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# Assignments in India

Overview of Tax and Regulatory Framework for Foreign Nationals 2011



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Moving to a foreign country often proves challenging. Coming to terms with a new tax system is one of the more significant factors contributing to this challenge. This guide is designed to help expatriates:

- To get an idea about the changes to their personal income tax as a result of such a move; and
- To understand the steps they may be advised to take before they leave their home country.

When dealing with the tax implications of moving abroad, it is helpful to consider the following:

- What tax planning should be done before the transfer abroad;
- How is the expatriate taxed in the foreign country; and
- What tax matters need consideration in preparing for the return to the home country.

This booklet reflects tax law and practice in India applicable for the Indian fiscal year 2010-11 (assessment year 2011-12).

This booklet does not claim to be a comprehensive guide. Accordingly, we must advise the reader against making decisions without consulting their tax advisors.

Should you require any specific information or additional copies of the booklet, please contact Mr. Kaushik Mukerjee, Executive Director at kaushik.mukerjee@in.pwc.com. (Please see Appendix D for contact details and addresses).

### Understanding basic principles

Section 01

#### The scope of Indian taxation

- 1. As a foreign national seconded to work in India you will, in general, become liable to Indian income tax. Other taxes to which you would become liable for are capital gains tax levied on disposal of assets in India and wealth tax levied on possession of taxable wealth. While many employers tax equalize the seconded employees, the primary tax liability under the tax laws remains with the employees.
- 2. Taxation in India is based on the residential status of a person and not on citizenship. Residential status of a person under Indian tax is determined solely based on his or her physical presence in India regardless of purpose of the stay.

#### The tax year

- 3. The Indian tax year runs from April 1 to March 31. The tax year is classified into:
  - "Previous year" with reference to which income subject to tax is computed; and
  - "Assessment year", which is the year subsequent to the previous year with reference to which income of the previous year is assessed and subject to tax at prescribed rates.

For example, the assessment year 2011-12 (April 1, 2011 to March 31, 2012) will correspond to previous year 2010-11 (April 1, 2010 to March 31, 2011).

#### Residence

4. Under the existing legislation, if you have stayed in India only for brief period of time, whether you

- are resident and / or ordinarily resident in India for tax purposes is determined initially by reference to your intended length of stay. If your stay is longer than intended, your residential status could change. If you spend an aggregate of 182 days or more in India in any previous year, you will certainly be considered as a resident for that year.
- 5. In order to follow the remainder of these notes and to understand their relevance to your situation, you will need some idea as to what your residential status could be. The following scenarios and examples indicate what rulings might be expected under the present law and practice in various circumstances.

If this is your first stay in India as an employee in India, the following rulings are probable:

#### Non-Resident

5.1 If you have been in India for 60 days or more but less than 182 days, and in the last four years preceding the relevant previous year you have not been in India for a period or periods aggregating to 365 days or more, you shall be a non-resident.

#### Example A

If you come to India after October 2, you would be treated as non-resident for that previous year as your stay in India would be less than 182 days provided you were not in India for an aggregate of 365 days or more in the 4 years preceding the previous year.

#### Example B

If you come to India after February 1, you would be treated as non-resident for that previous year since

you were present in India for less than 60 days.

#### Resident

5.2

- In any previous year your aggregate stay in India is 182 days or more, or
- In any previous year, your aggregate stay in India is 60 days or more and 365 days or more during the 4 tax years preceding the year for which residential status is being determined.

#### Example A

If you come to India on or before 30 September, you would be treated as resident for that previous year. You would be taxed on income arising in the first year from the start of your assignment till 31st March.

#### Example B

If you come to India on or before 31 January and you have stayed in India for 365 days or more during the 4 years preceding the relevant previous year, you would be treated as resident for that previous year.

#### Not Ordinarily Resident / Ordinarily Resident

- 5.3 A resident individual is treated as a 'resident but not ordinarily resident' (RNOR) in India if he satisfies any one of the following conditions:
- He has been a 'non-resident' in India for 9 out of 10 tax years preceding the year for which residential status is being determined; or
- He has been in India for a period of 729 days or less during the 7 tax years preceding the year for

- which residential status is being determined.
- · A "resident" individual satisfying none of the above two conditions is a "resident and ordinary resident" (ROR).

#### Example

If an expatriate stays in India for say 300 days for each of the 3 years, then he will not qualify as RNOR in the fourth year as:

- He is not a non-resident in 9 out of 10 previous years; and
- His physical presence is India exceeds 729 days in the preceding 7 years.

An expatriate who is an ROR is taxable on worldwide income. An expatriate who is RNOR is taxable on income earned/accrued or received in India.

6. Salary income is subject to income tax in India if services are rendered in India, irrespective of whether salary is received in India or not. Other incomes are subject to income tax if received or are deemed to be received in India, or accrue or arise or are deemed to accrue or arise in India.

In addition, income that accrues or arises outside India will also be subject to income tax in the case of persons who are resident and ordinarily resident in India under Indian tax legislation. In other words, an expatriate who is resident and ordinarily resident is taxed on his/her worldwide income.

#### Methods of calculating tax

7. An overview of personal deductions and income tax rates for assessment year 2011-12 and an example of an income

tax calculation for the previous year 2010-11 are set out in Appendix A. After deduction of allowances, income tax is imposed at graduated rates. Rates for assessment year 2011-12 are as follows:

Taxable Income Over (INR)	Not Over (INR)	Tax on Column 1 (INR)	Percentage on excess (%)
0	1,60,000	-	0%
1,60,000	5,00,000	-	10%
5,00,000	8,00,000	34,000	20%
8,00,000		94,000	30%

Resident women having income upto INR 190,000 and resident senior citizens (age of 65 years or more) having income upto INR 240,000 do not have to pay income tax.

Further, an education cess @3% of the tax will be levied.

8. Long-term capital gains are subject to tax at a flat rate of 20% (plus 3% education cess). However, long term capital gains from securities listed on a stock exchange in India, where Securities Transactions Tax has been paid, are exempt from income tax. Short-term capital gains are added to taxable income and subject to tax at normal rates. However, short term capital gains from securities listed on a stock exchange in India, where Securities Transactions Tax has been paid, are taxable at 15% (plus 3% education cess).

The concepts of long-term and shortterm capital gains are discussed in Paragraphs 22-25.

9. Wealth tax is currently not charged if the taxable wealth in India does not exceed INR 3,000,000 as on the valuation

- date each year, i.e., March 31. Taxable wealth in excess of INR 3,000,000 as on March 31 is charged at a flat rate of 1%.
- 10. There is no gift tax liability in India. However, where any sum of

money or property aggregating to INR 50,000 or more is received without consideration from any person(s) would be subject to tax as "Income from other sources".

This would not apply to any sum of money / property received:

- from any relative (spouse, brother, sister, brother or sister of the spouse or any lineal ascendants or descendants); or
- on the occasion of the marriage of the individual; or
- under a will or by way of inheritance; or
- in contemplation of death of the donor.

#### Husband and wife

11. Husband and wife are treated as separate and independent individuals for the purposes of income tax. However, income arising directly or indirectly from assets transferred by an individual to the spouse without adequate consideration is subject to tax in the hands of the transferor. Similarly, assets transferred without adequate consideration to the spouse are included in the taxable wealth of the transferor for wealth tax purposes.

## Understanding the Indian tax system

Section 02

#### The taxation of employment income

- 12. Taxable income includes all amounts, whether in cash or in kind, arising from an office of employment. It need not necessarily be the employer who makes the payment or provides the benefit. Apart from salary, fees, bonuses and commissions, some of the most common remuneration items are allowances, reimbursement of personal expenses, education payment and perquisites/ benefits provided by the employer either free of cost or at concessional rates. All such payments are included, whether paid directly to the employee or on his behalf. Incomes that are exempt from levy of income tax are dealt with separately.
- 13. Reimbursement of expenses actually incurred wholly, necessarily and exclusively in the performance of official duties is not included in taxable salary. Children education allowance and hostel allowance are exempt up to INR 100 / INR 300, respectively, per month per child (limited to 2 children). House rent allowances and certain other allowances are exempt subject to certain limits and conditions. Payment for encashment of earned leave at the time of retirement is exempt subject to certain conditions and limits. Provision of free medical facilities is not taxable in the hands of the employees, subject to certain conditions and limits.
- 14. Housing benefits provided by an employer are generally taxed at 15% of the salary or rent paid for the accommodation

- whichever is less. Hotel accommodation is taxable at 24% of salary or amount paid whichever is less. Cost of meals and laundry expenses are fully taxable. Accommodation provided in the remote area to employees working in mine, project execution sites etc. is not taxable.
- 15. Tax borne, if any, by an employer on non-monetary perquisites need not be grossed up in the hands of the employee. However, the employer cannot deduct such tax paid in computing its taxable income.
- 16. Examples of non-cash benefits which could be subject to tax might include use of accommodation, use of other assets, medical and life insurance plans, free use of gas/water/electricity and provision of free domestic helps etc.
- 17. The Finance Act 2009 has abolished the Fringe Benefit Tax introduced earlier by the Finance Act, 2005. Accordingly, following benefits earlier taxed as Fringe Benefit Tax in the hands of employer would be now taxable as perquisites in the hands of employee:-
- Value of any specified security or sweat equity shares allotted or transferred directly or indirectly by the employer or former employer, free of cost or at a concessional rate to the assessee. The valuation for this purpose is to be done on the basis of the Fair Market Value of the specified security or sweat equity share on the date on which the option is exercised by the employee.

- the amount of any contribution to an approved superannuation fund by the employer to the extent it exceeds one lakh rupees.
- Car and driver facilities provided by the employer is taxable at INR 1,800/2,400 per month (depending on the cubic capacity of the car) if the car is available for both official and personal use. Provision of Chauffer by the employer is also concessionally taxed at INR 900 per month.

Expenses incurred on telephones including a mobile phone actually incurred by the employer on behalf of employee are not taxable as perquisite.

In addition, certain other benefits like domestic servants, utilities, children education, interest free loans, usage of movable assets, gifts, credit card payments, food, club membership etc. are also taxable subject to tax valuation norms.

- 18. A deduction is allowed for profession tax (tax on employment) levied by State Governments and paid by the employee.
- 19. There are a number of issues relating to the taxation of employment income, which depend on the facts and circumstances of each case, and on the views taken by the Tax Authorities. Therefore, you should seek professional advice on your remuneration package as a whole to minimize Indian tax incidence.

#### The taxation of selfemployment income

20. Profits or gains from a trade, profession, business or vocation, which you carry out within India, are subject to tax whether you are resident or nonresident. If you are resident and ordinarily resident in India, a liability would arise even if your trade, etc., is carried on outside India. You should seek professional advice at the earliest possible stage.

## The taxation of investment income

21. Foreign nationals not resident in India are not allowed to make investments in immovable property in India without obtaining the specific approval of RBI. Investments in shares / Compulsory Convertible Debentures / Compulsory Convertible Preference Shares of an Indian company by foreign nationals not resident in India are subject to FDI (Foreign Direct Investment) Policy of Government of India. Foreign nationals resident in India are permitted to make investments.

#### Capital gains tax

- 22. As a general rule, capital gains from the disposal of taxable capital assets situated in India are liable to tax in the previous year in which such assets are sold and/or transferred.
- 23. Taxable assets include all forms of property, stocks and shares, land and buildings, goodwill, etc. (but exclude personal effects except jewellery, stock-in-trade, stores, and raw materials held for business purposes).

- 24. Assets held for more than three years (one year in the case of shares / securities or units of Unit Trust of India or of an Indian Mutual Fund) are called "long-term capital assets" and the assets not so held are called "short-term capital assets". Capital gains arising from transfer (disposal) of longterm capital assets are called "long-term capital gains". Gains arising from transfer (disposal) of short-term capital assets are called "short-term capital gains". This distinction is important as "long-term capital gains" are taxed / treated beneficially.
- 25. Short-term capital losses can be offset against any capital gains (long-term or short-term).

  Long-term capital loss can only be offset against long-term capital gains. Unabsorbed capital losses can be carried forward for a maximum of eight years to be offset only against future capital gains as above.

#### *Double taxation agreements*

26. So far, we have outlined the general principles of Indian domestic tax laws. However, if you are treated as a tax resident of another country you may qualify for relief from Indian tax under a double taxation agreement between that country and India. Most current agreements lay down various tests to determine in which of the two countries an individual is resident for treaty purposes. Most agreements contain clauses, which exempt

a resident of one country from tax on employment income in India if he is present in India for less than 183 days in a tax year, and some other conditions regarding the salary charge back and payment of salary by non resident etc. are satisfied. A list of countries with which India has such agreements is given in Appendix B.

#### Social security taxes

27. On October 1, 2008, the Ministry of Labour & Employment, Government of India notified social security schemes for international workers (IWs). Accordingly, every foreign national, holding passport of a foreign country is mandatorily required to contribute to the Indian social security schemes, namely, Employee's Provident Fund (EPF) and Employee's Pension Scheme (EPS), provided he/ she is coming to India to work for an Indian establishment to which the Provident Fund Act ("PF Act") applies. Further, IW coming from a country with which India has a Social Security Agreement ("SSA") and he/ she is contributing on reciprocity basis to the home country social security, either as a citizen or resident and enjoying the status of 'detached worker' in terms of the SSA, is excluded from this requirement.

India has so far signed social security agreement (SSA) with eleven countries to help employees and their employer from making double social security contributions in

both the home and the host countries. However, only the SSA with Belgium and Germany has been notified and made operational till date. Rest of the agreements are yet to be notified. A list of countries with which India has signed a SSA is given in Appendix C.

#### Contribution

28. Every IW has to contribute 12% of his/her salary, comprising basic wages, dearness allowance, retaining allowance (but excluding bonus) every month towards the Provident Fund. The employer is required to deduct the contribution from the employee's salary every month and after making a matching contribution of 12%, deposit the amount (both employer and employee) along with administrative charges (approx 1.11% of salary) with the PF Authorities latest by 20th of the following month.

> Out of employer's contribution of 12% of salary, a part is allocated to the Pension Fund for disbursement of monthly Pension and other benefits on retirement as per the EPS.

## Benefits and withdrawal of contribution

29. The contribution made by both the employer and the employee in the Provident Fund earns interest at specified rate (currently 9.5% per annum).

An IW can withdraw accumulations to the Provident Fund standing to his/her credit in the following circumstances only:

- on retirement from services in the establishment after attaining 58 years of age; or
- on retirement on account of permanent and total incapacity to work due to bodily or mental infirmity as certified by the prescribed medical officer/ registered practitioner; or
- on suffering from notified diseases provided in the scheme;
- as per the provisions specified in the relevant SSA under which the IW is covered

Further, payment of PF withdrawal is to be made in the manner as per the terms specified in relevant SSA where the IW is coming from a SSA country. In all other cases, the amount shall be payable to the credit of IW's bank account in India.

#### *Tax deduction/exemption*

30. Contribution made to Provident Fund by IW is eligible for deduction from his/her taxable income up to INR 100,000 per annum. Similarly, contribution by the employer and the interest accrued on Indian social security contributions are not taxable in the hands of the IW. Further, any withdrawal made by IW from Provident Fund is also exempt from Indian tax provisions, subject to fulfilment of certain conditions.

Monthly Pension received from the Pension Fund after retirement is taxable as employment income. However, commutation of pension payment shall be exempt from tax, subject to the following:

- In case of receipt of gratuity, the commuted value of one-third of the Pension shall be exempt from tax.
- In other cases, the commuted value of one-half of such Pension shall be exempt from tax.

#### *New Direct Tax Code (Code):*

- 31. The Central Government proposes to implement a new direct tax code with effect from 1st April 2012. This new code will replace the existing provisions of income tax and wealth tax.
- The new code proposes to improve the efficiency and equity of Indian tax system, introduce moderate levels of taxation and expanding the existing tax base. The new code also attempts stability in the law over long term.
- Following are some of the key features affecting assignees into India:
- 32. Tax Rates Income tax slabs are proposed to be enhanced compared to the existing levels as under:-

Taxable Income Over (INR)	Not Over (INR)	Tax on Column 1 (INR)	Tax (%)
0	2,00,000	-	0%
2,00,000	500, 000	-	10%
5,00,000	10,00,000	30,000	20%
10,00,000	-	1,30,000	30%

There is no higher basic exemption limit for resident female tax payer. For Senior Citizens, the basic exemption limit is proposed to be Rs, 250,000.

- 33. Residential status The DTC proposes to discontinue the sub categorisation of residents into 'ordinarily resident' and 'not ordinary resident'. However, practically the said proposal will not change the taxability of the individuals in India. Further, in case of Indian citizens or persons of Indian origin, residing overseas and visiting India, it is proposed to withdraw the beneficial treatment that they become residents only when their stay in India exceeds 181 days during the relevant financial year. These individuals will become resident of India if their stay in India exceeds 59 days during the relevant financial year and 364 days in the past 4 financial years. Such individuals will have the risk of attracting global taxation in India sooner than later where they have been visiting India frequently and spending significant time in India in each financial year.
- 34. Exemptions / deduction The exemptions for medical
  reimbursement is increased
  from INR 15,000 to INR 50,000,
  whereas the exemption of
  leave travel concessions and
  non-monetary perquisites are
  abolished.
- 35. Deduction in respect of investment in approved funds or pension funds is proposed to be INR 100,000. An additional deduction of INR 50,000 is proposed towards life and health insurance premiums and tuition fees upto two children.
- 36. An individual will be allowed a deduction of interest on home loan on self occupied property to the extent of INR 150,000. Furthermore, interest relating to the period prior to the financial year in which the property was acquired or constructed would be deductible in five equal instalments.

37. Wealth Tax - Wealth tax proposed to be levied where taxable wealth exceeds INR 1 Crore on the Valuation date i.e. March 31



### What to do before you arrive in India

Section 03

#### Work Permit / Employment Visas

- 38. An individual visiting India must have a valid passport.
  According to the provisions of The Foreigners Act 1946 and The Foreigners Order 1948, a valid visa is required for any "foreigner" intending to visit India. However, a foreigner who is a Person of Indian origin (PIO) or Overseas Citizen of India (OCI) card holder is exempted from visa requirement.
- 39. A foreigner means a foreign national who is not a citizen of India. A visa may be an "Employment Visa", a "Business Visa" (BV) or a "Tourist Visa" and it may be either "Single Entry" or "Multiple Entry." A visa is obtainable from the Indian Consulates or High Commissions situated in the respective countries.
- 40. A foreign national is not permitted to take up employment in India unless he holds an Employment Visa. You should therefore ensure that you have a valid Employment Visa if you intend taking up employment. Employment income received in India cannot be repatriated unless the expatriate holds a valid employment visa. In case you come to India on a short term business visit you will need BV. Tourist Visas are issued to tourists.

India Government has issued several clarifications during the past one year relating to issuance of employment visa / business visa etc. Employment visa will be issued to highly

skilled and / or professionals provided they are drawing salary exceeding USD 25,000 per annum. However, the income criteria will not apply to certain categories such as ethnic cooks, language teachers (other than English language teachers), translators and staff of Embassies / High Commissions in India. Further. the quota restrictions as imposed on the number of foreign nationals hiring has been done away. Employment Visa will be issued by the Indian Missions abroad normally for one year. Subsequent extensions (upto a maximum of 5 years) would be done in India. Foreign national coming to India for executing projects in Power and Steel Sectors will need to come on a Project visa. A ceiling has been placed on the number of IW that can be hired in the field of Power and Steel Sector.

It has been further clarified that BV will continue to be issued to foreign nationals who visit India for bonafide business purposes. The bonafide business purposes are defined as below:

- To establish an industrial / business venture;
- To explore possibilities to set up industrial business ventures in India;
- To purchase / sell industrial products in India

#### Extension of visa

41. Generally, extension of a visa is granted by the appropriate Indian Embassy/Indian

Consulate abroad. Although an employment visa can be extended by the Ministry of Home Affairs, without the foreign national going back to the home country, it is a timeconsuming process. A business visa is normally not extended, without going back to the home country. Further, change of purpose of visa is not permitted in India and foreign national has to go back to his/her home country and apply to Indian Embassy in his home country to obtain an employment visa.

Keeping in view the rapid changes taking place in the visa regime, it is strongly recommended to check the type of visa needed and other related matters at the time when a foreign national intends to come to India so that he is compliant with the prevalent visa regulations.

#### **Employment contracts**

- 42. Indian income tax is levied on income for services rendered in India. This is true even if your employer is outside India and the salary for services rendered in India is paid into your bank account outside India.
- 43. Ideally you should be employed as a full-time employee under a service contract setting out in clear terms the remuneration/salary and the non-cash benefits (perquisites) to which you will be entitled.
- 44. If you are being sent to India, on secondment by your foreign employer, for services to be rendered in India, a proper

secondment structure should be put in place. The considerations which should be kept in mind are: where salary should be delivered; if salary is to be paid outside India, would it be charged back to the Indian entity; current exchange control regulations for delivering salary; corporate tax implications (permanent establishment exposure), withholding tax, the transfer pricing regulations, service tax implications and Indian Social Security.

#### Remuneration package

- 45. Before moving, you need to ensure that satisfactory arrangements are made to cover any extra expenses, which you will incur through living in India. As explained in Paragraphs 12-18, most of the allowances, which you may receive because of the Indian assignment, are likely to be taxable.
- 46. The current exchange control regulations permit a foreign national, who is an employee of foreign company, on secondment/ deputation to a subsidiary in India, to maintain a foreign currency account in a bank outside India and receive entire salary outside India provided full taxes are paid on the said salary accrued in India. Foreign nationals working in India can repatriate 100% of salary to a place outside India provided income-tax is paid on the entire salary.

#### Opening bank accounts

47. As a foreign national employed in India, you can open a bank account in India with an Indian Bank or an Indian branch of a foreign bank.

#### Transferring funds to India

- 48. Funds can be remitted into a bank account in India from sources outside India (salary received outside India, etc.).
- 49. While rendering services in India, it is possible that you will continue to earn nonemployment income (such as dividends, interest on deposits, etc.) on your investments outside India. Such income normally is remitted to your bank account outside India. Subsequent transfer of the funds from your bank account outside India to your bank account in India will not make the Income taxable in India. However, such non-employment income directly remitted to your bank account in India is likely to be taxable in India.
- 50. A foreign national transferring his residence to India is allowed duty-free imports of used personal and household articles including jewellery up to INR10,000 by a male passenger or INR 20,000 by a female passenger. Further, duty free import of used personal effects, excluding jewellery, required for satisfying daily necessities of life are allowed. Also, imports of articles (other than specified articles), is permitted up to a value of INR 25,000, if these
- are carried in on the person or accompanied baggage of the person (In case a passenger is returning from Nepal, Bhutan, Myanmar or China, this limit is only 6,000/-). Jewellery taken out earlier by such passenger or by a member of his family from India is also permitted to be brought back, without any value limits, where the fact of its removal from India is established to the satisfaction of the customs authorities. However, 17 articles specified in the Baggage Rules, 1998, which include household appliances, business machines, vessels, aircraft and gold and silver (other than ornaments) are not included for the purposes of calculating the limits as laid down. Further there are restrictions for importation of contrabands. Firearms, cartridges of firearms exceeding 50, cigarettes exceeding 200 or cigars exceeding 50 or tobacco exceeding 250 grams, alcoholic liquor and wines in excess of two litres, or gold or silver, in any form, other than ornaments are not allowed to be imported.
- 51. The aforementioned 17 specified household appliances and business machines can be imported by a person holding a valid India passport and transferring residence to India after a period of 365 days or more during the two years preceding the date of arrival in India on payment of a concessional rate of customs

duty of 15%. However, in respect of such goods not more than one unit shall be permissible to such person and the total aggregate value of such goods including other goods imported free of duty under shall not exceed Rs, 75,000.

- 52. These items can also be imported by a foreign national transferring his residence However, only one item of each of these goods is allowed per family and the person claiming the benefit of such notifications should make a declaration stating that no other member of his family has availed of or would avail of such benefit. The provisions are applicable to all i.e. foreigners coming for residing in India as well as Indian resident coming after 2 years and who is transferring his residence to India. Furthermore, the total aggregate value of such goods should not exceed INR 5 Lakhs.
- 53. Articles above the duty free allowance limit are charged to a customs duty of 35% of the value of the goods.



## What to do when you arrive in India

Section 04



#### Exchange control regulations

54. Permission of the Reserve Bank of India is not required for a foreign national wishing to take up employment in India. However, regulations in respect of payment and repatriation of salary as discussed in paragraph 46 are to be adhered to. Further, there may be security clearance needed for certain sensitive sectors such as telecom etc.

#### Registration for foreigners

55. As per the provisions of the Registration of Foreigners Rules 1939, any foreign national visiting India, who either has valid visa or intending to stay for more than 180 days must register within 14 days of arrival with the "Foreigners Regional Registration Officer" (FRRO). OCI card holders are exempted from registration with FRRO. However, PIO card holders need to get themselves registered only when their continuous stay in India exceeds 180 days.

#### Registration procedure

- 56. At the time of registration, the following documents are generally required to be submitted to the FRRO:
- Form A;
- Certificate from employer about Indian employment;
- Four photographs;
- Original passport and Visa (returned after verification);
- Proof of residence; and
- Undertaking for repatriation from the employer.

Once the FRRO is satisfied about the above documents, a "Residential permit" is issued to the foreign national.

## Obtaining a Permanent Account Number

57. Upon arrival in India for employment purposes, you should apply to the agency appointed by the Indian income tax authorities in the prescribed form for allotment of a Permanent Account Number (PAN).

#### Establishing residence

58. As discussed in Section 1, the residence ruling is of primary importance in establishing the basis of individual taxation in India. Although you may have a good idea what these rulings will be, it is advisable to have them checked and confirmed by your advisors.

#### Withholding tax

59. When you come to India for employment and your employment income is taxable in India, your employer will be required to withhold tax on your earnings from salary at applicable rates and pay over the same to the Government's treasury within 7 days from the end of the month during which salary is paid. This is applicable even if your employer is not resident in India.

#### Direct collection

60. Where your employer fails to deduct withholding tax as required, and in all other cases when you have taxable income from a trade, profession or vocation, it will be your liability to make timely advance tax payments on due dates on an estimated basis. Interest would be charged for delayed payment of advance tax. There may be an adjustment of your tax liability at the end of the year if the withholding tax by the employer is incorrect or the estimates made for advance tax payments do not tally with the actual tax liability. If there is an overall shortfall in payment for tax, it should be made good by payment (self-assessment tax) before filing your annual income tax return for the relevant year. If a refund is due to you, it should be claimed in the annual income tax return.

## Car registration licensing and insurance

61. In case you are importing your vehicle to India, you must register and license your vehicle unless you are visiting India for less than three months. This is required even if you have been relieved from payment of import duty and taxes. You will have to submit a Customs Declaration form and an undertaking for the re-export of the vehicle. You must take your vehicle for registration to the Regional Transport Office ('RTO') as soon as possible and obtain a license for your vehicle.

- An international driving license is valid in India.
- 62. If you have obtained relief from import duty and taxes, you will be issued a vehicle import document. This allows your vehicle to be in India for the specific period provided in the import permit and ensures strict compliance with all the terms and conditions of the license.
- 63. Ensure that you are adequately insured before you drive on Indian roads. You must cover all risks, including third party liabilities. You will be required to show to the RTO that you are adequately insured before you can register your vehicle.

## What to do at the end of the tax year

Section 05

#### Your income tax return

- 64. At the end of each year, a tax return has to be filed with the income tax authorities in the prescribed form. The return is to be filed at the latest by July 31 of the relevant assessment year. If the taxable income includes income from a trade, profession or vocation (the accounts of which are required to be audited), the last date for filing the return is September 30 of the relevant assessment year.
- 65. For example, the return for assessment year 2011-12 corresponding to the previous year 2010-11 will need to be filed at the latest by 31 July 2011. If the taxable income includes income from a trade, profession or vocation (the accounts of which are required to be audited), the last date would be 30 September 2011.
- 66. You should ensure that the tax return is filled in with the utmost care without any apparent mistakes or incorrect claims for deduction. Wherever necessary, exemption/deduction claims should be backed by documentation. Self-assessment tax and interest, if any, must be paid before filing the return. Interest is charged for delay in filing returns.

#### Wealth tax return

67. If your taxable wealth as at the end of the previous year (i.e. March 31) exceeds INR 3,000,000, a wealth tax return has to be filed with the relevant wealth tax authority in the prescribed form. The due date

- for filing the return is the same as the income tax return.
- 68. Since there is no gift tax liability, there is no need to file a gift tax return.

#### Notices of assessment

- 69. The tax authorities may accept your tax return without requiring your presence for assessment proceedings. Under this procedure, a notification is generally sent to you showing your total taxable income, gross tax liability and net tax (after adjustment of withholding tax, advance tax, and self-assessment tax, if any) payable by you or refundable to you. If you are not in agreement with this assessment, you can apply for rectification.
- 70. The tax authorities may take up your case for scrutiny (i.e. audit) and issue a notice to you to appear before them to explain various issues/points raised by them in connection with your taxable income and claims for deduction. Scrutiny assessment for high income returns are more routine than exception. After taking into account your representations, etc., the tax authority will issue an assessment order determining your taxable income, gross tax liability and net tax (after adjustment of withholding tax, advance tax, and self-assessment tax, if any) payable by you or refundable to you.
- 71. If an assessment results in a refund of tax to you, then you may be entitled to interest

- on account of tax overpaid. Specific rules are prescribed to ascertain interest payable to the taxpayer.
- 72. If you do not agree with the assessment order passed as discussed above, you have the option to file several appeals against such assessments to seek redress. The first such appeal is filed with the Commissioners of Income Tax (Appeals) who are independent arbitrators in tax disputes. Further appeals against the order of Commissioners can be filed with the Tax Tribunals. Against the orders of the Tax Tribunals, further appeals on substantial questions of law can be filed with the High Court and thereafter with the Supreme Court.

#### Payment of tax due

73. If an assessment on income shows a balance of tax payable, a demand notice from the tax authorities is served for the tax amount and the interest if any already due on the date of assessment. If this is not paid on the due dates mentioned in the demand notice, further interest would be payable. Different and complex rules apply with regard to dates of payment of taxes and charging of interest. Generally, no postponement of payment of tax is permitted even though you appeal against an assessment.

### What to do when you are leaving India

Section 06

#### Tax clearance

74. You are required to obtain a no objection certificate from the Indian tax authorities at the time of leaving the country. One of the requirements to obtain such certificate is to furnish the Income tax authorities an undertaking, in the prescribed form, from your employer to the effect that the tax payable by employee to tax authorities shall be paid by the employer. On the basis of the said undertaking, the income tax authority will grant you a 'No Objection Certificate'. Immigration authorities at the port of departure may require you to produce such certificate.

#### Transferring funds abroad

75. Employment income credited to your account in India is freely repatriable.

#### *Important points to remember*

76. Your residential status for Indian tax purposes has been explained in Section 1. If, for example, you leave India on 29 May and have spent 59 days in India in that year, i.e., 30 days in April and 29 days in May, vou will be considered to be non-resident. One further day spent in India between 30 May and the following 31 March would result in your being "not ordinarily resident", provided you satisfy another condition (i.e. 365 or more days in India in the 4 preceding years).

- 77. If you are ruled as resident but not ordinarily resident, you would be taxable on income accrued or received in India. Income accrued or received outside India is not taxable.
- 78. It will be seen from paragraph 6 that if you are ruled as ordinarily resident in any tax year, Indian tax would be levied on a worldwide basis. The ruling of resident and ordinarily resident has been explained in paragraphs 5. It would be advisable to plan the duration of your stay in India to ensure that you are not treated as ordinarily resident in India.
- 79. You should seek professional advice before planning your departure to and from India to minimize your Indian tax liabilities.



## Other matters requiring consideration

Section 07



#### Scope for tax planning

- 80. In this booklet, we have mentioned a number of points which provide scope for tax planning and on which professional advice should be sought, preferably either before or shortly after your arrival in India. Advice may help to reduce your Indian tax and may also save tax in your home country. For convenience, the more important points are summarized below:
- Determination of your residential status for shortterm and long-term periods to ascertain liability to Indian tax (paragraphs 4 and 5);
- Preparation of tax efficient remuneration packages (paragraphs 12 to 18);
- Structuring of assignments keeping in view corporate tax and other considerations (paragraphs 42 to 46)
- Judicious setting up of bank accounts so that remittances to India from abroad are arranged to keep Indian tax on them to the minimum (paragraph 48); and
- Planning departure from India vis-à-vis residence ruling (paragraphs 76 to 79).

#### *Inheritance tax*

81. There is no inheritance tax in India.

## Medical care and National Health insurance

82. Free medical and hospital facilities are provided through the Government approved Municipal Clinics and Hospitals for all individuals. A number of good private hospitals also provide medical facilities at reasonable rates. Insurance companies also provide medical policies covering various types of medical treatment.

#### Miscellaneous

- 83. Although this booklet is primarily concerned with tax matters, we recommend that you seek advice on the following topics before you arrive in India:
- The availability of housing and the likely costs of accommodation;
- Educational facilities for children where appropriate;
- The level of remuneration required to provide a proper standard of living for yourself and your family;
- Motoring regulations; and
- Life assurance and other insurance coverage whilst working in India.

## Personal deductions, income tax rates, income tax calculation

Appendix A

Overview of personal deductions and income tax rates for financial year 2010-11 and an example of an income tax calculation for the financial year 2010-11 (assessment year 2011-12).

#### Deductions/rebates permitted

Certain allowances and benefits paid/provided by an employer like house rent allowance, leave travel allowance are treated as exempt subject to applicable conditions and limits and are accordingly not included in the computation of income.

A deduction from income is available upto Rs 100,000 for investments made in the previous year in certain eligible schemes in India, namely, -

- Life insurance premium on the life of self, spouse or any child
- Contribution to a Recognized Provident Fund
- Contribution to Public Provident Fund
- Contribution to a Tax plan of an Indian Mutual Fund
- Tuition fees of any university, college, school or other educational institution in India for the purpose of full-time education of the individual, spouse or any child
- Repayment of housing loan, etc.

From the previous year 2010-11, an additional deduction up to Rs 20,000 is available for investments in infrastructure bonds.

Taxable Income Over (INR)	Not Over (INR)	Tax on Column 1 (INR)	Percentage of Tax (%)
0	1,60,000	-	0%
1,60,000	5,00,000	-	10%
5,00,000	8,00,000	34,000	20%
8,00,000		94,000	30%

Resident women having income upto Rs 190,000 and resident senior citizens (age of 65 years or more) having income upto Rs 240,000 do not have to pay income tax.

Further, an education cess @ 3% of the tax will be levied (irrespective of the level of income).

Example of a computation of taxable income for an individual (a age of 65 years) for assessment year 2011-2012	nale below the
Earned Income	INR
Base Salary	5,00,000
Allowance	2,00,000
Taxable Perquisites	1,00,000
Total Salary & allowances	8,00,000
Add: Short-term capital gains from transfer of immovable property	2,00,000
Sub-Total	10,00,000
Add: Long-term capital gains from transfer of immovable property	2,50,000
Total taxable income	12,50,000
Tax Liability on income ( Other than long-term gain)	INR
On first 160,000	0
Above 160,000 to 500,000 (@10%)	34,000
Above 500,000 to 800,000 (@20%)	60,000
Above 800,000 (@30%)	60,000
Sub-total	1,54,000
Add:20% tax on long-term capital gains	50,000
Total Tax	2,04,000
Add: Education cess @ 3%	6,120
Total tax liability	2,10,120

## Countries with which India has double taxation agreements

Appendix B

#### Countries with which India has double taxation agreements

	:	:	:
Armenia	Indonesia	Namibia	Sweden
Australia	Israel	Nepal	Swiss Confederation
Austria	Italy	Netherlands	Syria
Bangladesh	Ireland	New Zealand	Tajikistan
Belarus	Japan	Norway	Tanzania
Belgium	Jordan	Oman	Thailand
Botswana	Kazakstan	Philippines	Trinidad & Tobago
Brazil	Kenya	Portuguese Republic	Turkey
Bulgaria	Korea	Poland	UAE
Canada	Kuwait	Qatar	UAR (Egypt)
China	Kyrgyz Republic	Romania	Uganda
Cyprus	Libya	Russia	UK
The Czech Republic	Luxembourg	Saudi Arabia	Ukraine
Denmark	Malaysia	Serbia	USA
Finland	Malta	Singapore	Uzbekistan
France	Mauritius	Slovenia	Vietnam
Germany	Mongolia	South Africa	Zambia
Greece	Montenegro	Spain	United Mexican State
Hungary	Morocco	Sri Lanka	
Iceland	Myanmar	Sudan	
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#### Countries with which India currently has Limited Purpose treaties/agreements

Afghanistan	Russian Federation
Ethiopia	Yemen Arab Republic
Iran	Lebanon
Kuwait	Pakistan

## Countries with which India has signed SSA

Appendix C

Sl. No.	Name of Countries	Remarks
1.	Belgium	Operational effective September 1, 2009
2.	Germany	Operational effective October 1, 2009
3.	France	Signed on 30 September 2008.
4.	Luxemburg	Signed on 30 September 2009.
5.	Switzerland	Signed on 3 September 2009.
6.	Netherlands	Signed on 22 October 2009.
7.	Denmark	Signed on 17 February 2010.
8.	Hungary	Signed on 3 February 2010.
9.	The Czech Republic	Signed on 8 June 2010.
10.	Korea	Signed on 19 October 2010.
11.	Norway	Signed on 29 October 2010.

## **Principal IAS Contacts**

#### Appendix D

PricewaterhouseCoopers Pvt. Ltd. (www.pwc.com/india) provides industry focused tax and advisory services to build public trust and enhance value for its clients and the stakeholders. PwC professionals work collaboratively using connected thinking to develop fresh perspective and practical advice.

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