



My Dear Friend

*I am presenting **Thursday Article on International Taxation for Corporate + NRI (both) in India***

- 1. Any kind of non-compliance is attracting **maximum penalty** for **300%** on tax amount + **maximum imprisonment for 7 year** (both).*
- 2. It's humbly suggested to stop non-compliance for furnishing of legal documents + correct informations (both).*
- 3. I trust that you will be enriched by reading this article*

● *With best wishes from CA Satish Agarwal* ●



International Taxation for Corporate + NRI (both) in India

INDEX

S.NO	Topic	Page No.
<i>(A) International Taxation for Corporate in India</i>		3
1	<i>Introduction on International Taxation for Corporate in India</i>	3
2	<i>Base erosion and profit shifting (BEPS) + Multilateral Instrument (MLI)</i>	3 to 4
3	<i>General Anti Avoidance Regulations (GAAR) provisions in India</i>	4
4	<i>Tax collection at source (TCS) Provisions on Seller of Goods</i>	4
5	<i>Tax deduction at source (TDS) Provisions on Purchaser of E-Services</i>	4
6	<i>Equalization Levy (EQL) Provisions on payment to Non-Resident (NR)</i>	4 to 5
7	<i>Govt's Faceless Assessment + Appeal (both) in India</i>	5
<i>(B) International Taxation for Non-Resident Indian (NRI) in India</i>		6
1	<i>Meaning of International Taxation for NRI in India</i>	6
2	<i>Income Tax on Income actual received by Non Resident in India</i>	6
3	<i>Income Tax on Income Deemed received by Non Resident in India</i>	6 to 7
4	<i>Income Tax Exemption on Certain Incomes for NRI in India</i>	7 to 8
5	<i>Tax Deducted at Source (TDS) against Payments to Non Resident</i>	8
6	<i>Meaning of Double Taxation Avoidance Agreement (DTAA)</i>	8
7	<i>Advantages (benefits) of DTAA for Non-Resident</i>	8
8	<i>Computation of Income of NRI under section 115D of ITA 1961</i>	9
9	<i>Income Tax of NRI on Inv. Income + LTCG under sec. 115E of ITA 1961</i>	9
10	<i>Capital gains on transfer of foreign exchange assets of NRI - Sec. 115F</i>	9
11	<i>Available benefits for NRI after becoming resident under Sec.115H</i>	9
12	<i>Difference between International Taxation and Indian Taxation</i>	9 to 10
<i>Profile of Publisher on International Taxation for Corporate + NRI (both) in India</i>		11



International Taxation for Corporate + NRI (both) in India

(A) International Taxation for Corporate in India

1. Introduction on International Taxation for Corporate in India

- (i) *Now MNCs from outside India are interested in multiplying their business + investment + supply of technology + supply of know how + listing at stock of exchange (all) in India*
- +
- (ii) *MNCs from India are interested in multiplying their business + investment + supply of technology + supply of know how + listing at stock of exchange (all) outside India*
- (iii) *Hence Govt. of India (Govt.) is needed to prepare the tax + business (both) friendly regulatory policies to grave the growth opportunities for India from MNCs from outside India + enable to grave the growth opportunities for MNCs from India (both).*
- (iv) *Now Govt. has given the importance for expansion of Indian income tax base through framing income tax provisions against digital + e-governance (both) businesses in India like introduction of concept of Place of Effective Management (POEM) + Significant Economic Presence (SEP) both to reduce tax uncertainty + litigation (both) in India.*

2. Base erosion and profit shifting (BEPS) + Multilateral Instrument (MLI)

- (i) *Organization for Economic Co-operation and Development (OECD) has launched 15 Action Plans on BEPS in July 2013 to have an international collaboration to abolish tax avoidance.*
- (ii) *15 Action plans as developed + launched (both) by OECD is recognising the importance of borderless digital economy + to develop new set of standards to prevent BEPS + to equip the Govt's with domestic + international instruments to prevent BEPS manipulation against paying negligible tax or 0% tax (both).*



- (iii) *Certain profits are still untaxed due to application of existing international tax provisions in India + outside India (both).*
- (iv) *Hence OECD is keeping track through having pace with modern business models and objective to expedite + streamline (both) implementation of measures as developed to address BEPS manipulation + to amend bilateral tax treaties (DTTA's)*
- (v) *Now exceeding the 90 countries (jurisdictions) have concluded the negotiations on Multilateral Convention to implement Tax Treaty related measures to prevent BEPS manipulation.*

3. General Anti Avoidance Regulations (GAAR) provisions in India

- *Now Govt. has introduced the GAAR provisions under ITA, 1961 from April 1st 2017 to declare an arrangement as Impermissible Avoidance Arrangement (IAA) under section 96 of ITA, 1961 to avoid aggressive tax planning to reduce income tax liability in India + outside India for international + domestic (both) transactions*

4. Tax collection at source (TCS) Provisions on Seller of Goods

- (i) *Now Govt. has introduced the TCS provisions on seller of Goods from Oct 1st 2020 through Finance Act, 2020.*
- (ii) *Now TCS @ 0.1 % is applicable against receipt of sale consideration is exceeding INR 50 Lac in preceding to previous financial year from buyer where annual turnover of seller as exceeding INR 10 crore in previous financial year*
- (iii) *Turnover from export of goods is not included in limit INR 50 Lac*

5. Tax deduction at source (TDS) Provisions on Purchaser of E-Services

- (i) *Now Govt. has introduced the TDS provisions on e-commerce operator from Oct 1st 2020 through Finance Act, 2020.*
- (ii) *Now TDS @ 1 % is applicable against payment of purchase consideration for goods or services (both) on gross amount under section 194-O of ITA, 1961*

6. Equalization Levy (EQL) Provisions on payment to Non-Resident (NR)

- (i) *Now Govt. has introduced the EOL provisions on payment to Non-Resident as service provider for online advertisement + e-commerce supply of services (both) from April 1st 2020 through Finance Act, 2020.*



- (ii) (a) **Now EQL @ 6 % is applicable against payment for online advertisement on gross amount**
- (b) **Now EQL @ 2% against e-commerce supply of services on gross amount**
- (iii) **Hence Govt. has introduced the EQL provisions as based on BEPS Action Plan 1 out of BEPS Action 15 Plans of OECD**

7. Govt's Faceless Assessment + Appeal (both) in India

- (i) **Now Govt. has introduced the Faceless Assessment + faceless appeal (both) schemes to provide transparency + efficiency + accountability in Income Tax assessment + Income Tax appeal (both) + to eliminate the interface between AO + CIT – appeal (both) and taxpayer during course of proceedings through stringent compliance dates + no personal hearing + limited adjournments + etc. (all)**
- (ii) **Hence taxpayer is required to keep ready the 100% documents + informations (both) to submit to AO + CIT – appeal (both) during course of proceedings**



(B) International Taxation for Non-Resident Indian (NRI) in India

1. Meaning of International Taxation for NRI in India

- (i) **International Taxation is known as set of legal provisions of different countries outside India that covering the tax aspects of cross border transactions for Direct Taxes + Indirect Taxes in India and outside India (both)**
- (ii) (a) **International taxation is study of Taxation beyond the National boundary.**
(b) **Hence it's required to study the Taxation in India + Taxation outside India (both) simultaneously for determining the taxation for international transaction between India and Outside India.**

2. Income Tax on Income actual received by Non Resident in India

- (i) (a) **Residential status of tax resident is based on his stay in financial year in India.**
(b) **Hence global incomes of tax resident are 100% liable to income tax in India.**
(c) **However tax resident is permitted to avail the Foreign Tax Credit (FTC) against income tax paid + income tax deducted at source (both) outside India**
- (ii) (a) **Residential status of non-resident taxpayer is based on his stay in financial year in India**
(b) **Therefore income received + Income deemed as received by him + on his behalf + income accrues + arises + deemed to accrue + deemed to arising (all) are Taxable in India.**

3. Income Tax on Income Deemed received by Non Resident in India

- **Certain deemed incomes of non-resident of India are required to be liable for income tax beside actually earned outside India under section 9 of Income Tax Act, (ITA) 1961 :-**
 - (i) **Income from Business Connection in India.**
 - (ii) **Income from Property + Asset + Source of Income (all) as located in India.**
 - (iii) **Capital Gain from transfer of Capital Asset as located in India.**
 - (iv) **Income from Salary as earned in India where Service is rendered in India..**



- (v) (a) *Income from salary as paid by Govt. of India (Govt.) to Indian Citizen beside service is rendered outside India.*
- (b) *However perquisite + allowance (both) are not taxable in India beside paid by Govt.*
- (c) *Hence Income from salary is taxable in India but perquisite + allowance (both) are not taxable in India beside paid by Govt.*
- (vi) *Income from dividend as paid by Indian Company.*
- (vii) *Income from Interest (subject to satisfaction of certain conditions)*
- (viii) *Income from Royalty (subject to satisfaction of certain conditions)*
- (ix) *Income from fee for Technical Services (subject to satisfaction of certain conditions)*

4. Income Tax Exemption on Certain Incomes for NRI in India

- *NRI not required filing the Income Tax Return (ITR) in India:-*
 - (i) *Where taxable income in India is consisting from investments + Long Term Capital Gains (LTCG) both*
 - +
 - (ii) *When income tax in India has already been deducted at source on investments + Long Term Capital Gains (LTCG) both*
 - (iii) *Where income in India is earned on notified tax free Saving Certificate + etc. (both)*
 - (iv) *Where income in India is earned on notified tax free Non Resident (Non Repatriable) [NRNR] Deposits as issued by banks in India.*
- *Banks in India are not permitted to accept fresh NRNR deposits from April 1st 2002. However Interest on NRNR deposit + principal (both) at time of maturity to be transferred to NRE account of NRI in India.*
- (v) *Where income in India is earned on FCNR (B) deposits as income is exempted under Section 10(4)(ii) of ITA 1961*
- (vi) *Where income was earned on tax free dividend from Indian Public Limited Company + Private Limited Company + Indian Mutual Fund + Unit Trust of India (all) when income in India was exempted from income tax in India.*



- (vii) *Where income in India was earned on tax free LTCG against transfer of equity shares as traded on recognized Stock Exchange + units of equity schemes of Mutual Fund when income was exempted from income tax in India .*
- (viii) *Where income in India is earned on tax free remuneration + fee (both) received for rendering technical consultancy in India under approved programme of Govt. when income is exempted from income tax in India.*
- (ix) *Where income in India is earned on Interest on tax free notified bonds as issued by Govt.*

5. Tax Deducted at Source (TDS) against Payments to Non Resident

- *Govt. has inserted the section 195 (6) of ITA, 1961 applicable from April, 1st 2008 against payment to non-resident of India to deduct TDS + to file Form 15CA + Form 15CB (all) before remitting outside India*

6. Meaning of Double Taxation Avoidance Agreement (DTAA)

- (i) *DTAA is agreement as signed between Govt. of India and Govt. outside India for resolving the issues of taxability of income + increased transparency to avoid tax evasion (both).*
- (ii) (a) *DTAA is required as every country has own taxation system to determine the taxability of income in their own country*
- (b) *Hence DTAA is required to avoid the effect of double taxation on non-resident against income as liable to income tax in country of source of income + in country of residency (both) through allowing the FTC in country of residency*

7. Advantages (benefits) of DTAA for Non-Resident

- (i) *Tax Credit + Tax Relief (both)*
- (ii) *Avoid Double Taxation*
- (iii) *Prevent Tax Discrimination*
- (iv) *Certainty of Tax Treatment to Investors*
- (v) *Exchange of Information's*
- (vi) *Ease in Recovery of Income Tax Liability*
- (vii) *Promote Investment + Mutual Relation (both)*
- (viii) *Prevent Fiscal Evasion*



8. Computation of Income of NRI under section 115D of ITA 1961

- **Govt. has inserted section 115D to deal with special provision for computation of total income of NRI in India:-**
- (i) **NRI is not permitted to claim any expenditure + allowance (both) for computing the income on investment as made by NRI in India**
- (ii) **NRI is not permitted to claim any deduction under section 80C to 80 U – Chapter VIA + section 48 (both) of ITA 1961**

9. Income Tax of NRI on Inv. Income + LTCG under sec. 115E of ITA 1961

- (i) **Income Tax @ 20% to be levied on investment income of NRI in India.**
- (ii) **Income Tax @ 10% to be levied on LTCG of NRI in India.**

10. Capital gains on transfer of foreign exchange assets of NRI - Sec. 115F

- (i) **NRI is permitted to invest the LTCG on transfer of Foreign exchange assets as not exceeding the 6 month from date of transfer + investment be in specified asset + saving certificate as notified under section 10(4B) to avail income tax exemption on LTCG under section 45 of ITA, 1961**
- (ii) **List of Specified Assets :-**
 - (a) **Equity Shares of Indian company**
 - (b) **Debentures + deposits (both) of Indian public limited company**
 - (c) **Notified security as issued by Govt.**
 - (d) **Other notified asset by Govt.**

11. Available benefits for NRI after becoming resident under Sec.115H

- (i) **NRI after becoming resident of India is permitted to apply in writing to Assessing Officer (AO) for informing about becoming resident of India with filing of ITR under section 139(1) of ITA, 1961.**
- (ii) **However NRI after becoming resident of India is required to fulfil certain conditions for availing benefit.**

12. Difference between International Taxation and Indian Taxation

- (i) **There is no separate tax law for studying the international taxation + Indian taxation (both) in India.**



- (ii) *There is no separate judicial court for appearing in international taxation + Indian taxation (both) in India.*
- (iii) *However specific Income Tax provisions are existed under ITA Act, 1961 for taxation of international transactions in India.*
- (iv) *Hence general Income Tax provisions are existed under ITA Act, 1961 for taxation of international (cross border) transactions for Direct tax purpose in India.*



Published By



CA. Satish Agarwal

B.com (Hons) FCA

*Practicing Chartered Accountant Since **1985***

+919811081957

9/14 (First Floor) East Patel Nagar, New Delhi- 110008

Email: satishagarwal307@yahoo.com

Website: www.femainindia.com

◆ **Disclaimer**

1. Contents of this **article are solely for informational purpose**. Neither this article nor information's as contained herein constitute a contract or will **form** basis of contract.
2. Material contained in this article does **not constitute or substitute professional advice** that may be required before acting on any matter.
3. While every care has been taken in preparation of this article to **ensure its accuracy at time of publication**.
4. **Satish Agarwal assumes no responsibility for any error** which despite all precautions may be found herein.
5. **We shall not be liable for direct, indirect or consequential damage** if any arising out of or in any way connected with use of this article or information's as contained herein.

November -2022

