



NRI NEWS BULLETIN FOR JULY 2022

Volume No: 07-2022

NRI AND INCOME TAX

Are NRIs (Non-Resident Indians) required to file their income tax returns in India and if yes, then what income is subject to tax in India? This is a question that would arise in the minds of most NRIs.

The resident status of a person is the primary determinant of the income tax payable in India and an individual could either be a Resident, Non-Resident or a Resident but not ordinarily resident in India. The income tax liability in India is not dependent upon his/her citizenship and hence even a non-citizen of India is subject to Indian income tax if he/she is resident in India.

An individual becomes non-resident for an assessment year, if he is in previous year, if he/she meets the following criteria:

- (I) If he/she has not been in India for 182 days or more
- (II) If he/she has been in India for 60 days or more during the year, but has not been in India for 365 days or more during the four years preceding the previous year

However, in respect to India citizen and a person of Indian origin who visit India during the year, a period of 60 days as mentioned in (II) above shall be substituted with 182 days. The similar concession is provided to the India citizen who leaves India in any previous year as a crew member or for the purpose of employment outside India.

The Finance Act 2020, w.e.f Assessment Year 2021-22 has amended the above exception to provide that the period of 60 days as mentioned in (II) above shall be substituted with 120 days, if an Indian or a person of Indian origin whose total income, other than the income from foreign sources, exceeds Rs15 lakh during the previous year.

As per the Income Tax Act 1961, income tax is payable on the total income received or deemed to have been received in India or the income that accrues or is deemed to have accrued in India during the financial year. This broadly means that only income earned or accrued in India for an NRI is liable to income tax is payable on the NRI's foreign income.

So, if a person is an NRI and has earned or accrued income from his investments or other sources in India, then he/she is required to file the income tax returns in India.

What are the categories of income of an NRI that are liable for income tax in India?

- **Income from bank accounts and deposits:** The income tax liability in India for an NRI is dependent on the type of bank account and deposit. Interest earned on Non Resident External(NRE) accounts and deposit is completely exempted from Indian income tax. Interest earned on foreign currency nonresident (FCNR) deposit is also exempted from Indian income tax. However, Non Resident Ordinary(NRO) accounts and deposit are subject to Indian income tax. Currently income tax is deducted at source(TDS) at a rate of 30% and an additional surcharge and cess. If an NRI is resident in any of the countries with whom India has a double taxation avoidance agreement (DTAA), then the TDS will be as per the DTAA agreement between India and that particular country. The NRI will have to produce a tax residency certificate from that regulatory authority of the country. The NRI will have to produce a tax residency certificate from the regulatory authority of the country of residence to claim for the reduced TDS. For e.g. If the NRI is resident in Australia, then as per DTAA between India and Australia, the TDS on the NRI's NRO deposits or accounts in India will be at 15% and an additional surcharge and cess subject to the NRI submitting the tax residency certificate. An NRI should also be cognizant of the income tax applicability in his country of residence since in some countries, the global income is taxable. So, even if the interest on NRE or FCNR deposit is exempt



from Income tax in India, the interest earned on the deposit is to be declared to the tax authorities in the country of residence and applicable tax has to be paid.

- **Income from property:** NRI's are permitted to purchase an immovable property in India, except agricultural/plantation or a farm house are also permitted to hold or transfer immovable property that was acquired prior to the attainment of the NRI status or if the same has been inherited from the resident Indian. An NRI is eligible to claim all deductions available to the resident Indian for a residential property purchase.

An NRI can make income either from capital gains, or by letting out property for rent.

Let's now see what happens when a NRI makes a capital gain from a residential house property. If an NRI sells a residential house property, Capital Gain arises (Short/Long Term depending upon period of holding of the asset), capital gain tax, applicable surcharge and Health & Education Cess, is applicable. The capital gain is the difference between sale value and cost of purchase (indexed cost of purchase i.e. the cost of purchase adjusted to inflation if period of holding the assets is more than 36 months). But, if the entire long term capital gain is reinvested in another residential house property within 1 year prior to the date of sale or within 2 years after the date of sale or constructed the residential property within 3 years from the date of transfer, then the entire long term capital gain is exempted from income tax in India. If the capital gain is not reinvested on or before due date of filing of income tax of the year in which the capital asset transfers, the Capital Gain amount to be deposited in Capital Gain Account Scheme. If the long term capital gain is more than the cost of new property, then the excess of capital gain over the purchase/construction cost of the new property will be taxable. If the property is old and is held for 36 months or less from the purchase date, then a short term capital gain tax and applicable surcharge and health & education cess is applicable. NRI's should also be aware of the restrictions on reparability of such sale proceeds, which is restricted to a maximum of only 2 properties. Also, the amount that is being repatriated should not exceed the amount paid for purchase of the property.

The other kind of income is from property is when the property is rented out. The rental income earned by an NRI is taxable in India. The tenant is to deduct the tax at source while make the rental payment. NRI's can get deduction towards maintenance expenses, repairs etc. Exemption is also available for Municipal/corporation tax paid. If the property has been purchased from home loan, then the interest paid towards the home loan can also be deducted. An NRI can also claim deduction for the repayment of the principal amount of up to Rs.150000/-p.a. and stamp duty, registration charges etc. paid at the time of purchase of the property. Since tax is to be deducted at source and the same income might also be subject to tax in the country where the NRI is residing, the NRI might avail of the benefit of DTAA, if it is applicable, and avail of a lower rate of TDS and claim credit of the taxes paid in India.

- **Capital gains from Shares and Mutual funds:** Profits earned through sale of share, debentures, mutual funds and other securities are taxed as "capital gains" under the Income Tax Act,1961.

If the profit is on shares of a company, equity or equity oriented mutual fund that are subject to security transaction tax (STT) and are held for more than 12 months, then such profits are determined as Long term capital gain and are exempt up to Rs.1 lakh from Indian income tax. Dividends received on shares of domestic companies is fully taxable in India. Long term capital gains from unlisted securities or debt mutual funds shall be taxed with applicable surcharge and health & education cess. Any profit/loss on Sale of unlisted security will be treated as Long Term Capital Gain/Loss if period of holding is more than 24 months. If these held for 12/24 months or less (as the case may be), then such gains are termed as short term capital gain and are taxed at normal rates of tax applicable to the total income of the NRI. In the case of short term Capital Gains due to sale of listed equity shares or units of an equity oriented fund which is subject to STT, the tax rate applicable.

- **Salary:** If an NRI or anyone on the behalf of NRI receives a salary income in India, then the salary paid to the NRI is taxable. A salary paid in India in an Indian account will be treated as salary paid for services rendered in India. So, such salary payment will be subject to taxation at tax slab as applicable.

- The interest rates on **FCNR [B] deposits of amount less than USD 1 million** (or its equivalent in other currencies) with effect from 13.07.2022 as under:

(In % p.a.)

PERIOD OF DEPOSIT	CURRENCY OF DEPOSITS				
	USD	GBP	EUR	CAD	AUD
1 year & above but less than 2 years	3.00	2.40	0.06	1.61	1.55
2 years & above but less than 3 years	2.72	2.76	0.11	2.66	2.05
3 years & above but less than 4 years	2.80	2.88	0.11	2.76	2.25
4 years & above but less than 5 years	2.91	2.89	0.20	2.81	2.50
5 years only	3.00	2.86	0.25	2.81	2.65

- Interest rates on **NRE term Deposit** (w.e.f. 16.07.2022):

(In % p.a.)

SLABS	PERIOD OF DEPOSIT	RATE OF INTEREST*	
		Less than Rs.2 Crore	Rs. 2 Crore to less than 10 Crore
SLAB-1	1 year only	5.30	6.00
SLAB-2	Above 1 year to less than 2 years	6.00	6.00
SLAB-3	2 years & above to less than 3 years	5.45	6.00
SLAB-4	3 years & above to less than 5 years	5.70	6.00
SLAB-5	5 years & above to 10 years.	5.75	3.40

- Interest rates on **RFC Term Deposits of amount less than USD 1 million** (or its equivalent in other currencies) and RFC Saving Bank deposits w.e.f. 13.07.2022 are as under:

(In % p.a.)

PERIOD OF DEPOSIT	CURRENCY OF DEPOSITS				
	USD	GBP	EUR	CAD	AUD
SAVINGS BANK	0.30	NIL	NIL	NIL	NIL
1 month & above but less than 3 months	1.57	1.06	NIL	1.65	1.23
3 months & above but less than 6 months	2.05	1.42	NIL	2.05	1.76
6 months & above but less than 1 year	2.80	1.96	0.03	2.71	2.48
1 year & above but less than 2 years	2.30	2.40	0.06	1.61	1.55
2 years & above but less than 3 years	2.72	2.76	0.11	2.66	2.05
3 years only	2.80	2.88	0.11	2.76	2.25



➤ Revision in Interest Rates on Domestic and NRO Term Deposits (w.e.f. 16.07.2022):
(In % p.a.)

SLABS	PERIOD OF DEPOSIT	RATE OF INTEREST*			
		Less than Rs.2 Crore		Rs. 2 Crore to less than 10 Crore	
		General	Sr. Citizen	Callable	Non-Callable
1	7 days to 45 days	2.90	2.90	2.90	NA
2	46 days to 90 days	4.00	4.00	3.10	3.10
3	91 days to 179 days	4.05	4.05	3.35	3.35
4	180 days to less than 269 Days	4.50	5.00	3.35	3.35
5	270 Days to less than 1 Year	4.55	5.05	3.35	3.35
6	333 Days (Valid till 30.09.2022)	5.10	5.60		
7	1 year only	5.30	5.80	6.00	6.05
8	Above 1 year to less than 2 years	5.40	5.90	6.00	6.05
9	2 years & above to less than 3 years	5.45	5.95	6.00	6.05
10	3 years & above to less than 5 years	5.70	6.20	6.00	6.05
11	5 years & above to 10 years	5.75	6.25	3.40	NA

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