

Tax Planning Avenues for NRIs / Returning NRIs / Outgoing NRIs

As a Non resident Indian, you are always skeptical about the tax laws in India and its administration. Over the years, the laws in India have been relaxed and simplified. The administration has also improved by being more friendly towards Non residents.

In following lines, I have tried to narrate our experience with important areas where a NRI needs to plan his affairs with Indian Taxation laws.

a) Residential Status :

As per Indian Income tax Act, all individuals are categorized in three residential types:

- 1) Ordinary Resident (OR)
- 2) Resident but not ordinary Resident (RNOR) &
- 3) Non resident (NR).

Taxation in India largely depends on residential status & nature of income. The number of days spent in India by a person decides the residential status.

It is important for NRIs to mention their residential status as “NRI” in all forms / applications etc. These could be for application of PAN , purchase of Mutual Funds etc. Any error here can have tax / legal implications. There are specific exemptions / deductions available for each category of residents and by mentioning incorrect residential status, one can miss out on the same.

In case of a resident Indian leaving India for employment / business outside India, his date of departure from India can be crucial in determining his residential status and taxability of income for that year. He therefore needs to plan the same carefully.

Case study -

For example, if Mr X leaves India on 1 st of April and carried out business overseas and earned a profit of USD 2 Mln. As he departed India on 1st April, it is likely that he would be treated as a Non Resident for that year and will not be taxed on this income of 2 Mln. Now consider a situation where Mr X departed on 15th October of the same year. In this situation, it is likely that he would be treated as a resident in India for that year and can be taxed on this income of 2 Mln in that year.

Similarly in case of a Resident but Not ordinarily resident (RNOR), income earned or received in India is taxable. Their other global income is not taxable in India.

b) Avoidance of Double Taxation in two different countries :

Income earned / received in India is taxable in India even in case of NRIs. In order to make sure that the NRIs do not end up paying tax on the same income in their residing country, Government of India has signed Double Tax avoidance agreement (DTAA) with more than 50 countries. Provisions of many of these DTAA throws up avenues for better planning of minimization of tax incidence for NRIs.

c) Tax saving in respect of Investments in specified Schemes / instruments :

NRIs having taxable income in India can invest in specifies instruments / schemes (like PPF, Life insurance premium, Nation saving certificates, Government recognized mutual funds etc) upto Rs.1 lac and use provisions of Income Tax Act for saving tax .

Also, for those NRIs that have realized profit on sale of property or other specified capital asset, they can invest the gain in specified financial instruments / another specified property (*subject to conditions*) and attain a Zero Tax position.

It is pertinent to note that following incomes are tax-free for NRIs –

- a) Interest on deposit in NRE account
- b) Interest on deposit in FCNR account /deposit.

d) Interest earned on NRE Account

Interest earned by NRIs on Non Resident External (NRE) bank account is exempt from tax. A NRI returning to India and having NRE/NRO bank accounts is required to report his return to his bankers, who shall then convert these accounts to resident bank accounts. The interest income earned on resident bank accounts is taxable.

e) Taxability on sale of Immovable Property

For NRI selling immovable property situated in India, sale proceeds are allowed to be repatriated after paying the requisite tax as per applicable law in India.

f) No tax on Profit on sale of shares / Mutual Fund Units :

NRIs need to note that in case where they have invested in shares of an Indian company through recognized stock exchanges in India and have sold these shares after holding them for more than one year, the gain on the same is tax free.

Also in case of sale of Mutual Funds units, there is no tax payable if the units are held for more than one year (*subject to conditions*).

g) Selection of Entity / structure for doing business in India :

For NRIs and returning NRIs, it is important that they select an appropriate structure in India for their ventures / employment contracts –

Indian Income Tax offers different tax treatment to different entities like Sole proprietary concern / Partnership firms / Corporate entity. NRIs need to choose an appropriate structure to suit their requirements and reduce the tax incidence.

For those working under contracts, they need to understand that in case they function under the employment contract, they are taxed as “salaries” and no deduction is available to them. However, if they were to choose to work under the “consultancy contracts”, they are eligible to claim further deductions towards expenses incurred while computing their taxable income under Indian Taxation laws.

h) Applicability of PAN and implication on TDS

Permanent Account Number (PAN) is a ten-digit alphanumeric identifier, issued by Revenue Authority of India. Each assessee (e.g. individual, firm, company etc.) is issued a unique PAN.

Tax Deducted at Source (TDS) is a kind of advance tax imposed by Revenue Authority of India. It is the amount withheld at the prescribed rates under DTAA or income tax act, from payments of various kinds such as salary, contract payment, commission, capital gains (in case of NRIs) etc. Credit for the same can be claimed in the home country depending upon the DTAA with respective countries.

However, if PAN is not available, then TDS will be deducted @ flat rate of 20% for which no credit will be allowed.

i) Applicability of Wealth Tax

Assets located outside India of Non-resident (NR) / Resident but Not Ordinary Resident (RNOR) are not taxable to Wealth Tax.

If NRI return to India with the intention of permanently residing in India, the assets brought by him will not be taxable for specified period. Also, the money and the assets acquired from the money, brought by NRI within during prescribed period will be exempt.

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