



## Planning for NRIs and Families based in India

---

# Content

- India Tax and Regulatory Scenario
- Brief overview of applicable FEMA provisions
- Brief overview of applicable Income tax aspects
- Few Aspects to ponder for Non Resident Indians
- Few aspects to ponder for Resident Indians



India Tax and Regulatory scenario

# Tax and Regulatory Scenario In India

- Very wide ambit of information tracking and compliance monitoring
- For Residents – exposure to global taxation
- For Non Residents – exposure to taxation if not planned properly
- Introduction of Place of Effective Management as test of residency for Corporates
- Likely introduction of General Anti avoidance rules next year.
- Extensive combat against “Black Money” – Income Disclosure scheme and tracking of expenses by requirement to furnish Permanent Account Number at each stage.

# Tax and Regulatory Scenario In India

THE INDIAN EXPRESS-LE MONDE-INTERNATIONAL CONSORTIUM OF INVESTIGATIVE JOURNALISTS COLLABORATION  
**AN EXPRESS INVESTIGATION - PART ONE**

## HSBC Indian list just doubled 1195 names. Balance: Rs 25420 cr

Global 'leak' reveals names of businessmen, politicians; set to widen scope of SIT black money probe

**SIX NAMES**  
 INCORPORATED FEBRUARY

It is called Swiss Leaks - a series of leaked documents from HSBC's Swiss private banking unit that revealed names of account holders and their balances for the year 2014. The names however, till now, are the total balance over 1000 million. But now, thanks to HSBC, the list has doubled to 1195 names, including businessmen, politicians, and celebrities.

**DIAMOND TRADERS**  
 Representatives of the industry, several of whom are now active abroad. In the list, with mostly Mumbai addresses given, among them, Raviid Malhotra, Sangeetika, Suresh, Parthiv, Chetan Wadia, Gaurishankar Kulkarni and Ramesh Shah.

**POLITICIANS**  
 There are also lawmakers and political executives, most of whom have been arrested. There is also a list of names of prominent business leaders and their family members of business magnates.

**WHAT THEY SAY**  
 HSBC says it has no control over the data and that it is a global leak.

**SWISS LEAKS**  
 The investigation revealed 1,195 Indian HSBC clients, mostly active in the US.

**TOP 100 NAMES**  
 What's new, why it's important

**explained**  
 What's the list? Why it is called Swiss Leaks? The list is a list of over 1000 HSBC "clients" worldwide, each with details of the account in Geneva, and the balance sheet as of 31st Dec 2014. The names have 1000 million in total balance sheet.

**How many are from India?**  
 There are 1195 names.

**What's new about the list?**  
 The list was obtained by private investigators in Geneva, and it is a list of names of Indian citizens who got a free status in the French passport. Because the list had names from across the world, Le Monde partnered with Washington based investigative journalism which, in turn, signed agreements with over 100 countries.



## CHARGE I had taken Rs 10,000 from the proprietor of a furniture firm in the city IT Officer arrested red-handed by CBI

**BANGALURU, VIENNA**  
 A CBI officer has been arrested in Vienna, Austria, for allegedly taking Rs 10,000 from the proprietor of a furniture firm in the city.

The CBI officer, who was on a visit to Vienna, was arrested by the Austrian police on the charge of taking Rs 10,000 from the proprietor of a furniture firm in the city.

The CBI officer, who was on a visit to Vienna, was arrested by the Austrian police on the charge of taking Rs 10,000 from the proprietor of a furniture firm in the city.

**High extortion in Mumbai**  
 A CBI officer has been arrested in Mumbai, India, for allegedly taking Rs 10,000 from the proprietor of a furniture firm in the city.

The CBI officer, who was on a visit to Mumbai, was arrested by the Indian police on the charge of taking Rs 10,000 from the proprietor of a furniture firm in the city.

## IDS PROVES A SUCCESS

Income Declaration Scheme (IDS) of the Govt of India has proven to be a fruitful exercise. Some important facts about the scheme

- Scheme duration: June 1 to Sept 30, 2016
- Total amount declared: ₹ 65,250 crore
- Declarations made: 64,275
- Tax revenue expected: ₹ 29,362.5 crore
- Tax slab for declaration: 45%
- Payment of tax: In three installments by Sept 30, 2017

Source: Central Board of Direct Taxes (CBDT) **KBK Infographics**





## Overview of Foreign Exchange Management Act (FEMA)

## FEMA – Overview of Residential Status

- A Person can be Resident (R) or Non Resident (NR) under both FEMA & I. Tax Acts
- A Person can be Resident under one of the Acts & Non Resident under the another
- Section 2(v) of FEMA
- Capital and Current Account transactions

# FEMA – Person Resident in India

- S. 2(v) " person resident in India" means-
- (i) a person residing in India for more than one hundred and eighty- two days during the course of the preceding financial year but does not include-
  - (A) a person who has gone out of India or who stays outside India, in either case-
    - (a) for or on taking up employment outside India, or
    - (b) for carrying on outside India a business or vocation outside India, or
    - (c)for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;
  - (B) a person who has come to or stays in India, in either case, otherwise than-
    - (a) for or on taking up employment in India, or
    - (b) for carrying on in India a business or vocation in India, or
    - (c) for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period;



# FEMA – Important concepts

- S. 2(v) " person resident in India" means – (con't)
  - (ii) any person or body corporate registered or incorporated in India,
  - (iii) an office, branch or agency in India owned or controlled by a person resident outside India,
  - (iv) an office, branch or agency outside India owned or controlled by a person resident in India
- S. 2(w) " person resident outside India" means a person who is not resident in India

# FEMA – Important concepts

- “ Non-Resident Indian" (as per FEMA Notf. 5) means a person resident outside India who is a citizen of India or is a Person of Indian Origin (PIO)
- Thus, Non Resident Indian (NRI) means an Indian Citizen or PIO who has gone out of India or who stays outside India, in either case
  - for or on taking up employment outside India, or
  - for carrying on outside India a business or vocation outside India, or
  - for any other purpose, in such circumstances
  - as would indicate his intention to stay outside India for an uncertain period.
- “ Person of Indian origin" (as per FEMA Notf. 5) means a citizen of any country other than Bangladesh or Pakistan, if
  - a) he at any time held Indian passport; or
  - b) he or either of his parents or any of his grand- parents was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955); or
  - c) the person is a spouse of an Indian citizen or a person referred to in sub-clause (a) or (b)

# FEMA – Important concepts

- S. 2(e) “capital account transaction” means a transaction which alters the assets or liabilities, including contingent liabilities, outside India of persons resident in India or assets or liabilities in India of persons resident outside India, and includes transactions referred to in sub- section (3) of section 6
- S. 2(j) “current account transaction” means a transaction other than a capital account transaction and without prejudice to the generality of the foregoing such transaction includes,-
  - (i) payments due in connection with foreign trade, other current business, services, and short- term banking and credit facilities in the ordinary course of business,
  - (ii) payments due as interest on loans and as net income from investments,
  - (iii) remittances for living expenses of parents, spouse and children residing abroad, and
  - (iv) expenses in connection with foreign travel, education and medical care of parents, spouse and children

# Facilities under FEMA for NRIs

- Maintenance of bank accounts in India.
- Investment in shares / convertible debentures of Indian companies under Foreign Direct Investment Scheme on repatriation basis,
- Investment in shares / convertible debentures of Indian companies under Portfolio Investment Scheme on repatriation basis.
- Investments on non-repatriation basis out of funds in NRO A/c. or through inward remittances.
- Investments in immovable properties in India (excluding farm house, agricultural land or plantation)
- Renting of immovable property is permitted provided rent is credited to NRO / NRE / FCNR account
- NRIs cannot open a new PPF account though they can continue to deposit into an existing account. Further, they cannot apply for extension beyond the maturity period.



Overview of Income Tax Provisions and important issues to be aware

# Residential Status under Income tax Act

- S. 6(1) Basic conditions for individuals
  - Physical presence test of 182 days, or
  - Physical presence test of 60 days in a financial year & 365 days or more in preceding 4 years to the subject previous year (on an average 92 days over 4 preceding years)
  - Exception in case of citizens going abroad for employment or for an employment as a member of crew of an Indian ship
  - NRI/PIO (on visit to India) as defined under Expln. to S.115C(e) – a restricted meaning
- S. 6(6) Not ordinarily Resident if Individual is
  - Non resident in India for 9 out of 10 previous years or
  - his stay in India is less than 730 days in 7 preceding years (on an average 104 – 105 days over 7 preceding years)
- S. 6(3) A Company is said to be resident in India in any previous year, if :
  - It is an Indian company; or
  - Its Place of effective management in that year is in India.
- Other Assesseees are resident if management & control is in India even Partial management and control will be sufficient for this purpose
- Returning persons who were in employment are not included in the exception to S.6(1)

# Other important Tax aspects

- Very strict implementation of Transfer Pricing Provisions by the Indian tax department resulting in substantial addition in disclosed income for various Multinational entities
- Likely introduction of General Anti Avoidance Rules will further give powers to tax department to look through or disregard transactions which are not permissible or justifiable or entered into for only tax benefits and lacks commercial substance.
- Introduced ad hoc levy on payment for online advertisement paid by an Indian resident / corporate to overseas entities – one of the first countries to introduce such a levy – popularly referred as Google tax

# Disclosure required for Resident Indian while filing the Return of Income

- In case of foreign assets and income, disclosure is required in Schedule FA of Income Tax Return of the following:
  - Any asset held outside India as beneficial owner or otherwise
  - Financial interest in any entity located outside India
  - Signing authority in any account located outside India
  - Details of Immovable Property located outside India
  - Details of trusts created outside India in which the person is settlor, beneficiary or trustee
  - Income from any source outside India. It is required to be offered to tax in India and the schedule in the ITR form in which it is included is to be mentioned



# POEM – Possible tax impact

## Possible tax implications if a foreign company becomes resident in India due to its POEM being India:

- Global income including active overseas income taxable at a higher rate of 40% in India (plus applicable surcharge and cess)
- Not eligible to adopt special presumptive tax regime applicable for business income of a non-resident from business of exploration of mineral oils (i.e. section 44BB where 10% of gross revenue is considered as income). Hence, maintenance of tax books of accounts compulsory. Applicability of MAT\* provisions - to be examined further in view of proposed explanation in Finance Bill 2016
- Transfer Pricing regulations may apply to all transactions with associate entities overseas as global income is taxable
- Such Overseas entity could also be subjected to domestic withholding tax obligations.
- Dividend from downstream foreign subsidiary will be taxed at 40% (plus applicable surcharge and cess) without underlying tax credit and concessional tax rate of 15% (only Indian companies eligible)
- There are certain tax exemptions / incentives which may apply only to Indian company (and not to a domestic / resident company), illustratively, capital gains exemption for transfer between 100% subsidiary and its holding company if the transferee is an Indian Company
- In tax treaties like India – USA, trigger of dual residency may result in denial of treaty benefit. Under BEPS, trigger of dual residency requires competent authorities to resolve treaty residency issue through mutual agreement

\* tax @ 18.5 % (plus applicable surcharge and cess) on book profits is payable, if the tax calculated under net income basis is less than 18.5 % of book profits



Few Aspects to Ponder for NRIs

# Aspect to Ponder

- If recently became NRIs – maintain proper details to prove physical presence outside of India and proper documentation of income earned while being NRI.
- Ensure no recurring income ( except investment income) is earned in India and only to have NRE/ NRO bank accounts
- Overseas assets to be properly owned through appropriate structures if intent is to return to India and become resident at some point
- Indian assets and Investments to be fully disclosed and appropriately structured in compliance with FEMA and Income tax Act.



Few Aspects to Ponder for Resident Indians

# Few aspects for Resident Indians

- Ensure complete and proper disclosure of foreign assets if any made.
- Black Money Act has very wide provisions and can look back at past 16 years and cover all of them in its ambit.
- To seek proper advice while deciding to Invest abroad keeping in view FEMA and Tax provisions and Ceilings
- Ensure no signing or management rights for overseas entities / Bank accounts is retained with residents.

Thank You