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India regulations for mobile employees
A preview

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Taxation of outbound employees

Global mobility is increasingly becoming a way of life. Deputations and secondments have become a natural extension of a globalized economy which demands that the right employee with the appropriate skill-set be at a particular location to fulfill organizational requirements. Companies are leveraging on the knowledge and experience of their employees both in project execution and business expansion.

While today's business environment is becoming more borderless, the realities of taxation have not. If you have been deputed overseas, you carry dual responsibilities on the taxation front – in India, as well as in the country of your deputation. To ensure that you are not caught on the back foot, awareness of the key regulations and liabilities is of paramount importance.

Awareness can only happen with access to well-researched, comprehensive and customized information. This publication provides an in-depth understanding of the significant regulations and key compliance procedures together with specific pointers for mobile employees.

Awareness will translate into readiness and you will be well prepared for the possible tax implications and can plan for compliance.

1. India taxes
What you need to know

1.1 Taxation of income

1.1.1 Tax residency

There are three possible residential statuses for an individual under the Indian tax laws - Resident and Ordinarily Resident (ROR), Resident but not Ordinarily Resident (RNOR) or Non-Resident (NR). The tax residency is dependent on the stay of an individual in India during a fiscal year that runs from 1 April to 31 March.

To illustrate - If you (an Indian citizen) leave India for the purpose of employment before staying for 182 days in a fiscal year (say before 28th September) and do not come back before 31st March, your residential status for the year would be NR. Else, it would be ROR provided you have stayed in India for more than 729 days in the previous 7 years. You would be categorized as an RNOR if you stay for more than 181 days in a fiscal year but do not meet the stay requirement for the preceding years.

1.1.2 Scope of income

An individual, who is classified as RNOR or NR, would be taxed in India only on income which is received in/ sourced from India. Once he becomes an ROR, he will be liable to pay taxes on his global income. This is summarized as below-

Source of Income	ROR	RNOR/ NR
Received in India	Yes	Yes
Sourced in India	Yes	Yes
Sourced and received outside India	Yes	No

India sourced income would include income generated in India out of assets located herein. For e.g. rental income from house property that has been let out, investment income from Indian securities, sale of assets in India. Besides, salary received in India may also be subject to India taxes. Do remember not to spend more than 181 days during a fiscal year during your subsequent visits to India to ensure that only your India sourced/ received income is taxed here.

1.2 Heads of income

1.2.1 Salary Income

Remuneration earned for services rendered in India will be taxable under the Indian tax laws. However, remuneration earned by an individual for services rendered outside India during an overseas assignment would not normally be subject to tax in India unless he/she is ROR or the remuneration is received in India.

1.2.2 Income from House Property

Rentals received during the fiscal year would be taxable as income. The Income-tax Act, 1961 (Act) provides for deductions that can be claimed from such rentals as under:

- Municipal taxes paid
- 30% of net rent received towards maintenance
- Interest paid towards mortgage of the house

Where the house is occupied by the relatives of the individual or is vacant on account of the individual residing abroad, it will be treated as a self-occupied house property and the deduction for the interest paid would be limited to ₹150,000. Additional deduction of ₹100,000 is available for interest on housing loan taken during 2013-14 if the value of the property does not exceed ₹4,000,000. This can be availed by first time home buyers and can be carried forward to the next year if not fully utilized.

Two or more properties

It is pertinent to note that only one house property may be claimed as self-occupied. If an individual has more than one house and the other house is not let out, he has to offer “notional rent” from such house for taxes. The notional rent would be the rent which would have been received had the

house property been let out. All other deductions available in case of a let out property would be available. There is no limit on deduction for interest paid on housing loan.

As mentioned earlier, RORs are taxable in India on their global income. Hence, income from overseas properties would also be subject to India taxes for this category while only rentals from Indian properties would be subject to tax in India for an RNOR/NR.

1.2.3 Capital Gains

Gains arising on sale of assets like land, buildings, shares, stocks, jewellery, paintings, etc. are covered under this head.

Type	How to determine the type of gains
Long term	Capital Asset held for more than 36 months (as regards stock / securities, 36 months is replaced by 12 months)
Short term	Capital Asset held for 36 months or less (as regards stock / securities, 36 months is replaced by 12 months)

Rate of tax:

Short term gains arising on sale of listed securities would be taxed at 15% whilst all other short term gains would be chargeable to tax at the applicable progressive tax rate. On the other hand, long term gains except for equity shares and equity based mutual funds would be taxed at 10% or 20% depending on the facts and circumstances.

On fulfillment of conditions, certain exemptions are available for-

- Long term capital gains, should the gains / sale proceeds be invested again or be subjected to Securities Transaction Tax (in the case of securities)
- Capital gains for RNOR and NR arising outside India

To reiterate, for an ROR all capital gains irrespective of where the asset is situated would be subject to tax in India, while for a RNOR/NR only capital gains arising from assets in India would be subject to tax in India except in case of foreign assets where the sale proceeds are received directly in India.

1.2.4 Income from Other Sources

This is the residuary section and covers any income that is not explicitly included in the other heads of income under the Act. The most common examples of such income are interest earned from bank accounts and dividends. Certain deductions may also be claimed under this head.

1.2.5 Deductions from income

An individual is eligible for a deduction from total income on certain investments made during the year subject to satisfaction of requisite conditions. The deduction is available up to ₹100,000 per fiscal year. Besides, health care premia, specified investments, interest on savings bank account and donations to approved institutions subject to applicable limits can also be reduced to arrive at taxable income.

1.3 India tax compliances

1.3.1 Timeline for Tax Payments

Taxes on income earned would be payable through the following mechanisms:

Type of tax payments	Remarks
Tax deducted at Source	• Generally deducted at source by employers / banks, etc. • Form 16 / Form 16A issued for the same
Advance tax	• Estimation of personal income • Determination of tax liability on the above • Payment of tax in three installments • Due dates -15th of September, December and March of every fiscal year
Self-assessment tax (SAT)	• Final tax payment to be made before filing of return of income along with interest, if any, for default in payment of taxes

Should your total taxes (after considering TDS) for the fiscal year exceed ₹10,000, you would have an advance tax liability in India.

1.3.2 Rates of Individual Taxation

India follows progressive rates of taxation for individuals. The applicable rates for FY 2013-14 are as below:

Income Slab ₹	Rate (%)
Up to 200,000*	Nil
200,001 - 500,000**	10
500,001 – 1,000,000	20
1,000,000 and above	30

* Exemption limit for senior citizens of age 60 years or more is ₹250,000 and super senior citizens of age 80 years or more is ₹500,000.
**Rebate of up to ₹2,000 available if the total income does not exceed ₹500,000.

Additional taxes:

Surcharge at the rate of 10% is payable on tax if income exceeds ₹10 million (only for fiscal year 2013-14)

Education cess at the rate of 3% is payable on tax plus surcharge (if any)

1.3.3 Tax return

An individual having total income less than the exemption limit is not required to file an India tax return. However it is advisable to file a tax return to maintain continuity and keep the records up-to-date. You would also need the return while applying for Income Tax Clearance Certificate before departing from India. RORs with overseas assets are mandatorily required to furnish a return whether or not they have any taxable income in India

Key facts of India tax return filing are as under:

- Annual process;
- Due date for filing is 31st July after the end of the fiscal year;
- Filing to be done electronically by individuals having taxable income exceeding ₹500,000,and RORs with overseas assets ;
- No supporting documents are to be attached to the return;
- No concept of joint filing of return in India;
- RORs to make additional disclosures if they have assets located overseas or hold signing authority abroad or trusteeship in overseas trusts.

An individual can claim deductions, treaty benefits and also avail foreign tax credits in the tax return. Though there is no requirement to file supporting documents along with the tax return, one would need them to substantiate the treaty exemption claims during tax assessments or upon query from the tax officer. For this purpose, the following documents would be essential:

- Copy of the passport for determining the residential status;
- Foreign tax return;
- Break-up of salary income (paid and taxed in India and abroad);
- Tax Residency Certificate (TRC);
- Prescribed details in Form 10F if not already mentioned in the TRC;
- Copies of bank statements

There could be additional documents that the tax officer may call for.

1.3.4 Income Tax Clearance Certificate (“ITCC”)

Before departure, every individual is required to obtain a Tax Clearance Certificate (i.e. No Objection Certificate for leaving India) from the income tax authorities. This certificate is required to be produced to the immigration department before leaving India.

1.3.5 India compliances – Employer standpoint

India follows a pay-as-you-earn system of taxation for remuneration income. If the employee continues on India payroll during the overseas assignment, the employer may be responsible for deduction and payment of taxes from such remuneration. The taxes need to be computed at an average rate, deducted on a monthly basis and remitted to the treasury within the 7th of the next month (except for March where the due date is 30th April). The employer also has to issue a tax deduction certificate at the end of the fiscal year providing details of remuneration income, taxes deducted and remitted [Form 16] besides filing quarterly returns of remuneration paid and taxes deducted/remitted on the same.

1.4 Others

Double Taxation Avoidance Agreement (DTAA)

India has entered into DTAAs with many countries. An individual who is resident of a country with which India has entered into a DTAA could avail the treaty benefits to either eliminate taxation in one of the states or avail credit in the residence country for taxes paid in the other country. The documents that may be required for this purpose are covered in the paragraph on tax return.

Individuals rendering services overseas for a shorter span[1] may be eligible for exemption from taxes in the host location (short stay exemption) on satisfaction of prescribed conditions.

[1] Period is defined as per the DTAA – most DTAAs provide for exemption for stay not exceeding 183 days in aggregate. However DTAAs with a few countries provide exemption if the stay in host location is restricted to 90 days.

2. Direct Taxes Code (DTC)

The current Income-tax Act is proposed to be replaced by the Direct Taxes Code in the future though the date from when it would apply is currently uncertain. It is widely publicized by the Government that the DTC would be simpler than the current Act.

Key proposals of the DTC Bill (yet to be approved by the Parliament)

- Education cess proposed to be dispensed with
- Wealth tax proposed to be levied on wealth exceeding ₹10 million as against ₹3 million as per the Wealth Tax Act.

The rules relating to perquisite valuation are awaited and will provide a clear picture of proposed salary taxation vis-à-vis current regulations.

Note: DTC proposals have undergone significant changes since the first draft and deliberations being still on may undergo further changes before it becomes law.

3. Social security obligations in India

3.1 India social security contributions (provident fund and pension) would continue as long as the employee is on the payroll of Indian company. However if the individual is transferred to the overseas company, then the India social security contributions may be stopped.

Mandatory contribution - The Employees' Provident Fund and Miscellaneous Provisions Act, 1952 ("PF Act") is applicable to all establishments employing 20 or more employees and the compliance of PF provisions are mandatory for all employees earning a monthly basic pay of ₹6,500 or less. Where the basic pay is higher than this limit, the employees can opt out of the scheme under certain circumstances. As per the provisions of the PF Act, both, the employer as well as the employee would contribute 12% of monthly pay (as defined) to the provident fund.

India has signed Social Security Agreements (SSA's) with several countries. Employees on deputation to these countries and contributing to their social security schemes would be regarded as 'international workers' [IWs]. The ceiling limit for basic pay (₹6,500) would not apply to IWs. The IW tag could be avoided by obtaining a certificate of coverage [COC].
For IWs, 8.33% of the employer's contribution would be diverted towards pension and balance 3.67% would be towards PF.

For employees with COC/going to countries with which there is no SSA, the monthly contributions to pension funds are restricted to ₹541 and the balance would be towards PF. For this purpose, salary refers to total salary whether received in India or abroad.

The employer needs to deposit the PF dues by 15th of next month. The details of employee qualifying as an IW also need to be provided in a prescribed form.

Withdrawal/Benefits - The amount deposited in the PF scheme can be withdrawn by the employee under specific circumstances. The amount withdrawn can be paid to the credit of the India bank account of the IWs or that of their employer.

PF Withdrawal:

a) In case an SSA exists - as per the provisions of the SSA.

b) In case no notified SSA exists then -
   - On retirement from service after attainment of 58 years
   - On retirement on account of permanent and total incapacity for work due to bodily or mental infirmity as certified by specified medical practitioner

Pension Withdrawal: As per the provisions of the SSA, where SSA exists. Withdrawal of pension for assignees to non-SSA countries is permissible only where period of contribution exceeds 10 years.

3.2 Dormant account: If there are no PF contributions to an account for three years, such account would be designated as dormant account and the Government would stop crediting interest to such accounts. However, IW accounts will not be flagged as dormant. As such employees who are permitted to withdraw may need to analyze and decide on when to withdraw the PF.

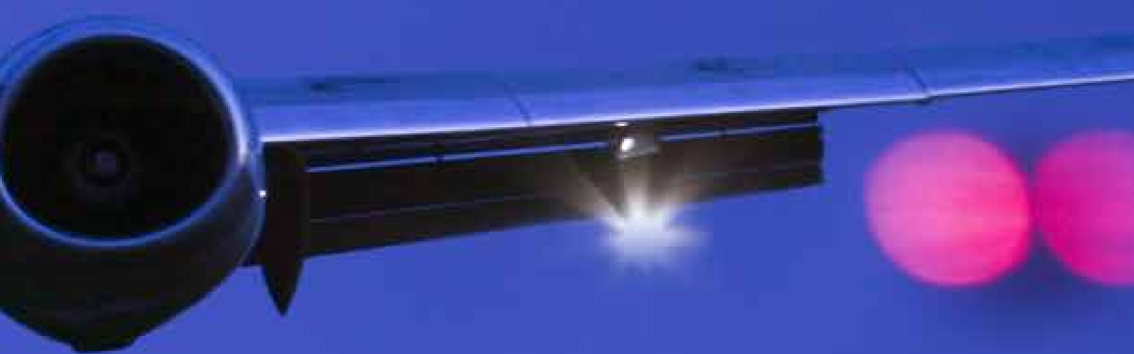
3.3 Social Security Agreements ('SSA')

Key Benefits of SSA – Assignees to countries with which India has signed SSAs may make an application to obtain COC from the relevant PF authorities in India. The criterion is that the employee continues to contribute to PF in India. If a COC is obtained, the employee and the employer may not be required / exempted from most of the contributions to social security in the overseas location. The following documents, inter alia, are required for applying for COC in India:

- Application in the prescribed form
- Return of members joining service
- Copy of the passport and visa

4. Requirements in a snapshot for you

Requirements	To be completed by	Periodicity
Tax payments (personal income)	September 15th December 15th March 15th	
Tax return	July 31st	Annually
ITCC	Before departure	One time



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