

# Taxation of Expatriates in India

## *Inbound and Outbound Expatriates*

*Direct Tax Refresh Course – August 2020*

*Pune Branch of*

*Western India Regional Council of*

*The Institute of Chartered Accountants of India*

# Broad Agenda

- » Basics for Expatriate Taxation
  - » Residential Status (ITA and DTAA), Scope of Total Income
- » Taxation of In-bound Expatriates
  - » Different Models (Assignment, Secondment, Direct) and tax and WHT implications
  - » Some typical issues relating to expatriates like short stay exemption, perks, ESOPs
- » Taxation of Outbound Expatriates in India
  - » Residential Status and Scope of Taxation
  - » Receipt Vs. Accrual, etc.
- » Social Security Contributions & SSAs
- » Exchange Control
- » Other Compliances



# ***Basics for Expatriate Taxation***

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# Background

- » An expatriate means a person based in a foreign country working in India (inbound) or a person based in India (likely Indian citizen) working abroad (outbound).
- » Under Indian Income Tax Act, 1961 ('ITA'), incidence of tax depends on
  - » The residential status of the taxpayer, and
  - » The place and time of accrual or receipt of any income
- » In India, charge of income tax is not based on domicile or citizenship
  - » The extent of Indian tax liability depends on the residential status of an individual based on his physical stay in India [though recently we have introduced Citizenship as criteria for determining the Residence]
- » For tax purposes, an individual may be
  - » Resident and Ordinarily Resident ('ROR')
  - » Resident but Not Ordinarily Resident ('RNOR'), or
  - » Non-Resident ('NR')
- » Even the Status under Foreign Exchange Management Act (FEMA) would be relevant

# Residential Status – Section 6

## » Broad Summary:

### » 182 or more – General Criteria - Resident

- › 60 days in the year plus 365 days or more in immediately preceding 4 years – Alternate
- › Alternate criteria does not apply to Indian Citizen leaving for employment, etc. and Indian Citizen / PIO with Indian Sourced Income  $\leq$  15 lacs - comes on a visit to India (being out of India)
- › Alternate criteria modified to 120 days for Indian Citizen or PIO having Indian Sourced Income in excess of Rs. 15 lacs (comes on a visit)

### » Indian Citizens having Indian Sourced Income in excess of Rs. 15.00 lacs, with more restricted criteria – Introduced from FY 2020-21 (A.Y. 2021-22)

- › Always be resident of India unless liable to tax in any other country / territory by reason of his domicile or residence
- › Will be treated as NOR

### » NOR Category

- › NR for 9 out of 10 years
- › 730 days in immediately preceding 7 years
- › 120 – 182 days

# Residential Status under Treaty – OECD Model Draft – Art 4

- » Resident of a Contracting State means any person who, under the laws of that State, is liable to tax therein by reason of his
  - » domicile, residence, place of management or any other criterion of a similar nature
  - » It does not include any person who is liable to tax in that State in respect only of income from sources in that State.
    - › e.g. Resident but Not Ordinary Resident (RNOR) in India [ or Non-Domiciled Residents in UK]
- » In case of an individual who is resident of both the contracting states
  - » tie-breaker Tests:
    - › Permanent home
    - › Centre of vital interest
    - › Habitual abode
    - › Nationality
    - › Competent authorities
  - » The tie-breaker rules are required to be followed sequentially as may be provided in the DTAA.
  - » Concept of Split Residency [Para 10 of OECD Commentary on Article 4]

# Scope of Total Income

- » Residents (and not NOR)
  - » On their worldwide income
- » NRs are taxed only on,
  - » Income that accrues/ arises or is deemed to accrue/ arise in India; and
  - » Income that is received or deemed to be received in India.
- » For this purpose, a RNOR is taxed like a NR with the only difference that,
  - » He/ she is also liable to tax on income accruing outside India if it is from a business controlled from or a profession set up in India.



***Taxation of Income under  
the head 'Salaries'***

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# Income from Salaries

- » The income arising on account of employee-employer relationship is taxable as “Salary” and it includes
  - » salary, allowances, perquisites, provident fund contributions, income received from previous employers, retirement benefits, salary arrears, profits in lieu of salary, income on termination of employment etc.
- » Income from salary shall be deemed to be accrued in India if it is “earned” in India
  - » services rendered in India; and
  - » Rest Period and Leave period which is preceded **and** succeeded by services rendered in India and forms part of contract of employment.
- » If the Recipient is entitled to the benefit of the DTAA with any country, then the provisions of the DTAA will have to be seen for determining the scope of taxation of salary.
- » Income under the head “Salaries” to be computed as per the applicable provisions of the ITA, save and except where the modifications apply to expatriates – Short Service Exemption



# *Taxation of Inbound expatriates*

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# Assignment Models for inbound expatriates

## » Secondment (Economic Employer Model)

Expatriate employee effectively becomes an employee of the Indian entity, his salary costs are borne by the Indian entity, who is responsible for all the acts/omissions of the employee.

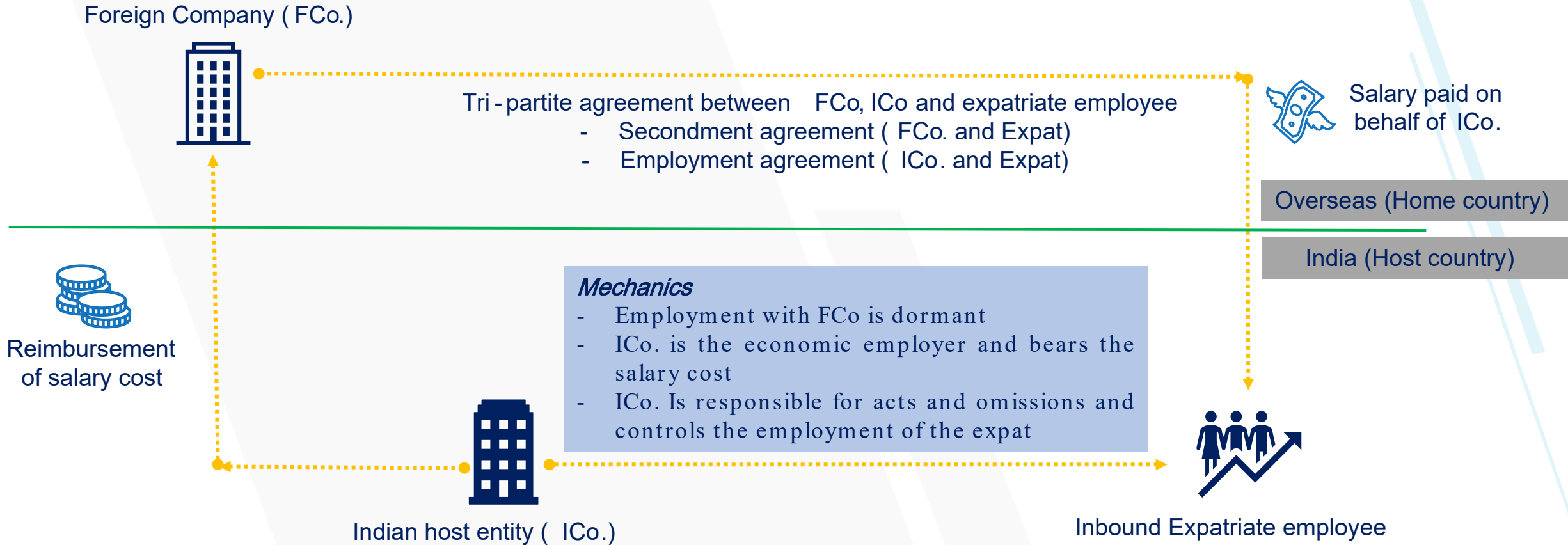
## » Deputation (Service Model)

Under this model, the expatriate employee is on roll of the foreign entity and is considered to provide service to the Indian entity, on behalf of the foreign entity, while in India.

## » Direct Fresh Employment (Employment Model)

Where a person (who is hitherto resident of a foreign country) is given employment in India by an Indian Company and he relocates to India for taking up the said employment, either for short term or long term

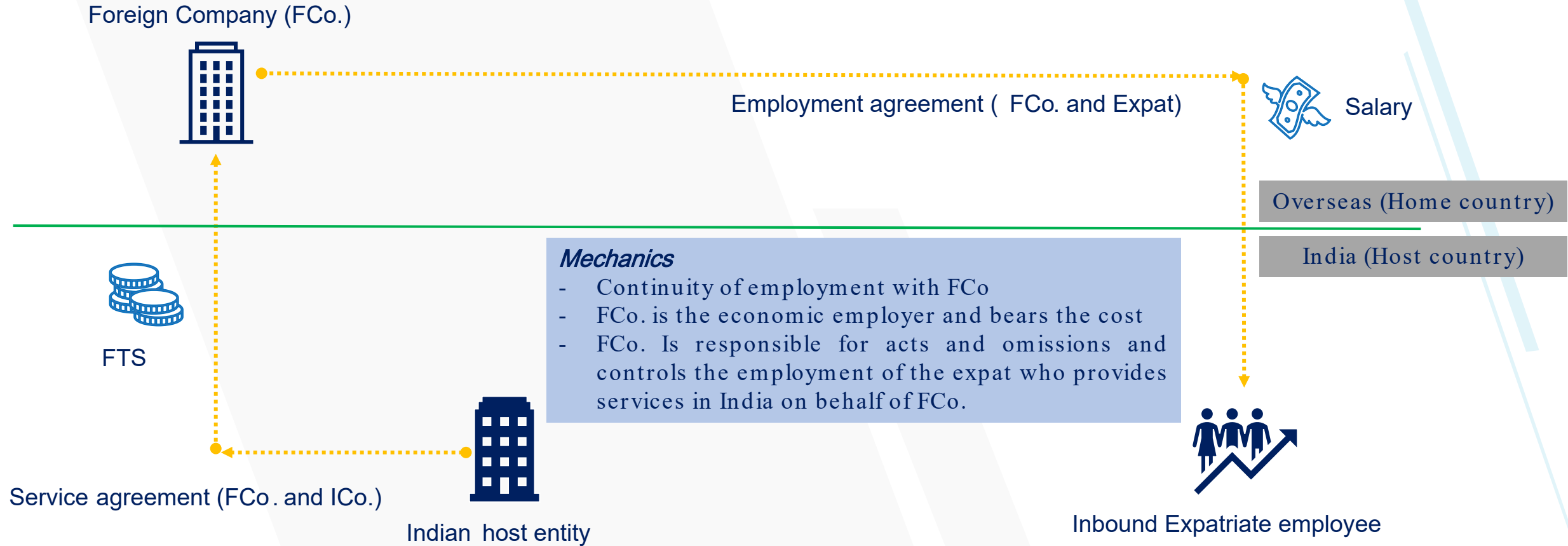
# Secondment Model – Transaction mechanics



# Secondment Model – Key tax implications

- » **Salary income** of expat shall be *taxable in India*
  - » services rendered in India during the period of stay irrespective of the residential status
- » **ICo.** to deduct and pay **TDS u/s 192** on salary paid to expat;
  - » even if salary disbursed outside India
- » Payment against salary by **ICo. to FCo.** should be *treated as reimbursement of salary paid on behalf of ICo.* and there should be *no WHT* consequences on mere reimbursement . *However, this is a litigative issue.*
  - » *(Ref. Centrica India Offshore (P) Ltd v. CIT) [2014] 44 taxmann.com 300 (Delhi) holding this as FTS – Make Availble)*
- » **GST** liability shall *not arise* on reimbursement in *absence of any supply of services.*
- » Employee / Employer *liable to contribute to PF* under Indian law subject to relief, if any, under a Social Security Agreement.
- » **PE exposure (of Fco) in India - Less Likely but litigative** considering employee not working on behalf of FCo.
  - » *(Ref. Centrica India Offshore (P) Ltd v. CIT) [2014] 44 taxmann.com 300 (Delhi)*

# Deputation Model – Transaction mechanics



# Deputation Model – Key tax implications

- » **Salary income** of expat shall be *taxable in India* to the extent rendered in India
  - » services rendered in India during the period of stay irrespective of the residential status
- » **FCo.** to deduct and pay **TDS u/s 192**
  - » (Ref. *CIT v. Eli Lilly & Co. (India) (P.) Ltd.*) [2009] 312 ITR 225 (SC)
- » **PE exposure in India** – fixed place PE / service PE subject to DTAA provisions.
- » If **no PE** - service fee paid by **ICo. to FCo.** – WHT as FTS (115 A – 10 % ++/ DTAA)
- » If **PE – Service Fee** taxed as **business income** u/ s 44DA - **WHT - 40%++** subject to DTAA
- » **GST** shall be payable by ICo. under **RCM** for services availed from FCo.
- » No Liability to **social security contributions** in India

# Some Other Models

## » Expatriate Pool Company

- » All persons who are expatriates are pooled into 1 company (set up in a most beneficial country)
- » They are deputed / seconded from such company
- » The issue of PE / FTS / substance / POEM, etc. to be carefully examined

## » In stead of direct employment – Consulting Arrangement

- » Especially Short Term Engagements
- » Independent Personal Services – DTAA provision
- » The issue of Service PE / POEM / FTS, etc. to be seen



## Scenario 1– Part payment of salary by FCo. and ICo.

- » Most relevant to determine *who is regarded as the 'employer'* of the expatriate.
- » This can be determined through *evaluating the control* of the entity over the employment:
  - » Control and supervision of the employee
  - » Responsibility of work of the employee
  - » Right to take decision on continuity of employment
  - » Regulation of terms and conditions of the employment
  - » Cost of salary and social security – meager disbursement of salary not to be treated as cost borne
  - » Control over selection/ identification of the expat to be deputed
- » Tax implications will be *identical to the case of secondment* and *WHT shall be deductible and payable by ICo.* (the employer), on entire salary paid to the expat *whether in or outside India, directly or through reimbursement*.

## Scenario 2- Salary borne by FCo. without cross charge to ICo.

- » FCo. shall be regarded as the legal and economic employer
- » Following are the key aspects of this model :
  - » Expats work under direction, control and supervision of ICo.
  - » ICo. is responsible for the services of the employees
  - » Employees retain lien on employment with FCo.
  - » FCo. pays the salary to the employees in the home country but the same is not cross charged to the ICo.
- » FCo. is the legal employer - arrangement identical to deputation - *WHT by FCo* on 100% of the salary and perquisites paid to the expat.
- » Since the Expat works in India on behalf of the FCo. - *implications w.r.t PE shall apply.*
  - » *If no cross charge then issue of transfer pricing may arise.*

## Scenario 3 – Manpower supply service provider

- » A manpower supply company (FCo.) deputing employees to India for specific requirements of the ICo;
  - » Employee is seconded by FCo. to ICo.
  - » Specific qualification/expertise requirements of ICo.
  - » under employment of ICo.
  - » Salary is paid by ICo., FCo is paid for recruitment services;
  - » the employee works under supervision and control of ICo.
    - › This shall have implications of a *secondment arrangement* discussed earlier
    - › *ICo. shall deduct tax on salary* paid for services rendered in India
  - » ICo. pays fees to FCo. against provision of recruitment services
    - › In the nature of manpower supply fee
    - › *May not qualify as FTS (litigative in nature – DTAA to be seen)*
    - › PE implications should not arise, however this can be contended otherwise

## Scenario 4–Dual employment

- » In case of dual employment, the expat employee continues to be in employment of the FCo. as well as the ICo., for the period he is seconded to India.
  - » Employee continues to be on payroll of FCo. and ICo.
  - » Seconded employee works solely for ICo. during the period of secondment and works solely for FCo. during his time in the home country
  - » *Salary is borne by the respective employer* and the employment controlled by the respective employer who shall be responsible for the work and bear all the risks in connection with the same.
- » For the period of employment in India, this arrangement ***shall fall under secondment***
- » the ***employee shall be taxable in India*** for the salary earned during secondment, for services rendered in India.
- » ***ICo. shall be liable to deduct tax*** at source on such salary borne by it.
- » Residential Status has to be either NR / NOR for not getting taxed on salary for secondment outside India

## Scenario 5- ESOPs

- » Section 17 of the ITA taxes ESOPs on the date on which the shares are allotted to the Employee
  - » Grant, Vest, Exercise and Allotment
  - » Difference between FMV and Exercise Price – Taxable (FMV on the date of exercise)
- » Consider a case where an Expatriate is entitled to an ESOP Scheme of the FCo
  - » As part of the Employment he is seconded / provides services in India during the Vesting Period
  - » Perquisite Value of the ESOPs, to the extent attributable to the period of service in India will be taxable in India - *(Ref. ACIT v. Robert Arthur Keltz) [2013] 35 taxmann.com 424 (Delhi - Trib )*
    - › Exercise of Option was done during the services rendered in India – Only proportionate chargeable to tax
    - › What happens if the taxable event (allotment of shares) U/ s. 17 does not happen during the time person is resident of India?

# Short stay exemption for Inbound expatriate employees

	Exemption u/s 10(6)(vi) of ITA	Benefit under DTAA* Income From Employment (Art 15 OECD)
Type of arrangement	Stay in India <=90 days in the PY	Present in India for <i>less than 183 days in 12 months period commencing or ending in PY</i>
Status of employee	<i>Not a Citizen of India</i>	Resident of Treaty Country (other than India)
Status of employer	<i>Foreign enterprise</i> – not engaged in trade/ business in India	<i>Foreign resident</i> – remuneration borne by or on behalf of non-resident employer
Treatment of Salary in India	no deduction of expense claimed from Income chargeable to tax in India	Remuneration not borne by PE in India

*\*These rules may vary across treaties with various states*

- Other Exemptions U/ s. 10 (6)
  - Remuneration as part of embassy, consulate, trade representation, etc – Subject to reciprocity and no other engagement. [U/ s. 10 (6) (ii)]
  - Employee of Government of Foreign State for Training in India – Subject to conditions [U/ s. 10 (6) (xi)]

# Some typical issues

- » Concept of Split Residency [Para 10 of OECD Commentary on Article 4 of Model Convention]
  - » Raman Chopra Decision of Delhi ITAT – Penalty Case (1<sup>st</sup> July – India USA)
- » Timing of commencement / ending of the Employment
  - » Residential Status – Past Visits / Employment in India – Tie Breaker Tests
  - » Termination – 60 days – 3 year employed in India earlier – 9/ 10, 730 days in 7 years – 365 days in 4 Yrs
- » Section 10 (10CC) benefit – Non-cash Perks, tax borne by Employer – 192 (1A) – Specially by NR Employer
- » Social Security Contribution outside India by Employer – Taxability in India
  - » L. W. Russel AIR 1965 AIR SC 49 / Yoshio Kubo (Delhi High Court) - vested right at the time of contribution to the fund
- » Providing Residential Accommodation
  - » Free of Cost or Concessional Rate of Tax – Perquisites – Premises owned by the Employer
  - » Rule 3 (1)(2)(a) – Owned 7.5 / 10 / 15 % of salary
- » Cost of providing transport to self and family and personal belongings on commencement and end
  - » Section 10 (14) read with Rule 2 BB
  - » Leave Travel Rule 2B (1) – In India



# *Taxation of Outbound expatriates*

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# Residential Status and Taxability of Income under IT Act

## Non-Resident (NR)/Resident but not ordinary resident (RNOR)

- » An outbound expatriate employee who is a citizen of India
  - » Going for employment outside India shall qualify for Non-Resident Status
    - » if the total stay in India is less than 182 days during the year of departure and any subsequent year of assignment outside India
- » In such a case, he/ she would be liable to tax in India only in respect of the following :
  - » Salary actually received in India
  - » Salary in respect of services rendered in India
  - » Salary in respect of rest or leave period which is preceded or succeeded by service in India

## Resident and Ordinary Resident (ROR)

- » subject to tax on their worldwide income - eligible for foreign tax credit on foreign sourced income .
- » Concept of Split Residency say Leaves for USA on 1<sup>st</sup> January, 2020 for employment

# Taxability of Salary Income

- » The tax treatment of various salary components and computation of the taxable salary in case of outbound expatriate employees;
  - » Similar as in the case of inbound expatriate employees, discussed earlier.
- » Even though the services are rendered outside India,
  - » Would be liable to tax in India, if the said employee is treated as Ordinarily Resident of India
    - › Critical for the Year of departure and the Year of return to India
    - › In case where he is either Non-resident or Not Ordinarily Resident, may not be liable to tax as the Services are not rendered in India, the Salary shall not be deemed to accrue or arise in India
  - » Issue when the salaries are remitted to Bank Account in India
    - › Received or deemed to be received in India
    - › The remitting bank works as agent of the Employer / Employee
    - › If accrual outside India and then remittance to India subsequently cannot make it taxable *Tanjore Permanent Bank Limited [1994] 207 ITR 924 (Mad) – Explanation 2 – CIT Vs. Vasudevan Pillai – Pension - Malaysia*
    - › Even the provisions of DTAA may be seen – Tax Residency Certificate

# Taxability of Salary Income

- » Outbound expatriate employees contributing to foreign social security scheme pursuant to their posting to a foreign country
  - » In absence Social Security Agreement between India and such foreign country
  - » Can still contribute to Provident Fund in India if
    - › they continue to be employees of Indian employer during the period of their assignment and continues to receive salary in India
- » EPFO circular of 20<sup>th</sup> January 2016
  - » Contribution to PF is required only if wages are paid or payable by the Indian establishment.

# Taxability of Salary Income – Scenario analysis

## » Employment arrangement :

- » Mr. X is an Indian national working for ICo.
- » ICo. has transferred Mr. X to its group company FCo. on secondment basis wherein Mr. X became the employee of FCo. and is working for FCo. rendering his services in host country .
- » The arrangement is such that Mr. X receives portion of salary in host country from FCo. and portion of salary in India from ICo.
- » Now let us understand the tax implication in the hands of Mr. X in India under different residential status .

Situation	Taxability in India if Mr. X is		
	ROR	RNOR	NR
Salary received in host country for services rendered in host country (whether repatriated to India or not)	√	×	×
Salary received in host country for services rendered in India	√	√	√
Salary received in India for services rendered in both i.e. host country and India	√	√	√



# ***Social Security in India***

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# Social Security Obligation in India

- » Social Security in India is predominantly governed by the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (the EPF Act)
  - » Provides pension and retirement benefits to workers in factories and covered establishments. These are defined as employing 20 or more employees.
- » EPF Act contains the following three principal schemes:
  - » Employees Provident Funds Scheme, 1952 (EPF Scheme)
  - » Employees' Pension Scheme, 1995 (Pension Scheme)
  - » Employees Deposit Linked Insurance Scheme, 1976 (EDLI scheme)
- » The applicability of the existing Provident Fund and Pension Schemes extended to "International Workers" (IW) with effect from November 1, 2008 [Para 83 of the EPF Scheme modifies the provisions of Scheme for IW] ;

# Social Security Obligation in India

- » International Worker defined as:
  - » A foreign national working for an establishment in India to which the EPF Act applies.
  - » It also includes:
    - › An Indian employee who divides his career between India and another country and
    - › That country should be one with which India has a social security agreement
- » Excluded International Worker:
  - » Nationals from countries with which India has entered into a Social Security Agreement ('SSA'). There are currently 18 operating SSAs.
    - › However, need to obtain certificate of coverage from the home country
  - » Foreign nationals working for an establishment which is not covered by the PF legislations;
- » EPFO vide its Circular dated 23rd June 2017 has clarified that Indian expatriates who qualify as IW while on employment abroad would become domestic employees once they come back to India.

# Contribution for International Workers

- » Both the employer and employee are required to contribute 12% of “monthly pay” under the EPF regulations.
  - » The employer also has to make 0.5% contribution (capped at a monthly salary of Rs. 15,000) towards EDLI scheme which is an insurance scheme under the EPF Act.
- » For International Workers, the wage ceiling of Rs. 15,000 is not applicable and contributions are required to be made on full monthly pay.
  - » Pay means Basic Salary, Dearness allowance (including cash value of food concession) and Retention allowance etc.



# Contribution for International Workers

Particulars	IW who has joined before 01-09-2014 or who is an existing member of PF	IW who has joined and become member of PF for the 1 <sup>st</sup> time on or after 01 -09-2014 and having monthly pay which exceeds the statutory limit of Rs. 15,000
Employee's Contribution to PF Scheme	12% of Monthly Pay	12% of Monthly Pay
Employer's contribution to PF Scheme	3.67% of Monthly Pay	12% of Monthly Pay
Employer's contribution to Pension Scheme	8.33% of Monthly Pay	-
<b>Total Contribution</b>	<b>24% of Monthly Pay</b>	<b>24% of Monthly Pay</b>

# Contribution to Overseas Social Security and Pension

- » Taxability dealt with earlier
- » Employee Contributions to overseas social security may available as deduction and only net salary will be taxable in India provided;
  - » Employer is authorized to deduct contribution from remuneration payable to the employee
  - » The scheme to which contribution is made is as required by law (not framed by company)
  - » Compulsory contribution mandated by law
  - » Employee does not have right to receive it as income
  - » The contributions are deducted from the employee's salary as a prior charge by overriding title
  - » The provisions of the home country income tax laws allow full deduction of the social security contributions from the income and it is only on the net income that the tax is levied;

# Social Security Agreements

- » India has currently signed SSAs with 20 countries and out of which, SSAs with 18 countries are effective and in force.
  - » Out of total 18 operative SSAs, 14 SSAs are with European country and other 4 are with Republic of Korea, Canada, Australia and Japan
- » Comprehensive Economic Cooperation Agreement (CECA) between India and Singapore – Benefit of SSA
- » Advantages of signing SSA
  - » Exemption from Contribution – Certificate of Coverage (‘COC’)
    - › confirmation from home country social security authorities - individual is covered under the respective home country social security and continues to be covered during the period of assignment.
    - › Foreign passport holders can obtain COC in home country and claim exemption in India.
    - › Indian passport holders can obtain COC in India and claim exemption in the host country with which India has SSA.
    - › In many SSAs, one of the eligibility conditions for obtaining a COC is the requirement for the employee to work in the host country on behalf of the home country entity.
      - › This could lead to a potential Permanent Establishment exposure.

# Withdrawal of Social Security Contribution

## » Provident Fund accumulations

» IW entitled to withdraw accumulated balance in the PF in the following circumstances:

Covered under SSA	Not covered under SSA
On ceasing to be an employee in an establishment covered under the EPF Act; or	-
On retirement from service in the company at any time after 58 years of age; or	On retirement from service in the company at any time after 58 years of age; or
Faced with certain contingencies mentioned in the EPF Act	Faced with certain contingencies mentioned in the EPF Act.

- » In case of IW - not covered under SSA - contribution to PF may get blocked till the age of 58 years
- » PF can be withdrawn by IW by credit to their Indian or overseas bank accounts.
  - » Alternatively, withdrawal is also possible by way of credit to the Indian employer's bank account and then remittance can be made by the Indian employer to such International Worker

# Withdrawal of Social Security Contribution

## » Pension accumulations

- » The lump sum refund will be available only to those employees who are covered under an SSA in force and
  - › who have not completed the 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 the lump sum refund.
- » In case of employees (both from SSA as well as non-SSA countries) having 10 years or more contributory service, they would be qualified to receive a monthly pension.

## » Obligation to pay Gratuity

- » An expatriate who have already rendered five years of service reserve the right to claim gratuity from the Indian employer at the time of termination.



# *Exchange Control*

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# Bank Accounts

- » Banks offer two types of accounts to Person Resident Outside India / Non-Resident Indians, based on whether funds available in the account are repatriable i.e. whether such funds can be transferred or repatriated abroad.
- » Different Types of Bank Accounts
  - » Non-Resident (External) Rupee Account (NRE Account)
  - » Foreign Currency (Non-Resident) Account (FCNR Account)
  - » Non-Resident Ordinary Account (NRO Account)
  - » Resident Foreign Currency Account (RFC Account)

# Remittance of Salary

- » A citizen of a foreign state resident in India or a citizen of India, employed by a foreign entity outside India and
  - » on deputation to India with the office/ branch/ subsidiary / joint venture/ group company in India of such foreign entity or being an employee of an Indian entity
  - » may open, hold and maintain a foreign currency account with a bank outside India and receive/ remit the whole salary payable to him/ her for the services rendered, by credit to such account
    - » provided that income tax chargeable under the ITA is paid on the entire salary as accrued in India.
- » However, a foreign national not on deputation but in direct employment with an Indian company shall need to receive his salary in India and then remit the same (after payment of appropriate taxes) overseas
- » Reference
  - » Master Circular No.8/ 2015- 16
  - » Notification No. FEMA 10/ 2000-RB dated 3<sup>rd</sup> May, 2000 (as amended from time to time)



# Permissible investments

- » The permissible investments for different categories of individuals under the foreign exchange laws in India are tabulated as under:

Status of Individual	Investments	General / Special Permission
Non-Resident Indian	Shares, convertible debentures, real estate (other than an agricultural land, plantation property or farm house etc.)	General Permission granted
Person of Indian Origin/ Overseas Citizen of India		
Foreign National	Shares, convertible debentures	General Permission granted
	real estate (including an agricultural land, plantation property or farm house)	Not permitted



# *Structuring Expatriate Agreement*

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# Important Points to be considered

- » Timing of the Employment – Commencement, completion and total Tenure – Residential Status
- » Nature of Arrangement – Direct Employment, Secondment, Deputation
- » Permanent Establishment of the Entity due to employment
- » Remuneration Structuring
  - » Taxability of Remuneration, Perquisites (relation with Salaries)
  - » SS Contribution
- » Tax Equalization and Hypothetical Tax
- » Transfer Pricing Regulation in both the countries
- » Remittance of the Salaries



# *Compliance requirements in India*

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# Inbound Expatriates

## Before Arrival

- » Foreign nationals arriving in India must hold valid visa or travel authorization .
- » Foreign nationals can secure below illustrative list of visas to enter India depending upon their purpose to visit India :
  - » Employment Visa
  - » Business Visa
  - » Entry Visa
  - » Tourist Visa
  - » Student Visa
  - » Transit Visa
  - » Missionary Visa
  - » Journalist Visa
  - » Conference Visa
  - » Medical Visa/Medical attendant Visa

Foreign nationals has to obtain Employment / Business Visa for taking up employment in India – OCI Card holders can get employed without employment visa

# Inbound Expatriates

## » *Employment Visa – key considerations*

- » For highly skilled/qualified foreign nationals seeking employment in India
- » Not granted for routine/ordinary jobs where large number of Indian nationals are available
- » Granted in annual salary > 16.25 lacs (25,000 USD), including allowances and perquisites
  - › This condition shall not apply to certain categories like ethnic cooks employed by foreign missions, language teachers/translators, staff working for concerned embassy/high commission, honorary work with NGOs without salary, foreign teaching faculty employed in the South Asian University and the Nalanda University, circus artists .
  - › The threshold is reduced to 9.1 lacs for certain categories like teaching staff (assistant professor and above) for specified central higher educational institutions .
- » Granted for a period of 5 years including renewals
- » A foreign national can change his employer during the grant period with prior permission of Ministry of Home Affairs within the group, subject to conditions

# Inbound Expatriates

## » *Business Visa – key considerations*

- » Granted for bona fide business reasons only for specified activities including ;
  - › Establishing a business venture or exploring opportunities to set up business
  - › Buying or selling industrial, commercial or consumer products
  - › Attending technical meetings, discussions, board meetings, general meetings to provide business support service
  - › Participating in an exhibition or trade fair
  - › Foreign trainees attending in-house training
  - › Foreign nationals engaged in commercial sports events in India
  - › Foreign experts and specialists on a short duration visit in connection with an ongoing project with the objective of monitoring the progress of the work, conducting meetings with Indian customers and/or to provide technical guidance
- » Duration shall normally be 6 months, 1 year, 5 years, etc. subject to agreement between two governments, allowing single or multiple entries. Period of each visit can be restricted to a maximum of 6 months

# Inbound Expatriates

## After Arrival

### » Foreigners' Registration

- » Foreign nationals visiting India are generally required to get themselves registered with concerned Foreigner's Registration Office ('FRRO/FRO')
  - » where the validity of visa exceeds 180 days or within the stipulated time period as endorsed on visa if any
  - » Generally foreign nationals are required to obtain registration within 14 days of arrival in India
  - » Penalty applicable if there is a delay in registration

### » Provisions related to Visa extension

- » Generally, long term visas such as Employment, Business, Entry(X), etc., are extendable on year to year basis.

### » Surrender of Residential Permit

- » While finally exiting India, post completion of Indian assignment, the foreign nationals are required to surrender residential permit
  - » To the concerned FRRO/FRO or the immigration officer at the Immigration checkpoint .

### » Foreigners need to inform the FRO in case change in accommodation and obtain certificate of change of address.



# Outbound Expatriates

- » In case of a person domiciled in India, leaving India the relevant information needs to be furnished to the tax authorities in Form No. 30C
  - » which is a self-declaration by the outbound expatriate that includes
    - » his/ her details such as PAN, passport details, purpose of visit outside India and estimated period of stay outside India, etc.
- » Based on the information submitted in Form No. 30C, the Income Tax Authority, if considers it necessary
  - » may require a person who is domiciled in India and leaving India to obtain Tax Clearance Certificate in Form No. 33 by making an application in Form No. 31.

# Compliances to be carried out in India

In-bound Expatriates	Out-bound Expatriates
Registration of Foreign National with Foreigners Regional Registration Officer (FRRO)	-
Opening of Bank Account in India	-
Permanent Account Number (PAN)	Permanent Account Number (PAN)
Return of Income	Return of Income
Form 67 along with Return of Income if claiming Foreign Tax Credit (FTC) in Return of Income in India	Form 67 along with Return of Income if claiming Foreign Tax Credit (FTC) in Return of Income in India
-	Certificate of Coverage to claim exemption from the host country's social security
Undertaking to be furnished by a person not domiciled in India at the time of his departure from India in Form No. 30A	Information to be furnished by a person domiciled in India at the time of his departure from India in Form No. 30C
Income Tax Authority shall on receipt of such undertaking in Form No. 30A, immediately give to such person a no objection certificate (Tax Clearance Certificate) for leaving India in Form No. 30B	Income Tax Authority, if considers it necessary, may require such person to obtain Tax Clearance Certificate in Form No. 33 by making an application in Form No. 31.
Surrender of Residential Permit post completion of Indian assignment to the concerned FRRO/FRO	-



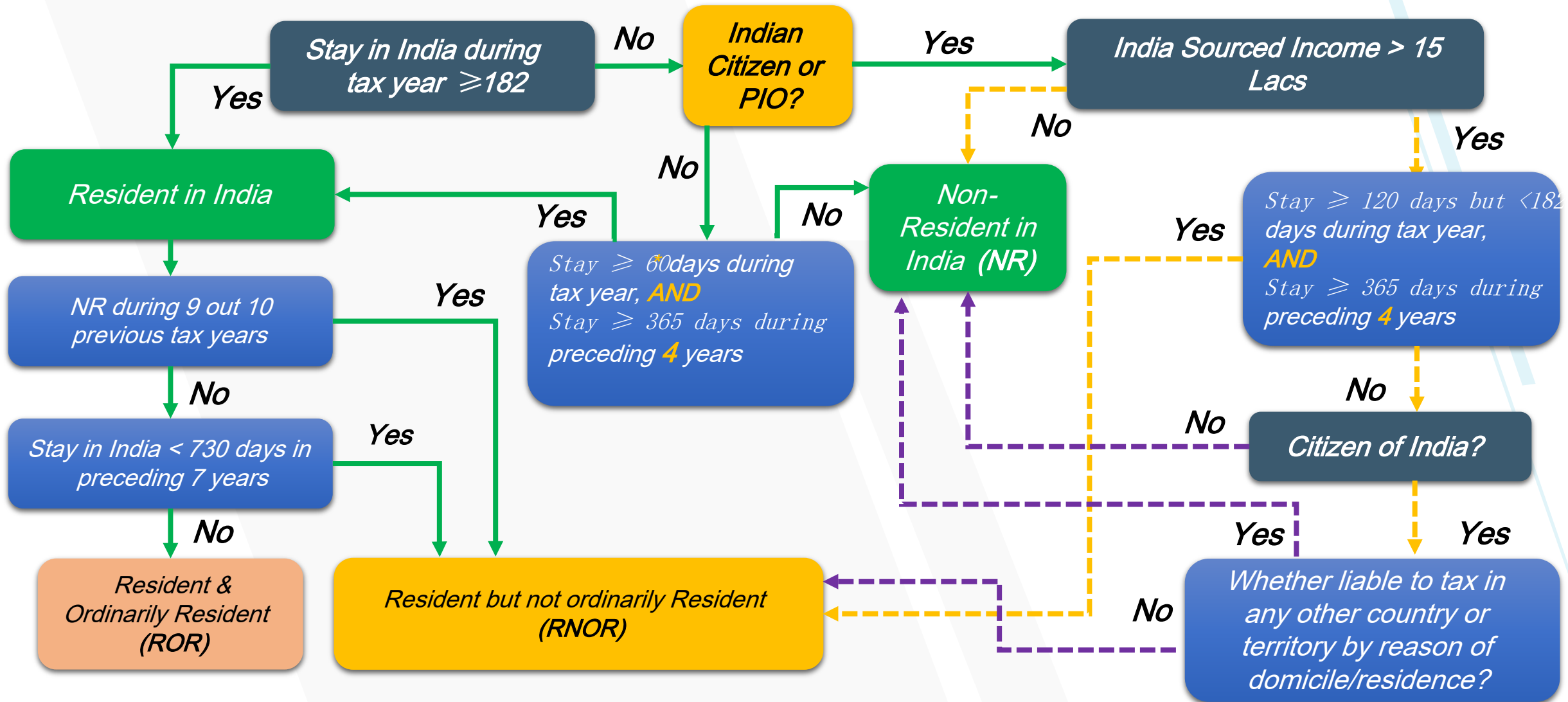
*Thank You*



# *Annexures*

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# Residential Status under IT Act for FY 2020-21 onwards



# Residential Status under IT Act for FY 201920 – relief for COVID 19

- » CBDT has introduced following relaxations when determining residential status of an Individual for FY 2019-20
  - » Who came to India before 22 March 2020, and to whom one of the following sets of circumstances applies:

Circumstances	Relaxations
Unable to leave India on or before 31 March 2020	The period of stay in India from 22 March 2020 to 31 March 2020 will not be counted
Quarantined in India due to COVID-19 on or after 1 March 2020, and either <ul style="list-style-type: none"><li>• left India via an evacuation flight on or before 31 March 2020, or</li><li>• was unable to leave India by 31 March 2020</li></ul>	The period of stay in India from the start of quarantine to the date of departure, or 31 March 2020, as appropriate will not be counted
Departed from India on an evacuation flight on or before 31 March 2020	The period of stay in India from 22 March 2020 to the date of departure will not be counted

# Scope of Total Income

» The above rules can be broadly depicted as follows:

Nature of Income	Taxability in the case of		
	ROR	RNOR	NR
Income received or deemed to be received in India	√	√	√
Income accruing / arising or deemed to be accrued / arising in India	√	√	√
Income from a business controlled from India or from a profession set up in India but not received or accrued in India	√	√	×
Income not received or not deemed to be received in India	√	×	×
Income not accruing / arising or not deemed to be accrued / arising in India	√	×	×

# Double Taxation Avoidance Agreement ('DTAA')

- » In case resident of one country (home/ residence country) derives income from another country (host/ source country)
  - » There arises a possibility of 'double taxation' of the same income in the source country and subsequently in the residence country
- » DTAA eliminates such double taxation of the same income
- » DTAA divide the taxing rights between the countries that are party to the agreement
- » Section 90 provides that where the provisions of the DTAA entered into by India with another country are more beneficial to any assessee,
  - » The assessee would be governed by such beneficial provisions of the DTAA
    - » Subject to TRC being furnished by the Assessee
  - » Hence, in the case of an expatriate, the provisions of the DTAA needs to be examined for the purpose of ascertaining the tax liability.



# Foreign Tax Credit

- » An expatriate being ROR of India, earning income in other country may be liable to tax in such country under the 'source' rule.
  - » However, he may also be liable to tax in respect of the same income in India as per the 'residence rule'
  - » This scenario can lead to double taxation of the said income
  - » DTAA provide for specific provisions for elimination of such double taxation
- » Article on elimination of double taxation/ relief from double taxation of the DTAA provides that, the tax paid in source country shall be available as a credit in India
  - » However, to the extent of tax levied by India on such income
- » An individual (qualifying as tax resident of India) must file Form No. 67
  - » Before filing return of income under Section 139(1) of ITA
  - » To claim Foreign Tax Credit in his/ her return of income

# Residential Status under FEMA

