Indian regulations for expatriates working in India

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In recent times, the Indian government has increased its attention towards the expatriate population. This has translated into changes in various legislations and resulted in increased responsibilities and additional compliance requirements. Given this scenario this update was created to provide a better understanding of the tax, immigration, social security and other allied laws which are relevant for the expatriate population.

An Assignee's stay in India is the key driver for determining his/her tax residency in India

India taxes
What you need to know

Tax residency

The Indian fiscal year runs from 1 April to 31 March. An assignee is liable to pay taxes in India based on his/her tax residency during a fiscal year. Tax residency is dependent on the stay of the assignee in India, irrespective of the purpose of such stay. An assignee can be a Resident and Ordinarily Resident (ROR), Resident but not Ordinarily Resident (RNOR) or Non-Resident (NR) in a year.

If you arrive in India for the first time, you will be NR/RNOR for the first two fiscal years. Generally, a person who spends more than 181 days in India during a fiscal year and more than 729 days in India in the previous 7 years will be an ROR for that fiscal year. The tax residency of an individual will determine the scope of income liable to be taxed in India.

Scope of Income

Source of Income	ROR	RNOR/ NR
Received in India	Taxable	Taxable
Sourced in India	Taxable	Taxable
Sourced and received outside India	Taxable	Taxable

Tax registration number

An assignee who is liable to pay taxes in India must apply for a tax registration number i.e. Permanent Account Number (PAN) with the Indian Income Tax Authorities in Form 49AA / Form 49A as applicable together with the prescribed documents. PAN is generally allotted within 15 days of submitting prescribed documents. The PAN is to be applied for immediately on arrival since it is required for foreigners' registration with the Foreigners' Regional Registration Office (FRRO).

Individual tax rates

India follows progressive rates of taxation for individuals. The applicable tax rates for fiscal year 2013-14 (1 April 2013 to 31 March 2014) are as below:

Income Slab (₹)	Rate %
Upto 2,00,000*	Nil
200,001 - 500,000**	10
500,001 – 1,000,000	20
1,000,001 or 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).

Educational cess at the rate of 3% is payable on tax plus surcharge

Tax payment

Taxes on income earned will be payable through the following mechanisms.

Withholding tax (TDS)	• Estimation of total income • Monthly deduction and remittance of taxes
Advance tax	• Trigger only if tax exceeds 10,000. • Determination of tax on estimated personal income • Payment of tax in installments due by 15th of September/ December and March of every fiscal year
Self-assessment tax	• Determination of tax on actual income • Payment of tax on or before filing return of income

Tax return

The due date for filing the India tax return is 31 July following the end of every fiscal year. The return can be filed either manually or electronically. However, electronic filing is mandatory in cases where the taxable income exceeds `500,000. There is no system of joint filing of tax return with spouse. The return may be subjected to scrutiny by revenue authorities.

An assignee who qualifies as ROR in a fiscal year has to report moveable and immoveable assets held overseas along with any financial interest or signing authority abroad and trusteeship in offshore trusts in the India tax return. This requirement is independent of the assignee having taxable income for the fiscal year.

Income Tax Clearance Certificate (ITCC)

An assignee who is repatriating back to home country should obtain an ITCC i.e. No Objection Certificate from the Income Tax Authorities. This certificate is required to be presented to the immigration authorities at the time of departure from India.

Taxation principles

Salary income

Remuneration earned by an individual for services rendered in India during the assignment period is taxable in India (irrespective of where the payment has been received). This will include salary for any holiday period during the assignment. In addition, any sum that is relatable to the India service period and received preceding/ succeeding the assignment period will also form part of salary income.

Perquisites/fringe benefits such as accommodation, car, employee stock option, education benefits provided by the employer are also liable to tax. Some of the allowances/benefits like housing and leave travel are eligible for specific deductions/exemptions subject to the amount being actually expended and satisfaction of requisite conditions. Further, certain investments made during the year are eligible for deduction from total income up to `100,000, subject to the satisfaction of specified conditions.

Others

Double Taxation Avoidance Agreements (DTAA)

India has entered into 94 double taxation avoidance agreements and 10 Tax information exchange agreements.

An individual who is resident of a country with which India has entered into DTAA could avail the treaty benefits to either eliminate taxation in one of the countries or avail credit of taxes paid in the country of residence. Commencing from India fiscal year 2012-13, assignees would require a tax residency certificate (TRC) from the tax authorities of the resident country to avail treaty benefits in the India tax return. In addition, prescribed details are to be submitted in Form 10F if not already mentioned in the TRC.

Individuals rendering services in India for a shorter span may be eligible to claim short stay exemption under the Indian Income tax Act, 1961 or the relevant DTAA provided certain conditions are satisfied.

India taxes
What the employer needs to know

Permanent Establishment (PE) Exposure

Deputation of assignees to India may lead to a PE of the overseas entity in India if the assignment is not appropriately structured. Accordingly, the profits attributable to the assignees' services may be considered taxable in India.

India compliances

India follows a 'pay-as-you-earn' system of taxation for employment income. An employer is under obligation to withhold taxes and deposit the same with the government treasury. The taxes need to be computed at an average rate and deposited on a monthly basis by the 7th of the succeeding month. An employer also needs to report employee-wise monthly salary and taxes on a quarterly basis in the tax withholding return. A tax deduction certificate needs to be issued annually to the assignee.

Current Income Tax Act proposed to be replaced by the

Direct Taxes Code (DTC)

It is pertinent to note that 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.

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

- Education cess is proposed to be dispensed with.
- Foreign nationals who qualify as 'resident' were not liable to wealth tax on their foreign assets. It is proposed that they are brought within the purview of wealth tax on certain specified foreign assets.
- Wealth tax is proposed to be levied on wealth exceeding ₹10 million under DTC regime as against ₹3 million as per the Wealth Tax Act.

Note: DTC proposals have undergone significant changes since the first draft and given that deliberations are still on, there may be further changes before it becomes law.

Foreign passport holders working for covered Indian

Social security obligations in India

Foreign nationals i.e. International Workers (IWs) working in establishments in India to which Employees' Provident Fund (PF) regulations apply are required to contribute to the PF except those who have been specifically exempted under the regulations.

Social Security Agreements (SSA)

Assignees from countries with whom India has signed an SSA, contributing towards the social security of the home country and holding Certificate of Coverage (COC) from the home country will not be required to contribute towards the Indian social security. The COC needs to be filed with the PF authorities.

Bilateral comprehensive economic agreement (BCEA):

India has entered into BCEAs with various countries. Assignees from countries with which such agreements have been entered into before 1st October, 2008 and contributing to their home country social security would also be exempt from Indian social security contributions on satisfaction of specified conditions. India has entered into a BCEA with Singapore prior to 1 October 2008. Hence, assignees from Singapore can avail exemption under the BCEA subject to fulfilling the conditions specified therein.

Mandatory contribution

As per the provisions of the PF scheme, both employer as well as employee will contribute 12% of monthly pay (as defined). Out of the employer's contribution 8.33% of monthly pay will be towards the pension fund and balance 3.67% will be towards Provident Fund. Salary will include the total salary whether received in India or abroad.

Based on the nature of work in India, visiting assignees may require e-visas

An employer needs to deposit the PF by the 15th of the next month. The details of the assignees also need to be provided on a monthly basis in a prescribed form.

Withdrawal/Benefits

The amount deposited in the scheme can be withdrawn by an assignee under specific circumstances. Further, the amount withdrawn shall be payable to the credit of the assignees bank account or to the employer's bank account in India.

PF withdrawal

- In case an SSA exists – as per the provisions of the SSA.
- In case no notified SSA exists then
  - On retirement from services 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 a specified medical practitioner.

Pension withdrawal

- Withdrawal benefit – as per the provisions of the SSA, where SSA exists.
- Annuity – after 58 years of age subject to satisfaction of conditions.

Current SSAs

Signed and notified	Signed but not yet notified	Negotiations
Belgium	Czech Republic	Australia
Germany – Limited	Norway	USA
Switzerland	Germany – Comprehensive	
Denmark	Canada	
Luxembourg	Portugal	
France	Japan	
Republic of Korea	Finland	
Kingdom of Netherlands	Sweden	
Hungary	Austria	

Other regulations

Other relevant regulations for foreign nationals

There are other regulations which may be of interest to the foreign nationals working in India. Some of these are listed below:

Visa

An expatriate needs to secure an employment visa for working in India. As per the clarification by the Ministry of Home Affairs, foreign nationals need to earn a minimum remuneration of USD 25,000 per annum along with certain other conditions to be eligible for the E-Visa. Expatriates visiting India even for a short span may require an E-Visa on account of the nature of their work in India and hence care should be taken to obtain the correct visa for visiting India.

Registration

Foreign nationals working in India need to obtain registration with the FRRO within 14 days of their arrival in India. This registration needs to be renewed periodically during their service tenure in India.

Person of Indian Origin (PIO) and Overseas Citizens of India (OCI) card holders

Visa and Registration requirements for Person of Indian Origin (POI) and Overseas Citizens of India (OCI) card holders are as follows:

Particulars	PIO Card	OCI Card
Visa	Not required	Not required
Registration with FRRO	Required if stay exceeds 180 days	Not required

Exchange control

India has liberalized its exchange control provisions to allow expatriates to freely repatriate their remuneration back to the home country after payment of appropriate taxes and social security and submission of appropriate documents. The norms also permit employers to make direct payments to the employees' foreign bank accounts net of appropriate taxes and social security.

Requirements in a snapshot

Requirements	To be completed by	Periodicity
FRRO Registration	Within 14 days of arrival	To be renewed periodically
PAN application	Prior to FRRO registration	One time
Tax payments		
(personal income)	15 September, 15 December and 15 March	
Tax return	31 July	Annual
ITCC	Before departure	One time
Social security	On a monthly basis by the employer	Monthly