

## Who is an NRI?

### Income Tax Act 1961

#### Definitions

**Section 2.** In this Act, unless the context otherwise requires,—

**Clause (30)** “non-resident” means a person who is not a “resident”, and for the purposes of sections 92B, 93 and 168, includes a person who is not ordinarily resident within the meaning of clause (6) of section 6;

#### Residence in India.

**Section 6.** For the purposes of this Act,—

- (1) An individual is said to be resident in India in any previous year, if he—
- (a) is in India in that year for a period or periods amounting in all to one hundred and eighty-two days or more; or
  - (b) having within the four years preceding that year been in India for a period or periods amounting in all to three hundred and sixty-five days or more, is in India for a period or periods amounting in all to sixty days or more in that year.

*[Explanation.—In the case of an individual,— (a) being a citizen of India, who leaves India in any previous year [as a member of the crew of an Indian ship as defined in clause (18) of section 3 of the Merchant Shipping Act, 1958 (44 of 1958), or] for the purposes of employment outside India, the provisions of sub-clause (c) shall apply in relation to that year as if for the words “sixty days”, occurring therein, the words “one hundred and eighty-two days” had been substituted ; (b) being a citizen of India, or a person of Indian origin within the meaning of Explanation to clause (e) of section 115C, who, being outside India, comes on a visit to India in any previous year, the provisions of sub-clause (c) shall apply in relation to that year as if for the words “sixty days”, occurring therein, the words “one hundred and [eighty-two] days” had been substituted.]*

(2) A Hindu undivided family, firm or other association of persons is said to be resident in India in any previous year in every case except where during that year the control and management of its affairs is situated wholly outside India.

(3) A company is said to be resident in India in any previous year, if—

- (i) it is an Indian company; or
- (ii) during that year, the control and management of its affairs is situated wholly in India.

(4) Every other person is said to be resident in India in any previous year in every case, except where during that year the control and management of his affairs is situated wholly outside India.

(5) If a person is resident in India in a previous year relevant to an assessment year in respect of any source of income, he shall be deemed to be resident in India in the previous year relevant to the assessment year in respect of each of his other sources of income.

(6) A person is said to be “not ordinarily resident” in India in any previous year if such person is—

- (a) an individual who has been a non-resident in India in nine out of the ten previous years preceding that year, or has during the seven previous years preceding that year been in India for a period of, or periods amounting in all to, seven hundred and twenty-nine days or less; or
- (b) a Hindu undivided family whose manager has been a non-resident in India in nine out of the ten previous years preceding that year, or has during the seven previous years preceding that year been in India for a period of, or periods amounting in all to, seven hundred and twenty-nine days or less.

#### Proposed changes by Direct Taxes Code-DTC

The major change introduced by the DTC is in the criteria of determining the residential status of NRI's who, are working abroad, and come on visit to India. Currently, such NRI's who are citizen of India or Person of Indian Origin (PIO) are regarded as resident, only if, they stay in India for 182 days or more in the financial year. However, under the proposed DTC, any inbound individual (including NRI's/PIO) will become resident, if they are present in India for 60 days or more in the financial year and 365 days or more over a period of four years prior to the financial year.

However in general it is not correct to opine that under the proposed provisions of the Direct Tax Code, in relation to the 'Residential Status', the NRI shall be resident in India if he stays for more than 60 days in India in a financial year (1st April to 31st March) and attract Indian tax liability in respect of his income earned outside India.

In nutshell, we advise that NRI may stay in India for more than 60 days in a financial year and yet he shall continue to special status of "Resident but Not Ordinarily Resident" under the Income-tax Act, 1961 for tax purposes and even under proposed DTC and shall not be liable to tax in India in respect of his income earned outside India. To a large extent, the majority of the NRI's may not be adversely affected by the proposed changes. It is important for NRI to know that if he has stayed in India for less than 364 days in past 4 years or less than 728 days in past 7 years than his tax liability shall be restricted to income earned in India only even if his stay in India is more than 60 days in a year. He can stay in India up to 120 days or may be little more depending upon his past stay in India and yet not covered by the proposed DTC PROVISION.

**Are you a Returning Indian then read on...**

### **RETURNING INDIANS**

A returning NRI should know and understand various aspects of Foreign Exchange Regulations (FEMA), Indian Taxation and Banking Regulations in order to rearrange his financial affairs in India and outside India.

Detailed information covering important aspects for such arrangement is explained here

### **FOREIGN EXCHANE MANAGEMENT ACT (FEMA)**

#### **A) OVERSEAS ASSETS**

All kind of Foreign exchange / Overseas assets such as properties, bank deposits, stocks and securities, life insurance policies, loans, company deposits, debentures, bonds etc. acquired, held or owned by an NRI while he was abroad can be continued to be so held and deal in any manner even after the NRI's return to India for permanent settlement.

#### **B) INDIAN ASSETS**

I. **BANK ACCOUNTS.** (In India) Returning NRIs, upon his return to India has to deal with his various accounts in India in the following manner:

Account Description	Treatment to be given
NRO A/c	Re-designate to Resident A/c.
FCNR A/c	Hold upto maturity.

FCNR A/c    Hold upto maturity.

Upon maturity should be converted into Rupee Account or RFC A/c.

NRE A/c	Re-designate to Resident A/c or Transfer Balance to RFC A/c.
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#### **II. RESIDENT FOREIGN CURRENCY ACCOUNT (RFC Account)**

- A Returning NRI's, on becoming residents are free to open and maintain such accounts with authorized dealers.
- The funds held in RFC are fully repatriable and also denominated in Forex.
- Funds in RFC accounts can be remitted abroad for any bona fide purpose of the account holder or his dependents

#### **II. SHARES SECURITIES ETC**

Returning NRI is required to inform all the companies, funds etc. as to change of residential status from NRI to Resident.

## **INCOME TAX ACT**

1. The tax liability of a person returning India would depend on the Residential Status of a person as per the Income-tax Act, 1961.
2. Under the Indian Tax Laws overseas income is liable to Tax in India only if the assessee is an ordinarily resident.
3. A returning Indian who has been a Non Resident for 9 years or more, then for 2 successive years he shall be a resident but not ordinarily resident (RNOR).
4. Interest on Non Resident External Account (NRE) and Foreign Currency Non-Resident Account (FCNR) [Section 10(4)(ii)] is Exempt in the hands of a person who is a Person Resident outside India as per section 2(w) of FEMA, 1999 and definition of 'Non-Resident' under Income Tax is not relevant for this sub section.
5. Income in respect of Interest, premium on redemption, other payment on notified securities, bonds, certificates and deposits. [Section 10(15)(i)].
6. Interest paid by schedule banks to Non Resident or to a person who is not ordinarily resident on RBI approved foreign currency deposits (i.e. RFC deposits) is exempt (s. 10 (15) (iv) (fa)). The exemption, in respect of RFC account, continues till such time as the account holder continues to be "Resident but Not Ordinarily Resident".
7. NRI's have been offered a separate concessional tax regime in respect of certain types of income under Chapter XIA comprising section 115C to 115I. As per section 115E, concessional tax of 20 percent is available in respect of investment income and 10% in respect of long-term capital gains from the specified assets, which are acquired out of convertible foreign exchange. The benefit of concessional tax treatment under chapter XIA continues even after NRI becomes a resident.
8. Pension: If you are likely to receive pension from your former employer after you return to India, it may be liable to tax in India subject to provisions of Double Taxation Avoidance Agreement between India and the country from which you are receiving it.

## **WEALTH TAX**

1. Assets located outside India of Non-resident (NR) / Resident but Not Ordinary Resident (RNOR) are exempt from Wealth Tax.
2. If NRI return to India with the intention of permanently residing in India, the assets brought by him will be exempt. Also, the money and the assets acquired from the money, brought by NRI within one year after his return, will be exempt. This exemption is available to NRI for a period of seven years after his return to India. [Sec. 5(1)(v)]

## **ASPECTS TO BE KEPT IN MIND BY RETURNING INDIAN**

1. A Returning Indian needs to plan his return to India. For the purpose, he needs advice / information on various aspects of Tax Laws / FEMA, 1999.
2. What are your residential status under; Foreign Exchange Management Act, 1999 and The Income Tax Act, 1961?
3. Planning the date and month of return to India so as ensure minimum tax liability in the year of return (i.e. April to March)?
4. Holding and operating of non-resident Banking accounts on your return to India and Taxability thereof.
5. Taxability of Income earned in and outside India in the year of return to India and in the subsequent period.
6. Application of Double Taxation Avoidance Treaty, if any applicable
7. Advice / information on various aspects of Tax Laws / FEMA, 1999 in respect of holding of assets in and outside India / earning income in and outside India and its taxability?
8. Filing Return of Income.
9. Reorganize your asset portfolio in India/outside India with professional assistance to ensure minimum tax