Deloitte.

Deloitte India Tax Briefing

Inbound

June 2022

Contents

Arrival Formalities

Permanent Account Number (PAN)

- **PAN is India tax identification number and it is required for**
  - **Tax withholding purposes**
  - **Filling of India tax return**
  - **Other purposes like quoting in financial transactions as required by bank**
- **PAN to be registered on income tax e-filing portal**

Aadhaar

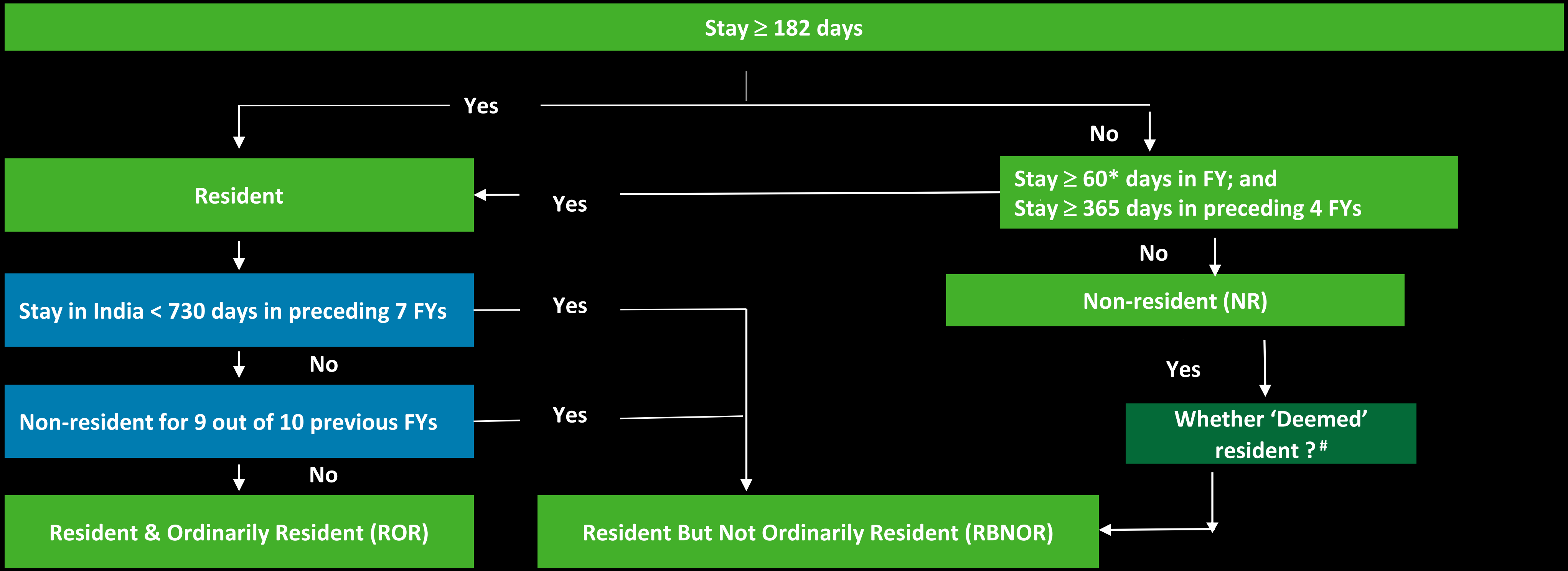
- Aadhaar is a unique identification number which carries biometric information like fingerprints, iris scans, and other personal details like name, age, address etc.
- Quoting Aadhaar number or Aadhaar enrolment ID while filing India tax return is mandatory with certain exceptions.
- It is mandatory to link PAN and Aadhaar. Else, penalty will be applicable.

Illustrative list of documents required

- Copy of passport
- Copy of Visa
- Passport sized colored photographs
- Employer's certificate (in original) stating address of the applicant in India duly signed by authorized signatory. The same is to be issued on employer's letter head – for PAN applicable

Residential status

- Tax Year is from 1 April to 31 March.
- Residential status is required to be to understand the scope of taxability and is mainly based on the physical presence of the individual in India.

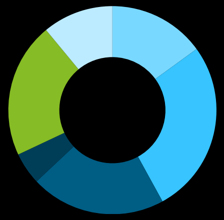


- 60 days stands extended to 182 days in below cases –
  - **Indian citizen** who leaves for the purposes of taking employment outside India.
  - **Indian citizen or person of Indian origin (PIO),** who being outside, come to India on visits and having India source income not exceeding INR 15 lakh during the relevant FY.
- If India sourced income exceeds INR 15 lakh then the 60 days stands extended to 120 days and such individuals will be regarded as RBNOR.

#Deemed resident means the **Indian citizen** who is not liable to tax in any other country/territory by reason of his domicile or residence or any other criteria of similar nature and have India source income exceeding INR 15 lakh during the relevant FY

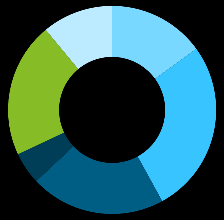
Scope of taxable income

As per the India domestic tax laws



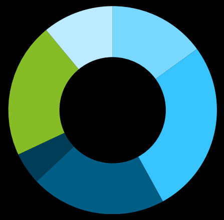
ROR

- Global Income



RNOR

- Income received or deemed to be received in India;
- Income accrues or arises or is deemed to accrue or arise in India; and
- Income that accrues or arises outside India which is derived from a business controlled in or a profession set up in India.



NR

- Income received or deemed to be received in India; and
- Income accrues or arises or is deemed to accrue or arise in India

As per section 90 of the income tax act, where there is a double taxation avoidance agreement with India, the provisions of the act will apply to the extent they are beneficial.

Taxability of employment income

Domestic law perspective

Remuneration is taxable in India if services are rendered in India irrespective of the residential status. Global income is taxable for ROR individual subject to relief in accordance with domestic tax laws.

Double Taxation Avoidance Agreement(DTAA) Perspective

If the income is subject to tax in home country as well as host country, relief can be claimed for double taxation based on Double Taxation Avoidance Agreement.

Tie-breaker clause

If a person qualifies to be resident under domestic tax laws of both the countries, the residency needs to be determined using the tie breaker analysis in chronological order.

Country of permanent home	Any one – Yes; country of residence determined
Country of personal and economic interest	Any one – Yes; country of residence determined
Habitual abode	Any one – Yes; country of residence determined
National of which country	Any one – Yes; country of residence determined
Competent authorities to decide	

Illustration - Claiming Foreign Tax Credit (FTC) in India

Scenario	Doubly taxed income	Taxes in India (assumed)	Taxes in overseas country (assumed)	Remarks
1	100	30	35	FTC to be claimed in India should be restricted to 30. No refund of additional taxes paid in overseas country.
2	100	30	25	FTC available in India would be restricted to 25. The balance 5 needs to be paid in India.

- FTC may be availed in India provided the individual qualifies as a resident of India as per the treaty. FTC will be available on the average rate of tax.
- The taxes should have been paid / payable overseas to claim FTC. Revision may be required for the India tax return filed, if the FTC has been claimed on estimated basis in the absence of overseas tax return.
- Additional requirements for claiming FTC:
  - Furnish Form 67 electronically
  - Furnish employee certificate and proof of taxes paid in overseas country.

If the overseas country is US, credit is provided only for Federal taxes.

Illustrative list- Heads of Income

Heads of Income	Illustrative List of Income
Salaries	Salary and allowance and benefits in cash/kind (such as Rent free accommodation, car, stock options etc.) provided by employer either free or at a concessional rate.
Income from House Property	Rental income from House Property
Profits & Gains of business or profession	Business Income
Capital Gains	Profit/loss on sale of shares, mutual funds, properties etc.
Income from other sources	Interest on fixed deposit, dividend etc.

Employee Stock Award

1 On Grant

No Tax Impact

2 On Vesting

- Taxable Benefit = Fair Market Value (FMV) on date of vesting.
- Tax trigger – On vesting of shares
- The employer is required to withhold taxes and report in Form 16
- Taxable benefit on vesting is apportioned based on number of days of stay in home and host country from grant date to vest date.

3 On Sale

- Capital gains = Sale consideration less FMV on the date of vesting considered for India perquisite valuation
- Employee to pay taxes and report in tax return

Classification of income through the Life cycle of stock award/RSU:

Employment income on exercise/vesting

Grant → Vesting → Sale

Capital gains on sale

Modes of tax payment

Withholding Tax

- Tax to be withheld on the salary and benefits provided by the employer.
- Annual certificate to be issued by the employer for salary and benefits.
- Another common example for tax withholding could be TDS made by bankers on the interest payment

Advance Tax

- Advance tax is applicable if tax payable on other income is more than INR 10,000
- Advance tax payable on personal income in four installments
  - 15 per cent by 15 June
  - 45 per cent by 15 September
  - 75 per cent by 15 December
  - 100 per cent by 15 March

Self assessment Tax payable at the time of filing tax returns

Tax rates for individuals the period 1 April 2022 to 31 March 2023

- Option available for individuals and HUF to apply for the simplified tax regime/the current regime
- Individuals with business or professional income have only one chance to revert to the current regime on opting for the simplified regime, unless they cease to have income from business/profession.

Slab of income (INR)	Simplified tax regime[1]	Regular regime[1]
Upto 250,000	NIL	NIL
250,001 to 500,000	5%	5%
500,001 to 750,000	10%	20%
750,001 to 1,000,000	15%	20%
1,000,001 to 1,250,000	20%	30%
1,250,001 to 1,500,000	25%	30%
Above 1,500,000	30%	30%
Availability of deductions	• Deduction for employer contribution to National Pension scheme (NPS) • Transport allowance, conveyance allowance, per-diems and travel/ transfer allowance u/s 10(14) Refer annexure 1 for exhaustive list of deductions/exemption not available	• Standard deduction and profession tax, house rent allowance, leave travel assistance • Eligible investments under chapter VIA like LIC premium, health insurance premium, donations etc. • Interest paid on loan taken on self-occupied property

[1]Information subject to change

Tax rates for individuals (contd.)

Taxable Income (In million)	Rate of Surcharge[1]	Effective Rate of Tax (including surcharge and HEC)[1]
> 5 m < 10 m	10%	34.32%
> 10 m < 20 m	15%	35.88%
> 20 m < 50 m	25%	39%
> 50 m	37%	42.74%

* Health and education cess (HEC) payable at the rate of 4% of total tax including surcharge.

A tax rebate up to INR 12,500 is available to Resident individuals where total taxable income does not exceed INR 5,00,000.

[1]Information subject to change

Illustrative list of Deductions
(Applicable only if opting for current regime)

Section	Description
10 (13A)	House Rent Allowance (HRA) exemption: Exemption for rent paid for the rental accommodation in India.
10 (5)	Leave Travel Allowance (LTA) exemption: Exemption with respect of expenditure incurred for travel in India.
80C *	• Contributions towards Provident Fund (PF), Investment in Public Provident Fund (PPF), life insurance premium, certain fixed deposits and mutual fund investments, tuition fees, housing Loan principal repayment etc. • The deduction under this section is limited to INR 150,000.
80CCD *	Contribution to Nation Pension Scheme (NPS)
80D	• Health insurance premium payment in India for Individual and his family – Up to INR 25,000/- • In case any of the above are senior citizens the deduction can be claimed up to INR 50,000/-
80G	Deduction is allowed for certain donations made to the institutions registered under income tax act in India.
80TTA	Savings bank interest to the extent of INR 10,000 for the financial year would be allowed as deduction.

Apart from the above there are specific deductions available for medical expenses incurred towards specified ailments, interest payment towards education loans etc. subject to specified conditions/limits.

Employee Obligation : Filing of tax return

Due date to file the tax return is 31 July

Who is required to file tax return?

- Mandatory to file income tax return, where the total income exceeds the basic exemption limit; i.e., INR 250,000 for tax year 2022-23
- An ROR individual having foreign assets though he/she may not have any taxable income in India
- Deposits more than INR 1 crore in bank accounts
- Incurred expense in excess of INR 2 lakhs for travel outside India
- Incurred expense in excess of INR 1 lakhs for consumption of electricity
- Deposits more than INR 50 Lakh in savings account in India
- TDS more than INR 25,000 against PAN

What are the consequences of non-filing?

- Non filing of the tax return / delayed filing attracts a fee.
- Fee for delay in filing the tax return:
  - INR 1,000 ~ if total income does not exceed INR 500,000
  - INR 5,000 ~ any other case
- Loss from business, capital loss etc. cannot be carried forward to be set off with future gains if the tax return is not filed with in the due date.
- Simplified regime cannot be opted in case of belated/non-filing of tax return.

Requirement to deduct taxes on rental payments

It is mandatory for the individuals to deduct taxes at the time of payment of rent in below cases.

If landlord is resident

- Requirement to deduct taxes if rent paid exceeds INR 50,000 per month
- Tax is required to be deducted @ 5%* if the landlord has PAN, otherwise tax need to be deducted @ 20%.
- Deductor is not required to obtain TAN (Tax deduction and collection account number)
- Tax deduction and payment is required only once - in last month of the previous year (or last month of tenancy if the property is vacated during the year)

If landlord is Non-resident

- No such threshold
- Tax should be deducted @ 31.2% on monthly basis.
- Deductor is required to obtain TAN (Tax deduction and collection account number)
- Tax deduction and payment is required monthly

Reporting of Assets & Liabilities as on March 31

- The India tax return form has a Schedule "Asset and Liability" in which all assets and liabilities have to be reported
- This schedule is applicable for individuals with total income in excess of **Rs. 5 million** and they are required to report their assets and liabilities at the year end under this schedule.
- In case of ROR, the specified assets located outside India also need to be reported.

Assets

Immovable Assets
- Land
- Building

Movable Assets
- Cash in Hand
- Jewellery, bullion, etc.
- Vehicles, yachts, boats and aircraft
- Bank (including all deposits)
- Shares and Securities
- Insurance policies
- Loans and advances given

Liabilities in relation to above assets is also required to be reported.

Foreign assets reporting

Only for ROR

- It is mandatory to report the assets held outside India during the calendar year for all the individuals who qualify to be resident and ordinary resident (ROR) in India.
- Mandatory requirement for ROR irrespective of the income being less than the basic exemption limit.
- The foreign assets will include
  - Foreign Depository Accounts
  - Foreign Custodial Account
  - Foreign Equity and Debt Interest
  - Cash Value Insurance
  - Immovable Property
  - Financial interest in any entity
  - Other Capital assets
  - Details of other accounts with signing authority
  - Details of Trust

Reopening of cases for Tax audit is possible up to 16 years. Non reporting / under reporting would attract penalty of INR 10 lakhs.

List of Documents to be retained for tax return filing*

List of Documents

- Copy of Form 16 received from Current or Previous Employer for the relevant Financial year;
- Details of income tax portal account i.e. password;
- Investment proofs - Life Insurance & Medical Insurance Premium; Fixed Deposit certificates; Contribution to PPF, etc.;
- Certificate from Bank - Repayment of House Property / Educational Loan / Interest certificate;
- Bank Statements - For details with respect to savings interest earned/any other income received;
- Capital Gains - Statement from the Brokerage house;
- Let-out property - Municipal taxes paid receipt;
- Donations receipt;
- Form 26AS and Annual Information statement (AIS) downloaded from Income tax portal

* Kindly note that the above list of documents are illustrative in nature

PF applicability to International Workers (IW’s)

- Social Security Obligations in India: Mandatory for Foreign nationals i.e. International Workers (IW’s) working in establishments in India to which Employees’ Provident Fund (PF) regulations apply;
- IW means an employee other than Indian employee, holding other than Indian passport, working for an establishment in India to which the Employees’ Provident Fund (PF) regulations apply;
- Excluded employees: Assignees from countries with whom India has signed SSA’s; contributing towards the social security of the home country and holding Certificate of Coverage (COC);
- PF withdrawal permitted only after 58 years of age on retirement.

Contributions to Indian Social Security

Employer	Employee
Provident Fund – 3.67% of the monthly pay	Provident Fund – 12% of the monthly pay
Pension Fund* - 8.33% of the monthly pay	
Total – 12%	**Total – 12%**

*An employee who is not an existing member of the Pension scheme as on 1st September 2014 and whose monthly pay exceeds INR 15,000, no contribution is required to be made towards pension fund.

Taxability of Employer and Employee Contribution to Retirement Payments

Taxability of Employer's share of Retirement Benefit Contributions

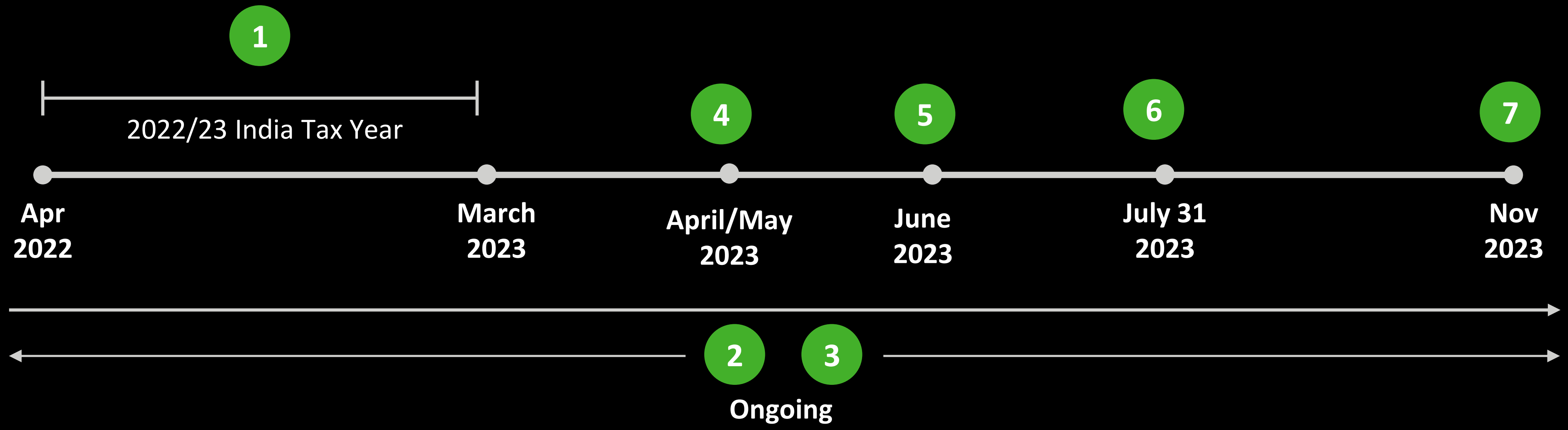
As per Finance Act, 2020

- Aggregate of employer contribution to Provident Fund, National Pension Scheme & Superannuation Fund and in excess of INR 7,50,000 is taxable as perquisite.
- Annual accrual on taxable contribution as mentioned above is also taxable
- This is applicable from 1 April 2020.

Taxability of Employee's share of Retirement Benefit Contributions

- Where employee contribution to PF (which has to be at least equal to the employer's contribution) exceeds INR 2,50,000 in aggregate during a financial year, interest accretion on such excess contribution would be taxable in the hands of employee.
- The annual limit of INR 2,50,000 would include voluntary contributions as well
- These provisions are effective from Financial 2021-22
- No clawback etc. even if the PF contributory period had already exceeded / eventually exceeds 5 years.

Compliance Actions, Tax Return & Payment Timeline: 2022/23



1. Obtain signed meeting forms/ acknowledgment post briefing
2. Complete Travel Details
3. Retain records/documents required for filing
4. Submit Tax Questionnaire and provide complete information/necessary documents
5. Issue of Form 16 (salary certificate) by employers
6. E-file tax return
7. E-verification of tax returns within 120 days

Annexure 1: Exhaustive list of deductions/exemptions not available

Sl. No.	Description	Allowed/Not Allowed	Relevant Section
1	Leave travel concession or assistance	Not Allowed	10(5)
2	House Rent Allowance	Not Allowed	10(13A)
3	Following allowances notified under section 10(14) is allowed for individuals under the new regime: a) Transport Allowance granted to a handicap employee to meet expenditure for the purpose of commuting between place of residence and place of duty b) Conveyance Allowance granted to meet the expenditure on conveyance in performance of duties of an office; c) Any Allowance granted to meet the cost of travel on tour or on transfer; d) Daily Allowance to meet the ordinary daily charges incurred by an employee on account of absence from his normal place of duty.	Allowed All other deductions under section 10 are not allowed	10(14) (which comprises of 10(14)(i) read with rule 2BB and 10(14)(ii)) (other than those as may be prescribed for this purpose)
4	Allowance for income of minor child (INR 1,500)	Not Allowed	10(32)
	Children Education Allowance	Not Allowed	10(14)(ii) read with Rule 2BB(2)
	Any allowance granted to an employee to meet the hostel expenditure on his child.	Not Allowed	10(14)(ii) read with Rule 2BB(2)
5	Deductions from Salary (Standard Deduction, Profession tax, etc.)	Not Allowed	16
6	Deduction for interest paid on housing loan Set off of loss from house property against any other income	Not Allowed	24(b)
7	Deductions under section 80CCD(2) (NPS) and 80JJAA Other deduction under section 80	Allowed. Not Allowed	Chapter VI
8	Food Coupons	Not Allowed	Section 17(2) read with rule 3 – However amendment is pending.