CA Act & Regulations | Accounting & Auditing | Income Tax & Wealth Tax | Indirect Tax | Company Law | Other Law | Miscellanea

Print Home Search

Back Up Next

TAXATION OF NON-RESIDENTS

1. WHO IS A 'RESIDENT' FOR TAX PURPOSES? (SECTION 6)

A. INDIVIDUAL

1. An individual is considered as a **'resident'** if he is

   a. in India for 182 days or more in a previous year

      OR

   b. in India for 365 days or more in 4 years immediately preceding a previous year and 60 days or more in a previous year

   Exception:

   A citizen who leaves India in any year for employment or as a member of the crew of an Indian ship or who is abroad and comes on a visit to India, in the previous year, is treated as a resident in that year, if he has been in India for 182 days or more. The second condition in b) above, is not functional in such cases.

2. An individual is considered as **'not ordinarily resident'** if he is

   a. a non-resident for 9 out of 10 previous years in the immediately preceding previous years

OR

b. has been in India for a period of 729 days or less in the seven preceding previous years.

3. An individual is considered as **'non-resident'** if he does not satisfy either of the conditions mentioned in 1) above.

   Note: In case of presence in India for part of a day, in the calculation of days/physical presence, the broken period should be taken on hourly basis (*Walkie vs IRC* (1952) 1 AER 92. And in case of non-availability of data, the date of arrival and date of departure shall be taken into account for the purpose of calculation of number of days. (Advance Ruling P. No. 7 of 1995).

B. **HUF/FIRM/AOP** is said to be **'resident'** in any previous year if it is **wholly or partially** controlled or managed from India; i.e., it would be a **'non-resident'** if control or management is **wholly** outside India.

C. COMPANY

Company is said to be '**resident'** in India in previous year if

- It is an Indian Company OR
- Management and Control is situated wholly in India

2. TAXABILITY OF INCOME (SECTION 5)

Resident	***World income liable for tax in India***
Non resident	Only Income deemed to accrue or arise in India and Income received or deemed to be received in India is liable to be taxed in India
Resident but Not ordinary resident	Income received or deemed to be received in India and Income accruing or arising or deemed to accrue or arise in India and Income accruing or arising or deemed to accrue or arise outside India from business controlled in India or profession set up in India will be liable to be taxed in India.

3. EXEMPT INCOME (SECTION 10)

Section	***Particulars***	***Remarks***
10(4)	Interest on Bonds or securities as notified by the government, premium on redemption and	Exempt
	Interest income on NRE Account paid or credited	

10(4B)	Interest income from notified government securities; i.e., NSC (VI/VII Issue) purchased in foreign exchange before 1-6-2002, by a NR who is an Indian citizen or a PIO.	Exempt
10(15)(i) & (iid)	Income by way of Interest, premium on redemption or any other payment on NRNR deposit and other securities, bonds, savings certificates, notified u/s 10(15)(i).	Exempt (Interest on NRNR deposit is exempt till he continues to be a non resident), however Premature encashment is taxable in the year of encashment.
10(15)(iv)(fa)	Interest on FCNR and RFC Deposits paid by a however Premature encashment is taxable in scheduled bank to a NR or NOR	Exempt
10(34)	Income by way of dividend from Mutual fund specified u/s 10(23D)	Exempt
10(35)	Income received from Administrator of Unit Trust of India and from Unit Trust of India.	Exempt
10(36)	Income from transfer of Long-term Capital Gains	Conditions • Purchased from a recognized Stock Exchange or issued through public issue by company • on or after 1st March 2003 and listed before 1st March 2004 • forming part of BSE - 500 as on 1st March 2003 , • held for a period of 12 months, is exempt. Further CBDT has issued a circular clarifying the shares allotted under the divestment process by the Government of India shall qualify for this section and hence can be claimed exempt.
10(38)	Income by way of Long-term Capital Gains	On Sale of securities affected on a recognized stock exchange. after the applicability of the Securities Turnover Tax are exempt

4. BUSINESS INCOME OF NON-RESIDENT (SECTION 44)

Section	***Particulars***	***Remarks***
Section 44B	Shipping companies profits derived by non-residents	Profits and gains of non resident from the business of operation of ships are taxed at the rates of 7.5% of the aggregate of the amount paid on account of carriage of passengers, livestock mail or goods shipped at any port in India and amount received or deemed to be received in India on account of carriage of passengers, livestock mail or goods shipped at any port outside India. *Note*: Amount received on account of Demurrage charges/Handling charges or any other amount of similar nature shall also be included for the purpose of calculating business profits@ 7.5%
Section 44 BB	Income from activities connected with exploration of mineral oils	In case of NR engaged in the business of providing services and facilities in connection with or supplying, plant and machinery on hire, used or to be used for and exploration of mineral oils, the income is taxable @ 10% of amount paid or payable to any person on behalf of, for the provision of these services
Section 44 BBA	Operation of a Foreign Airlines	Income from such business is charged at 5% of the amount received from carriage of passenger, livestock, mail, or goods from any place in India or deemed to be received by or on behalf of the tax-payer on account of such services from any place outside India.
Section 44BBB	Foreign Companies engaged in business of civil construction	Income of a foreign company with respect to the business of civil

		construction or the business of erection of plant and machinery or testing or commissioning in respect of a turnkey power project approved by the Central Government in this behalf, shall be chargeable @ 10% of the amount paid or payable in connection with such project.
Section 44C	Deduction of head office expenditure in respect of Non-resident	Allowance for expenditure of Head office shall be restricted to least of the amount equal to 5% of adjusted total income or so much of expenditure as is attributable to business or profession in India

An assessee can claim profits lower than prescribed above, for which he would be required to maintain books of account as required by section 44AA and the accounts shall have to be audited under section 44AB. The AO shall make an assessment u/s 143(3) and determine the tax payable or refundable as the case may be.

5. SPECIAL RATES OF TAX ON FOR NON-RESIDENTS

Sections 115A to 115AD covers the tax rates for investment income/royalty income of different non-resident entities.

Section	***Particulars of Income***	***Tax rates/TDS***
115A(1)(a)	1. Income by way of Dividend (other than 115–O), 2. Interest received from Government or any Indian concern for money borrowed in foreign currency, and 3. Income on units purchased in foreign exchange u/s 10(23D) or UTI	20%
115AB	Income from units purchased in foreign exchange by a Overseas Financial Organsiations registered with SEBI by way of: 1. Long-term Capital Gains arising on sale/repurchase of units of Mutual Funds u/s 10(23D)/UTI 2. Income received from units	10%

115AC	1. Interest by way of notified bonds of Indian Companies or bonds of public sector company, purchased in forex	10%
	2. Dividend on Global Depository receipts (GDR)	10%
	3. Long-term Capital Gains on transfer of such bonds or GDR	10%
115AD	Income from Foreign Institutional Investor (FII)	
	1. income (other than dividend u/s 115-O)	20%
	2. Short-term Capital Gains	30%/10%*
	3. Long-term Capital Gains	10%/NIL **
115A(b)	Income by way of Royalty or Fees for Technical Services received by a nonresident (not being a company) or a foreign company from Government or Indian Concern under agreement entered after 31st May 1976 and where it is entered into with Indian Concern, it is approved by Government or it relates to matter included in Industrial policy	
	— for royalty/fees for Technical Services payment under agreement entered on or before 31st May 1997	30%
	— for royalty fees for Technical Services payment under agreement entered on or after 31st May 1997 but before 1st June 2005	20%
	— for royalty fees for Technical Services payment under agreement entered on after June 2005	10%

(*) Where securities transaction tax (STT) has been paid tax would be charged at 10%

(**) Where securities transaction tax (STT) has been paid the long-term capital gains would be exempt

In case where the gross total income consists of only income referred above, no deduction shall be allowed under chapter VIA or under sections 28 to 44C and 57 in computing the taxable income under sections 115 A, 115AB, 115AC, 115AD. Further no return is required to be furnished u/s 139(1) where the total income of the assessee includes only the specified income and the TDS under provision of Chapter XVII B has been deducted therefrom.

***Note*: Short-term Capital Gains taxed @10% u/s 111A as well as Long-term Capital Gains shall not be eligible for deduction u/c VIA**

6. SPECIAL PROVISION FOR NRIS – CHAPTER XIIA (SS. 115 C TO 115-I)

Chapter XIIA covers the taxability of the any income earned by a Non-resident Indian (NRI) from foreign exchange asset. However, a NRI may elect not to be governed by the provision of this chapter and to be assessed under the normal provisions of the Act by giving a declaration to that effect along with his return of income. Accordingly, the chapter shall not apply to him w.e.f. the said assessment year

1. **Definitions**

   NRI — an individual being a citizen of India or a PIO, who is not a 'resident'.

   PIO — a person is deemed to be of Indian origin if he or either of his parents or any of the grandparents was born in undivided India.

   Investment income — income earned from 'foreign exchange asset'

   Foreign Exchange Asset — 'specified asset' acquired by NRI out of convertible foreign exchange

   Specified asset means any of the following assets, namely: —

   i. Shares in an Indian company (public or private);
   ii. Debentures issued by an Indian company, which is not a private, company
   iii. Deposits with an Indian company, which is not a private company
   iv. Any security of the Central Government (NSC VI/VIII issue) (Ref Note)
   v. Any other assets as specified by the Central Government (no asset notified till date)

2. **Computation of income**

   The taxability of investment income as follows (Ss. 115D and E)

   a. Any income from investment or income from long- term capital gains from assets other than specified assets — 20%
   b. Income by way of long-term capital gains from specified assets — 10%
   c. No deduction permissible under Chapter VIA

f. No deduction for any expenditure
g. No indexation benefit

It is not necessary to file return of income (S. 115G) where the total income includes only the above two types of income whereon tax has been duly deducted. However where a NRI has other income; i.e., income other than foreign exchange asset, NRI is required to file his Return of Income and it shall be assessed under the normal provision of the Act.

3. **Exemption from Long-term Capital Gains Tax u/s 115F**

Capital gains arising on transfer of foreign exchange asset shall be exempt in case the

- NET CONSIDERATION is reinvested
- within a period of six months
- in any other specified asset (as mentioned above) (Ref Note)

However where the new asset is transferred or converted to money within a period of three years from the date of its acquisition, the capital gains claimed exempt u/s 115F shall be taxable under the head "Capital Gains" along with the Gains arising on transfer of the new asset purchased.

4. **Applicability of Chapter XIIA after becoming resident**

NRI can continue to be assessed under chapter XIIA with respect of income from specified assets. He may furnish a declaration along with his return of income filed u/s 139 to the Assessing Officer that the provision of this Chapter may continue to apply to him with respect to the said investment income. Accordingly, he shall be assessed under the said provision for specified income till the conversion of such asset into money or other asset.

7. SPECIAL PROVISION FOR CALCULATION OF CAPITAL GAINS OF SHARES & DEBENTURES

Proviso 1 to Section 48 explains the method of calculation of capital gains on transfer of shares/debentures of Indian company (private or public). The same shall be computed by conversion of sales consideration and transfer expenses into the same foreign currency which was utilized for purchase of such shares/debentures. The capital gains so arrived is reconverted into Indian rupees as per the rates specified below:

Particulars	***Exchange rate to be applied***
Sales consideration	Average exchange rate on date of transfer
Cost of acquisition	Average exchange rate on date of purchase
Expenditure on sale	Average exchange rate on date of transfer
Capital Gains	Buying rate on date of transfer

The exchange rates to be considered above shall be the telegraphic transfer buying/selling rates as adopted by State Bank of India for purchasing or selling such currency.

Since the non-residents can avail of the benefit of exchange rate fluctuation, no indexation benefit is available in this case.

8. TAXABILITY OF VARIOUS INVESTMENT OPTIONS IN INDIA

Investment Scheme	***Taxability of Income***	***Principal/Redemption proceeds***
Public Provident Fund	Tax Free	Tax free
Mutual Funds	Dividend from equity oriented MF is tax free Dividend income from Debt oriented Mutual Fund is also tax free	Maturity/redemption proceed minus cost of investment is taxed as Short-term capital gains where held for less than 12 months. Long-term Capital Gains is Exempt in case of equity oriented Mutual Funds
Equity shares	Dividend Income is tax free	Sales consideration minus Investment is taxed as Short-term capital gains where held for less than 12 months Long-term Gains Exempt (subject to 10(36), and 10(38))
Bank Deposits	Taxable	Principal is not taxable
Immovable property	Rent Income subject to section 24.	Sales consideration less indexed cost of acquisition taxable @ 20% subject to section 54-54F)

9. APPLICABILITY OF DTAA

Where the non-resident is covered under any DTAA, the rates of tax applicable for specified income shall be lower of the rates prescribed under the Act or the DTAA.