TECHNICAL GUIDE ON EXPATRIATES TAXATION

Committee on International Taxation

The Institute of Chartered Accountants of India

(Set up by an Act of Parliament)

New Delhi

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Edition	:	July, 2011
Committee/Department	:	Committee on International Taxation
Email	:	citax@icai.org
Website	:	www.icai.org
Price	:	₹ 75/-
ISBN	:	978-81-8441-470-7
Published by	:	The Publication Department on behalf of the Institute of Chartered Accountants of India, ICAI Bhawan, Post Box No. 7100, Indraprastha Marg, New Delhi - 110 002.
Printed by	:	Sahitya Bhawan Publications, Hospital Road, Agra 282 003 September/2011/1000 Copies

Foreword

The opening up of the Indian economy and its globalization has resulted in far reaching changes. The inflow of funds from foreign institutional investors and non-residents has led to the emergence of taxation of non-residents as an extremely important topic in the current context.

Income from Employment has also been the most significant component of income derived from personal services in international taxation perspective. Working people from one state have been on the move to other states by taking employment always. Such movements have been increase in the recent past due to opening of global economies and increased cross-border trade. Formation of European Union, SAARC and other regional co-operation group are just a few examples. All these activities have encouraged free movement of people both on temporary and permanent basis.

Realizing the importance of the subject, Committee on International Taxation of ICAI and Taxation Committee of WIRC has taken an initiative to come out with a Technical Guide on "Expatriates Taxation" which provides a detailed study on the subject in a simple language.

I record my appreciation for the initiatives taken by CA. Mahesh P. Sarda, Chairman, Committee on International Taxation of ICAI. I congratulate contribution of CA N.C.Hegde for the hard work put in by him for providing the basic draft and in bringing out this Technical Guide. I also appreciate CA Shriniwas Y. Joshi, Chairman WIRC of ICAI for his coordination of the project.

I am sure that this Technical Guide will be of immense use to the readers.

Date 1st July, 2011
New Delhi

CA. G. Ramaswamy
President
ICAI

Preface

The advent of economic reforms in the form of globalization and liberalization in our country has resulted in the rapid growth of the economy in general and cross border transactions in particular. The process of globalization is set to gain further impetus with the good performance of the economy in recent past. There has been manifold increase in the cross border activities of Indian and MNCs business entities in the manufacturing and service sectors. The movement of manpower is an integral part of the entire process and has substantially increased in the recent past. The international taxations aspects related to income sourced from Expatriate Employment requires greater level of understanding.

Looking to the importance of the subject, the Committee on International of ICAI in collaboration with WIRC of ICAI undertook project to come out with a study addressing issues relating to Expatriates Taxation. Accordingly, CA. N. C. Hegde FCA, Mumbai (Regional Council Member of WIRC) was requested to pilot the project. I am extremely thankful to CA. Shriniwas Joshi, Chairman of the Western India Regional Council and CA. N. C. Hegde for their efforts in bringing out this publication. I place my appreciation on record for the valuable contributions made by CA. Alpana Rao, CA. Arvind Rao and CA. Hiten Shah.

I wish to thank Hon'ble CA. G. Ramaswamy, President, ICAI and Hon'ble CA. Jaydeep N. Shah, Vice President, ICAI for their continuous support and encouragement to the initiatives of the Committee.

I am sure that this study will help all the members in better understanding of the issues involved in Expatriates Taxation.

Date 1st July, 2011

CA. Mahesh P. Sarda
New Delhi
Chairman
Committee on International Taxation
ICAI

Preface

The Industrial Policy of 1991 welcomed both foreign investment and allowed hiring of foreign technicians. Since then, we have seen both Indian subsidiaries of foreign companies as well as Indian corporates having a choice in attracting the best talent that is available globally. The hire of expatriates is no longer a phenomenon which is limited to the major metropolitan cities.

The Government has made it extremely easy for Indian corporates to remunerate them as well as enable the expatriates to repatriate their salaries.

However whilst on hand there is greater operational freedom for residents for hire of expatriates as well complete freedom to remunerate them, the tax treatment of salaries has often been a subject matter of concern both to the Indian employer and the expatriate.

Tax treaties that India has entered into have no doubt provided respite but one still is left with a lot of issues which are often unresolved.

It is in this background that the book on "Taxation of Expatriates" gives a detailed study on the said subject. The study provides for an analysis of the law and a lucid and practical discussion on various connected issues. The study has employed simple language that is easy to comprehend.

I wish to thank the Taxation Committee of WIRC and CA N.C.Hegde to take this important project so as to provide all information related to the subject in a concise form.

I would also like to thank my professional colleagues, CA Alpana Rao, CA Arvind Rao and CA Hiten Shah for having spared the time from their busy schedule to bring out this excellent booklet .

I am confident that the book will immensely useful for members in understanding the subject as well as help them in discharging their professional responsibilities especially in regard to the preparation of tax returns.

CA Shriniwas Y. Joshi
Chairman, WIRC

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Introduction

The term expatriate is derived from Latin (ex-patria) which means "out of the country". The Oxford Dictionary defines an expatriate as a 'person living abroad'. Similarly the Webster Dictionary defines the term as 'a person residing in a foreign country'. Technically an expatriate is a person temporarily or permanently residing in a country and culture other than that of his/her upbringing or legal residence[1]. The term 'expatriate' in some countries also has a legal context used for tax purposes

The Income-tax Act, 1961 ('ITA') does not define the term 'Expatriate'. But as pointed out above it essentially refers to an employee who is working abroad on deputation or secondment. In terms of the Oxford Dictionary, deputation means 'to appoint someone to perform a task for which one is responsible'. Secondment is defined in the Oxford Dictionary as 'to temporarily transfer a worker to another position'.

The concept of 'deputation' is well understood in service law and has a recognized meaning, as observed by the *Apex Court in State of Punjab and others vs. Inder Singh and Others,* (8 Supreme Court Cases 372). The Apex Court pointed out that:

> *"'Deputation' has a different connotation in service law and the dictionary meaning of the word deputation is of no help. In simple words "deputation" means service outside the cadre or outside the parent department. Deputation is deputing or transferring an employee to a post outside his cadre, that is to say, to another department on a temporary basis. After the expiry (of) period of deputation the employee has to come back to his parent department to occupy the same position unless in the meanwhile he has earned promotion in his parent department as per the recruitment rules. Whether the transfer is outside the normal field of deployment or not is decided by the authority who controls the service or post from which the employee is transferred. There can be no deputation without the consent of the person so deputed and he would, therefore, know his rights and privileges in the deputation post."*

Thus, for the purpose of easy understanding, it can be said that an expatriate is a resident of a foreign country working in another country. It presupposes reference to a person who, for treaty purposes, continues to be a resident in

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[1] Wikipedia

his/her home country. Thus, in the Indian context expatriate means a resident of foreign country working in India (inbound) or an Indian resident working abroad (outbound).

Depending upon the entry strategy adopted by the foreign employer, an inbound expatriate can either be a seconded employee or on a short-term deputation or a foreign technician, with his/her remuneration being borne by the foreign employer or by the Indian counterpart or shared by the two entities. The common types of assignment and the typical characteristics and tax implications are as indicated below.

Type / Nature of assignments	Typical Characteristics	India Tax implications
Business visits	• Employee visiting India for short business visits of 20-30 days spread over the year • Purely for the limited purpose of attending meetings/ conferences in the capacity of employee of foreign company	• No tax implications for foreign entity as well as for the expatriate
Short-term assignments	• Employee would be sent to India for short periods of 6-8 months • He/ she would be working in India but as an employee of the foreign company & would continue to be on its payroll • Normally Indian entity would compensate the foreign counterpart for the services rendered by the expatriate • Generally, such arrangement is made for performing training or supervisory functions	• There could be Service Permanent Establishment exposure for the foreign entity depending upon the relevant clause of the tax treaty entered into between India and the respective country • Consequently, the foreign entity would be taxable in India & will have to comply with the local tax laws including withholding tax formalities • Employees will be taxable on the salary income earned They may be eligible for short stay exemption subject to fulfilment of certain conditions under the Treaty or under the domestic law

Type / Nature of assignments	Typical Characteristics	India Tax implications
Medium-term & Long-term assignments — Secondment	• Employee would be deputed to India for rendering services to the Indian entity for a period of 2 – 3 years or more • He/ she would be working in India in the capacity of Employee of Indian company • He/ she would be on the payroll of Indian entity and the remuneration would be solely borne by the Indian entity	• Indian entity will have to comply with all the regular legal formalities in respect of the expatriate • By and large the foreign entity will not have any Permanent Establishment exposure in India. • Since economic employment lies with Indian entity the expatriate would be taxable on the salary income earned

Similarly, in case of outbound expatriates as well the assignment could be in the nature of business visits, short-term, medium-term or long-term assignments.

Type / Nature of assignments	Typical Characteristics	India Tax implications
Business visits	• Employee visiting foreign country for short business visits of 20-30 days spread over the year • Purely for the limited purpose of attending meetings/ conferences in the capacity of employee of the Indian company	• Employee would remain a resident in India and hence salary in respect of period of foreign visits would continue to be taxable in India • No distinct tax implication for the Indian employer as well as for the employee
Short-term assignments	• Employee would be sent out of India for short periods of 6–8 months • He/ she would be working outside India but as an employee of	• There could be Service Permanent Establishment exposure for the Indian entity in the foreign country depending upon the relevant clause of the

Type / Nature of assignments	Typical Characteristics	India Tax implications
	the Indian company & would continue to be on its payroll • Foreign entity may compensate the Indian company for the services rendered by the expatriate • Generally, such arrangement is made for performing training or supervisory functions	tax treaty entered into between India and the respective country • Outbound expatriate may qualify as non-resident in India under the domestic law in which case tax credit can be claimed • However, if salary is received in India, the same may be taxable and accordingly subjected to withholding tax in India • In case the employee continues to be resident in India, short stay exemption can be claimed in the host country
Medium-term & Long-term assignments - Secondment	• Employee would be deputed to the foreign entity for rendering services for a period of 2-3 years or more • He/ she would be working abroad in the capacity of employee of the foreign company	• Host country will have to comply with all the local formalities in respect of the employee • Generally such outbound expatriate would qualify as non-resident in India under the domestic law during such term

Type / Nature of assignments	Typical Characteristics	India Tax implications
	• He/ she would be on the payroll of foreign entity and the remuneration would be solely borne by such foreign entity	• Possibility of dual residency in the year of transfer depending upon their stay pattern in the year of leaving or repatriating back • Salary for the period services are rendered abroad would not be taxable in India

Taxation

I. Basic concepts — Domestic Law

Under the ITA, incidence of tax depends on the residential status of the tax payer as well as on the place and time of accrual or receipt of any income. Each of these components is discussed in the following paragraphs.

Residential status

In India charge of income-tax is not based on domicile or citizenship. The extent of Indian tax liability depends on the residential status of an individual based on the individual's physical stay in India.

Residential status is determined on the basis of the physical presence in India during each previous year i.e. the financial year commencing from 1st April.

For tax purposes, an individual may be Resident and Ordinarily Resident ('ROR'), Resident but Not Ordinarily Resident ('RBNOR') or Non-Resident ('NR'). The conditions to be satisfied to qualify in any of these categories are discussed below:

i. Basic residency test

An individual is regarded as a resident in India in any previous year, if he/she is present in India for:

— 182 days or more during that year; or

— 60 days* or more during that year and 365 days or more during the 4 preceding tax years.

*To be replaced by 182 days in following two cases:

— an Indian citizen who leaves India for the purpose of employment abroad or as a crew member of an Indian ship; or

— an Indian citizen or Person of Indian Origin[2] employed abroad who comes to India on a visit.

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[2] A person shall be deemed to be of Indian origin if he, or either of his parents or any of his grand-parents, was born in undivided India – Explanation to section 115C(e) of the Act.

ii. Non resident

An individual fulfilling neither of the above basic residency test is regarded as a non-resident in India.

iii. Resident but Not Ordinarily Resident and Resident and Ordinarily Resident

A person resident in India may be further classified as ROR or RBNOR based on the below mentioned criteria.

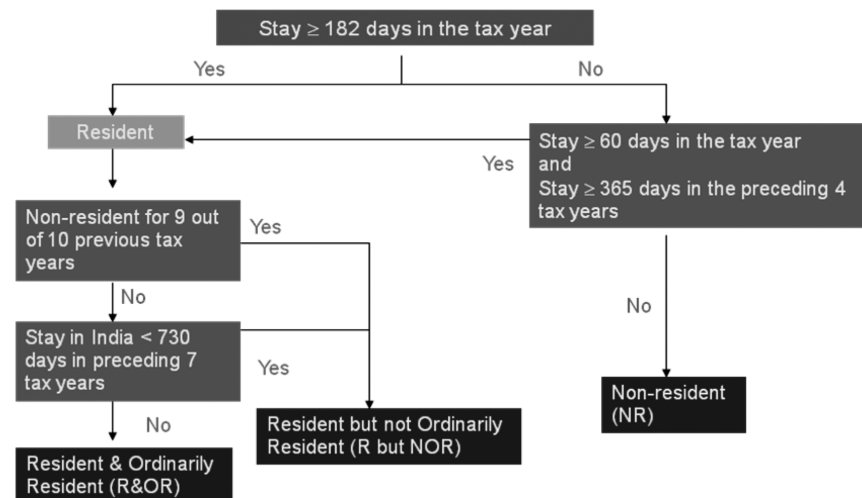
A resident individual (i.e., satisfying the basic residency test specified in clause (i)) would be regarded as a ROR in India in any financial year if **both** the following conditions are satisfied:

— He/ she has been **resident** in India for at least 2 out of 10 preceding financial years; and

— He/ she has been **present** in India for a period or periods aggregating to 730 days or more, during the 7 preceding financial years.

A resident individual who does not satisfy any one or both of these additional conditions would be regarded as RBNOR.

The above residency rules are summarised in the below matrix:



The actual number of days an individual is present in India is generally determined on the basis of entries in the passport, taking into account the day of entry as well as the day of exit[3]. Further, stay in the

[3] P. No. 7 of 1995 – 223 ITR 462 (AAR)

territorial waters of India would also constitute presence in India for the purpose of determining the residential status.

Illustration 1

Mr. ABC, a Canadian citizen, arrives in India for the first time on September 1, 2010. Details of his entry and exit from India as per his passport and his residential status would be as follows:

Year Number	Previous Year	Days present in India	Cumulative stay in preceding previous year	Residential status
1	2010-11	181	0	NR
2	2011-12	366	181	RBNOR
3	2012-13	365	547	RBNOR
4	2013-14	365	912	ROR

Normally, an inbound expatriate coming to India for the first time will become ROR in the third/fourth year from the year of arrival.

Illustration 2

Mr. XYZ, an Indian citizen, who is appointed as a Senior Manager by an Australian company, leaves India for the first time on September 10, 2009. Details of his India visits in the subsequent years and his residential status would be as follows:

Year Number	Previous Year	Days present in India	Cumulative stay in preceding previous year	Residential status
1	2009-10	163	>365	NR
2	2010-11	75	>365	NR
3	2011-12	185	>365	ROR

Normally an outbound expatriate would remain non-resident in all the years when the total stay in India is less than 182 days.

Scope of income

While residents (i.e., tax payers whose residential status is ROR) are taxed on their worldwide income, non-residents are taxed only on income that is received or deemed to be received in India or income that accrues/arises or is deemed to accrue/arise in India. For this purpose a RBNOR is taxed like a non-resident with the only difference

that he/she is also liable to tax on income accruing abroad if it is from a business controlled in or a profession set up in India.

The above rules can be broadly depicted as follows:

Nature of income	Taxability in case of		
	ROR	RBNOR	NR
income received or deemed to be received in India	√	√	√
Income accruing or deemed to be accrued in India	√	√	√
Income from a business controlled from India or from a profession set up in India but not received or accrued in India	√	√	X
Income not received or not deemed to be received in India	√	X	X
Income not accruing or not deemed to be accrued in India	√	X	X

Thus, depending upon its nature, any income is taxed in India either on receipt or on accrual basis. Income is said to be received when it actually reaches the tax payer; however, it is said to accrue or arise when the right to receive such income becomes vested to the tax payer.

It may be pointed that any income which is taxed on accrual basis cannot again be taxed on receipt of the same. Further, once an amount is received as income, any remittance of such amount to another place does not result in receipt at another place – for instance if a ROR tax payer is receiving income abroad in financial year 2009-10, he cannot be said to have received the same when he brings or remits such income to India in financial year 2010-11.

General scheme of taxation

Under the ITA, income is classified and accordingly taxable under any of the following heads:

- Income from Salaries

  Any and all income arising on account of employee-employer relationship is taxable under this head and **inter alia** includes

perquisites, provident fund contributions, income received from previous employers, retirement benefits, salary arrears, etc.

- Income from House Property

  Under this head of income there is a charge on the potential of property (i.e., land and/ or building, commercial as well as residential) to generate income not merely on the rent received there from. Specific rules are laid down for computing the taxable value of a property for taxation purpose.

- Profits and gains from Business or Profession

  Income earned by a tax payer on exercise of a business or profession is taxable under this head. Generally, business/ profession income is arrived at after deducting from the gross sale/billing all the expenses incidental to such business/ profession, including depreciation. Weighted deduction is available in case of certain specified expenses such as research & development whereas certain expenses are deductible on fulfilment of prescribed conditions (for instance only on actual payment or on compliance with withholding tax procedures).

- Capital Gains

  Capital Gain represents the profit or gain arising to a tax payer on transfer of a capital asset during a year. Generally capital gains are calculated by deducting from the net sale consideration the cost of acquisition and cost of improvement incurred by the transferor on the capital asset. In case of assets long-term capital assets i.e. those held for a period of more than 36 months (12 months in case of listed securities), in order to give effect to inflation the cost of acquisition and improvement are indexed using the cost inflation index numbers notified by the Government; however indexation benefit is not available for bonds and debentures.

  Capital Gains on transfer of residential house held for more than 36 months are exempt if they are reinvested in acquiring or constructing another residential house within a specified period. Similarly capital gains from the sale of any capital asset held for more than 36 months are exempt if the amount of capital gains is reinvested in certain specified assets, being redeemable bonds issued by the National Highways Authority

of India or the Rural Electrification Corporation within six months and for a lock-in period of three years.

- Income from other sources

  This is a residual head of income and any income which is not covered under the earlier heads is covered in 'income from other sources' for instance interest, gifts, dividends, lottery winnings, etc.

The computation mechanism for income under each of the above mentioned head is distinct and the total income under all the heads, after setting off brought forward losses, if any, constitutes the **Gross Total Income** ('GTI') for a particular financial year. From the GTI a tax-payer/ assessee is entitled to claim certain deductions[4] in respect of specific investments and/ or expenses (for instance provident fund investments, insurance premiums, housing loan repayments, etc.) up to the prescribed limits so as to arrive at the **Net Taxable Income** for the year.

As discussed earlier, expatriates are in essence employees working in a country away from their country of legal residence. Thus, for the purpose of easy understanding, normally the income earned by an expatriate working in India would be arising from the employee-employer relationship, irrespective whether he/she is on the payroll of the foreign entity or the Indian entity, and therefore the same would be taxed as their 'Salary income'. The taxability of such salary income and related issues are discussed in the forthcoming topics.

Tax rates

Income tax is payable on the Net Taxable Income at the rates specified for the relevant year. The tax rates for every financial year are proposed and adopted by the Parliament in the Annual Budget. The tax rates for the financial years 2010-11 and 2011-12 are as follows:

[4] Under Chapter VI-A of the ITA

For financial year 2010-11 (assessment year 2011-12)

Income slabs	Tax rates
Taxable income up to ₹ 160,000	Nil
Taxable income between ₹ 160,001 & ₹ 500,000	10%
Taxable income between ₹ 500,001 & ₹ 800,000	20% plus ₹ 34,000
Taxable income above ₹ 800,000	30% plus ₹ 94,000

The basic exemption limit of ₹ 160,000 is increased to ₹ 190,000 in case of resident female tax payers and ₹ 240,000 in case of resident tax payers who are of the age of 65 years or more.

For financial year 2011-12 (assessment year 2012-13)

Income slabs	Tax rates
Taxable income up to ₹ 180,000	Nil
Taxable income between ₹ 180,001 & ₹ 500,000	10%
Taxable income between ₹ 500,001 & ₹ 800,000	20% plus ₹ 32,000
Taxable income above ₹ 800,000	30% plus ₹ 92,000

There is no change in the basic exemption limit for resident female tax payer's vis-à-vis financial year 2010-11. The same has however been increased to ₹ 250,000 in case of resident tax payers who are of the age of 60 years or more but less than 80 years and to ₹ 500,000 in case of resident tax payers who are of the age of 80 years or more.

The above tax rates are required to be increased by an additional cess of 3% in all cases.

II. Basic concepts — Tax Treaties

In case resident of one country (home/ residence country) derives income from another country (host/source country) there arises 'double taxation' of the same income in the source country and subsequently in the residence country. Such double taxation can also

arise due to difference in the definition of tax residency and in the scope of taxation of various countries.

Thus, with respect to an expatriate, double taxation may arise on account of the following reasons:

- He/she is a resident of two countries and each state seeks to tax the individual on worldwide income;
- He/she is a resident of one country deriving income from another country.

In order to prevent such double taxation, governments engage in efforts to avoid double taxation by entering into Double Taxation Avoidance Agreements/ Tax Treaty ('DTAA'). The adoption of a DTAA requires modification to the internal tax laws of the respective state and as such, an enabling Act of Parliament.

Under the ITA section 90 empowers the Central Government of India to enter into an agreement with any country for granting relief from and avoidance of double taxation, exchange of information, recovery of tax and to make such provisions as may be necessary for implementing the agreement. In India, a tax treaty becomes a law without any further legislation having to be enacted[5].

DTAA divide the taxing rights between the countries that are party to the agreement. India has entered into two types of DTAA with other countries:

- Comprehensive DTAA, which cover all income flows; and
- Limited DTAA that cover only shipping and/ or air transport income.

India has concluded comprehensive DTAA with almost 90 countries including major countries like Australia, Belgium, Brazil, Canada, China, Germany, Italy, Japan, Mauritius, New Zealand, Singapore, United Kingdom, United States, etc.

India has also entered into 'Tax Information Exchange Agreements' with few countries namely Bermuda, Isle of Man, British Virgin Islands, Bahamas and Cayman Island.

Section 90 further provides that where the provisions of the DTAA entered into by India with another country are more beneficial to any

[5] Supreme Court in *Maganbhai vs. Union of AIR* 1969 SC 783.

assessee, the assessee would be governed by such beneficial provisions of the treaty. This position has been upheld by the Apex Court in the case of *UOI vs. Azadi Bachao Andolan* (236 ITR 706). Hence, in the case of an expatriate the provisions of the treaty need to be examined for the purpose of ascertaining the tax liability.

Residential status under DTAA

Generally, Article 4(1) of a DTAA, defines the term 'resident' of a country to mean any person who, under the laws of that country, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature, and also includes that State and any political sub-division or local authority thereof. Thus, in order to qualify as a resident under a DTAA entered into by India an expatriate should enjoy residential status either in the overseas country or in India under the domestic laws. It may be noted that the residential status of the employer is not relevant in determining the status of the expatriate.

However, if by virtue of the above provision, an individual is a resident of both the contracting countries, the distributive rules cannot apply. Therefore, for such cases, clause 2 provides the tie breaker test for determining which of the two contracting countries the person would be deemed to be a resident as per the treaty. The relevant factors to be considered in the tie-breaker test are as follows:

- Permanent home: The country in which he/she has a permanent home available to him/her;
- Centre of vital interest: The country with which his/her personal and economic relations are closer
- Habitual abode: The country in which he/she has habitual abode;
- Nationality: Country of which he/ she is a national;
- Competent authorities: As determined by Mutual agreement between both the countries competent authorities.

III. Taxation of salary

Any salary due or received from the employer or the former employer is charged to tax in India as 'Income from Salary'. Further, it is taxed on due or receipt basis, whichever is earlier.

As discussed earlier, salary income of expatriates would be taxable in India under the provisions of the ITA in case the same is either

received or deemed to be received in India or in case it accrues or is deemed to be accrued in India.

Further, section 7 of the ITA provides that the following incomes are deemed to be received in India:

(i) Annual increase in the recognized provident fund balance of an employee, in excess of the prescribed percentage[6]

(ii) Transferred balance in the recognized provident fund to the extent specified[7]

(iii) Contribution made by the employer to the specified employee pension scheme

Section 9 *inter alia* provides that income from salary shall be deemed to be accrued in India in case the same is in respect of:

- services rendered in India; and
- leave period which is preceded and succeeded by services rendered in India and forms part of contract of employment.

Thus, salary income of an expatriate would be deemed to arise in India, and hence taxable, if the services are rendered in India, irrespective of the place of entering into the contract of employment or receipt of the income.

A. Inbound Expatriates

An inbound expatriate working in India would be liable to tax in India on the salary earned, whether he is on the payroll of the Indian company or of the foreign company, subject to certain exemptions provided in the domestic law as well as the respective DTAA.

Salary components

The ITA provides an inclusive definition of the term salary and perquisites. The term salary includes wages, any annuity or pension, gratuity, any fees, commission, perquisites or profits in lieu of or in addition to any salary or wages, advance salary, leave salary, etc. Thus, essentially salary includes all consideration in money or money's worth (cash or kind) for services rendered arising out of an employer-employee relationship. The definition is wide enough to

[6] As per Rule 6 of Part A of the Fourth Schedule of the Act.

[7] As per Rule 11(4) of Part A of the Fourth Schedule of the Act

cover all types of payments whether in cash or kind; whether immediate or lump sum and whether from current or past employer.

In addition to the normal components included in salary structure of any employee, some typical components of the remuneration package of an expatriate and the tax treatment of the same are discussed below:

1. **Daily allowance** – Daily allowance or per diem is generally paid to expatriates in addition to their regular salary in order to compensate for the change in the living conditions. Such daily allowance is includible in the taxable salary income of expatriate. However, exemption can be claimed in respect of the actual expenses incurred by the expatriate towards ordinary daily charges on account of absence from the normal work place[8]. Basically such allowance would include relocation/ transfer expenses, shipment cost, travelling expenses, etc. reimbursed to the expatriate and the same would be exempt. However, a lump sum relocation incentive or allowance paid to the employee may not qualify for the aforesaid exemption.

2. **House Rent Allowance ('HRA')** – In case the expatriate has taken accommodation on rent in India, the HRA paid by the employer would not be taxable to the extent of lower of the following:

   - Actual HRA received for the period during which the rented accommodation was occupied; or
   - Excess of rent paid over 10% of salary for the period; or
   - 50% of the salary, in case accommodation is situated in Mumbai, Delhi, Kolkata or Chennai, or 40% in all other cases

Salary for the purpose of computing the aforesaid exemption means basic salary, dearness allowance if terms of employment so provide and commission earned by the employee based on a fixed percentage of turnover achieved.

3. **Provident Fund** – Effective 1 November, 2008, it is mandatory for international workers i.e. non-Indian passport holders working in India and Indian employee going for work in a

[8] Rule 2BB read with section 10(14) of the ITA.

foreign country with which has entered into a Social Security Agreement, who are employed with an establishment to which the provisions of the Provident Fund Act apply, to contribute to Provident Fund in India. The fund allocation of contributions is as under:

Component	Contribution
Employee Contribution	12% of Pay*
Employer Contribution to	
– Provident Fund	3.67% of Pay*
– Pension Fund	8.33% of Pay*

*Pay means Basic Salary, Dearness allowance (including cash value of food concession) and Retention allowance.

An international worker, who is contributing to a social security programme of his/her country of origin, either as a citizen or resident, with whom India has entered into a social security agreement on reciprocity basis and enjoying the status of detached worker for the period and terms as specified in such agreement are excluded from contributing to Indian social security schemes. Presently, India has signed Social Security Agreements ('SSA') with

- Belgium
- France
- Germany
- Switzerland
- Luxembourg
- Czech Republic
- Denmark
- Hungary
- Korea
- Netherlands
- Norway

However, only the SSA with Belgium, Germany, Switzerland and France are effective from September 1, 2009, October 1, 2009, January 29, 2011 and July 1, 2011 respectively. The effective date on which the other SSAs will come into force is still to be notified.

Accordingly, a foreign national coming to India under an employment visa would be liable to contribute to the provident fund in India except when he/she is working for an establishment not covered by Provident

Fund Regulations or is enjoying the status of detached worker as per the SSA between India and his home country.

The Provident Fund contributions have to be made by the employer on a monthly basis. Generally the employee's contribution is collected by way a deduction from the monthly salary. The employer's contributions to a recognised provident fund are not liable to tax in the hands of the employee in the year of contribution. However, in case the employer chooses to contribute higher than the prescribed 12%, such excess shall be includible in the taxable salary income of the employee. The employee contribution to provident fund is not in the nature of tax but it is in the nature of savings and therefore employee's contribution would qualify for deduction under section 80C of the ITA.

The contribution made by the employer and employee would fetch an interest[9]. Further, interest accrued for each year is also not taxed in the year of accrual. However, it may be noted that the balance held in the provident fund (i.e., employer's contribution plus employee's contribution plus accrued interest thereon) can only be withdrawn on retirement or after the expatriate reaches 58 years of age or on incapacity to work and not at the time of repatriation to home country. Further, the claim for withdrawal of Pension is possible only if India has entered into SSA with the country of residence of the expatriate or he/she has completed 10 years of contributory service to Family Pension Scheme.

At the time of withdrawal, the employer's contribution to provident fund along with accrued interest on the employer's plus the employee's contribution and tax benefit claimed on employee's contribution would be taxed as income in the year of withdrawal, provided the expatriate has not rendered five years of continuous service in India.

4. **Perquisites** – The term perquisite is defined widely to include all the benefits/concessions received by an employee from an employer. It includes both, monetary as well as non-monetary perquisites. Rules have been prescribed for valuing the perquisites and the same are discussed below:

4.1. **Accommodation**

Free or concessional accommodation provided by the employer constitutes a taxable perquisite under the ITA. In terms of the valuation rules such accommodation perquisite is valued as follows:

[9] Presently the notified rate of interest on Provident Fund is 9.5%

Accommodation perquisite	Valuation Rules prescribed	
	Where accommodation is unfurnished	Where accommodation is furnished
A Provided by Central/ State Government	Licence fee determined by Central/ State Government reduced by rent recovered from employee	Value of unfurnished accommodation to be increased by 10% of the cost of Furniture, in case owned, or actual hire charges where it is hired
B Provided by any other employer who owns the accommodation	- 15% of salary in cities having population above 2.5 million as per 2001 census - 10% of salary in cities having population exceeding 1 million but not exceeding 2.5 million as per 2001 census - 7.5% of salary in other case Less: Rent recovered from employee	Value of unfurnished accommodation to be increased by 10% of the cost of Furniture, in case owned, or actual hire charges where it is hired.
C Provided by any other employer who has taken the accommodation on lease or rent	Actual amount of lease rental paid or payable by the employer or 15% of salary whichever is lower Less: rent recovered from employee	Value of unfurnished accommodation to be increased by 10% of the cost of Furniture, in case owned, or actual hire charges where it is hired.

Accommodation perquisite	Valuation Rules prescribed	
	Where accommodation is unfurnished	Where accommodation is furnished
D Provided in a hotel - Up to 15 days on transfer of the employee	Nil	
- For more than 15 days	Lower of actual hotel charges or 24% of salary for the period of stay	

4.2. **Vehicle**

	Nature of perquisite	Valuation Rules prescribed	
		Small car (engine cc up to1.6 litres)	Big car (engine cc above 1.6 litres)
A	In case car is provided by employer		
A.1	Used exclusively for official purposes	Nil (see note)	Nil (see note)
A.2	Used exclusively for private purposes of employee and expense reimbursed by employer	Actual expenditure incurred	Actual expenditure incurred
A.3	Used partly for official purpose and partly for private purpose and the running and maintenance expenses are reimbursed by the employer	₹ 1,800 p.m. (plus ₹ 900 if driver is provided)	₹ 2,400 p.m. (plus ₹ 900 if driver is provided)
A.4	Used partly for official purpose and partly for private purpose and the running and maintenance expenses for private use are fully met by the employee	₹ 600 p.m. (plus ₹ 900 if driver is provided)	₹ 900 p.m. (plus ₹ 900 if driver is provided)

B	In case car is owned by employee and employer reimburses running and maintenance expenses		
B.1	Used exclusively for official purposes	Nil (see note)	Nil (see note)
B.2	Used partly for official purpose and partly for private purposes	Actual expenses reimbursed reduced by ₹ 1,800 p.m. (plus ₹ 900 if driver is provided)	Actual expenses Reimbursed reduced by ₹ 2,400 p.m. (plus ₹ 900 if driver is provided)

Note:

A Log book containing details of journey undertaken, viz. date of journey, destination, mileage and the amount of expenditure incurred, for official purpose needs to be maintained.

A Certificate from the employer to the effect that expenses were incurred wholly and exclusively for the performance of official duties should be obtained.

4.3. Employee Stock Option Plan ('ESOP')

Securities allotted to employees under ESOP or similar programmes constitute non monetary benefit derived by the employee and is taxed as salary income in the year of allotment of shares. The taxable value is the Fair Market Value ('FMV') of the specified securities on the date on which the option is exercised by the employee as reduced by the exercise price recovered from the employee.

The FMV of the securities is determined as follows:

	Type of securities	FMV on date of exercise
Listed securities	Traded on one Indian stock exchange	Average of the opening and closing price
	Traded on more than one Indian stock exchange	Average of the opening and closing price on the stock exchange that recorded highest trading

	Not traded on date of exercise	Closing price of the share on a closest date preceding the date of exercise
Unlisted securities		As determined by a Category I Merchant banker: –on date of exercise or –any date not more than 180 days preceding the date of exercise

The flow of events and the relevance of the same in determining the levy of taxation on ESOP can be depicted as follows:

4.4. <u>**Other perquisites**</u>

Perquisite	Valuation
Sweeper, gardener, watchman, personal attendant	Actual cost to the employer Less: Amount recovered from the employee for services
Supply of gas, electric energy, water	Actual amount of expenditure incurred or reimbursed by such employer on that account Less: Amount, if any recovered from the employee for such benefit or amenity Note: Where supply of gas, electric energy, water is made from resources owned by the employer, without purchasing them from any outside agency the value of perquisite would be manufacturing cost per unit incurred by the employer.
Fee or concessional educational facilities for any member of employee's household	Actual amount of expenditure incurred or reimbursed by such employer on that account Less: Amount, if any recovered from the employee for such benefit or amenity

Perquisite	Valuation
Interest free concessional loan for housing	Interest amount, as per State Bank of India rates on maximum outstanding monthly balance Less: Interest paid by employee, If any Except petty loan up to ₹ 20,000 or loan for medical treatment in respect of specified diseases
Free food and non-alcoholic beverages	Amount of expenditure incurred by the employer Less: Amount recovered from the employee Except if employer provides free food and Non-alcoholic beverages during the office working hour at office premises or through paid voucher and amount of expenditure not exceeding ₹ 50 per meal.
Gifts, Vouchers or token to employees	Actual amount of expenditure incurred However, such value to be considered Nil, if the value of gift per employee during the previous year in aggregate is below ₹ 5,000, provided such gift is received by the employee or his/ her family member on ceremonial occasions.
Memberships and annual fees	Actual amount of expenditure incurred or reimbursed by such employer on that account Less: Amount, if any recovered from the employee for such benefit or amenity. Note: However, there will be no perquisite in the hands of employees if complete detail in respect of such expenditure are maintained by the employer & the employer gives the certificate to the effect that the expenditure was incurred wholly and exclusively for the performance of official duties.

Perquisite	Valuation
Use of movable assets (other than Laptops)	10% of actual cost of the asset or the amount of rent paid or payable Less: Amount, if any recovered from the employee for such benefit or amenity
Transfer of movable asset to the employee directly or indirectly	Actual cost of movable asset Less: 10% of depreciation for each completed year which such assets was put to use by the employer (In case of computer and electronic items 50 per cent and motor car 20 per cent by reducing balance method Less: Amount, if any recovered from the employee for such benefit or amenity
Any other benefits or amenities, services, rights or privilege	Cost to employer (based on arm's length transaction) Less: Amount, if any recovered Note: Expenses on telephone mobile phone actually incurred on behalf of the employee by the employer not to be taxed

4.5. **Medical expenses**

The ITA provides for the exemption of the following medical perquisites provided by an employer to its employees:

- Medical treatment provided to employee or his/ her family member in a hospital maintained by the employer;
- Amount paid by the employer towards expenditure incurred on medical treatment of employee or his/ her family member in an approved hospital and in respect of prescribed ailments;
- Premium paid by the employer for medical insurance of its employees under an approved scheme or reimbursement of such insurance premium to employees;
- Reimbursement of medical expenses up to ₹ 15,000 per annum;

- Actual expenditure incurred on stay and medical treatment abroad of the employee or his/ her family member plus stay abroad of one companion to the extent permitted by the Reserve Bank of India.

For the above purposes, family means spouse, children and dependent parents and siblings of the individual.

5. **Tax borne by employer** – As a principle, an expatriate should be neither better off nor worse off by taking up an international assignment and therefore he/she should pay no more or no less tax on the salary income than what would have been payable had the employee continued in the home country.

   This principle is known as 'tax equalisation' and in order to achieve the same the employment contract entered into with these expatriates contain an express stipulation that the remuneration would be paid net of tax. In other words, the Indian taxes in respect of income from employment in India would be borne by the employer and not by the employee. The tax so borne by the employer would form part of the expatriate's salary and therefore in computation of the 'income from salaries' the taxes so borne by the employer have to be grossed up and included therein.

   As per the provisions of domestic tax laws in India[10], the employer could, at his option pay taxes on the non-monetary perquisites provided to employees, and such taxes need not be grossed up. Considering that the normally expatriates are tax equalized, the benefit of this could be availed. However, there would be a disallowance in the corporate tax return to this extent.

   The Delhi Special Bench[11] in its ruling has held that tax borne by the employer is a non-monetary perquisite; accordingly such tax liability need not be grossed up. This will result in substantial saving in the assignment cost of the foreign company. It may however be noted that the Tribunal is not the final authority in the chain of judicial hierarchy and hence, litigation cannot be ruled out if such position is adopted by any foreign employer company.

[10] Section 10(10CC)

[11] RBF Rig Corporation vs. ACIT (297 ITR 228) (Del. ITAT SB)

In this regard, it is pertinent to note that the Indian corporate law does not permit an Indian company to pay net of tax salary to its employees.

The table below shows the total cost for an employer where the tax liability borne by it is grossed up and not grossed up relying on the Delhi Tribunal decision.

	Particulars	Tax liability (without grossing up) ₹	Tax liability (with gross up) ₹
(a)	Total Income	100	100
(b)	Tax Perquisite (tax liability borne by the employer)#	31	45[100*31/ (100-31)]
(c)	Total Income including perquisite	131	145
(d)	Tax payable (@ 31%)	41	45
(e)	Total cost for the employer (a) + (d)	141	145

#assuming tax rate @31% for simplicity

Exemptions

Short-stay exemption

The ITA[12] provides for a short stay exemption in case of an individual who is not a citizen of India. The remuneration received by him/ her as an employee of a foreign entity, for services rendered by him/ her during his/ her stay in India is exempt from tax subject to fulfilment of all the following conditions:

- The foreign enterprise is not engaged in any trade or business in India;
- His/her stay in India does not exceed in the aggregate a period of 90 days in such previous year; and
- Such remuneration is not deductible from the income of the employer chargeable under the ITA.

Similarly, India's tax treaties with different countries also provide for a short stay exemption for treaty residents of other countries in respect

[12] Section 10(6)(vi) of the ITA

of employment exercised in India. Generally, Article 15 or 16 of the tax treaties deal with taxation of employment income.

The said Article provides that salaries, wages and other similar remuneration derived by a resident in respect of employment exercised in the host country would be taxable in the host country; however such income would be taxed exclusively in the home country/ country of residence provided:

- The employee is present in the host country for a period or periods not exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned depending upon the relevant clause of the respective DTAA;
- The remuneration is paid by, or on behalf of, an employer who is not a resident of the host country; and
- The remuneration is not deductible in computing the profits of an enterprise chargeable to tax in the host country. In other words, such remuneration is neither deductible nor borne by the PE of the foreign employer in the host country.

The aforesaid conditions may differ from country to country and the relevant treaty should be referred to before application. A claim for the beneficial provisions under this Article should also be substantiated with evidence.

Thus, it could be concluded that inbound expatriates whose presence in India is for a short-term duration could be exempt from tax in India under the relevant treaty subject to fulfilment of all the conditions mentioned in the relevant clause of the respective tax treaty.

Tax credits

An inbound expatriate earning income in India may be liable to tax in India under the 'source' rule and may also be taxable in respect of the same income in his/ her home country as per the 'residence' rule. This scenario can lead to double taxation of the same income and in order to avoid the same tax treaties provide for specific provisions for elimination of such double taxation. The most common methodology for avoidance of double taxation used in Indian tax treaties are:

- Exemption method — income or capital that is taxable in the country of source may be fully exempted in the country of residence or vice versa. Alternatively, the country of source limits its right to tax income from sources in its country.

- Credit method — income or capital that is taxable in the country of source may be subject to tax in the country of residence. However, the tax levied in the country of source is credited to the extent of tax levied by the country of residence on such income or capital.

Generally, in terms of the tax treaties income arising to an expatriate is taxed with or without limitation in the source country and therefore the country of residence has the obligation to eliminate double taxation.

In case of dual residency, once the expatriate becomes a resident of the host country, he/she may not be liable for tax in the home country in respect of the salary earned in the host country. Accordingly, in such cases an expatriate will be liable to tax in the home country only for the period he/she is a resident & the period for which they are considered as "Tax Resident" of the host country will not be liable for tax in India. For better understanding this can be explained by e.g. Assuming Mr. A, outbound expatriate of India leaves the country for the purpose of employment in October to USA. He will be treated as "ROR" for the Indian tax year but if he is a tax resident of USA from January, then the salary earned during the period January to March will not be required to be reported while filing his tax return in India.

Computation

Generally, expatriates receive part of their salaries in foreign currency especially when they continue to remain on the payroll of the foreign employer. In such cases, the salary denominated in foreign currency is to be converted to Indian rupees using the telegraphic transfer buying rate of such foreign currency as on the following dates:

- In case where tax is deductible at source by the employer-the date on which tax is required to be deducted at source i.e. at the time of payment of such salary[13]
- In other cases — the last day of the month immediately preceding the month in which the salary is due, or is paid in advance or in arrears[14].

Telegraphic Transfer Buying Rate in relation to a foreign currency means the rate of exchange adopted by the State Bank of India for

[13] Rule 26 of the Income Tax Rules

[14] Rule 115 of the Income Tax Rules

buying such currency having regard to the guidelines specified from time to time by the Reserve Bank of India.

In this regard, it is pertinent to note that the Indian Apex Court[15] has ruled that in case salary paid to the expatriate is for rendition of services in India, with no part of such services being performed for the foreign company, tax has to be deducted at source from salaries of expatriates working in India even in cases where such salaries were paid abroad. In other words, salary payable for services rendered in India should be subjected to tax deducted at source/ withholding tax provisions, even on that part of the salary which is paid by the Home country to the seconded employees and the advance tax mechanism would not work in such a case.

The sum of all the salary components, after considering the exemptions and including the value of monetary as well as non-monetary perquisites, would constitute the total salary income chargeable to tax in India.

B. Outbound Expatriates

An overview of the significant issues arising in case of an outbound assignment and the general taxability in such cases are discussed below:

An outbound expatriate shall qualify for the non-resident status if the total stay in India is less than 182 days and in such a case, he/ she would be liable to tax in India only in respect of the following:

- Salary actually received in India;
- Salary deemed to be received in India i.e. annual accretion to the recognised provident fund in excess of the prescribed percentage[16] and employer's contribution to notified pension scheme;
- Salary in respect of services rendered in India;
- Salary in respect of rest or leave period which is preceded or succeeded by service in India.

[15] Eli Lilly & Company (India) Pvt. Ltd. (178 Taxman 505)

[16] Presently the prescribed percentage is at 9.5% in case of interest and 12% of salary in case of employer's contribution.

However, outbound expatriates qualifying as resident (ROR) in India would be subject to tax on their worldwide income under the ITA and eligible for foreign tax credit on foreign sourced income.

Further, in terms of the DTAA, an outbound expatriate would be deemed to be a resident in India, if he/she is resident under the ITA, and accordingly would be entitled to claim the short stay exemption in the host/source country subject to fulfilment of all the conditions prescribed in the respective tax treaty.

The tax treatment of the various salary components and computation of the taxable salary in case of outbound expatriates would be similar as in the case of inbound expatriates, discussed above. However, there are few typical issues in case of outbound expatriates which have been discussed below:

- Generally, an outbound expatriate would qualify for the beneficial provisions for determination of residential status and therefore can continue to enjoy non-resident status as long as total stay in India does not exceed 181 days.
- Even though the services are rendered outside India, in case the expatriate continues to receive salaries in India under a short-term assignment, such salary would be taxable in India. However, if the outbound expatriate, being a non-resident, fully offers such salary to tax in the host/source country, the same may not be taxed in India. Accordingly the Indian employer need not deduct tax in respect of such salary payments upon a satisfaction that the resulting tax liability has been discharged in the host country[17].
- The outbound expatriate would be entitled to claim foreign tax credit in respect of taxes, if any, withheld in India.
- Outbound Indian employees contributing to foreign Social Security scheme pursuant to their posting to a foreign country would still be liable for Provident Fund in

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[17] British Gas India Ltd. (AAR) (285 ITR 218)

India if their payroll is maintained by the Indian employer and they have been paid in India.

- Where the outbound expatriate has to contribute to the social security of the foreign country as well and the expatriate has no discretion on the same, such contribution would not to be taxable as his/her income as it is an overriding charge of income not diversion of income[18]. However, in case of voluntary schemes, the contributions related to period of services in India are taxable as income in India in the hands of concerned employees.

C. **Hints for tax planning**

- In order to enjoy the non-resident status, expatriates – inbound as well as outbound — visiting India should not stay in India for more than 181 days in a financial year and their total stay during the preceding 4 years should not exceed 364 days.
- A non-resident can escape tax liability in respect of income earned out of India (i.e., income from foreign assets or from services rendered abroad) if the same is first received out of India and then remitted to India, either wholly or partly.
- Since most of the DTAA entered into by India provide for a short stay exemption in case of stay equal to or less than 183 days, it is advisable that the inbound expatriate coming to India on a short-term assignment, should get an employment visa of not more than 6 months.
- In case accommodation to be provided to an inbound expatriate, coming on a medium or long-term assignment, is to be taken on rent by the employer, the rental agreement can be directly entered into by the expatriate while the employer pays HRA. This would give some scope for restructuring the salary so as to maximize the HRA exemption and minimize the taxable salary value.

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[18] 18 *Gallotti Raoul vs. ACIT* (61 ITD 453) (Mumbai ITAT)

- As pointed out earlier, in case of medium or long term assignments normally there would not be PE exposure for the foreign entity provided the economic employment of the assignees is with the Indian entity. In order to demonstrate such economic employment the following factors need to be taken care of at the time of such medium or long term deputation of employees to India:
  - The deputation/secondment letter issued by the foreign entity as well as the appointment letter issued by the Indian entity should clearly indicate that such expatriate would be the employee of the latter;
  - Being the employer the Indian entity would have all the rights on the work performed by the expatriate; as a corollary it would also bear the responsibility as well as risks in respect of the same;
  - The scope of work as well as the authority to instruct the expatriate in relation to the same would rest with the Indian entity alone;
  - The services would be performed at the place which is under the control and responsibility of the Indian entity;
  - The remuneration payable to the expatriate should be commensurate with the services rendered to the Indian entity;
  - The assignment duration should be determined by the Indian entity and the foreign entity should not have the right to recall the expatriate. In short foreign entity should not have lien on the seconded employee.
- In addition to the above, it is also advisable that the foreign company enters into a Local Service Contract with its Indian counterpart in respect of the secondment defining all the terms, scope of work, break-up of compensation, etc. in order to minimize the impact of PE exposure.

D. Issues

Taxation of employees working abroad on ship or aircraft

In terms of Articles 8 and 9 of India's tax treaties dealing with Air transport and shipping business, the remuneration in respect of an employment exercised aboard a ship or aircraft in international traffic may be taxed in the country of which the person deriving the profits from the operation of the ship or aircraft is a resident.

Taxation of director's fees

Director's fee is the remuneration received by an individual, in the capacity of a member of a board of directors of a company which is a resident of the other country. Services are deemed to have been rendered in the country where the Company is a resident. Remuneration would cover all payments in cash and kind (non-monetary benefits, ESOPs etc). It is pertinent to mention here that the OECD definition restricts itself to only *'Directorial remuneration in his capacity as a member of the board of directors of a company'* and excludes all payments made to a Director in any other capacity.

IV. Other heads of income & deductions

As discussed earlier, apart from salary, income arising to a tax payer in India can be classified into 4 heads. Each of these heads of income and the distributive rights for taxation of the same are discussed below:

Income from house property

An expatriate shall be taxable in India in respect of income from immovable property provided either such income is received in India or the underlying property is situated in India. However, in case the expatriate is ROR in India, his/her global income would be liable to tax in India and accordingly, income arising from immovable property situated outside India would also be taxable in India.

In this regard, Article 6 of India's tax treaties, dealing with income from immovable property generally provide that such income 'may be taxed in the country where the property is situated' (i.e., the source country).

Since the provisions of the DTAA prevail over the domestic law, the income from immovable property would be taxable in the country in which such property is situated.

Income from Business or profession

In terms of India's tax treaties, business income derived by a non-resident shall be taxable in India provided such business is carried on in India through a 'permanent establishment' situated in India. A permanent establishment ('PE') primarily means an industrial or commercial establishment that is equipped with sufficient resources to operate as an independent business unit ('fixed base PE') and includes within its ambit a PE arising on account rendition of services by a non-resident ('service PE') as well as an agency permanent establishment ('agency PE'). It would basically mean a 'virtual projection' of the resident of a foreign country into India.

Thus, in case a person resident abroad is carrying on a business in India through a PE, income attributable to such PE shall be taxable in India.

Income from profession

In terms of India's tax treaties, income derived by a non-resident in India in respect of professional services shall be taxable in India provided the non-resident professional has a fixed base available to him/her in India or his/her stay in India is equal to 183 days or more in the relevant financial year.

For the purpose of this Article 'professional services' includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Capital gains

Under the ITA, non-resident expatriates are subject to tax only on gains from the transfer of capital assets situated in India or from the transfer abroad of foreign assets if sales proceeds are received directly in India.

Generally, the Article dealing with capital gains in India's tax treaties also provide for the source based taxation in case of immovable properties, movable properties forming part of the business assets of a permanent establishment as well as for shares. For all other assets taxation would be in the country of residence of the tax payer.

Income from other sources

Any residual income not covered in the earlier heads of income is taxable as Income from other sources and basically includes interest,

dividend (excluding exempt dividend under section 10 of the ITA), royalties, fees for technical services, etc. Generally, in terms of tax treaties, non-resident expatriates would be taxable in India in respect of such income provided the same is arising in India. The tax rates for the same are specified in the respective Article of the treaties.

Under the domestic tax law the following interest income are exempt from tax:

- Interest on Non-resident (external) account in the hands of individual non-resident under the Foreign Exchange Management Act[19]
- Interest on FCNR deposits exempt in the hands of individual who are non-resident or resident but not ordinarily resident[20]

The total of income under each of the heads discussed above would constitute the gross total income from which the expatriate can claim certain deductions on account of investments in eligible securities, payment of life insurance premium, contribution to provident fund, contribution to certain pension funds, payment towards children tuition fee and other specified payments up to a maximum amount of ₹ 100,000 per annum[21].

V. Procedural Compliances

An expatriate coming to India has to comply with the following procedural formalities in India

A. Entry procedures – inbound employees

Before arrival:

Foreign nationals arriving in India for employment must hold a valid employment visa. The Indian Embassy/High Commission located in various countries issues employment visa to foreign nationals. There are no work permit requirements to work in India. Business/tourist visas are usually not convertible into employment visa while in India.

After arrival:

Foreign nationals visiting India on employment visa are required to get themselves registered with concerned

[19] Section 10(4)(ii) of the ITA

[20] Section 10(15)(iv)(fa) of the ITA

[21] Section 80C of the ITA

Foreigner's Regional Registration Office ('FRRO') within 14 days of his/her first arrival, irrespective of the duration of their stay[22]. However, foreigners holding Overseas Citizenship of India ('OCI') or Person of Indian Origin ('PIO') are exempted from FRRO registration. In case the expatriate is PIO or OCI card holder, then they do not require FRRO registration.

Further, foreigners visiting India on other categories of long-term visa including Business visa would not require registration with the concerned FRRO if duration of his/her stay does not exceed 180 days on a single visit. In case a foreigner intends to stay for more than 180 days on a single visit he should get himself registered well before the expiry of 180 days.

Registration facilities are not provided at the airport and are carried out in the office of FRRO or District Superintendents of Police.

At the time of registration every foreigner, shall furnish, such information in registration report, as may be in his possession for the purpose of satisfying the Registration Officer and shall, on being required, sign the registration report in the presence of the said officer and shall thereupon be entitled to receive a certificate of registration. For the purpose of the registration the following needs to be submitted:

- Four recent passport size photographs;
- Photocopy of photo page and valid Indian Visa page of the passport;
- Proof of residential address in India;
- Documents of identification and;
- In case of Employment Visa, request letter, undertaking, contract agreement from employer;
- In case of Business Visa, business related papers on the authenticity of the business, copy of permission from Reserve Bank of India and approval of Government of India in case of joint venture/collaboration;

[22] See http://www.immigrationindia.nic.in/reg_req2.htm for further details

No fee is charged for registration, but a penalty in Indian currency equivalent to US$ 30/- (₹ 1,395/-) in case of late registration is charged.

B. **Permanent Account Number ('PAN')**

PAN is akin to an Income-tax registration number and any person earning taxable income in India has to obtain the PAN. The application is to be made in Form 49A to the National Securities Depository Ltd. facilitation centres together with a copy of the following documents:

- Copy of passport as proof of identity
- Copy of bank statement in country of residence or in India, as the case may be, as a proof of address or FRRO registration giving the India address of stay[23]

PAN application can also be made online on the website of National Securities Depository Ltd.[24]

The PAN is to be quoted on all tax returns, correspondence with the tax authorities and on all documents relating to prescribed categories of transactions.

C. **Advance Tax**

Where the total tax liability after TDS exceeds ₹ 10,000 advance tax is payable within the same financial year on the principle of pay-as-you-earn. The due dates for payment of advance tax and the amount payable are:

Due Date	Amount Payable
On or before 15th September of the year	30% of estimated tax
On or before 15th December of the year	60% of the estimated tax less earlier installment
On or before 15th March of the year	Whole of the estimated tax less earlier installments

[23] the documents required for making the PAN application can be accessed at http://www.tin-nsdl.com/Foreigncitizen.asp

[24] https://tin.tin.nsdl.com/pan/index.html

Failure to pay advance tax invites interest liability under sections 234B and 234C of the Act. Interest is payable at 1% per month for three months in case of deferral of tax payment which is due on 15th September and 15th December and for one month in case of deferral of payment of the last instalment i.e. tax which is due on 15th March. No interest is charged in respect of advance tax on capital gains and windfall gains if the tax on such income is paid in subsequent installments due when the gain arises before 15th March. If such gain arises after 15th March, no interest will be charged if the tax is paid on or before 31st March.

If the total amount of advance tax amounts to less than 90% of the tax payer's actual liability after TDS (including foreign tax credit), interest is payable at the rate of 1% per month from 1st April following the year in which the tax is due until full payment of the tax occurs.

The amount paid after 15th March but on or before 31st March is also treated as advance tax paid. Thus, if estimated income is likely to exceed the amount estimated on or before 15 March, then additional advance tax can be paid and penal interest can be saved.

D. **Self-assessment Tax**

Any remaining tax due after claiming credit for Tax Deducted at Source/Tax Collected at Source, advance tax payments and foreign tax credits is to be paid by way of self assessment tax. Self assessment tax is a tax paid after the end of the tax year by an individual and generally at the time of filing the tax return.

E. **Tax return filing**

Every expatriate earning taxable income in India is required to furnish a return of income, in the prescribed form, giving details of his/her income under different heads, tax liability thereon, deductions claimed, etc. The due date for filing such tax return is 31st July of the assessment year i.e. the following financial year. For instance, the tax return for the financial year ended 31st March, 2011 is required to be filed by 31st July, 2011.

A return of income filed within the due date, can be revised at any time, before the expiry of one year from the end of the relevant assessment year (i.e., till 31st March, 2013 in the

above instance) or before completion of the assessment by the tax department, whichever is earlier.

F. **Tax clearance certificates**

The ITA provides for procedures to be followed by any person leaving India to obtain a no-objection certificate and the same are summarised below:

For foreign nationals

In terms of section 230(1) of the ITA a foreign national who has come to India in connection with business, profession or employment and has derived income from any source in India has to furnish an undertaking in the prescribed Form 30A to the tax authorities. The said form is basically an undertaking to be given by the employer of the expatriate to the effect that any future tax liability arising in case of the expatriate would be paid by the employer. The purpose of the undertaking is that the Indian Government should not be at loss in terms of collection of taxes in case any tax liability arises in India after repatriation of the expatriate. The tax authorities upon receipt of the undertaking and verification of the documents filed shall issue a no objection certificate in Form No. 30B to the expatriate. Such certificate issued by the tax authorities is valid for one month from the date of issue. Due to any reason, if the expatriate has to defer his departure date beyond the period of one month, he is required to obtain a fresh certificate from the tax authorities.

The above compliance procedure is not applicable to a foreign national who but visits India as a foreign tourist or for any other purpose not connected with business, profession or employment.

For individuals domiciled in India – outbound employees

In case of a person domiciled in India, leaving India the relevant information needs to be furnished to the tax authorities in Form No. 30C which is a self declaration by the outbound expatriate that includes his/her details such as PAN, passport details, purpose of visit outside India and estimated period of stay outside India, etc.

Thus, it may be seen that an inbound expatriate shall file Form No. 30A and obtain No Objection Certificate in Form 30B from the tax authorities in India while an outbound expatriate shall furnish his/her information in Form No. 30C to the tax authorities.

Exchange Control

A. Residential status

The Foreign Exchange Management Act, 1999 (FEMA) defines a non-resident/ person resident outside India as a person who is not resident in India.

In terms of the aforesaid definitions an individual shall be deemed to be a non-resident in case he/she is residing in India for a period of not more than 182 days and includes:

- A person who has gone out of India or who stays outside India either for employment outside India, or for carrying business outside India, or for any other purpose as would indicate his/ her intention to stay outside India for an uncertain period; and
- A person who has come to or stays in India for purposes other than for taking up employment in India, or for carrying on business in India, or for any other purpose as would indicate his/her intention to stay in India for an uncertain period.

On the basis of the nationality and residential status of the individual under the foreign exchange laws, an individual may be categorized as a Non Resident Indian (NRI) or a Person of Indian Origin (PIO) or a Foreign National.

A non-resident Indian ('NRI') is defined as a non-resident who is citizen of India whereas a Person of Indian Origin ('PIO') means a citizen of any country other than Bangladesh or Pakistan who had (a) at any time held Indian passport or (b) he or either of his parents or any of his grandparents was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 or (c) the person is a spouse of an Indian citizen or a person referred to in (a) or (b).

B. Bank accounts

Banks offer two types of accounts to NRIs, based on whether funds available in the account are repatriable i.e. whether such funds can be transferred or repatriated abroad.

- Repatriable Accounts:
  - Non-Resident (External) Rupee ('NRE') Accounts –

Both Principal and Interest can be repatriated/ transferred out of India.

Savings rate on NRE accounts is at par with savings rates in resident accounts.

Term deposits can be made for 1 to 3 years.

The interest rates on (NRE) Term deposits cannot be higher than LIBOR/SWAP rates as on the last working day of the previous month, for US dollar of corresponding maturity plus 50 basis points.

The interest rates on three year deposits also apply in case the maturity period exceeds three years.

The change in interest rate also applies to NRE deposits renewed after their present maturity period.

- FCNR (B) Accounts –

  As in NRE accounts, both principal and interest are repatriable.

  Presently, deposits can be made in 6 specific foreign currencies (US Dollar, Pound Sterling, EURO, Japanese Yen, Australian Dollar and Canadian Dollar).

  Interest rate — Fixed or floating within the limits of LIBOR/SWAP rates for the respective currency/ corresponding term minus 25 basis points (except Japanese Yen).

  The term of deposits can range between 1 and 5 years.

- NRO Accounts –

  Only current earnings are repatriable.

  Savings NRO accounts are normally operated to credit rupee income from shares, interest, rent from property in India, etc.

  In case of term deposits, banks are allowed to determine their own interest rates.

  Banks can allow remittance up to USD 1 million per financial year for *bona fide* purposes from balances in the NRO accounts once taxes are paid out.

  This limit includes the sale proceeds of immovable properties held by NRIs and PIOs.

- o Resident Foreign Currency (RFC) Account –

  NRIs and PIOs returning to India can maintain an RFC account with an authorized bank in India to transfer funds from their NRE/ FCNR (B) accounts.

  Proceeds of assets held outside India before their return to India can be credited to the RFC account.

  These funds are free from all restrictions as to their utilization or in investment in any form outside India.

- *Non-Repatriable Accounts:* Non-repatriable funds are those which cannot be taken out of India.

  These have to be maintained in a separate bank account i.e. a Non Resident Ordinary ('NRO') account. Investments made from non-repatriable accounts cannot be repatriated but have to be maintained in a Non-Repatriable Demat account. Money once transferred from an NRE account to an NRO account cannot be transferred back to an NRE account.

  Generally when a resident becomes an NRI, his existing savings account is designated as a NRO account. The NRO accounts could be maintained in the nature of current, saving, recurring or term deposits. NRIs can also open NRO accounts for depositing their funds from local transactions. The interest earned from NRO accounts is accountable to tax laws. NRO accounts can be opened in the name of NRIs who have left India to take up employment or business temporarily or permanently in a foreign country. Funds from NRO accounts are not repatriable or transferred to NRE accounts without the prior approval of the RBI.

  However, NRIs, PIOs, Foreign Nationals, retired employees or non-resident widows of Indian citizens can remit, through the Authorised Dealer, up to USD one million per calendar year from the NRO account or from income from sale of assets in India.

It may be noted that the RBI *vide* its recent circular dated 9th June 2011[25] has permitted foreign nationals to re-designate their resident account maintained in India as NRO account on leaving the country

[25] RBI/2010-11/560 A.P. (DIR Series) Circular No. 70

after their employment in order to enable them to receive their pending bonafide dues such as income tax refunds, Provident Fund withdrawals, etc. subject to certain conditions.

C. Remittance of salary

A citizen of a foreign state resident in India, being an employee of a foreign company and on deputation to India or being an employee of an Indian company, may open, hold and maintain a foreign currency account with a bank outside India and receive/remit the whole salary payable to him for the services rendered, by credit to such account, provided that income tax chargeable under the ITA is paid on the entire salary as accrued in India.

Similarly a citizen of India, employed by a foreign company outside India and on deputation to India, may open, hold and maintain a foreign currency account with a bank outside India and receive the whole salary payable to him for the services rendered in India, by credit to such account, provided that income tax chargeable under the ITA is paid on the entire salary as accrued in India.

D. Permissible investments

The permissible investments for different categories of individuals under the foreign exchange laws in India are tabulated as under:

Status of individual	Investments	General / Special permission
NRI	Shares, convertible debentures*, real estate (other than an agricultural land, plantation or farm house) etc.	General Permission granted
PIO	Shares, convertible debentures*, real estate (other than an agricultural land, plantation or farm house) etc.	General Permission granted
Foreign national	Shares, convertible debentures* etc. Real Estate (including an agricultural land, plantation or farm house)	General Permission granted Not permitted**

*The foreign exchange regulations provide that an Indian entity shall issue any security (eg. shares, convertible debentures etc.,) to a non-resident only with the prior permission of Reserve Bank of India (RBI). A foreign national, being a person resident outside India, may acquire shares listed on an Indian stock exchange only through a registered foreign institutional investor route under the portfolio investment scheme. Similarly a NRI/PIO, being a person resident outside India, may acquire shares listed on an Indian stock exchange under the portfolio investment scheme. It may be noted here that once the individual gains the status of being a resident as per the exchange control regulations, the individual may acquire securities through a recognised stock exchange in India.

** A foreign national is generally not permitted to acquire any property or invest in real estate in India. However, he may acquire a residential property in India by obtaining a prior permission from the RBI. The RBI may grant permission to the foreign national after satisfying certain conditions, on a case to case basis.

Hence, it may be observed that a NRI/PIO may be privileged to make investments into most forms of investments, whereas certain restrictions are applicable in case of investments made by foreign nationals.

Financial Planning for Expatriates

Introduction

Most individuals choose to become expatriates to either improve their current lifestyle and/or to create better financial security for their future. Luxury accommodations and new work experiences also add to the perks of turning expatriates. These objectives seem easier to achieve for an expatriate as the cost of living is generally lower in the country where they are posted, with the additional benefit of earning higher than what they would have earned in their home country to compensate for the relocation.

But, from the personal financial planning perspective, being an expatriate may not be all that attractive. Individuals typically have to forego quite a few of their privileges like social security benefits, validity of their life insurance and additional tax liabilities – on account of taxes on income earned on assets in their home country plus taxes on their incomes in the host country.

While being an expatriate, it is easier to get trapped in the exquisite lifestyle in the host country, failure to take some simple financial measures at various stages could only help worsen their financial situation over medium to long-term.

The following paragraphs address some of the key financial planning issues to be managed for an Expatriate.

1. Residential status

The first step for an expatriate during their movement is to understand the change in their residential status and gauge the impact of the same on their income. An in-depth discussion on this aspect has already been covered in the preceding chapters on taxation for expatriates.

2. Cost of living

One of the important challenges facing the expatriate in a host country is factoring in the difference in the cost of living in a country other than their normal residence. Cost of living could be better or worse in the host country, many a times this difference is compensated for by the employers by way of 'Cost of Living' allowance.

Budgeting, at least for the first 3-4 months of moving into the host country, would help the expatriate to account for the actual increase/ decrease in monthly expenditure and the allowance received.

Any surplus from the allowance should be put to effective use by the expatriate, while in case of any shortfall, adequate measures need to be planned to fund the same.

3. Property(ies) in their home country

Any property, owned by the expatriate in the home country, has to be managed well before the transfer. An expatriate can choose from options such as selling the property before moving out, leaving his/ her family back in that property, renting the property or simply do nothing with the property.

If the expatriate chooses to sell the property, it is advisable to meet all the tax obligations in respect of the capital gains taxes in the home country, or at least provide for the same, before relocation.

In case, the expatriate chooses to rent the property, adequate measures have to be taken to handle the taxation of that income in the home as well as the host country. Adequate arrangements need to be made to organize for the collection of the rentals and payment of taxes on time. It is advisable to have a representative, wherever possible, or a professional to attend to the property for any repairs or other incidental matters. A property is one of the important assets in any individual's net worth and thereby necessary measures are a must to upkeep the same during the time the expatriate is relocated.

Doing nothing with the property will also need special efforts to maintain and upkeep the property till the expatriate's return to his home country. Here too, it is advisable to appoint some trustworthy person who would oversee the maintenance of the property back home.

4. Expatriate banking matters

Many expatriates who choose to manage their own savings and investments have traditionally allocated their money into cash and property. Consequently, it would be prudent to discuss about the banking operations for expatriates here. Most expatriates split their money into 2 bank accounts – a local currency bank account for India and their home country bank account.

4.1 Indian accounts

More often than not, the Indian bank account is where the expatriate's salary is deposited and their house rent/ utility bills/ car loans (if any) and day-to-day living expenses are managed from. In choosing an Indian bank account, an expatriate can consider between vanilla savings account and 2-in-1 accounts, which help the account holders to auto sweep-in money into higher interest yielding deposits, while extending the benefit of overdrawing expenses from the deposit to the extent of the deposit kept.

Availability of other facilities such as wide-network of ATMs, convenient branch locations, Internet banking, higher interest deposits, access to loans is also important to be noted before finalising on any banking institution.

The expatriates have to ensure that their Indian accounts maintain a balance that is at least equal to 3-4 months of their average monthly expenditure. In addition to the same, it is recommended that the Expatriate maintain an 'Emergency Fund' to the tune of at least 4-5 months expenses by way of Fixed Deposits in their Indian accounts. This fund should be sufficient to meet any unforeseen expenditure.

4.2 Overseas accounts

The overseas account is the account that the expatriate maintains in their home country where the balance savings are parked. This account may be typically used to pay utility bills and any mortgage repayments back home. One important issue in maintaining such overseas accounts is that of security. Though internet banking facilities is important to access and manage the account, it should be ensured that the bank takes sufficient measures by way of encryption and other matters to prevent the account from being hacked.

5. Currency exchange

Exchanging foreign currency is an inevitable task for all expatriates.

Activities ranging from buying a new property or sending money to overseas accounts or many more of similar activities will require exchanging of currencies, and international money exchange can often be a costly process.

Many expatriates tend to use their banks for international currencies exchanges. Banks are typically known to having a large spread on exchange rates.

A better option advisable here is to use the services of a foreign exchange company. This can definitely help the expatriate save a lot of money.

6. Retirement planning

Retirement planning implies planning for ones retirement by making provisions out of one's current income and investing for the retirement time. However, for expatriates, enjoying a more lavish lifestyle, things can be quite different and difficult, as during retirement, the expatriate would expect to at least continue their current standard of living, if not improved.

It can sometimes be difficult to estimate for how long an expatriate may be living and working in India, especially if they have been posted here on employment at key positions in companies. It is also possible for an expatriate to take up several expatriate postings in different countries during their working life. In such cases, the expatriate may actually retire in their home country, but minus the equivalent social security benefits that he / she would have earned by working in their home country.

Therefore, it becomes essential that an expatriate has to take due care in planning for their retirement by considering the various options available in India (or any other countries) with the help of a proper retirement plan. Every expatriates needs would be unique and their retirement plan has thus got to be unique.

Expatriates can now take advantage of the Provident fund schemes available in India and which has been made mandatory for international workers too. This topic has been discussed in depth in the preceding chapters on taxation of expatriates.

7. Building and maintaining an effective investment portfolio

It is very important for an expatriate to continue to build and maintain a focussed investment portfolio which has the potential to take into account all of their investment needs. This would include investments that may have been made in their home country and/ or in other countries where they might have lived and worked in.

Framing investment policies have to cater to some specific aspects like:

a. Taxation – most of this has been covered in the preceding chapters;

b. Liquidity – expatriates should avoid locking their money in long maturity investments or illiquid investments;

c. Ease of management – the investments should be easily manageable so that the expatriates are able to retain control over their investments;

d. Flexible;

e. Portable;

f. Balance between growth and income

Liaising with a well-qualified local financial planner/advisor for this issue would work best for expatriates. Some of the commonly available avenues for investments by expatriates would be bank fixed deposits, company deposits, mutual funds, bonds, etc.

8. Personal insurance needs

8.1 Health insurance

The first and the most important aspect in relation to the personal insurance needs of the expatriate is to check if the medical cover of the home country would be actually valid in India and whether any claims in India shall be entertained.

This is often the most overlooked aspect, of which the consequences can be severe with the finances having to suffer in case of any contingencies. In such cases, it would be worthwhile for the expatriate to have a stand-alone medical cover in India for himself and family.

8.2 Life & other insurances

An expatriate cannot ignore 3 of the most important covers under his risk management plan in India:

- **Life** cover to protect the expatriates family from unforeseen events,
- **Critical Illness** cover to protect against dreaded diseases, and
- **Income replacement** covers in case of permanent disabilities

It is advisable that the expatriate opts for a locally based policy in the host country for these needs. Like for the medical cover, the expatriate needs to examine if any cover available with the home country is actually valid and will pay out the proceeds in case of any of the insured events were to occur.

9. Estate planning — Valid Will

A will is basically an instrument that will help the expatriate to pass on their estate to those they wish, after death.

One's will has to be reviewed periodically to factor in the changes in one's personal life and properties. For an expatriate, another dimension that adds to the importance of a valid will is disposal of properties in their home country as well new assets acquired in the host country. The expatriates have to take note of the fact that in the absence of a valid will, the disposal of assets in the host country may be governed by the local laws applicable there. This may sometimes create an unwarranted situation, which may be difficult to cater to.

While the law need not be specific to have a separate will in every country where the expatriate holds property, if properly handled, it will certainly make the job of the executors to the will a lot easy. In other words, such a mechanism will help the executors with the power to implement and enforce the expatriate's wishes in every jurisdiction.

Another aspect of Estate Planning is to be aware of the Inheritance laws in the host and home country, in case the expatriates are beneficiaries under any of their relatives will. Proper planning here will help the expatriate to avoid any surprises on this front.

Conclusion

Last, but not the least financial planning for expatriates includes planning for their return to home country. Too often, expatriates return back home without proper financial consolidation, which in turn could lead to severe consequences. A proper exit strategy has to be worked out to fit each individuals particular set of circumstances and the prevailing market conditions. In fact, at such times the expatriate has to increase his/her interaction with their financial advisors both at the source country and home country.

To sum it up, it would not be an over statement to say that if an expatriate begins planning for his entry to the host country 6 months prior to his departure, then financial consolidation for the exit to home country should begin at least 1 year in advance before the exit date.

Gist of Important Case Laws

UOI vs. Azadi Bachao Andolan (SC) (236 ITR 706) *Page 12*

Circular No. 789 dated 13-4-2000 providing that FIIs, etc. which are resident of Mauritius would not be taxable in India on income from capital gains arising by sale of shares is valid and efficacious — the double taxation agreement between India and Mauritius is valid in law and an attempt by resident of third party to take advantage of existing provision of DTAC is not illegal.

RBF Rig Corporation vs. ACIT (Delhi ITAT SB) (297 ITR 228) *Page 20*

The taxes paid by the employer on behalf of the employee are a perquisite within the meaning of section 17(2) of the Income-tax Act, which is "not provided by way of monetary payment". Such tax payment is exempt u/s 10(10CC) — accordingly taxes paid would not form the part of total income of the employee and hence not requiring multiple grossing up for the purpose of TDS.

Eli Lilly & Company (India) Pvt. Ltd. (SC) (178 Taxmann 505) *Page 22*

The withholding tax provisions relating to salary payments are distinct from with the withholding tax provisions on other income — if the salary paid by the foreign company abroad was for rendition of services in India and if no work was found to have been performed for the foreign company, such payments would be subject to withholding tax provisions in India — the Indian JV was required to comply with the withholding tax provisions even in case of salary paid overseas by the foreign company.

Interest will be charged only in cases where no taxes have been paid on foreign salary or where there is a gap between the date on which tax was deductible and the date of actual tax remittance of salary.

British Gas India Ltd. (AAR) (285 ITR 218) *Page 23*

The AAR was of the view that the requirement under Explanation (a) to section 6(1) of the ITA was not leaving India for employment but it was leaving India for the purposes of employment outside India and a person who was leaving India for employment outside India need not be an unemployed person in order to be entitled to claim the beneficial provisions of the said Explanation – accordingly the salary paid by the Indian entity to such non-

resident employee shall not be taxable in India, if the same has been offered for tax in the foreign country

Gallotti Raoul vs. ACIT (Mumbai ITAT) (61 ITD 453) ***Page 24***

Mandatory contribution by the employer towards the social security in the home country of the employee (foreign national), wherein no benefit/ right gets vested in the year of contribution should not be considered as a taxable perquisite in hands of such employee. Also see *ACIT vs. Harashima Naoki Tashio,* ITA No. 4634/Del)