



India

Introduction

An individual is taxed in India on the basis of the residential status under the Income Tax Act of 1961 (the Act). Residential status, per the Act, is determined, inter alia, on the basis of physical presence of the individual in India during the particular financial year (April 1 to March 31).

Contact

Vikas Vasal**KPMG in India**

Tax Executive Director

T: +91 124 307 4780**E:** vvasal@kpmg.com**Parizad Sirwalla****KPMG in India**

Executive Director

T: +91 223 090 2010**E:** psirwalla@kpmg.com

Income tax

Liability for income tax

Residential status under the Act

An individual can be a resident and ordinarily resident (ROR), a resident but not ordinarily resident (NOR), or a nonresident (NR) for Indian tax purposes.

Taxability of income

Taxation varies based on the residency status of the individual in a financial year.

- ROR – liable for tax on worldwide income
- NOR – liable for tax on income sourced from India, received/deemed to be received in India, or from income derived from a business controlled or set up in India
- NR – liable for tax only on income sourced from India or received/deemed to be received in India

Foreign nationals may be exempt from tax in India if their stay in India does not exceed 90 days, as prescribed in the Act, or the number of days prescribed (generally 183 days) under various double taxation avoidance agreements (DTAA) into which India has entered with other countries, subject to satisfaction of all the other conditions.

Definition of source

Salary for services rendered in India is deemed to accrue in India and, hence, is taxable in India for all individuals, irrespective of the place of receipt, subject to benefit, if any, under the DTAA. Generally, services rendered are equated with physical presence in India. Salary entitlements paid for leave periods before or after services rendered in India, in line with an individual's employment contract, are also deemed to have been earned for services rendered in India.

Salary received in India is taxable in India, irrespective of residential status of the individual and place of rendering services, subject to benefit, if any, under the DTAA.

Tax trigger points

Remuneration for services rendered by a foreign national, employed by a foreign enterprise during the individual's stay in India, is exempt from tax in India if:

- The total period of the stay in India does not exceed 90 days in a financial year
- The foreign enterprise is not engaged in any trade or business in India
- The remuneration is not charged to an employer subject to Indian income tax.

To the extent that the individual qualifies for relief in terms of the dependent personal services article of the applicable DTAA, there will be no tax liability. The DTAA exemption will not apply if the Indian entity is the individual's economic employer. In addition, any salary or local benefits received in India are not eligible for relief.

Types of taxable income

Individuals are taxable on income from one or more of the following categories:

- Salaries
- Income from house property
- Profits and gains of a business or profession
- Capital gains
- Income from other sources

Income under each category is computed separately. The net result of all categories is aggregated to arrive at gross total income. Taxable income is determined by subtracting specified deductions from the gross total income. The benefits/amenities provided by employers to their employees are taxed as perquisites in line with the income tax rules.

Tax rates

Financial year 2010–2011:

Individuals are required to pay tax on their taxable income at graduated rates ranging from 10 percent to 30 percent. The maximum marginal tax rate for the financial year 2010–2011 (April 1, 2010 to March 31, 2011) is 30 percent on income earned over 800,000 Indian rupees (INR). An extra tax, which is applicable in India, called an education cess, is levied at a rate of 3 percent on the income tax.

The maximum amount not liable to tax in case of an individual (below 65 years) is INR160,000; in the case of an individual aged 65 years and above, the maximum amount not liable to tax is INR240,000. However, in the case of resident women (below 65 years), the maximum amount not liable to tax is INR190,000.

Financial year 2011–2012:

The maximum marginal tax rate proposed for the financial year 2011–2012 (April 1, 2011 to March 31, 2012) continues to be 30 percent on income earned over and above INR8,00,000. An education cess (see above) of 3 percent on the income tax is levied.

It is proposed that the maximum amount not liable for tax in the case of an individual (below 60 years) will be INR180,000; in the case of an individual aged 60 years and above (below 80 years), the maximum amount not liable for tax is proposed to be INR250,000. Further, in the case of individual aged 80 years and above, the proposed maximum amount not liable for tax is INR500,000. However, in the case of resident women (below 60 years), the proposed maximum amount not liable for tax remains the same at INR190,000.

Direct tax code (DTC)

The current tax regime is likely to be replaced with new Direct Tax Code that will go into effect April 1, 2012.

Social security

Liability for social security

The Ministry of Labour and Employment, in a notification dated October 1, 2008, amended the “Employees Provident Fund Scheme, 1952,” and the “Employees Pension Scheme, 1995,” collectively referred to as the Indian Social Security Scheme. Accordingly, the scope of the Indian Social Security Scheme was extended to specifically include a new concept of “international workers” (IW).

IWS include expatriates working for an employer in India to which the Provident Fund Act applies and Indian employees working in a country with which India has entered into a social security agreement (SSA).

IWs (other than excluded employees) are required to contribute 12 percent of the specified salary to the Indian social security scheme. Employers are also required to contribute 12 percent of their employees’ specified salary to the scheme. The contribution must be deposited on a monthly basis by the 15th of the subsequent month. Necessary forms and returns must be filed with the authorities by the prescribed deadlines.

IWs are exempt from contributing to Indian social security if:

- They are contributing to the home country social security scheme
- They fall into the category of detached worker for a period specified in the SSA.

A relief mechanism has been provided for “excluded employees,” which primarily refers to IW coming from a country with which India has entered into an SSA.

India currently has SSAs with Belgium, Germany, France, Switzerland, Netherlands, Luxembourg, Hungary, Denmark, Czech Republic, South Korea, and Norway. India is in the process of signing SSAs with other countries, including the United States, Australia, Sweden, the United Kingdom, and a few others.

The SSAs with Belgium and Germany became effective on September 1, 2009 and October 1, 2009, respectively.

Withdrawal of social security contribution

Prior to recent events, IWs were entitled to withdraw the accumulated amount of social security contributions at the time of completion of their assignment in India. Recently, the Ministry of Labour and Employment further amended the Indian social security scheme whereby IWs can withdraw the social security accumulation only on retirement after attainment of 58 years of age or in certain exceptional circumstances, such as retirement due to permanent and total incapacity, under the situations specified in the relevant SSA, etc.

IWs deputed from a country with which India does not have an SSA will not be eligible for any pension benefits.

Compliance obligations

Employee compliance obligations

Individuals are liable to discharge tax by way of advance tax if the tax liability (net of tax deducted at the source) exceeds INR10,000 in a particular financial year (per the due dates mentioned under the Act). Shortfall/delay in payment of advance tax will attract interest.

Individual taxpayers must file their returns by July 31 following the financial year-end, which is March 31. Extensions of the filing deadline are not permitted. Where a taxpayer files a return after the due date, interest is levied at 1 percent per month (or part thereof) for each month of delay on the balance tax payable.

Foreign nationals may be required to register with the Foreigner’s Regional Registration Office (FRRO).

The tax deducted must be deposited with the central government within seven days from the end of the month of deducting the tax. A certificate must be issued to the employee for the tax deducted within two months from the end of the financial year. The employer also must submit a return of tax deducted on a quarterly basis to the tax authority.

Other

Work permit/visa requirements

A visa must be applied for before the individual enters India. The type of visa required will depend on the purpose of the individual’s entry into India. Every foreign national arriving on a visa that is valid for more than 180 days in India must ensure that the individual is registered with the FRRO of the city in which the individual lives. An employment visa must be registered within 14 days of the individual’s first arrival on employment in India.

The Ministry of Home Affairs (MHA) has issued certain “frequently asked questions” on work-related visas being issued in India clarifying the purpose, duration, and various scenarios under which business and/or employment visas may be granted to foreign nationals.

Further, the government of India has mandated that an employment visa may be granted to a foreign national only if the individual’s salary is in excess of USD25,000 per annum. However, the threshold salary limit is not applicable to ethnic cooks, language (other than English) teachers/translators, and staff working for a high commission/consulate in India.

Double taxation treaties

In addition to India’s domestic arrangements that provide relief from international double taxation, India has entered into double taxation treaties with 102 countries (comprehensive and limited) to prevent double taxation and allow cooperation between India and overseas tax authorities in enforcing their respective tax laws.

Permanent establishment implications

There is the potential that a permanent establishment (PE) could be created as a result of extended business travel, but this would be dependent on the type of services performed and the level of authority the employee has. A detailed analysis is recommended in order to determine the possible PE implications.

Wealth tax/indirect tax

India does not impose an estate duty, but does impose wealth tax on specified assets. In addition, customs duty is payable on certain specified goods brought into India, and other indirect taxes, such as value-added tax (VAT)/sales tax, expenditure tax, and service tax, are payable on purchases of goods and services.

Transfer pricing

India has a transfer pricing regime. A transfer pricing implication could arise to the extent that the employee is being paid by an entity in one jurisdiction but performing services for the benefit of the entity in another jurisdiction, in other words, a cross-border benefit is being provided. This would also be dependent on the nature and complexity of the services performed.

Local data privacy requirements

There are currently no data privacy laws in India.

Exchange control

Per the Exchange Control Regulations, a foreign citizen resident in India or an Indian citizen employed by a foreign company having an office/branch/subsidiary/joint venture may open, hold, and maintain a foreign currency account with the bank outside India and receive the whole salary payable to the individual in that account provided that income tax is paid on the salary accrued in India.

A foreign citizen resident in India employed with an Indian company can open, hold, and maintain a foreign currency account with a bank outside India and can remit the whole salary received in India to such an account overseas provided the income tax is paid on the entire salary in India.

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