



Thinking beyond borders: Management of extended business travelers - India

January 2024



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01

Key message

1 Key message

An individual is taxed in India on the basis of their residential status under the Income Tax Act of 1961 (the Act). Residential status, per the Act, is determined, inter alia, on the basis of physical presence of the individual in India during a particular Financial Year (FY) (1 April to 31 March).

02

Income tax

2 Income Tax

2.1 Residential status under the Act

An individual can be a resident and ordinarily resident (ROR), a resident but not ordinarily resident (NOR), or a non-resident (NR) for Indian tax purposes.

An individual is taxed in India, based on their residential status under the Act. Residential status as per the Act is determined, inter alia, based on the number of days of physical presence of the individual in India during the FY. Please note that part of a day, date of arrival/ departure from India are considered as full day of presence in India. The principles governing the determination of residential status are laid down in Section 6 of the Act.

Tax Residential status shall be determined as follows:

As per the Act, individuals are said to be 'Resident' in India in any FY if they satisfy either of the following conditions:

- they are present in India in that fiscal year for a period of 182 days or more; or
- they are present in India for a period of 60 days* or more during the FY and a total of 365 days or more during the 4 FYs immediately preceding the relevant FY.

***The period of 60 days stands extended to 182 days / 120 days in the following cases:**

- For a citizen of India who leaves India for the purposes of employment outside India or as a member of the crew of a prescribed Indian ship, in the year of departure, the 60 days condition is replaced with 182 days;
- For a citizen of India or a person of Indian origin who being outside India, comes on a visit to India in any FY and their income, other than income from foreign sources, does not exceed 1.5 million Indian rupee (INR) the 60 days condition is replaced with 182 days;
- For a citizen of India or a person of Indian origin who being outside India, comes on a visit to India in any FY and their income, other than income from foreign sources, exceeds INR1.5 million the 60 days condition is replaced with 120 days.

If none of the above conditions are satisfied, the individual will qualify as a Non-Resident (NR) of India for that FY, unless they qualify as a Resident based on the deemed residency clause as mentioned below.

Deemed Resident

The individual, being a citizen of India, shall be deemed to be resident in India in any FY, if they are not liable to tax* in any other country/jurisdiction by reason of their domicile or residence or any other criteria of similar nature and their income, other than income from foreign sources, exceeds INR1.5 million.

*"liable to tax", in relation to a person and with reference to a country, means that there is an income-tax liability on such person under the law of that country for the time being in force and shall include a person who has subsequently been exempted from such liability under the law of that country.

A Resident individual could be Ordinarily Resident (OR) in India or Not Ordinarily Resident (NOR) in India as per the Act as explained below:

If the individual qualifies as a resident only based on the deemed residency clause or based on the reduced stay of 120 days or more as explained in the above paragraph, and does not satisfy any other basic condition, they would qualify as a NOR.

In other cases, the individual will qualify as an Ordinarily Resident (OR), if both the following additional conditions are satisfied:

- they have been “resident” in India in at least 2 out of the 10 FYs immediately preceding the relevant FY; and
- their stay in India during the 7 preceding FYs immediately preceding the relevant FY is more than 729 days.

If they do not satisfy either one or both the above-mentioned additional conditions, they would qualify as a NOR.

2.2 Taxability of income

Taxation varies based on the residency status of the individual in a FY.

- ROR – liable for tax on worldwide income
- NOR – liable for tax on income sourced /deemed to source from India or received/deemed to be received in India, or from income derived from a business controlled or set up in India
- NR – liable for tax only on income sourced /deemed to source from India or received/deemed to be received in India

Foreign nationals may be exempt from tax in India if their stay in India does not exceed 90 days, as prescribed in the Indian domestic law, or the number of days prescribed (generally 183 days) under various double taxation avoidance agreements (DTAA) into which India has entered with other countries / jurisdictions, subject to satisfaction of all other conditions.

2.3 Definition of source

Salary for services rendered in India is deemed to accrue in India and hence, is taxable in India for all individuals, irrespective of the place of receipt and residential status, subject to benefit, if any, under the DTAA. Generally, services rendered are equated with physical presence in India. Salary entitlements paid for leave periods which is preceded and succeeded by services rendered in India and forms part of the service contract of employment, are also deemed to have been earned for services rendered in India.

2.4 Tax trigger points

As mentioned above, salary for services rendered in India is taxable in India for all individuals. Further, salary received in India is taxable in India, irrespective of residential status of the individual and place of rendering services, subject to benefit, if any, under the DTAA / domestic tax laws of India.

Remuneration for services rendered by a foreign national, employed by a foreign enterprise during the individual's stay in India, is exempt from tax in India if:

- the total period of the stay in India does not exceed 90 days in a FY the foreign enterprise is not engaged in any trade or business in India
- the remuneration is not liable to be deducted from the income of the employer chargeable in India

To the extent that the individual qualifies for relief in terms of the dependent personal services article of the applicable DTAA, there will be no tax liability. The DTAA exemption will not apply if the Indian entity is the

individual's economic employer. In addition, any salary or local benefits received in India are not eligible for relief under the DTAA. Additionally, subject to satisfaction of conditions, credit of taxes against juridical double taxation can be claimed under relevant Article of the DTAA / Indian tax law in the India tax return.

Tax Residency Certificate (TRC) has been mandated for claiming DTAA benefits. In case a tax assessment is initiated, the taxpayer may be required to submit a TRC, issued by the Government of the respective country/jurisdiction or specified territory in which such taxpayer is resident, with the Indian Revenue authorities. In case where prescribed particulars are not mentioned in the TRC issued by the foreign government, then the individual has to furnish the requisite details in Form 10F.

Further, as per the Foreign Tax Credit (FTC) rules, following set of documents are required to be filed for claiming FTC in the India Tax Return:

- 1 Statement of income from the country/jurisdiction or specified territory outside India offered for tax for the previous year and of foreign tax deducted or paid on such income in a pre-prescribed Form No. 67 and verified in the manner specified therein.
- 2 Certificate or statement specifying the nature of income and the amount of tax deducted therefrom or paid by the assessee
- 3 From the tax authority of the country/jurisdiction or specified territory outside India, from the person responsible for deduction of such tax or signed by the assessee.

Provided that the statement furnished by the assessee in 3 above shall be valid if it is accompanied by, -

- an acknowledgement of online payment or bank counter foil or challan for payment of tax where the payment has been made by the assessee;
- proof of deduction where the tax has been deducted at source.

2.5 Types of taxable income

Individuals are taxable on income from one or more of the following categories:

- salaries
- income from house property
- profits and gains of a business or profession
- capital gains
- income from other sources

Income under each category is computed separately. The net result of all categories is aggregated to arrive at gross total income. Taxable income is determined by subtracting specified deductions from the gross total income. The benefits/amenities provided by employers to their employees are taxed as perquisites in line with the income tax rules.

2.6 Tax rates

Normal Provisions:

From (INR)	To (INR)	Basic Tax (INR)	% on Excess
0	250,000*	0	0%
250,001**	500,000	0	5%

From (INR)	To (INR)	Basic Tax (INR)	% on Excess
500,001	1,000,000	12,500	20%
Above 1,000,000	-	112,500	30%

* 300,000 in case of a resident individual of the age of 60 years or older but under 80 years.

** 300,001 in case of a resident individual of the age of 60 years or older but under 80 years.

* 500,000 in case of a resident individual of the age of 80 years or older.

** 500,001 in case of a resident individual of the age of 80 years or older.

- For resident individuals with taxable income of INR500,000 or below, a rebate of 100 per cent of such income tax or INR12,500, whichever is less shall be allowed.
- Surcharge for individuals at 10 percent on total income tax, if total taxable income is between INR5,000,001 to INR10,000,000. Marginal Relief is available.
- Surcharge for individuals is applicable at 15 percent on total income tax, if total taxable income is between INR10,000,001 to INR20,000,000. Marginal Relief is available.
- Surcharge for individuals is applicable at 25 percent on total income tax, if total taxable income is between INR20,000,001 to INR50,000,000. Marginal Relief is available.
- Surcharge for individuals is applicable at 37 percent on total income tax, if total taxable income exceeds INR50,000,000. Marginal Relief is available.
- Health and Education cess is applicable at 4% on total income tax (inclusive of surcharge, if any).

Note:

There are certain prescribed incomes which are taxable at special rate of taxes. Also, for certain incomes, surcharge is capped at 15 percent, even in case where the income exceeds INR 20,000,000.

New Tax Regime: **

This regime provides modified tax slabs and rates for individuals. On satisfaction of certain prescribed conditions**, an individual may opt to compute tax in respect of total income (without considering prescribed exemptions/ deductions), as per the new slab rates, instead of the Normal Provisions (existing tax regime).

From (INR)	To (INR)	Basic Tax (INR)	% on Excess
0	300,000	0	0%
300,001	600,000	0	5%
600,001	900,000	15,000	10%
900,001	12,00,000	45,000	15%
12,00,001	15,00,000	90,000	20%
Above 15,00,000	-	150,000	30%

- For resident individuals with taxable income of INR500,000 or below, a rebate of 100 per cent of such income tax or INR12,500, whichever is less shall be allowed.

- Surcharge for individuals at 10 percent on total income tax, if total taxable income is between INR5,000,001 to INR10,000,000. Marginal Relief is available.
- Surcharge for individuals is applicable at 15 percent on total income tax, if total taxable income is between INR10,000,001 to INR20,000,000. Marginal Relief is available.
- Surcharge for individuals is applicable at 25 percent on total income tax, if total taxable income is between INR20,000,001 to INR50,000,000. Marginal Relief is available.
- Health and Education cess is applicable at 4% on total income tax (inclusive of surcharge, if any).

Note:

There are certain prescribed incomes which are taxable at special rate of taxes. Also, for certain incomes, surcharge is capped at 15 percent, even in case where the income exceeds INR 20,000,000.

****Conditions under the New Tax Regime**

The choice of the New Tax Regime, albeit, comes with a few pre-requisite conditions such as:

Foregoing prescribed exemptions:

1. Leave travel concession [section 10(5) of the Act]
2. House rent allowance [section 10(13A) of the Act]
3. Allowances prescribed under section 10(14) of the Act, which illustratively includes Children Education Allowance, Children hostel Allowance, etc. However, the following list of allowances (being indicative) continue to be exempted, subject to conditions and notification in Rules:
 - Transport Allowance granted to specified employee to meet expenditure for the purpose of commuting between place of residence and place of duty
 - Conveyance Allowance granted to meet the expenditure on conveyance in performance of duties of an office
 - Any Allowance granted to meet the cost of travel on tour or on transfer
 - Daily Allowance to meet the ordinary daily charges incurred by an employee on account of absence from their normal place of duty
 - Allowance for income of minor [section 10(32) of the Act];
4. Exemption such as towards free food and beverage through vouchers provided to the employee.

Foregoing prescribed deductions:

- 1 Deduction for entertainment allowance and employment/professional tax [section 16 of the Act]
- 2 Interest under section 24 of the Act in respect of self-occupied or vacant property referred to in section 23(2) of the Act
- 3 Loss under the head income from house property for rented house shall not be allowed to be set off under any other head and would be allowed to be carried forward as per extant law
- 4 Deduction from family pension [section 57(iia) of the Act]
- 5 Specified deductions under chapter VI-A of the Act (such as section 80C, section 80D, Section 80G, 80TTA etc.) except deduction on account of employer's contribution toward new pension scheme [section 80CCD(2) of the Act]

Apart from the above-mentioned employee specific exemptions / deductions which are not available under the new Tax regime, following are other prescribed exemptions / deductions which are not available under the new Tax regime:

- Exemptions under section 10(17) [i.e. exemption for specified members of government authorities], Section 10AA [i.e. exemption available to newly established Units in Special Economic Zones] are not available.
- Few prescribed deductions from the income under the head business and profession shall not be available.
- Any Deductions under chapter VI-A of the Act except for deduction under section 80CCD(2) and 80JJA shall not be available.
- Certain prescribed set off of loss are not permissible.

The option for Tax Regime (subject to above prescribed conditions and compliances) can be exercised every year, if the individual does not have business income. In case of individual having business income, option once exercised would be applicable for all subsequent years (with a one-time option to change), except where such person ceases to have any business income.

The assessee has the option to choose the New Tax Regime under section 115BAC of the Act, where the return of income is filed within the due date.

Subsection (6) of Section 115BAC of the Act read along with Rule 21AGA requires filing of Form 10-IEA while exercising/ opting for section 115BAC tax rate. As per the specified Form 10-IEA, the same is required to be filed for taxpayer exercising section 115BAC tax rates and falling u/s 115BAC(6)(i) i.e. the same is applicable only where individual has income under the head business and profession.

An employee may, for the purpose of tax withholding on salary income, intimate the employer to withhold tax as per the New Tax Regime prescribed under section 115BAC of the Act, Once opted, the employee will not be permitted to change the option during that particular FY. The employee may, subsequently, select either of the two regimes, while preparing and filing their personal tax return, notwithstanding the choice intimated to the employer.

03

Social Security

3 Social Security

3.1 Liability for social security

The Ministry of Labour and Employment, in a notification dated 1 October 2008, amended the “Employees Provident Funds Scheme, 1952,” and the “Employees’ Pension Scheme, 1995,” collectively referred to as the Indian Social Security Scheme. Accordingly, the scope of the Indian Social Security Scheme was extended to specifically include the concept of “International Workers” (IWs).

IWs include expatriates working for an employer in India to which the Provident Fund Act applies and Indian employees who have contributed to the Social Security program of a country/jurisdiction that has a Social Security Agreement (SSA) with India and are eligible for benefits under these SSAs.

Accordingly, all the expatriates holding foreign passports will qualify as IWs in India.

Consequently, all employees who fall within the definition of IWs are required to become members of the Schemes under the Provident Fund Act unless they qualify as ‘excluded employees.’

Amendments in PF and Pension Scheme

The Ministry of Labour and Employment, Government of India issued a notification providing that a Nepalese national and a Bhutanese national shall be deemed to be an Indian worker. This notification is effective from 2 November 2016.

IWs are excluded from contributing towards PF in India:

- if they are contributing to social security in their country/jurisdiction of origin; and obtained a Certificate of Coverage (COC) under the relevant SSA; or
- if they are deputed from a country/jurisdiction with which India has entered into a bilateral comprehensive economic agreement before 1 October 2008; or
- if they are a Nepalese national on account of Treaty of Peace and Friendship of 1950 and the worker who are Bhutanese national on account of India-Bhutan Friendship Treaty of 2007, shall be deemed to be Indian workers. (Date of effect: 2 November 2016)

IWs (other than excluded employees) are required to contribute 12 percent of the specified salary (salary as defined under the EPF Act) towards Provident Fund in India. Employers are also required to contribute 12 percent of their employees’ specified salary to the scheme. A portion of employer’s contribution i.e., 8.33 percent of salary is mandatorily contributed into the pension scheme prior to 1 September 2014. The contribution must be deposited on a monthly basis by the 15th of the subsequent month. Necessary forms and returns must be filed with the authorities within the prescribed timelines.

Amendments in the Employees’ Pension Scheme, 1995

- As per notification issued by Government of India, Ministry of Labour & Employment dated 22 August 2014, the employee who is joins and becomes a member of the fund for the first time on or after 1 September 2014 and has a salary exceeding INR15,000 at the time of joining the fund is not eligible to become member of Employees’ Pension Scheme, 1995.
- Therefore, the employer’s entire PF contribution of 12 percent will be contributed towards Provident Fund account and there will be no diversion of employer’s share to the Pension Fund.
- Thus, all International Workers who would be becoming the member of the Provident Fund for the first time on or after 1 September 2014 and have salary exceeding INR15,000 at the time of joining the fund are not eligible to become member of Employees’ Pension Scheme, 1995.

Amendments in the Employees' Deposit Linked Insurance Scheme, 1976

- As per notification issued by Government of India, Ministry of Labour & Employment dated 22 August 2014; the wage ceiling was enhanced from INR 6,500 to INR 15,000.
- The contribution towards EDLI scheme and its administrative charges will be subject to a salary cap of INR 15,000 in case of International Workers.
- The contribution must be deposited on a monthly basis by the 15th of the subsequent month. Necessary forms and returns must be filed with the authorities by the prescribed timelines.

Social Security Agreements

As on 1 January 2019, India has signed Social Security Agreements ('SSAs') with 20 countries/jurisdictions viz., Belgium, Germany, Switzerland, Denmark, Luxembourg, France, Korea, Netherlands, Hungary, Norway, Czech Republic, Sweden, Canada, Japan, Portugal, Finland Austria, Quebec, Australia and Brazil. Out of the 20 countries/jurisdictions, the countries/jurisdictions with which India has SSAs which are currently effective are as follows:

Sr. No.	Name of the country / jurisdiction	Effective Date
1	Belgium	1 September 2009
2	Germany	1 October 2009
3	Switzerland	29 January 2011
4	Denmark	1 May 2011
5	Luxembourg	1 June 2011
6	France	1 July 2011
7	Korea	1 November 2011
8	Netherlands	1 December 2011
9	Hungary	1 April 2013
10	Sweden	1 August 2014
11	Finland	1 August 2014
12	Czech Republic	1 September 2014
13	Norway	1 January 2015
14	Austria	1 July 2015
15	Canada	1 August 2015
16	Australia	1 January 2016
17	Japan	1 October 2016
18	Portugal	8 May 2017
19	Quebec	1 April 2017

Source: https://www.epfindia.gov.in/site_en/FAQ.php

Question No 314

Further, India has signed SSA with Brazil, but it is yet to come into effect.

Withdrawal of social security contribution

Provident Fund accumulations

The IWs who are covered under an operational SSA between India and any other country/jurisdiction can withdraw their accumulated PF balances on ceasing to be an employee in an establishment covered under the PF Act.

However, in case a person is not covered under SSA, they may withdraw the PF balance on retirement from service in the company at any time after 58 years of age or is faced with certain contingencies (death/ specified illnesses/ incapacitation).

Pension accumulations (Payable only if the employee is not eligible for Monthly Pension)

In relation to pension withdrawal, a lump sum refund will be available only to those IWs who are covered under an SSA in force and who have not completed eligible service of 10 years even after including the totalization of service under the respective SSAs. Employees not covered under an SSA will not get a lump sum refund.

NOTE: Employees who have joined or become members of EPFS on or after 1 September 2014 and have monthly salary (as defined in the EPF Act) in excess of INR15,000 would not be required to contribute towards pension scheme (EPS), therefore there would be no pension accumulation for such employees.

Monthly Pension

Employees (both from SSA as well as Non-SSA countries/jurisdictions) having 10 years or more contributory service would qualify to receive a monthly pension. Employees would also be entitled to receive monthly pension in cases where:

- 1 if they have rendered eligible service of 10 years or more and retires on attaining the age of 58 years; or
- 2 early pension, if they have rendered eligible service of 10 years or more and retires or otherwise ceases to be in the employment before attaining the age of 58 years of age.

Note:

Employees who have joined or become members of EPFS on or after 1 September 2014 and have monthly salary (as defined in the EPF Act) in excess of INR 15,000 would not be required to contribute towards pension scheme (EPS), therefore there would be no pension accumulation for such employees

It may be noted that the Government of India has notified 4 Labour Codes, which, upon being effective shall replace the existing Social Security law and other prescribed laws. These Labour Codes are yet to be made effective.

04

Compliance obligations

4 Compliance obligations

4.1 Employee compliance obligations

Registration

Upon arrival in India for employment purposes, employee should apply in the prescribed form, for allotment of a Permanent Account Number (PAN) which is the individual's India tax registration number.

Advance Tax

Individuals are liable to discharge tax by way of advance tax if the tax liability (net of taxes deducted at source) exceeds INR10,000 in a particular FY (per the due dates mentioned under the Act). Shortfall/delay in payment of advance tax will attract interest. The advance tax payments should be made in four installments - 15 percent by 15 June, 45 percent by 15 September, 75 percent by 15 December and 100 percent by 15 March.

Further, a resident senior citizen, not having any income from a business or profession, shall not be liable to pay advance tax.

Declaration to Employer

A mandatory declaration needs to be provided by employee to employer for all the deduction / benefits to be claimed against the salary income (for e.g. Leave Travel Allowance, House Rent Allowance, etc.) in Form 12BB.

India tax return filing

As per the domestic tax law in India, every individual is required to file India tax return for the respective FY with the Indian-tax authorities by 31 July following the FY end if:

- His/her income chargeable to tax in India, without giving effect to exemption claimed upon sale of a Capital Asset, exceeds basic exemption limit (i.e. INR 250,000); or
- Expenditure has been incurred by the taxpayer of an amount or aggregate of the amounts exceeding INR 200,000 for self or any other person for travel to a foreign country/jurisdiction; or
- Expenditure has been incurred by the taxpayer of an amount or aggregate of the amounts exceeding INR 100,000 towards consumption of electricity; or
- He/she qualifies as Ordinary Resident of India and
 - holds, as a beneficial owner or otherwise, any asset (including any financial interest in any entity) located outside India; or
 - has signing authority in any account located outside India; or
 - is a beneficiary of any asset (including any financial interest in any entity) located outside India.

As per the Finance Act, 2021, in order to provide relief to senior citizens who are of the age of 75 year or above and to reduce compliance burden for them, a new section has been added to provide a relaxation from filing the return of income, if the following conditions are satisfied: -

- 1 The senior citizen is resident in India and of the age of 75 or more during the previous year;
- 2 The senior citizen has pension income and no other income. However, in addition to such pension income, the individual may also have interest income from the same bank in which he is receiving his pension income;

- 3 This bank is a specified bank. The Government will be notifying a few banks, which are banking company, to be the specified bank; and
- 4 The individual shall be required to furnish a declaration to the specified bank. The declaration shall be containing such particulars, in such form and verified in such manner, as may be prescribed.

Once the declaration is furnished, the specified bank would be required to compute the income of such senior citizen after giving effect to the deduction allowable under Chapter VI-A and rebate allowable under section 87A of the Act, for the relevant assessment year and deduct income tax on the basis of rates in force. Once this is done, there will not be any requirement of furnishing return of income by such senior citizen for this assessment year.

Extensions of the filing deadline are not permitted in India. Where a taxpayer files a return after the due date, interest is levied at 1 percent per month (or part thereof) for each month of delay on the balance tax payable. Final due date for filing a belated or revised India tax return is 31 December, post which the belated or revised cannot be filed. Further, where a person fails to file India Tax Return within the time prescribed, late filing fees of INR 5,000 will be charged if the return is furnished on or before 31 December*

*If the total income of the person does not exceed INR 500,000, the fee payable for late filing of India Tax Return shall not exceed INR 1,000.

The rate of penalty is 50 per cent of tax for under-reporting of income and 200 per cent of tax for misreporting of income

Further, for an individual of age 80 years or older at any time during the previous year, and who furnishes the India tax return in ITR 1 or ITR 4, it is not mandatory for the individual to e-file the return of income i.e. a paper return can be filed. For all other cases, e-filing of India tax return is mandatory.

To promote voluntary tax compliance and reduce litigation, the provision has been introduced by the Finance Act 2022 where a taxpayer will have an option to file an updated return disclosing additional income within 36 months from the end of the relevant FY (subject to certain conditions viz., such return cannot result in a loss / reduction of income / increase in refund, such return cannot be filed if assessment / audit is initiated or completed, etc.). The taxpayer will be required to pay additional tax of 25 percent (on aggregate of incremental tax and incremental interest) to be paid if such return filed within two years from end of FY. Additional tax is 50 percent in other cases.

Income Tax Clearance

All individuals who are not domiciled in India and came to India in connection with business, profession or employment are required to obtain a no objection certificate from the Indian tax authorities prior to leaving India. Further, all individuals who are domiciled in India are required to intimate the Indian tax authorities at the time of leaving India.

4.2 Employer compliance obligations

As per the domestic tax law in India, any person responsible for payment of salary is required to obtain Tax Deduction Account Number (TAN) and withhold tax at appropriate rates on salary paid to the employees.

Further, the tax deducted must be deposited with the central government within 7 days from the end of the month of deducting the tax (for the month of March the tax needs to be deposited by 7 April, in case where taxes on non-monetary benefits are borne by employer or 30 April in other cases).

The employer also must file quarterly returns (e-TDS return) of withholding tax on salaries in the prescribed forms (Form No.24Q) with the Indian tax authorities as per the prescribed due dates (i.e. 31 July, 31 October, 31 January and 31 May).

A certificate (namely Form No. 16 and Form 12BA) must be issued to the employee for the tax deducted by 15 June of the year following the end of the FY.

05

Immigration

5 Immigration

5.1 Immigration Updates

The Government of India (GOI) had issued detailed visa guidelines in 2009 in the form of FAQs. Since 2009, the said guidelines have been updated a number of times to simplify rules and provide clarifications.

Government of India in the year 2018 issued additional visa guidelines. Please refer to below link to access detailed 2018 guidelines:

[8-003a \(mha.gov.in\)](http://8-003a(mha.gov.in))

Foreigners Division

There have been amendments in the visa guidelines from time to time. Following are the recent noteworthy changes:

e-Visa

- Currently, there are Seven sub-categories of e-Visa:
 - e-Tourist visa - For recreation, sightseeing, casual visit to meet friends or relatives, and attending a short term yoga program
 - e-Business visa - For all activities that are permitted under normal BV
 - e-Medical visa - For medical treatment including treatment under Indian systems of medicine
 - e-Medical attendant visa - as attendant to e-Medical visa holder. Only two e-Medical Attendant Visa's will be granted against one e- Medical Visa.
 - e-Conference visa – For attending a conference/ seminar/ workshop organized by a Ministry or Department of the Government of India, State Governments or UT Administrations etc. & their subordinate/ attached organizations & PSUs.
 - e-Ayush visa- For all foreigners seeking treatment through Ayush systems, Indian system of medicine
 - e-Ayush Attendant visa – As attendant to e-Ayush visa holder.
- The foreign national may fill in the application for e-Visa online on the website
- On account of Covid and suspension of International air travel, e-Visa facility, earlier available to nationals of 171 countries, was suspended. The Ministry of Home Affairs in India has decided to restore the E-Visa facility for 171 countries (e-Visa under the categories of e- business visa, e-medical visa, e-medical attendant visa, and e-conference visa). e-Business Visa and e-Tourist visa may be granted multiple times in a year for a maximum period of 1 year with multiple entry facility
- In case of an e-Business Visa, the continuous stay in India cannot exceed 180 days during each visit.
- In case of an e-Tourist Visa, the continuous stay cannot exceed 90 days during each visit. However, nationals of USA, UK, Canada and Japan, can continuously stay in India for 180 days.
- There is a temporary e-visa category (i.e., e-Emergency X-Misc Visa which is an official document that allows entry to India. It's only available for Afghan citizens and has a duration of 6 months. Applicants can't work in India under this visa. The process is 100% online
- For conference visa e-Event clearance module has been introduced for quicker security clearance from MHA.

Employment Visa (EV)

- Foreign nationals can now, subject to certain conditions and approval, change employment in India if it is between holding company, joint ventures and consortiums and its subsidiaries or between subsidiaries of holding company, joint ventures and consortiums.
- Assistant professor and above in central higher educational institutions may now get EV only if they draw an annual gross salary of INR0.91 million.
- Reduced salary threshold of INR0.91 million is no longer available to nationals of Afghanistan, China, Iran and Sri Lanka who are married to an Indian national.
- Foreign translators employed in BPO/ITES sector, ethnic cooks employed in commercial ventures, and teachers employed to teach particular subjects in foreign language may now get EV only if they draw an annual gross salary of INR1.625 million.
- Salary threshold of INR1.625 million is no longer applicable to foreign teaching faculty employed in South Asian University/Nalanda University and circus artists.
- In case the period of employment is less than 1 year, the salary threshold of INR1.625 million has to be worked out on pro-rata basis.
- Foreign journalists who intend to work in Indian media organizations as well as employees/ managers for non-journalistic activities are now eligible for EV.
- Employment visa can be extended in India up to 10 years without returning to their home country/jurisdiction. Earlier, the limit was 5 years.

Business Visa (BV)

- Foreign nationals are not eligible to visit India on BV to establish or to explore possibilities to set up proprietorship and partnership firms.
- Foreign academicians/experts coming under GIAN, crew members of scheduled/non- scheduled flights, etc. are also eligible to apply BV.
- B-sports visa may be granted to foreign nationals who are engaged in commercial sports events in India on contract.
- For calculation of 180 days or more in relation to registration requirement for a BV holder, the aggregate stay will be seen in a calendar year.
- In case of urgent request, BV may be granted within 48 hours of filing of visa application.
- In addition to citizens of the USA, citizens of Canada, Japan, UK and South Africa may also be granted multiple entry BV with 10 years validity.
- A new business card scheme has been introduced for the businessmen from SAARC countries/jurisdictions which allows multiple entry for 3 years or more, quicker immigration clearance, etc.
- Business visa can be extended in India up to 10 years without returning to their home country/jurisdiction. Earlier, the limit was 5 years.

Project Visa (PV)

- A foreign national may now work at a place other than the location of the project.
- Foreign nationals who are in India on BV and were in India on PV earlier, may get their business visa extended in India. Earlier, a non-extendable BV was issued in such cases.

Intern Visa (IV)

- Foreign nationals may apply for a visa where gap between completion of graduation/post- graduation and the commencement of the internship is up to 2 years.
- For grant of an intern visa, an annual remuneration of INR360,000 will suffice.

Tourist Visa (TV)

- In addition to citizens of the USA, citizens of Canada and Japan may also be granted multiple entry TV with a validity of 10 years with a stipulation that “continuous stay during each visit shall not exceed 180 days and registration not required”.
- In respect of nationals of other countries (except for nationals of 33 countries mentioned below), Multiple entry Tourist Visa may be granted for a period of 5 years as a default option. Grant of 5-year Tourist Visa will be with the stipulation “Continuous stay during each visit shall not exceed 90 days and registration not required”. However, in the case of nationals of UK, continuous stay during each visit shall not exceed 180 days.
- In respect of nationals of 30 countries i.e. (1) Iran, (2) Egypt, (3) Libya, (4) Qatar, (5) Iraq, (6) Syria, (7) Sudan, (8) Tunisia, (9) Kuwait, (10)Yemen, (11) Algeria, (12)Bahrain, (13) Turkey, (14) Morocco, (15) Kyrgyzstan, (16) Turkmenistan, (17) Democratic People’s Republic of Korea (North Korea), (18) Lebanon, (19) Afghanistan, (20) Saudi Arabia, (21) Uganda, (22) Congo, (23) Ethiopia, (24) Nigeria, (25) Belarus, (26) Somalia, (27) South Sudan, (28) Kazakhstan, (29) Uzbekistan and (30) Sri Lanka, duration of visa will be decided by the concerned Indian Missions/ Posts subject to a maximum of 5 years with the stipulation “continuous stay during each visit shall not exceed 90 days and registration not required”
- In respect of nationals of Bangladesh and China, provisions as available in the bilateral agreements/ policy guidelines, as issued from time to time, will be applicable.
- Tourist visa is not available to Pakistan nationals

Tourist Visa shall be non-extendable and non-convertible to any other type of visa except in specific cases.

Foreigner’s registration

- A foreign national departing from India within 14 days of arrival on their first visit is not required to obtain registration with the FRRO/FRO.
- Children of age 12 years or older are now required to obtain registration from FRRO/FRO. Earlier, the prescribed age limit was 16 years.

Visa-on-Arrival

- Visa-on-Arrival is granted only to the nationals of Japan, UAE and Republic of Korea visiting India for business, tourism, conference and medical purposes.

Permanent Residency Status (PRS)

- PRS may be granted for a period of 10 years with multiple entry to an individual foreign investor (other than a Pakistan national) who makes prescribed investment which results in employment of at least 20 resident Indians in every FY. Before the grant of PRS the investor will be granted a B-4 visa (investor) for a period of 18 or 36 months.
- The investor’s spouse/dependents may be granted a dependent visa and may take up employment in the private sector or undertake studies in India without the need of an employment or student visa.
- The investor and their spouse/dependents need not register with the FRRO/FRO and will be allowed multiple entry to India without any stay stipulation.

Overseas Citizen of India (OCI) Card

In January 2015, the Indian government had merged the Person of Indian Origin (PIO) and Overseas Citizen of India (OCI) schemes through the citizenship (amendment) act 2015. Under the merged scheme existing PIO cardholders could enjoy the same benefits as that of OCI Cardholders and issuance of New PIO card was restricted. Accordingly, the government recommended that all PIO cardholders apply for OCI cards in lieu of their existing PIO cards. Bureau of Immigration (BOI), Government of India will accept PIO cards as valid travel document till 31 December 2022 along with valid foreign passport and the Indian Immigration check posts will continue to consider all PIO cards valid for exit/entry into India till 31 December 2022.

Further, the Indian government has recently issued a consolidated notification which provides certain rights of an OCI card holder.

Other e-Services

A web based portal has been introduced by MHA, GOI that offers online solution for application submission as well as for document upload in respect of all visa and immigration related services (such as Indian FRRO registration, visa extension, change of address/passport, visa conversion, exit permission, etc.)

Miscellaneous

- In emergent medical situations, foreign nationals can stay in India without converting their visa to Medical visa.
- Long term visa holders need not seek permission from FRRO/FRO concerned for attending conferences/ seminars/workshops.
- A foreign national can now apply for an Indian visa from any country/jurisdiction irrespective of their period of stay in that country/jurisdiction. The visa will be granted only after consulting the Indian mission concerned in the country/jurisdiction of origin/domicile.
- A foreign national who is already in India on business, employment, student, research visa, may with approval of FRRO/FRO attend any international conference/seminar/workshop, etc.
- A foreign national other than a Pakistan national may stay in India as a tourist under any visa category.
- A foreign national while already in possession of Indian long-term visa (e.g. EV, BV, etc.), may apply for short term visa (e.g. conference visa, e-visa, etc.) and can simultaneously keep both the visas.
- A foreign national may apply for a police clearance certificate at the Indian mission/post in relation to their past stay in India.
- The State Government or the FRRO/FRO now (without the clearance of MHA) issue Protected Area Permit (PAP) Restricted Area Permit in business, employment, student and research visa. Further few islands of Andaman and Nicobar have been excluded from RAP regime.

Citizens of Maldives with a valid passport and visiting India for 90 days or less for tourism and medical purpose need not obtain an Indian visa.

06

Other issues

6 Other issues

6.1 Double taxation treaties

In addition to India's domestic arrangements that provide relief from international double taxation, India has entered into double taxation treaties with more than 100 countries/jurisdictions (comprehensive and limited) to prevent double taxation and allow cooperation between India and overseas tax authorities in enforcing their respective tax laws.

6.2 Permanent establishment implications

There is a likelihood that there could be Permanent Establishment exposure, for overseas company in India (due to presence of secondees in India) and this may need a separate examination from corporate tax perspective.

6.3 Wealth tax / Indirect tax

Wealth Tax has been abolished from the FY 2015-16 onwards.

6.4 Good and Service Tax (GST)

India has introduced GST with effect from 1 July 2017. GST applies on all supplies of goods and/or services unless otherwise exempted/excluded. There is a dual-GST model for levy of GST i.e., Central GST (CGST) and State GST (SGST) is levied on intra- state supply of goods and / or services and Integrated GST (IGST) is levied on inter-state supplies (including import of goods and import of services) Also GST is payable under reverse charge mechanism (RCM) on receipt of certain services which are notified.

The standard rate of GST applicable is 18 percent. There is a reduced rate at 12 percent that among other supplies apply to fruit juices, medicines and paper. There is a super reduced rate at 5 percent that among other supplies apply to food grains, tea and fertilizers. There are exempt supplies that include fresh fruits/vegetables, cereal, and bread to mention a few. Also, a higher rate of 28 percent that apply to certain specified luxury/sin goods which include cars and tobacco.

Export goods / services are zero rated including supplies to Special Economic Zones. In addition to GST, customs duty is also payable on import and/ or export of goods in India.

6.5 Transfer pricing

The Indian Transfer Pricing Regulations are largely in line with the Organization for Economic Co-operation and Development (OECD) Transfer Pricing Guidelines (last updated in 2022). Since their introduction in 2001, the Indian Transfer Pricing Regulations have come of age — both in terms of quality of audits as well as the revenue generated for the Indian government. Further, over the past few years, there has been significant guidance from Income Tax Tribunals and higher Appellate Authorities on various fundamental transfer pricing issues across industries.

The due date for maintenance of Transfer Pricing local Documentation and filing of Accountant's report in Form 3CEB is 31 October for the FY ending on March 31 every year.

The Indian Transfer Pricing Regulations extend to international as well as certain domestic transactions between associated enterprises. The Regulations have been evolving over the years and now also aim to cover debts arising during course of business; business reorganizations or restructuring (included irrespective of whether the same has an impact on current year's profits, income, losses or assets); and

intangible properties including marketing intangibles, human assets, customers or technology related intangibles, etc.

Domestic transfer pricing provisions are applicable if the aggregate value of 'Specified Domestic Transactions' (SDT) exceeds INR 20. crores during the year. The applicability of domestic TP provisions has been restricted only to those taxpayers who claim tax exemption or tax holiday in India. Effective from FY 2023-24, transactions between a new manufacturing co-operative society availing concessional tax regime and a closely connected person have been included within the purview of SDT.

India's Advanced Pricing Agreement ('APA') program allows an APA to cover a period of five consecutive future years. There is also a roll back mechanism within the APA scheme, that enables taxpayers to apply the transfer prices agreed upon in an APA to be rolled back for a period of up to four previous years. Therefore, an APA in India can now provide certainty for up to a period of nine financial years.

There are certain Safe Harbour Rules which prescribe margins and spreads to be maintained for some eligible transactions that have been extended till FY 2022-23. The scope of APA and Safe Harbor provisions have been expanded to cover determination of income deemed to accrue or arise in India to a Permanent Establishment (PE). The same would be effective for APAs entered on or after 1 April 2020 and for Safe Harbor from AY 2020-21.

Provisions relating to secondary adjustments were introduced in India in 2017 and are applicable in respect of primary transfer pricing adjustments made in respect of FY 2016-17 and subsequent years. Secondary adjustment provisions are applicable only in case of APAs signed on or after 1 April 2017. Effective from 1 September 2019, the regulation also provides an option to the Assessee to pay a one-time additional tax @ 18% (plus surcharge of 12% & cess) in cases wherein the excess money has not been repatriated on time.

Provisions relating to thin capitalization rules, were introduced in 2017 whereby interest expense is in excess of thirty percent of cash profits or earnings before interest, taxes, depreciation and amortization, the excess interest (i.e. interest expense in excess of 30 percent of EBITDA or interest paid to associated enterprise, whichever is less) shall not be allowable as an expense in the same year, but will be allowed to be carried forward up to a period of eight years. Banking and insurance businesses have been kept outside the ambit of these provisions. Effective from FY 2023-24, specified Non-Banking Financial Companies have also been exempted from thin capitalization rules.

India has introduced three-tier documentation structure in line with the OECD guidelines i.e. in addition to local documentation provisions that existed, provisions regarding Master File and Country-by-Country (CbyC) Report have also been added with effect from the fiscal year beginning 1 April 2016. Section 286 was inserted in the Income Tax Act, 1961 along with subsequent amendments in the Income Tax Rules 1962 (the Rules) to govern the same. Regulations relating to documentation requirements continue as is with a requirement to maintain documentation on a contemporaneous basis if value of transactions exceed INR ten million.

Indian transfer pricing authorities have already been adopting the OECD's approach on BEPS in relation to intangible-related returns and concurs that such returns should reside with the entity which makes strategic decisions around creation of the intangibles, and not with the entity which has mere ownership of title and funding capacity. India therefore believes that by adopting the "significant people functions" approach in determining the economic owner of intangibles, the disconnect between profit and economic activity will be significantly resolved.

6.6 Local data privacy requirement

The Digital Personal Data Protection Act, 2023 was introduced in August 2023. The Act regulates the governance of Digital personal data collected by organisations and aims at protecting the individual's privacy by empowering them with rights over the manner in which their data is processed.

Some of its key highlights are:

- Lawful basis of processing consolidated to consent and certain legitimate uses
- Data localisation rules relaxed allowing transfers across jurisdictions unless specifically notified (**Data localisation is scrapped in this act & approach is to notify Blacklist Countries where data cannot be transferred via notification by the govt.**)
- Data processing agreements mandatory before outsourcing activities to third parties
- Financial penalties up to INR250 crore per instance of non-compliance with the law
- Periodic Data Protection Impact Assessments made mandatory for Significant Data Fiduciary
- Appointment of DPO is made mandatory for Significant Data Fiduciary
- Periodic Data Audits by an Independent Data Auditors is made mandatory for Significant Data Fiduciary
- Personal data in public domain excluded from scope.

The Government is expected to notify details and timelines in due course.

6.7 Exchange control

Per the Exchange Control Regulations, a foreign citizen resident in India or an Indian citizen employed by a foreign company having an office/branch/subsidiary/joint venture/group company in India may open, hold, and maintain a foreign currency account with the bank outside India and receive the whole salary payable to the individual in that account provided that income tax is paid on the salary accrued in India.

A foreign citizen resident in India employed with an Indian company can open, hold, and maintain a foreign currency account with a bank outside India and can remit the whole salary received in India to such an account overseas provided the income tax is paid on the entire salary in India.

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- the Employees' Provident Fund (Third Amendment) Scheme, 2008;
- Goods and Services Tax Act, 2017;
- Foreign Exchange Management Act, 1999;

- The Digital Personal Data Protection Act, 2023
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