules relating to import duties on household items for professionals returning to India. These rules allow the import of personal and

household articles, free of duty and certain other listed items, on payment of concessional rate of duty.

For those returning after a long stay abroad – one year or more than two years, the rules provide a clearance-free duty of up to Rs 200,000 (US\$2,753) in household items. Other rules apply for shorter durations, while some restrictions also apply.”^x

- Exemption on sale of property for an NRI

“Long-term capital gains (when property is held for more than 3 years) is taxed at 20%. Do note that long-term capital gains earned by NRIs are subject to a TDS of 20%.

NRIs are allowed to claim exemptions under section 54, Section 54EC and Section 54F on long-term capital gains. Therefore, an NRI can take benefit of the exemptions from capital gains at the time of filing a return and claim a refund of TDS deducted on Capital Gains.

Exemption under Section 54 is available on “long-term capital gains on sale of a house”^{xi} property. Exemption under Section 54F is available on “sale of any asset other than a house property.”^{xii}

Exemption is also available under Section 54 EC when capital gains from sale of the first property is reinvested into specific bonds.

If the person is not very keen to reinvest their profit from sale of the first property into another one, then they can invest them in bonds for up to Rs.50 lakhs issued by National Highway Authority of India (NHAI) or Rural Electrification Corporation (REC).

The homeowner has 6 months’ time to invest the profit in these bonds, although to be able to claim this exemption, they will have to invest before the tax filing deadline.

The money invested can be redeemed after 3 years but cannot be sold before the lapse of 3 years from the date of sale.

The NRI must make these investments and show relevant proof to the buyer to get no TDS deducted on the capital gains. The NRI can also claim excess TDS deducted at the time of return filing and claim a refund.”^{xiii}

Therefore, while doing tax planning, it is of utmost importance for Non – Residential Indians to consider the following –

1. Residency Status of the person
2. Tax Liability in Foreign Assets
3. NRI Bank Accounts

ENDNOTES

ⁱ Section 115-C (e), Chapter XII-A, consisting of sections 115C, 115D, 115E, 115F, 115G, 115H and 115-I, inserted by the Finance Act, 1983, w.e.f. 1-6-1983 of Income Tax Act, 1961.

ⁱⁱ Finance Bill 2020 has added a caveat to this sub-clause. If the Indian income (income other than income from foreign sources) of such tax payers is greater than Rs 15 lacs, the period of 60 days in Condition 2 shall be substituted by 120 days (and not 182 days). This new condition can complicate matters for many.

As per the Income Tax Act (Section 115, Clause e), a person is of Indian Origin if he or either of his parents or any of his grandparents were born in undivided India.

ⁱⁱⁱ This is a new condition and has been added through the Finance Bill, 2020. Available at [https://www.personalfinanceplan.in/who-is-nri-as-per-fema-and-income-tax-act/#:~:text=As%20per%20the%20Income%20Tax%20Act%20\(Section%20115%2C%20Clause%20e,resident%20\(ROR%20or%20RNOR\),05-12-2020,02:02](https://www.personalfinanceplan.in/who-is-nri-as-per-fema-and-income-tax-act/#:~:text=As%20per%20the%20Income%20Tax%20Act%20(Section%20115%2C%20Clause%20e,resident%20(ROR%20or%20RNOR),05-12-2020,02:02).

^{iv} Section 9 of Income Tax Act, 1961

^v Available at <https://taxguru.in/income-tax/nri-taxation-india-income-tax-act-1961.html>, 05-12-2020, 23:45.

^{vi} Section 234 B, 234 C of Income Tax Act, 1961.

^{vii} Section 80 C of the Income Tax Act, 1961.

^{viii} Available at <https://www.stilt.com/blog/2019/05/nri-tax-in-india/>, 05-12-2020, 23:55.

^{ix} Available at <https://cleartax.in/s/income-tax-for-nri>, 06-12-2020, 00:21.

^x Available at <https://www.lexology.com/library/detail.aspx?g=d37af54a-5b59-4703-96f8-648e2351e1a4>, 06-12-2020, 00:26.

^{xi} Section 54 of Income Tax Act, 1961.

^{xii} Section 54 F of Income Tax Act, 1961.

^{xiii} Available at <https://www.indianwealthmanagement.in/taxation-2/taxation-at-a-glance-for-non-resident-indians-2/>, 06-12-2020, 00:31.