



Non-Resident Indian (NRI) Taxation

Agenda

- Residency Test
 - Seafarer Taxation
 - Income Chargeable to tax in India for NRI's
 - Types of Bank Accounts
 - Tax deductions
 - TDS on Sale of Immovable Property
 - Special Provisions & Expat Taxation
 - Double taxation avoidance agreement
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NRI TAXATION

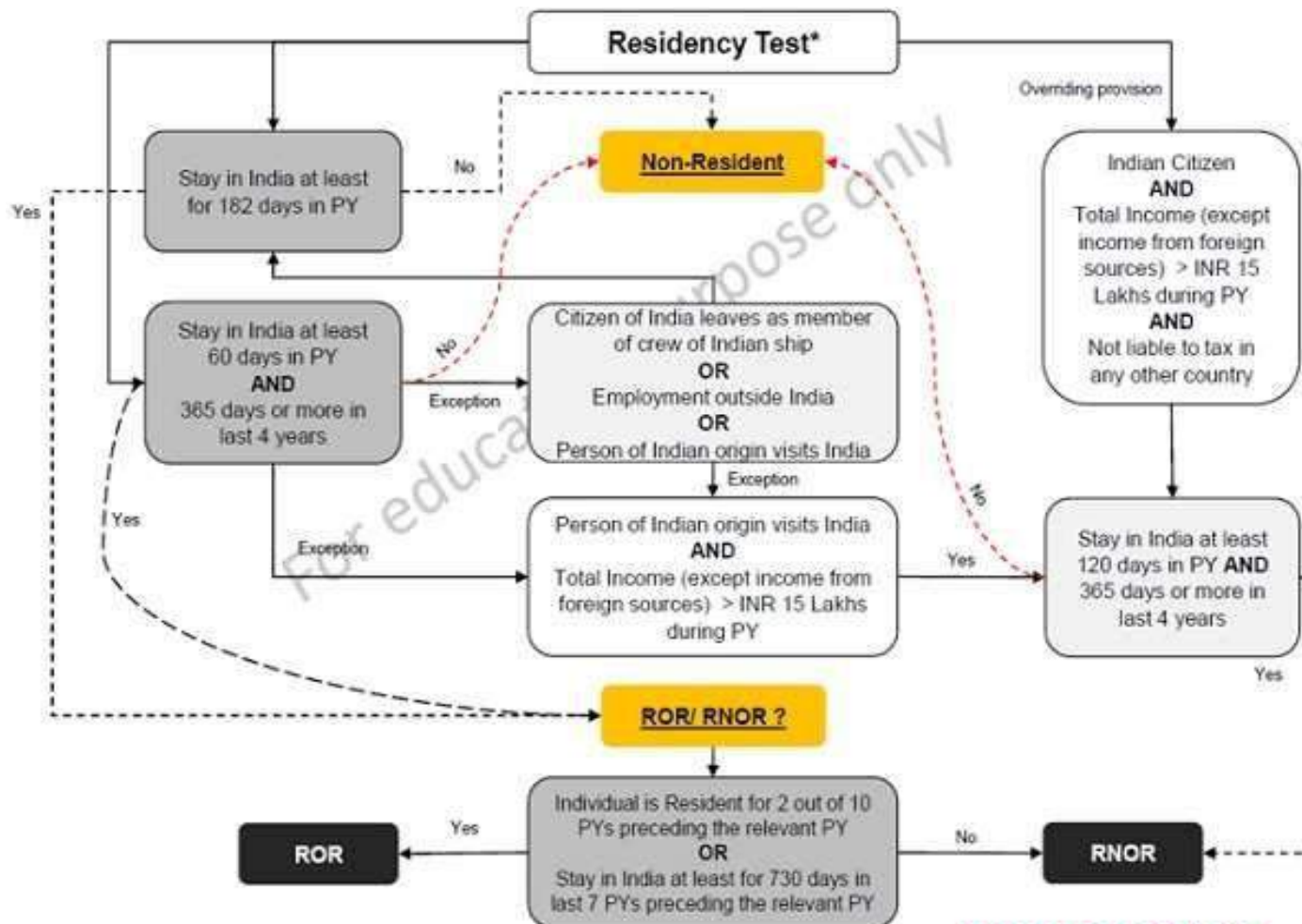
- ❑ NRI taxation under the ***Income Tax Act, 1961*** applies to those residing out of India but have Source of Income earned in India.
- ❑ The applicability of Provisions of Income tax Act and Rules framed thereunder are somewhat different from those applicable to Resident Indians.
- ❑ Taxation of individuals in India is primarily based on their Residential Status in the relevant tax year.
- ❑ If your status is **‘Resident (ROR)’**, your global income is taxable in India. If your status is **‘NRI/RNOR’** your income earned or accrued and deemed to be earned or accrued in India is Taxable in India.

Salary received in India or salary for service provided in India, income from a house property situated in India, capital gains on transfer of asset situated in India, income from fixed deposits or interest on a savings bank account are all examples of income earned or accrued in India. These incomes are taxable for an NRI.

**INCOME WHICH IS
EARNED OUTSIDE
INDIA IS NOT
TAXABLE IN INDIA.**



Residency test



Seafarer Taxation

Sea Farer Taxation

Who is a Seafarer ?

- A sailor, merchant navy, mariner or seaman is a an individual person, who works aboard on a ship or watercraft.
- This person works as part of ship crew, and/or may also work in any one of a number of different fields that are related to the operation and maintenance of a ship.
- This person sails on ship as part of his employment.
- Payment to seafarer generally happens to his/her Indian NRE Bank Account in foreign currency.

Taxability of a Seafarer

- Term Seafarer is not defined in the Income Tax Act
 - Tax liability calculation is on the basis of Residential status of the Individual
 - Resident Seafarer
 - Non Resident or Not Ordinary Resident Seafarer
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RESIDENTIAL STATUS OF INDIAN CITIZEN AND A CREW MEMBER OF SHIP

Indian citizens as Crew Members on Indian ships:

- ❑ With effect from 1st April 2015, the period or periods of stay in India shall, in respect of an eligible voyage shall be computed as follows:
 - ❑ shall not include the days – from the start date of the Continuous Discharge Certificate (CDS) and ending on the end date of this document, as signed off on the Discharge certificate.
 - ❑ CDS must be as per the Merchant Shipping (Continuous Discharge Certificate-cum-seafarer's Identity Document) Rules, 2001 made under the Merchant shipping act, 1958
 - ❑ CDS must be for a voyage, which originates from any port in India and has its destination at any port outside India OR which originates from any port outside India and has its destination at any port in India. [Notification No. 70/2015/ F.No.142 /12/2015-TPL].

While calculating the stay of 182 days, the entire period mentioned in the Continuous Discharge Document shall be excluded even though the ship may have been on Indian coastal waters in its journey.

RESIDENTIAL STATUS OF INDIAN CITIZEN AND A CREW MEMBER OF A SHIP

Indian citizens as Crew Members on Foreign ships:

- ❑ Indian crew serving on foreign ships for 182 days or more are treated as non-resident in India, irrespective of where the ship trades (including Indian waters)

Judicial precedents

- ❑ **CBDT Circular No. 13/2017 dated 11th April, 2017 and Circular No.17/2017 dated 26th April, 2017** stating that **salary** for services rendered outside India on a foreign going ship by non-resident seafarers **credited to Indian NRE account** shall not be included in the total income **merely** because the salary was credited directly to the bank account maintained in India.
 - ❑ **residential status** of assessee **determined solely on basis of number of day** she is **present in India**, other facts like 'economic presence' and 'legal presence' are irrelevant as same are not recognized by provisions of section 6. :Delhi Tribunal in case of **Additional Commissioner of Income Tax vs Sudhir Choudhrie [2017] 88 taxmann.com 570**
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RESIDENTIAL STATUS OF INDIAN CITIZEN AND A CREW MEMBER OF A SHIP

Some Judicial precedents (contd) :

- ❑ the term '**employment**' used in section 6(1)(c) should not be ascribed technical meaning. Even, **self-employment like business or profession** could also be covered within the term **CIT v O. Abdul Razak [2011] 10 taxmann.com 4/198 Taxman 1/337 ITR 350 (Ker.)**

 - ❑ **CBDT Circulars on forced stay in India**
 - ❑ CBDT Circular No. 11 of 2020 dated 8th May 2020 for FY 2019-20
 - ❑ Visited India before 22nd March, 2020 but has been unable to leave before 31st March, 2020, the period from 22nd March, 2020 to 31st March, 2020 would not be taken into account in calculating his / her residential status under the India.

 - ❑ CBDT CIRCULAR NO. 2 OF 2021 dated 03.03.2021 for FY 2020-21
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RESIDENTIAL STATUS OF INDIAN CITIZEN AND A CREW MEMBER OF A SHIP

Some Judicial precedents (contd) :

- ❑ CBDT CIRCULAR NO. 2 OF 2021 dated 03.03.2021 for FY 2020-21
 - ❑ No relaxation in conditions to Residency test due to suspension of International flights
 - ❑ View taken by CBDT, sufficient safe guards in place in DTAA from preventing individuals from being subject to double taxations

Income Chargeable to Tax in India (NRI's)

Salary Income :

- Received/Receivable in India for, Services rendered in India.
- Chargeable to tax as per slab rates applicable to Individuals in the Particular Financial Year

Salary/Income remitted by Government of India to a Citizen of India towards services rendered outside India , will it be considered as Income accrued in India and chargeable to Tax in India ?? Even if the tax residency status is Non-Resident ??

Income from House Property:

- Rental income from the house located in India is taxable
- Benefits of deduction of Property tax paid, 30% Standard deduction and interest on Home loan are allowed
- Eligible to claim Deduction u/s 80 C towards repayment of Principal on Home loan

TDS provisions activated : Tenant to deduct and pay TDS from the Rental income, u/s 195 @ 30% plus cess & surcharge, if applicable

15CA/15CB certification needed if the remittance amount exceeds the prescribed threshold limit

Income Chargeable to Tax in India (NRI's)

Income from Business/Profession :

- Income earned from Business set up or controlled in India shall be taxable in India.
- Income earned from Professional services rendered in India shall be taxable in India

Income from Capital Gains:

- Capital Assets like Shares, Units of Mutual funds, securities, House Property, Gold etc., situated in India and of Indian Origin

Income from Other Sources:

- Interest income from Savings and Fixed Deposits accounts held in India and in Indian currency
- Dividend Income and other Interest earned from Investments made in India

Does this mean the Non-Resident will have to pay Income tax on such Income in India as well as his/her Country of Residence ??

Types Of Bank Accounts

TYPES OF BANK ACCOUNTS (NRI)

Some of the major ones are

Non-Resident Ordinary (NRO) Savings Account/ Fixed Deposit Account

Maintained in INR.

It is used to house funds from your income that you have earned from India .

Interest income earned on the amount in an NRO Account is liable for TDS as is taxable in India.

Repatriable up to prescribed limit if taxes are fully paid

Non-Resident External (NRE) Savings Account/ Fixed Deposit Account

Forex converted and maintained in INR.

It is mainly used to house your savings from income that you have earned abroad

The interest income earned on the amount in an NRE account is non-taxable in India.

Fully Repatriable

Foreign Currency Non -Resident (FCNR) Fixed Deposit Account

Foreign Currency Non - Resident Accounts must be opened and maintained in foreign currency.

Interest income earned on your money in an FCNR account is non-taxable in India.

Can funds be transferred from NRO to NRE account?

Tax Deductions

ELIGIBLE TAX DEDUCTIONS FOR NRI

Section 80C

Life Insurance premium payment
- Premium must be less than 10% of sum assured and the insured must be the NRI, spouse or an offspring

Tuition fee payment - Fees paid to any institution in India for the full-time education of any 2 children

Principal repayment on loan for purchase of house property and Stamp duty, Registration charges on Purchase of house property

Investment in ULIPs - Investment in Unit Linked Insurance Plan of LIC Mutual Fund) or ULIPs of UTI

a maximum deduction of up to INR 1.5 lakh is allowed under Section 80C from gross total income for an individual.

ELIGIBLE TAX DEDUCTIONS FOR NRI

- NRI not eligible to do few investments u/s 80C:**
 - Investment in PPF
 - Investment in NSC
 - Investment in 5-year Post office scheme
 - Senior Citizen Savings Scheme

- Section 80D:** Mediclaim Insurance

- Section 80E :** Interest paid on Education loan

- Section 80G :** Donations of Charitable Trusts and Institutions

- Deduction u/s 80TTA:** Interest on Saving Bank accounts

Are they eligible to claim rebate u/s 87A ?

Can an NRI submit Form 15G (Form 15H : Senior citizen) to avoid Tax deduction ?

Can an NRI obtain Lower Tax deduction Certificate u/s 195(3) of the Income tax Act?

TDS on Sale of Immovable Property

Section 194 IA provides that **any person, being a transferee**, responsible for paying (other than the person referred to in section 194LA) to a **resident transferor** any sum by way of **consideration for transfer of any immovable property (other than agricultural land) shall deduct** an amount equal **to one per cent** of such sum as income-tax **at the time of credit of such sum to the account** of the transferor or at the time of payment of such sum in cash or by issue of cheque or draft or by any other mode, whichever is earlier.

No deduction shall be made the **consideration** for the transfer of an immovable property and the **stamp duty value of such property, both, is less than fifty lakh rupees.**

TDS on Sale of Immovable Property by NRI's

As per Section 195 (1)

*Any person responsible for paying to a non-resident, not being a company, or to a foreign company, any interest (not being interest referred to in section 194LB or section 194LC) ⁹²[or section 194LD] or any other sum chargeable under the provisions of this Act (not being income chargeable under the head "Salaries") shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, **deduct income-tax thereon at the rates in force (Prescribed by the Finance Act)***

OR

Rates contained in the Double Taxation Avoidance Agreement (DTAA) between India and the country of residence of such non-resident

Whichever is more beneficial to the payee

TDS on Sale of Immovable Property by NRI's

The TDS rates given under the Finance Act 2022 are as follows :

Particulars	Rates *
Income from the investment made by an NRI (Interest/Dividend)	20%
Long term capital gains arising from the transfer of the following assets as per Section 115E: Shares of an Indian Company Debentures and deposits of a Public Company in India Securities issued by the government	10%
Long term capital gain from listed shares and securities referred to in Section 112A	10%
Any other long-term capital gain	20%

TDS on Sale of Immovable Property by NRI's

The TDS rates given under the Finance Act 2022 are as follows:

Particulars	Rates*
Interest payable by the Government or Indian concern on the money borrowed in foreign currency	20%
Royalty and Fees for technical services payable by the Government or an Indian concern	10%
Winnings from: Card games, lotteries, crossword puzzles, and other games of any sort Horse races	30%
Any other income	30%
*TDS Rates to be increased by 4% Education cess and Surcharge (if applicable)	

***Special Provisions
relating to certain
Income of Non
Residents Chapter
XII-A***

Section 115 G

NRI is not required to furnish his/her Income tax return u/s 139 (1) in certain cases if :

- His total income in respect of which he is assessable under this Act during the previous year consisted only of investment income or income by way of long- term capital gains or both; and
 - the tax deductible at source under the provisions of Chapter XVIIIB **has been deducted from such income.**
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SPECIAL PROVISIONS FOR NRIS

Special provisions for NRIs included in the Section 115D under the Income Tax Act fall under the following sections -

No deduction allowed in the computation of investment income of an NRI.

Non-application of provisions for NRI taxation (Section 115I) - A non-resident Indian may elect not to be governed by the provisions of this chapter for any assessment year by furnishing his return of income for that assessment year under section 139 declaring therein] that the provisions of this chapter shall not apply to him for that assessment year and if he does so, the provisions of this chapter shall not apply to him for that assessment

If the assessee is an NRI –

- ❖ **No deduction is allowed on the gross total income (if it includes only income from investment and long-term capital gains)**
- ❖ **If income from investment and long-term capital gains form only a part of the gross total income, such income will be reduced and the remaining amount might be eligible for availing deductions under Chapter VI-A**

Non chargeable capital gains on transfer of foreign exchange assets in certain cases (*Section 115F*) - This basically entails the exceptions where the transfer of a long term foreign exchange asset will not incur any tax.

If the Non resident has invested within 6 months from date of transfer

- ❖ Invested whole of the consideration in any specified assets n case total income during the previous year is only through income from investment and/or long-term capital gains.
- ❖ TDS has been deducted from the above mentioned income.

If a foreign exchange asset is transferred or converted into money within 3 years from the date of acquisition, the capital gain not charged from the transfer of the asset on the basis of cost of the new asset will be a chargeable income

Benefits of taxation after an NRI becomes a resident (*Section 115H*)

- This relates that if an individual was an NRI in the previous year and becomes a resident in any subsequent year which makes him assessable differently under tax laws, he needs to declare in writing to AO with his return of income that Income that Income from investment on foreign exchange assets as per Section 115C need to be assessed as per provision of this chapter until the asset is converted into a monetary amount



Finally,



Tax on income from investment and long term capital gains (Section 115E) -If the total income of an NRI includes:

Income from investments or long-term capital gains of an asset other than shares in an Indian company, debentures issued by or deposits with a non-private Indian company, any security of the Central Government or assets further specified by the Central Government

Income by way of long term capital gains then the tax payable by the NRI will be the aggregate of -

Income tax calculated at the rate of 20% on the investment income portion.

Income tax calculated at the rate of 10% on the long-term capital gains income portion.



TAXATION RULES FOR NRI

Tax rules in India for NRIs vary by a significant degree when compared to the rules that are applicable for resident Indians.

Important points to note :-

- ✓ *Income tax slabs for NRIs are based only on the income barring any gender, age or other specification.*
- ✓ *In case of TDS, all incomes of NRIs are charged irrespective of any threshold value.*
- ✓ *Tax filing isn't normally required for NRIs if the income is subject to clauses under **Section 115G of the Income Tax Act.***
- ✓ *No nominal deductions are applicable on investment income except under specific situations.*



Expatriation Taxation

Residential Status of Expatriate employees in India:

- Is Determined by the provisions of Income tax Act and DTAA.
- If resident in both the countries, then Tie Breaker Rule to be referred to
- Tie Breaker Test :

Factors	Description
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 Adobe	The country in which he/she has a habitual abode
Nationality	Country of which he/ she is a national
Competent Authority	As determined by mutual agreement between both the countries competent authorities

Tax Residency Certificate to claim DTAA Benefit ?

Basic Rule : Salary taxable in Country where Employee is Physically present while rendering services

***Double taxation
avoidance agreement***

DOUBLE TAXATION AVOIDANCE AGREEMENT:

What is Double Taxation Avoidance Agreement?

- ❑ The Double Tax Avoidance Agreement (DTAA) is a tax treaty signed between two or more countries to help taxpayers avoid paying double taxes on the same income.
- ❑ A DTAA becomes applicable in cases where an individual is a resident of one nation, but earns income in another.
- ❑ DTAA's can be either be comprehensive, encapsulating all income sources, or limited to certain areas, which means taxing of income from shipping, inheritance, air transport, etc.

Types of Double Taxation Avoidance Agreement

- ❑ **Comprehensive DTAA's**: Comprehensive DTAA's are those which cover almost all types of incomes covered by any model convention. Many a time a treaty also covers wealth tax, gift tax, Etc.
- ❑ **Limited DTAA's**: Limited DTAA's are those which are limited to certain types of incomes only, e.g. DTAA between India and Pakistan is limited to shipping and aircraft profits only.



Advantages of Double Taxation Avoidance Agreement:

If the person is an NRI with investments in India, there may be DTAA provisions that apply to income from such investments.

The individual can claim relief at the time of filing tax return for that financial year, provided there is an applicable DTAA.

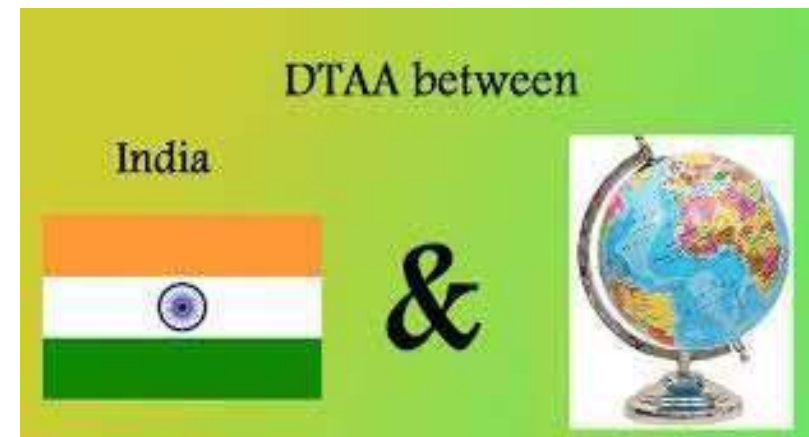
The intent behind a Double Tax Avoidance Agreement is to make a country appear as an attractive investment destination by providing relief on dual taxation.

In some cases, DTAA's also allow for concessional rates of tax. For instance, interest earned on NRI bank deposits attract TDS of 30%. However, under the DTAA's agreements the tax rates can be different

This form of relief is provided by exempting income earned in a foreign country from tax in the resident nation or offering credit to the extent taxes have been paid abroad. Say, for instance, if an individual is asked to go abroad on deputation and receives payments during the period away from home, the income earned may be subject to tax in both the countries.

India's Positioning with other countries

- ❖ India presently has **DTAA with Majority of Countries and Limited Agreements with eight countries** ,
- ❖ The treaties provide for the income that would be taxable in either of the contracting states, depending on the understanding of the nations, and the conditions for taxing and the exemption from tax.



DTAA BETWEEN INDIA & USA

Introduction

Mr. X, a resident of India works in the United States. In turn, for the work done, Mr. X is given some remuneration in the United States. Now, the US Government levies the Federal Income Tax on the income earned in the US.

However, there is a possibility that the Indian Government also charges income tax on the same sum, i.e. the remuneration earned abroad as Mr. X is a resident of India.

To save innocent taxpayers like Mr. X from the harmful effects of double taxation, the Governments of two or more countries may enter into an agreement known as the Double Taxation Avoidance Agreement (DTAA). Thus, Governments enter into a Double Taxation Avoidance Agreements with the intent of providing relief to the tax-payers:

- **The Exemption Method** : *By either exempting the income earned abroad in its entirety, (In our example, the entire income earned by Mr. X in the US will be exempt in India) or*
- **The Tax Credit Method**: *By providing credit to the extent of tax already paid in the US (The tax paid by Mr. X in the US will be eligible for deduction in India).*

India and the United States of America signed a comprehensive DTAA in the year 1989, and the provisions went into effect for residents of India and the U.S. on December 18, 1990

The DTAA applies to the residents of the contracting states i.e. India and USA, subject to certain exceptions.



Applicability of the agreement:

USA

Federal Income Tax imposed by the Internal Revenue Code (IRC):

The DTAA applies to the Federal Income Tax of the US or in other words, the US income tax. However, the agreement does not apply to the following taxes:

- ❖ **Accumulated Earnings Tax:** This tax is usually levied on companies whose retention ratio of earnings is unreasonable. The main intention of the introduction of this tax is to encourage companies to declare a dividend to the shareholders.
- ❖ **Personal Holding Company Tax:** This tax is levied on closely held corporations where earnings are retained with an intent to avoid higher individual tax rates.
- ❖ **Social Security Taxes:** This tax is leviable on salaried individuals as well as self-employed taxpayers. This amount is used for maintaining the social security of the nation.
- ❖ **Exercise Taxes imposed on insurance premiums and with respect to private foundations:** The DTAA applies to the premium paid to foreign insurers only to the extent the risks are not re-insured with a person who is not entitled to exemption from such taxes.

INDIA

- Income Tax including a surcharge (excluding income tax on undistributed income of companies)



DTAA BETWEEN INDIA & SINGAPORE

Introduction

- ❑ The DTAA between India and Singapore is a tax treaty that avoids the double taxation of income between Singapore and India and reduces the overall tax burden of the residents of both countries.
- ❑ Without the India-Singapore DTAA , income is liable to be double taxed (i.e., each country may levy its own tax on the same income).
- ❑ This double taxation unfairly penalizes income flows between countries, thereby discouraging trade and commerce.
- ❑ To address this problem and reduce the overall taxpayer burden, Singapore and India signed the treaty. Therefore, any income that's taxable in both the countries will be taxable only in one country as per the terms of the DTAA.

Double Tax Avoidance Agreement between India and Singapore was concluded on 24th January 1994, and it came into force on 27th May 1994. The provisions of this agreement were rectified by a treaty signed on June 29, 2005.

Its second treaty was signed on June 24, 2011, coming into force on September 1, 2011.



Types of Taxes covered:

SINGAPORE

- Income tax
- Capital gains tax

INDIA

- Income tax, including any surcharge
- Capital gains tax



India-Singapore DTAA Revised, Implications for Singapore





Q&A





THANK YOU !!