INTERNATIONAL AND DOMESTIC TAXATION FOR USA AND NRI TAXPAYERS

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ABSTRACT

International and domestic taxes for U.S. and NRI taxpayers are affected by several rules, treaties, and compliance requirements. Since the US tax system is worldwide, Americans pay taxes on all income. This includes the foreign Bank Account Report (FBAR) and Foreign Account Tax Compliance Act (FATCA), which require reporting of abroad assets and income to prevent tax evasion. Even though they pay Indian taxes on income earned in India, non-resident Indians (NRIs) with U.S. citizenship or residency status are also taxed by the U.S. Tax treaties between the US and India strive to minimise double taxation by assessing tax liability, exemptions, and credits. U.S. and NRI taxpayers must be prepared to navigate the complicated foreign tax system to optimise benefits and reduce penalties. They must understand tax incentives, follow changing laws, and traverse different tax jurisdictions. This abstract emphasises the need of understanding this complicated tax legislation for local and international financial planning.

Keywords: *USA; NRI taxpayers; International; domestic taxation.*

INTRODUCTION

Taxes are the primary source of income for any country. Income tax generates the most money for the Indian government. The US tax system is complicated enough without having to account for non-resident aliens (NRIs). But this isn't without its drawbacks. The Double Tax Avoidance Agreement shields some non-resident Indians from having to pay taxes in two countries.

TAXATION ON FOREIGN NATIONALS' INCOME IN THE UNITED STATES

Any individual who is a resident of the United States or a citizen of the United States and who operates under the categories of NRI, PIO, or OC is obligated to pay taxes on their global income.

According to the laws that govern taxes in the United States, non-resident Indians (NRIs) may be liable to a certain tax rate on any income that they generate in the United States. There are a number of factors that determine whether or not non-resident foreigners in the United States are subject to fiscal responsibility.

Income from Salary

In comparison to their American equivalents, income taxes in India differ in a variety of ways during the course of their existence. The many components of an Indian worker's compensation that come from a variety of sources are each subject to their own individual taxation. Tax benefits may be available to individuals in the form of reimbursements or allowances for medical expenses.

There are no comparable tax laws that apply to salary income in the United States. The income of a person may be subject to taxation regardless of the source of such income. A summary of your taxable income in India is included on Form 16, which is commonly referred to as the Income Tax Return. On the other hand, the income tax return of an individual or non-resident immigrant in the United States is required to disclose all of the tax-free components of income that was produced in India. These people are likewise required to pay taxes in the United States on those components.

In accordance with Article 15 of the DTAA, a resident of one nation who receives income from another country is going to be liable to taxes "only" in the country in which they live. Consequently, if an NRI is employed in the United States and receives payment in Indian dollars, they are solely obligated to pay taxes in the United States. In order for this to take place, it is required to inform one's Indian payer that they should not withhold TDS. Additionally, he is required to provide an IRS Tax Residency Certificate in order to demonstrate his residency to his Indian payer. Even in the event that the certificate is not on file, an NRI may still be able to claim the tax credit for the TDS deduction that was made by an Indian employer on their tax return in the United States.

Incomes Through Freelancing and Contractual Work

Non-resident Indians (NRIs) who work as consultants in the United States and get financial compensation from an Indian company are the ones who are most likely to be impacted by this. In such a scenario, the connected non-resident aliens are obligated to pay taxes to the United States on the money. It is absolutely necessary to pay this tax, regardless of whether the money was taken out of a bank account in the United States or in India.

In this particular scenario, it is necessary to take into consideration the criteria of the Double Tax Avoidance Agreement (DTAA).

If a non-resident Indian (NRI) working in the United States makes money in India, then that money would only be liable to taxes in the United States, as stated in Article 15 of the DTAA. Once again, if an NRI is able to show a Tax Residency Certificate in India, his income will be exempt from taxes that are reduced at the source from the beginning. In the United States, non-resident Indians have the ability to make a claim for taxes that they have paid in India.

Rental Income

He will be subject to taxation in the United States on his rental income if he is the owner of an Indian property that is rented out. The provisions of Article 6 of the DTAA provide that any rental income derived from an immovable property may be subject to taxation in the nation in which the property is situated. Therefore, non-resident Indians from the United States are required to pay taxes on any income they get from rent in India. On the other hand, non-resident Indians are required to disclose this income when they file their tax return for the United States. On account of taxes paid in India, they would be eligible for a tax credit.

'Only' the nation in which one resides is responsible for taxing a person's wage and any income earned via contractual obligations. However, both governments have the ability to impose taxes on revenue from rental properties. The nation that is the location of the property is the one that has the first right. Therefore, the non-resident Indian will first pay the tax on his rental income in India according to the India tax slab that is accessible to him.

Revenue from the Sale of Farmland

Land used for farming is exempt from sales tax in India. It is taxed, nonetheless, in the United States. Foreign nationals living outside of the US are subject to US income taxes on any money they make from the sale of agricultural property.

OBJECTIVES OF THE STUDY

1. To research the earnings from contract work and freelancing.
2. To research how foreign nationals' income is taxed in the United States.

Capital Gains

A capital gain is any profit that an individual makes as a result of selling capital assets such as real estate, stocks, shares, mutual funds, etc. When deciding whether an asset is considered a long-term or short-term capital gain, the rules in India and the United States are different. These issues arise once again for non-resident Indians. Foreign nationals living in India may have to pay taxes on their sales in India and then further taxes in the US, even if they may claim a tax credit in the US. Once again, this might wind up being considered a double-taxed asset to an NRI.

Indian Capital Gains Tax

These are India's capital gains tax rules:

1. Physical goods, property, or land gains:

Sale profits are short-term and long-term capital gains.

- **Long-term Capital Gain:** After three years from the date of purchase, any gain that occurs on the sale of tangible assets is referred to be a long-term capital gain. At the rate of twenty percent, it is subject to taxation.
- **Short-term Capital Gain:** The phrase "short-term capital gains" refers to any gain on sale that occurs within three years. The NRI's whole income is taken into account, and he is subject to taxation according to his overall tax bracket.

2. Investments in stocks, bonds, mutual funds, and other forms of money:

The sale of equity shares or mutual funds by a person after one year is free of taxation if the gain is capital.

A capital gain of fifteen percent is subject to taxation if sold within a year.

The sale of debt mutual funds or debentures after one year of ownership is subject to long-term capital gains taxation. With indexation, the tax rate is 20%; without it, it's 10%.

Income is subject to taxation at your overall tax bracket if you sell within one year, since these profits are considered short-term capital gains.

Capital Gain Taxation in the US

Under US law, all assets are subject to a one-year period for long-term capital gains. Your taxable income will increase by any short-term profits, and you will be subject to a 15% tax on any long-term capital gains.

Designing a Tax System

The amount of money needed to provide public services, as well as their size and breadth, are decisions made by governments. Concurrently, they decide how to pay for it, whether by borrowing money or increasing taxes. Government expenditure has historically been funded by borrowing, or deficits, and the ideal amount of this financing is conditional on a wide range of variables. Economists have said, for instance, that borrowing money is an acceptable way to cover short-term spikes in expenditure (like during a war or catastrophe relief effort) or drops in income (like a recession). Whatever the situation may be, we will be concentrating on the tax system since that is the only means by which the government can pay for its debt.

The two defining features of every tax system are its tax base and its rate structure. What is taxed is defined by the base, and the amount that is taken in by the rate. We start by looking at the two most popular tax bases: consumption and income. It doesn't matter what a taxpayer consumes under a system that uses income as its only basis; the point is to tax anything that makes it easier for them to consume. Income from wages, salaries, interest, and dividends is all subject to taxation under this system. So are earnings from unrealised capital gains and non-cash sources of income, including the implied rental value of owner-occupied properties. To sum up, under an income-only tax system, not only may all income be taxed, but also any gains in wealth.

In contrast, income that is spent is subject to taxation under a consumption-based system, whereas savings is not. There are many types of consumption-based tax regimes, including value-added, consumption-based flat, consumed-income, and national retail sales taxes.

The American tax system is a cross between a consumption tax and an income tax, rather than just one or the other. The handling of foreigners' actions inside U.S. borders as well as U.S. persons' and businesses' overseas commercial operations is another crucial component of establishing a tax base. U.S. citizens and permanent residents are now subject to income tax on all of their global revenue, regardless of where their business takes place, with a small credit available for taxes paid to foreign countries. Regardless of the location of ownership, all economic activity in the country is subject to U.S. taxes. Similarly, U.S. persons and firms are subject to U.S. taxes regardless of the country in which their activity takes place. Another option would be for the US to tax based on territory, meaning that regardless of the nationality of the individual or company, all money made inside US boundaries would be subject to taxation. However, income gained outside would be exempt from taxation. Under territorial taxation, no amount of money earned outside of the United States would be taxable to citizens or businesses of the United States. This decision has significant ramifications for economic development and efficiency, especially in light of the rising rivalry between the US and other nations for economic activity.

Authorities in charge of taxes have two major tasks: deciding on a tax base and settling on a system of tax rates. Both the fairness and efficiency of the tax system are profoundly affected by this decision. A country's tax policy might be flat and applied to everyone, or it can be progressive, with higher rates going to the wealthiest citizens. How much of an impact taxes have on economic efficiency is heavily dependent on the tax rate applied to resource increments, such as a dollar's worth of extra income or spending. By altering taxpayer incentives and, by extension, their economic behaviour, this marginal tax rate influences taxpayers to make choices that would have been different had the tax not been imposed. To a large extent, the tax system influences economic efficiency via these "distortions" of behaviour (in comparison to the no-tax baseline).

AMERICAN TAX REFORMS: HISTORICAL, CURRENT, AND PROSPECTIVE

A more efficient economy and more competitive American businesses may be achieved via tax reform in the United States. Looking back at initiatives to change the US tax code, beginning with TRA86, we may make educated guesses about what the future holds in terms of possible changes. We zero in on tax base reform in the United States and how savings and their returns are taxed, including dividends, interest, and capital gains.

Two Decades of Proposed Tax Reform

According to the tax legislation of the United States, a number of different sources of income are accorded a special status. For instance, these preferences can provide an incentive for individuals to increase their savings for retirement or to make investments in new equipment in order to mitigate the distortions caused by the income tax. Both of these actions might result in increased efficiency. There are occasions when tax preferences are put in place with the intention of influencing decision-making in order to stimulate certain kinds of economic activity. For instance, tax credits may be used to provide financial support for activities such as research and experimentation, higher education, participation in the labour market, or the employment of individuals who come from disadvantaged homes. Some taxpayers may be subject to higher marginal tax rates as a result of these measures since the tax base would be further reduced. Because of them, the tax law is made even more difficult. The current tax system in the United States is characterised by a trade-off between tax rates and the tax base, as shown by the President's Advisory Panel on Federal Tax Reform. With a larger tax base, their statistics indicate that there is the possibility for a drop of one-third in tax rates across the board. This disagreement is evident in the fact that changes have been made to the tax base on many occasions over the course of the last twenty years.

Taxes on the United States of America and Non-Resident Indians

The system of taxes that is used inside the country is an important component of the overall financial landscape. The United States Internal Revenue Service is in charge of determining the method in which individuals, both in the United States and in other countries, are subject to taxation based on their income, assets, and the countries in which they reside or make money. In order to successfully plan for taxes and comply with laws, it is vital to have a comprehensive understanding of the domestic tax systems in both the United States of America and India. This is due to the fact that the Indian tax system focuses a particular emphasis on taxpayers who are not residents of India inside the country. The purpose of this article is to investigate the domestic taxation systems that are applicable to citizens of the United States as well as Non-Resident Indians (NRIs), with the intention of calling attention to the problems and obligations that are presented to each of these three categories.

Taxation System Within the United States

A worldwide taxation system is used by the United States of America, which means that citizens and residents of the United States are obligated to record and pay taxes on their worldwide income, regardless of the location in which they obtained it. In contrast to the majority of other nations, who only impose taxes on income produced inside their borders, this is a significant difference. This is the most important factor to take into account for taxpayers in the United States. People who are citizens of the United States, as well as people who satisfy the "substantial presence test" (which is based on the number of days they are physically present in the United States), are liable to the tax rules of the United States on their income around the globe. The income from job, business, investments, and even sources from other countries is included in this category.

It is the responsibility of the Internal Revenue Service (IRS) to supervise the collection of taxes and the enforcement of those taxes. The filing of annual returns is mandatory for taxpayers in the United States, and the deadline for filing is normally April 15; however, extensions are permitted. It is dependent on the exact sorts of income that they have, as well as whether they are self-employed, employed, or have other sources of income, which forms they submit accordingly. Form 1040 is the form that is used by persons the most often. Moreover, Form 8938 (FATCA) and FinCEN Form 114 (FBAR) are the documents that taxpayers in the United States are required to use in order to declare overseas bank accounts and assets under certain circumstances. Should you fail to comply with these reporting obligations, you may be subject to severe fines.

The foreign earned income exclusion (FEIE) is one of the distinctive features of the United States tax code. This special provision enables taxpayers who meet certain requirements to exclude a certain portion of their income earned outside of the United States from taxes. This exclusion is up to $120,000 beginning in the year 2024. The taxpayer must, however, satisfy a number of requirements in order to be eligible for this exclusion. These requirements include having lived in a foreign country for a specific amount of time and being employed by a foreign employer. In addition, the United States tax system has many mechanisms that help taxpayers avoid double taxation. One of these mechanisms is the foreign tax credit (FTC), which enables taxpayers to reduce their U.S. tax burden by the amount of foreign taxes that they have paid.

NRIs, or non-resident Indians, are subject to taxation in India.

People who have Indian citizenship yet live outside of the nation for the majority of the year are known as non-resident Indians, or NRIs. For Indian tax reasons, this categorization is utilized. The Indian Income Tax Act defines a person's status as a resident or non-resident depending on their actual presence in the country. Standardly speaking, an individual is considered a non-resident Indian (NRI) if they have spent more than 182 days outside of India during the current fiscal year (April to March) or more than 365 days outside of India in the preceding four years. Because of these traits, which establish tax residency, NRIs are taxable differently than natives of India.

Income earned inside India is the only source of income that non-resident Indians are obligated to pay taxes on. Everything made in India, whether from a job, a company, rental income, or capital gains, is considered Indian income. What this means is that Indians who do not live in India are not required to pay taxes in India on any money they make outside of India. Wages earned outside of India, dividends received, or interest earned on assets outside of India all qualify as forms of foreign income. Taxes on income produced within the country may still apply to a non-resident Indian (NRI) if they have substantial economic ties to India, such as by keeping property or doing business.

Capital gains taxes on non-resident Indians (NRIs) in India is complex since different rates are applied to short-term and long-term profits, respectively. For example, the tax rate for short-term earnings is 15%, whereas the rate for long-term capital gains on shares held for more than a year is 10% (without indexation). The sale of property in India by a non-resident Indian (NRI) is subject to capital gains taxation, with special rules applied to profits accrued over a longer period of time. The criteria of the Double Tax Avoidance Agreement (DTAA) between India and their place of residence must be considered by non-resident Indians (NRIs), further complicating matters. Tax breaks or exemptions might be available as a result of this agreement.

NRI Tax Requirements in the United States.

Form 1040NR, which is different from the standard Form 1040 used by citizens and residents of the United States, must be submitted by non-resident Indians (NRIs) in terms of documentation. Income earned by non-residents while in the United States is subject to withholding taxes. Income from dividends, interest, and salaries may be subject to different withholding tax rates in the US and the NRI's home country, depending on the kind of income and whether or not there is an applicable tax treaty.

India is one of the countries with whom the US has established a system of tax treaties. Tax credits and exemptions are allowed under the U.S.-India Tax Treaty to avoid double taxation. This treaty allows non-resident Indians (NRIs) to request exemptions from paying profits, interest, and royalties, subject to certain conditions. The fact that this treaty eliminates double taxation on income for Indian tax residents is an additional benefit.

Standards for Reporting and Compliance Obligations

Foreign assets are subject to very stringent reporting requirements for non-resident Indians and US taxpayers. American citizens and permanent residents are obliged to report their overseas assets and bank accounts when their combined worth exceeds a certain threshold, often $10,000 per year. This is accomplished via FinCEN Form 114, which is also called the FBAR. Serious penalties apply if you do not submit your FBAR paperwork by the due date. The maximum penalty for a willful violation is 50% of the account balance. Furthermore, U.S. taxpayers must declare

overseas financial assets on Form 8938 if their combined value above certain thresholds defined by the overseas Account Tax Compliance Act (FATCA).

Particular reporting obligations may arise for non-resident Indians (NRIs) in relation to income or assets held outside of India under the country's tax laws. While it's true that NRIs can only be taxed on income that comes from inside India, it's conceivable that they'll still have to report money that comes from outside of India on their tax filings. This is especially the case if they are determined to have been in India for tax purposes in certain years. Nevertheless, the government has established many exemptions for non-resident Indians (NRIs) under the Non-Resident Taxation Scheme to make tax payments easier for those living outside of India.

Planning and Methods for the Administration of Domestic Taxes

In order to minimize their tax payments and stay in accordance with both nations' tax legislation, taxpayers in the US and non-resident Indians must participate in tax planning. U.S. taxpayers, particularly those with overseas residences, have a few options for avoiding double taxation, including the Foreign Earned Income Exclusion (FEIE) and Foreign Tax Credits. Possible solutions to the issue of double taxation include using tax treaties and keeping accurate records for money earned outside of the country.

When it comes to tax planning for non-resident Indians (NRIs), it's important to know how different types of income are taxed in India. This includes capital gains, income from property sales, dividend income, and any exemptions or credits that are available through the India-United States Tax Treaty. Furthermore, NRIs should maintain careful track of the days they spend in India during a fiscal year to avoid being wrongly classified as residents under Indian tax legislation.

CONCLUSION

To negotiate the complexities of international and domestic taxation, US and NRI taxpayers must be informed of both countries' tax laws and regulations, as well as the many cross-border tax restrictions. US citizens and residents may benefit from the Foreign Earned Income Exclusion (FEIE) and Foreign Tax Credit (FTC). US taxpayers and non-resident Indians must declare abroad assets and income. Maintaining accurate records and completing documentation on time is important since failing to comply with these criteria might result in significant penalties. Tax treaties like the US-India Tax Treaty prevent double taxation. Thus, taxpayers must employ these laws to decrease their tax liability. Non-resident Indians and US taxpayers abroad must use smart tax planning to minimize their tax responsibilities while complying with local and international tax laws. If they stay informed, use their tax benefits, and work with tax experts, taxpayers can navigate the complexities of the US and Indian tax systems and improve their financial management. Managing global income taxes requires careful planning under the global taxation system. NRIs' income from within India is taxed, while their income from outside India is not. In

addition, companies must handle the intricacy of tax residency requirements, capital gains taxes, and the India-US Double Tax Avoidance Agreement (DTAA).

REFERENCES

1. Swenson, D.L. (2001), "Transaction type and the effect of taxes on the distribution of foreign direct investment in the United States", in: James R. Hines Jr., ed., International Taxation and Multinational Activity (University of Chicago Press, Chicago) pp. 89-108.

2. Olsen T.E., and P. Osmundsen (2001), Strategic tax competition: Implications of national ownership", Journal of Public Economics 81:253-277.

3. Hines Jr., J.R., and A.B. Jaffe (2001), "International taxation and the location of inventive activity", in: James R. Hines Jr., ed., International Taxation and Multinational Activity (University of Chicago Press, Chicago) pp. 201-226.

4. Viard, Alan D., 2004, "Border Adjustments Won't Promote U.S. Competitiveness," Tax Notes International, October 11.

5. Hines Jr., J.R. (2001), "'Tax sparing' and direct investment in developing countries", in: James R. Hines Jr., ed., International Taxation and Multinational Activity (University of Chicago Press, Chicago) pp. 39-66.

6. Hartman, David A., 2004, "The Case for Border-Adjusted Taxation in the United States," Tax Notes International, September 27.

7. de Mooij, Ruud and Sjef Ederveen, 2003, "Taxation and Foreign Direct Investment: A Synthesis of Empirical Research," International Tax and Public Finance, Vol. 10, pp. 673–93.

8. Desai, Mihir A., and James R. Hines Jr., 2005, "Value Added Taxes and International Trade: The Evidence" (unpublished; Ann Arbor: University of Michigan).

9. Slemrod, Joel, 2004, "Are Corporate Tax Rates, or Countries, Converging?" Journal of Public Economics, Vol. 88, pp. 1169–86.

10. Bhatia, K., & Sharma, P. (2019). Taxation of Non-Residents: A Comparative Analysis of Indian and International Tax Laws.

11. Baker, R. (2018). U.S. Taxation of International Income. Bloomberg Tax. ISBN:978-1454852100 DOI: Not available (Book publication)

12. Sundaram, S. (2017). Taxation in India: Law and Practice. LexisNexis.ISBN:978-9351438891DOI: Not available (Book publication)