

TAXATION IN INDIA

Corporate Perspective



FIRSTRAND

Residence in India

- An individual is said to be resident in India in any previous year, if he
 - is in India in that year for a period or periods amounting in all to one hundred and eighty-two days or more ; or
 - 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.



Residence in India

- 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.



Residence In India

- **Resident**
 - An Individual is said to be resident in India in any previous year if he is in India for at least 182 days in that year or during that year he is in India for a period of at least 60 days & has been in India for at least 365 days during the 4 years preceding that year.
- **Non- Resident**
 - A person who is not a resident in terms of the above provision is a non-resident.



Residence In India

- **Resident but Not Ordinarily Resident (RNOR)**
 - A person who is otherwise resident as defined above would be RNOR, if he satisfies any of the following two conditions:
 - He has been Non-resident in India in 9 out of 10 preceding previous years or
 - He has been in India for a period of 729 days or less in the preceding 7 previous



Scope of Total Income

- In the case of a **resident**, his **world income** will be taxable and in the case of a **non-resident** all incomes from whatever **sources** derived, which is received or is deemed to be received **in India** or accrues or arises or is deemed to accrue or arise to him in India will be taxable.



Expatriates working in India

- In case of foreign expatriate working in India, the remuneration received by him, assessable under the head '**Salaries**', is **deemed to be earned in India** if it is payable to him for **service rendered in India** as provided in Section 9(1)(ii) of the Income Tax Act.
- Income payable for the **leave** period which is preceded and succeeded by services rendered in India and forms part of the service contract shall also be regarded as income earned in India.
- Irrespective of the residential status of the expatriate employee, the amount received by him as salary for services rendered in India shall be **liable to tax in India regardless of the place where the salary is actually received.**



Exceptions to the rule

- Remuneration of an employee of a foreign enterprise is exempt from tax if his stay in India is **less than 90 days** in aggregate during the financial year. This is subject to further relaxation under the provisions of Double Taxation Avoidance Agreement entered into by India with the respective country.
- Remuneration received by a foreign expatriate as an official of an embassy or high commission or consulate or trade representative of a foreign state is exempt on reciprocal basis.
- Remuneration from employment on a foreign trip provided the stay of the employee does not exceed 90 days in the financial year.
- Training stipends received from foreign government.
- Remuneration under co-operative technical assistance programme or technical assistance grants agreements .



Double Taxation Agreement

- Expatriate personnel rendering services in India shall be required to pay Income Tax in India for the period of their services rendered in India, however in view the DTA between India and SA, the salaries will not be taxed in India, if all the following conditions are satisfied :
 - the recipient is present in India for a period or periods not exceeding in the aggregate 183 days in a year of income of India; and
 - the remuneration is paid by, or on behalf of, an employer who is not a resident of India; and
 - the remuneration is not deductible in determining the taxable profits of the permanent establishment or a fixed base which the employer has in



Determination of Tax Liability

- Employees will be liable to pay taxes on the salary received by them at the following rates applicable for the financial year 2008-09:

Women	Senior citizens	Others	Tax rate
0 – 180	0 – 225	0 -150	0%
180 – 300	225 – 300	150 – 300	10%
300 – 500	300 – 500	300 – 500	20%
500 and above	500 and above	500 and above	30%



Determination of Tax Liability

- Further, the tax determined above will be increased by the **surcharge @ 10%**, in case the gross income exceeds Rs. 1 million and **education cess @ 3%** on aggregate of income tax and surcharge, if applicable.
- Consequently, maximum tax rate will be **33.99%**.
- This is subject to the other provisions of Income Tax Act, 1962 and the provisions contains in the DTA



Responsibility of Employer

- If the expatriate employees deputed by the foreign employer are liable to pay income tax in India, responsibilities of the employer will be as follows, irrespective of whether Permanent Establishment of the employer exists in India or not:
 - To deduct tax at source from the salaries paid to the employee.
 - The tax so deducted should be deposited to the credit of the Central Government within 7 days from end of the month of deduction.
 - To furnish quarterly return for the tax withheld from the salary.
 - Failure to comply with these provisions may lead to penal consequences.



Fringe Benefit Tax

- **Meaning & Applicability**

- Fringe Benefit Tax (FBT) is a tax payable at the specified rate (max 33.99%) of the value of fringe benefits provided or deemed to have been provided by an employer to his employees.
- FBT shall be charged in addition to the income-tax charged for every assessment year and shall be payable by the employer even if no income-tax is payable by the employer under other provisions of the Income-tax Act.
 - Expenses like telephone expenses, gifts, conveyance expenses, travel expenses, business promotion expenses etc. are deemed to be fringe benefits for this purpose. The employer will also be liable to pay FBT on the fringe benefits provided to the employees at the specified rate.



Fringe Benefit Tax

- **Due date for filing Return of Fringe Benefit**
 - The due date for furnishing the return of fringe benefits is 30th September in the case of a company.
 - An employer may file a belated return/revised return of fringe benefits any time before the expiry of one year from the end of the relevant assessment year or before completion of assessment, whichever is earlier.
 - Delay in furnishing return will attract simple interest @1% per month on the balance FBT payable.
 - In addition to this, penalty may also be levied of Rs. 100/- per day till the default continues.



Fringe Benefit Tax

- **Payment of FBT**

- CPMPL will need to estimate the FBT liability in advance and will be liable to make payment in advance in four installments which are as follows:

Quarter ended	Due date of advance Tax Installment	% of total estimated FBT
June	On or before 15 June	15%
September	On or before 15 September	45%
December	On or before 15 December	75%
March	On or before 15 March	100%

- Failure to the above installments will attract simple interest @1% of the amount of shortfall of payment of advance tax.



Fringe Benefit Tax

- Fringe benefits shall be deemed to have provided by the employer if he has incurred any expense on, or made payment for, the purposes summarized below:-
 - entertainment;
 - provision of hospitality of every kind by the employer to any person, whether by way of provision of food or beverages or in any other manner
 - except any expenditure on food or beverages provided by the employer to his employees in office and payment through paid vouchers which are not transferable and usable only at eating joints or outlets;
 - conference including any expenditure on conveyance, tour and travel (including foreign travel), on hotel, or boarding and lodging in connection with any conference (other than fee for participation by the employees in any conference);



Fringe Benefits Tax (continue)

- sales promotion including publicity but excluding following expenditure on advertisement;
- employees welfare excluding payment made to fulfill any statutory obligation or mitigate occupational hazards;
- conveyance;
- use of hotel, boarding and lodging facilities;
- repair, running (including fuel), maintenance of motor cars and the amount of depreciation thereon;
- use of telephone (including mobile phone) other than expenditure on leased telephone lines;
- festival celebrations;



Fringe Benefit Tax (continue)

- use of health club and similar facilities;
- use of any other club facilities;
- gifts; and
- scholarships;
- tour and travel (including foreign travel)



Wealth Tax

- Wealth tax is charged in respect of the 'net wealth' as on March 31st every year on individuals as well as companies at the rate of 1% of the 'net wealth' in excess of 1.5 million.
- The term 'net wealth' broadly represents excess of prescribed assets over the concerned debts.
 - The prescribed assets includes guest house & residential house, motor car, jewellery, yachts, boats, aircraft, cash in hand etc.
 - A debt is an obligation to pay liquidated or certain sum of money incurred in relation to those assets, which are included in the net wealth.



Employment Contracts

- The relationship between a company and its managerial employees and other employees who earn a salary which is higher than the salary caps provided under the various labour statutes, is governed by the employment contract which in India is variously known as 'offer letter', 'employment letter, letter of appointment', etc.
- Confidentiality, non-compete, ownership of IPR are some of the clauses which are universally found in all employment contracts. A Restraint of Trade clause in the employment contract is void to that extent. The courts in India have also held the same position.



Employment Contracts

- One significant difference between the employment relations prevalent in the US and other developed countries and those of India, is the absence of the concept of "At-will" employment.
- At-will employment which means that the both the employee and the company may terminate the employment at any time without ascribing any reason is a concept which is not followed in India.
- Employment contracts in India are long term agreements and termination of employment must be according to the terms provided in the agreement subject also to the applicable statute(s).



Business Immigration to India

- The Indian Government issues several types of visas through its Missions located worldwide. These visas include business and employment visas.
- **Employment visa**
 - Employment visa is granted on a case to case basis to foreign nationals desirous of taking employment in India.
 - employment visa may also be issued for longer periods depending on the terms of the period specified in the contract of employment of the foreign national.
 - Foreign Nationals visiting India for employment must hold a valid employment visa.
- **Business Visa**
 - Business Visas are normally multi entry and are issued for a period of 6 (six) months to 1 (one) year.



Business Immigration Requirements

Pre-arrival requirements

- The Indian Missions located in various countries issue visas. An applicant for a visa must present as under:
 - 1. Visa Application Form
 - Visa application form should be filled in legibly and clearly
 - The name and other relevant particulars should be filled in as per details in the passport.
 - 2. Passport
 - At the time of submission of application, the passport should be valid for at least six (6) months beyond the date of intended departure from India and must have at least 2 (two) blank pages.
 - 3. Photographs
 - Recent passport size photographs depicting front pose against light background must be submitted.



Business Immigration Requirements

Pre-arrival requirements (continue)

- 4. Visa Fee
 - Visa application should be accompanied by the prescribed fee. Please note that visa fee schedule varies according to the type of visa issued and varies from one country to another and can be revised at short notice and is usually non-refundable. Processing time for visa applications also varies in a similar manner.

- 5. Supporting Documents
 - For employment visa, below mentioned supporting documents must also be enclosed:
 - Letter of recommendation of the Indian Company employing the foreigner;
 - Terms and Condition of the employment;
 - The prescribed undertaking on the letterhead of the Indian Company; and
 - Proof of registration of the employer's organisation in India.



Business Immigration Requirements

- **Post-arrival Requirements**

- Foreigners entering India on Employment visa, valid for more than 180 days, are required to register, within 14 (fourteen) days of first arrival in India, with the Foreigners Regional Registration Officer ("FRRO") under whose jurisdiction they propose to stay.



Business Immigration Requirements

- **Registration Procedure**
 - A Resident Foreign National is required to make an application to the Registration Officer ("RO") at the place where the foreigner resides and registers his/her name.
 - The following documents are required to be submitted:
 - Properly filled application form;
 - Photocopy of the main pages of the passport;
 - Recent photographs of the applicant; and
 - Details of Proof of residence of the applicant in India.
 - Prescribed undertaking

