

# INDIA

As per 1 January 2018

## EXPATRIATE AND EMPLOYER TAX COMPLIANCE AND ADVISORY

### Personal Income Tax Rates – Employment Income

Progressive tax rate – 0 to 30%. Plus surcharge at 10% of tax if income exceeds INR 5 million and 15% of tax if income exceeds INR 10 million and health and education cess of 4% of tax and surcharge. Income upto INR 250,000 is not taxable.

### Tax period

April 1 to March 31

### Tax residency / Domicile according to domestic law

The residential status of an individual is determined on the basis of number of days of stay in India during a fiscal year April to March.

An individual is considered to be “Tax Resident” in India **if he meets either** of the following conditions:

- He stays for 182 or more days in India in a particular fiscal year. **Or**
- He stays in India for 60 days or more during the fiscal year and for at least 365 days in aggregate during the preceding four fiscal years (the 60 days’ condition is increased to 182 days in the case of a citizen of India who leaves India in any fiscal year as a member of the crew of an Indian ship or for the purposes of employment outside India or in the case of a citizen of India or a person of Indian origin who comes for a visit to India in a fiscal year).

Further, if his stay exceeds 729 days in the last 7 years and he is a “Resident” in India in at least 2 out of the 10 preceding fiscal years then residential status would be “Resident and Ordinary Resident”. Else his residential status is “Not Ordinarily Resident”.

### Tax registration

A person earning any income in India is required to obtain registration by applying for Permanent Account Number (PAN) (which is a unique identification number in the tax records ) with the tax authorities. PAN is to be quoted on every document that is submitted before the tax authorities in India.

### Employment income definition

Salary includes any amount received from the employer in the nature of allowances, perquisites, advance and arrears of salary. Perquisites include stock options, rent free / concessional accomodation, car, concessional loan, etc. provided by the employer.

### Examples of tax exemption

Leave encashment, House Rent Allowance, relocation expenses, gratuity, etc. are exempt subject to certain conditions and upto prescribed limits.

### Specific expatriate concession

Remuneration for services rendered by a foreign national, employed by a foreign enterprise during their stay in India, is exempt if:

- the total period of the stay in India does not exceed 90 days in a fiscal year
- the foreign enterprise is not engaged in any trade or business in India; and
- the remuneration is not cross charged to an entity subject to Indian income tax.

Remuneration received by or due to a non-resident foreign national for services rendered in connection with employment on a foreign ship, where the total period of the stay in India does not exceed an aggregate period of 90 days in a fiscal year, is exempt from tax.

Similar exemptions are available under tax treaties if the stay is less than 183 days, but conditions vary.

<b>Income of board members</b>	Sitting fees, remuneration and commission.
<b>Tax returns</b>	An individual whose taxable income (from salary and all other sources) during the fiscal year exceeds INR 250,000 is required to file a Return of Income. The Return of Income for the fiscal April to March is to be filed by July 31 of the subsequent year.
<b>Tax payments</b>	The employer is liable to withhold tax on salary at the rates (10 to 30%) applicable to the employee and deposit the same with the Treasury. Thus, entire tax on salary is withheld at source. Where the salary is paid by the Indian employer to the expatriate coming to India, it will withheld taxes. The employee is liable to pay tax on interest income and any other income he earns in India. Entire tax liability is to be discharged before the filing of the Return of Income.

## TAX TREATIES

<b>Employment income / income from board members</b>	Article 15 / 16 / 17 of the Double Tax Avoidance Agreements between India and other countries.
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## INTERNATIONAL SOCIAL SECURITY

<b>Cross border employments</b>	<p>Remuneration for services rendered by a foreign national, employed by a foreign enterprise during their stay in India, is exempt if:</p> <ul style="list-style-type: none"> <li>• the total period of the stay in India does not exceed 90 days in a fiscal year</li> <li>• the foreign enterprise is not engaged in any trade or business in India; and</li> <li>• the remuneration is not cross charged to an entity subject to Indian income tax.</li> </ul> <p>Remuneration received by or due to a non-resident foreign national for services rendered in connection with employment on a foreign ship, where the total period of the stay in India does not exceed an aggregate period of 90 days in a fiscal year, is exempt from tax.</p> <p>Similar exemptions are available under tax treaties if the stay is less than 183 days, but conditions vary.</p>
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<b>Exception under Art 16 of Reg. 883/2004 and Art 17 of Reg. 1408/71</b>	Not Applicable.
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<b>Social Security Cost as % from gross salary and absolute amounts</b>	Both the employer and employee are required to contribute 12% of the basic salary and dearness allowance (if paid) to the Provident Fund each month.
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## IMMIGRATION

<b>Work permit</b>	While a person comes to India and if his stay exceeds 180 days then he need to needs to obtain a residential permit from the Foreign Regional Registration Office (FRRO) in India.
<b>Visa</b>	The employee should come to India on an Employment visa.
<b>Residency permits / registration certificate</b>	Employment Visa and FRRO registration.
<b>Driving license</b>	International Driving permit required.

<b>STOCK OPTION PLAN</b>	Any stock options received for the period the employee renders service in India will be taxable in India as a perquisite. The trigger for taxability is the allotment of shares. The difference between the value of the shares allotted and the exercise price is the perquisite
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value.

## ARTICLE 15 OF THE OECD MODEL

183 days

Stay not to exceed 183 days.

Notion of employer

Salary should not be borne an Indian Company.

Existence of a permanent establishment

Salary should not be claimed as a deduction while computing profits of a Permanent Establishment in India.

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