

TAX PLANNING FOR NRIs

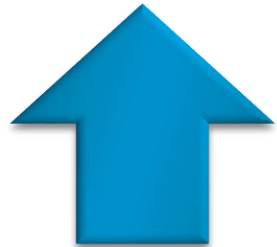
Namrata R. Dedhia

Organised by –

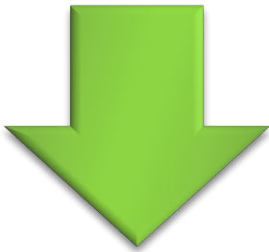
WIRC of ICAI

Tax Planning???

Tax Planning



Tax Planning



Tax Avoidance /
Evasion



Coverage

- ▶ Residential Status
- ▶ Scope of Total Income
 - ▶ Income deemed to accrue or arise in India
- ▶ Exemptions & Deductions
- ▶ Special Provisions
 - ▶ Computations
 - ▶ Rates

Residential Status & Scope of Total Income

Residence Test – Section 6

- ▶ Basic Conditions - Resident if any one satisfied

- ▶ Stay in India for 182 days or more; or
- ▶ Stay in India for 60 days or more + Stay in India for 365 days or more during preceding 4 previous years

Second condition rendered irrelevant in case of

- ▶ Indian citizen leaving India as a crew member of Indian ship or for the purpose of employment outside India,
- ▶ Indian citizen or PIO visiting India

- ▶ Additional Conditions – Not ordinary resident if any one satisfied

- ▶ Non-resident in 9 out of preceding 10 previous years; or
- ▶ Stay in India for less than 730 days during preceding 7 previous years

Non-Resident Indian

- ▶ Section 115C(e) defines A “non-resident Indian” to mean an individual being citizen of India or person of Indian origin (PIO) who is not a “resident”
- ▶ A person shall be “deemed to be of Indian origin” if he or either of his parents or grandparents, was born in undivided India.

Scope of Total Income

Nature of Income	ROR	RNOR	Non-resident
Income received or deemed to be received in India	Taxable	Taxable	Taxable
Income accruing or arising or deemed to accrue or arise in India	Taxable	Taxable	Taxable
Other income – - From business controlled from India or profession set up in India - Other	Taxable Taxable	Taxable Not taxable	Not taxable Not taxable

Income deemed to accrue or arise in India

- ▶ Section 9(1)(i) – through Business Connection, property, asset or source of income or transfer of capital asset situated in India
 - ▶ Includes indirect transfer of assets outside India deriving substantial value from assets located in India
- ▶ Section 9(1)(ii)/(iii) – Salary
 - ▶ Place of rendering the services will determine taxability
- ▶ Section 9(1)(iv) – Dividend
 - ▶ Taxable on payment basis
- ▶ Section 9(1)(v)/(vi)/(vii) – Interest / Royalty / FTS

Double Tax Avoidance Agreements

- ▶ Taxability to be tested under the Act as well as the DTAA
- ▶ Option to adopt whichever is more beneficial – Section 90(2)
- ▶ Tax Residency Certificate and Form 10F required to avail benefits of DTAA.

Exemptions

Exempt Income – Section 10

Section	Provision
10(4)	Interest on Non-resident External (NRE) account
10(7)	Allowances or perquisites paid or allowed outside India by the Government to an Indian citizen for rendering service outside India
10(14)	Allowances given to employees, to the extent actually incurred
10(15)(iid)	Interest on bonds
10(15)(iv)(fa)	Interest on FCNR account, earned by a NR or NOR
10(34)/(35)	Dividends from Indian companies / specified mutual funds
10(34A)	Buy back of unlisted shares
10(38)	Long term capital gains on STT paid transfer of equity shares / units of a equity oriented mutual fund

Other exemptions

- ▶ Transactions not considered as transfer – u/s. 47

Non-resident to non-resident transfers not considered as transfer if made outside India -

- ▶ Bonds or GDRs referred to in section 115AC [47(viia)]
- ▶ Rupee denominated bond of an Indian company issued outside India – w.e.f. 1st April 2018 [47(viiaa)]
- ▶ Govt. securities carrying periodic payment of interest, transferred through an intermediary dealing in settlement of securities
- ▶ General provisions of sec. 47, sec. 56, shall also apply to NRIs

Exemptions from Capital Gains

Sec.	Original Asset	Nature of Gain	New Asset	Conditions
54	Residential House	Long Term	One Residential House in India	<ul style="list-style-type: none"> • Purchase within 1 year before or 2 years after • Construct within 3 years after • Lock-in period of 3 years
54EC	Any asset	Long Term	NHAI, RECL, PFC Bonds	<ul style="list-style-type: none"> • Invest within 6 months • Maximum investment of Rs. 50 lakhs
54F	Any asset other than Residential house	Long Term	One Residential House in India	<ul style="list-style-type: none"> • Purchase within 1 year before or 2 years after • Construct within 3 years after • Should not purchase or construct one more property within 3 years • Lock-in period of 3 years

Exemptions from Capital Gains

Sec.	Original Asset	Nature of Gain	New Asset	Conditions
54EE	Any asset	Long Term	Units of specified fund (start-up fund)	<ul style="list-style-type: none"> • Unit issued before 1st April 2019 • Invest within 6 months • Maximum investment of Rs. 50 lakhs
54GB	Residential Property (Sold upto 31 st March 2017/2019)	Long Term	Shares of Indian company engaged in manufacturing or eligible business or eligible start-up	<ul style="list-style-type: none"> • Invest before due date of filing return • Company to utilise the amount for purchase of new asset within one year • Lock-in period of 5 years

Available Deductions

- ▶ Sec. 80C –
 - ▶ Life Insurance premium, Children's tuition fee, Principal repayment on housing loan, ULIPS, ELSS
 - ▶ Contribution to existing PPF only
- ▶ Sec. 80D – Mediclaim
- ▶ Sec. 80E – Interest on loan for higher education of self, spouse, children or student for whom NRI is guardian
- ▶ Sec. 80G – Donations
- ▶ Sec. 80TTA – Savings account interest

Special Provisions

Special Computation Provisions

- ▶ Capital Gains Computation in certain cases (1st proviso to sec. 48) –
 - ▶ Conditions to be satisfied –
 - ▶ Asset, being shares or debentures of an Indian company acquired by using foreign currency, transferred by a non-resident
 - ▶ Computation prescribed –
 - ▶ Convert cost of acquisition, selling expenses and sale consideration into original foreign currency at average TT rate of the respective date
 - ▶ Compute Capital Gains in foreign currency, without indexation benefit
 - ▶ Reconvert Capital Gains in Indian rupees using TT selling rate on date of sale
- ▶ Applicable to both short term and long term gains
- ▶ Applicable to all subsequent reinvestment in, and sale of, shares or debentures of an Indian company

Special Regime – Chapter XII A

Section	Nature of Income	Tax Rate
115E	Income from specified assets purchased in convertible foreign exchange – <ul style="list-style-type: none"> • Investment income (except DDT paid dividend) • Long term capital gains (without indexation) 	20% 10%
Specified assets – <ul style="list-style-type: none"> • shares of an Indian company • debentures of or deposits with a public Indian company • government securities 		
Proportionate exemption from capital gains on investment in specified assets or NSC within 6 months of sale of original asset, subject to lock-in of 3 years		
No return of income required to be filed if no other income & TDS is deducted		
NRI can choose to apply or not apply these provisions on a yearly basis		
Transitional provisions also available to returning NRIs based on declaration		

Special Rates of Tax

Sec.	Nature of Income	Tax Rate
111A	Short term Capital Gains on STT paid transactions	15%
112	Long Term Capital Gains - on unlisted securities and shares (without indexation) - on others Option of 10% without indexation in case of listed securities (other than a unit) or a Zero Coupon bond	10% 20%
115A	Interest on foreign currency loan given to an Indian party	20%
115A	Interest on – <ul style="list-style-type: none"> • loan given to infrastructure debt fund • loan given to or bonds issued by an Indian company or business trust, and approved by the government • Distributed by a business trust 	5%
115AC	Interest from or long term capital gains on (without indexation) foreign currency bonds issued by an Indian company or bonds of public sector company purchased in foreign currency	10%

Other aspects

- ▶ Taxability of salary upon deputation to India
- ▶ Income from foreign assets for returning NRIs
- ▶ Social security benefits / Pension received from abroad after returning to India
- ▶ Reporting of Foreign Assets



THANK YOU

Namrata Dedhia