TAXATION IN INDIA

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Introduction

- Income Tax Act, 1961 provides for levy, administration, collection and recovery of Income Tax. It provides progressive rate schedule, exemption limits, and incorporates number of incentive provisions. It provides sound tax system. Rate schedule & Exemption limits are prescribed by Finance Act each year.

Introduction

- Rapid increase in globalization has led to movement of executives across jurisdictions as the global market is expanding for skilled professionals. Setting up of businesses by companies across the globe has also necessitated that expatriate employees are sent to different countries.
- India in particular has evidenced a huge influx of foreign investment and has also witnessed significant growth in its Software industry. The country has become a leading destination for outsourcing of operations. These factors has resulted in increasing movement of specialized personnels to and from India.

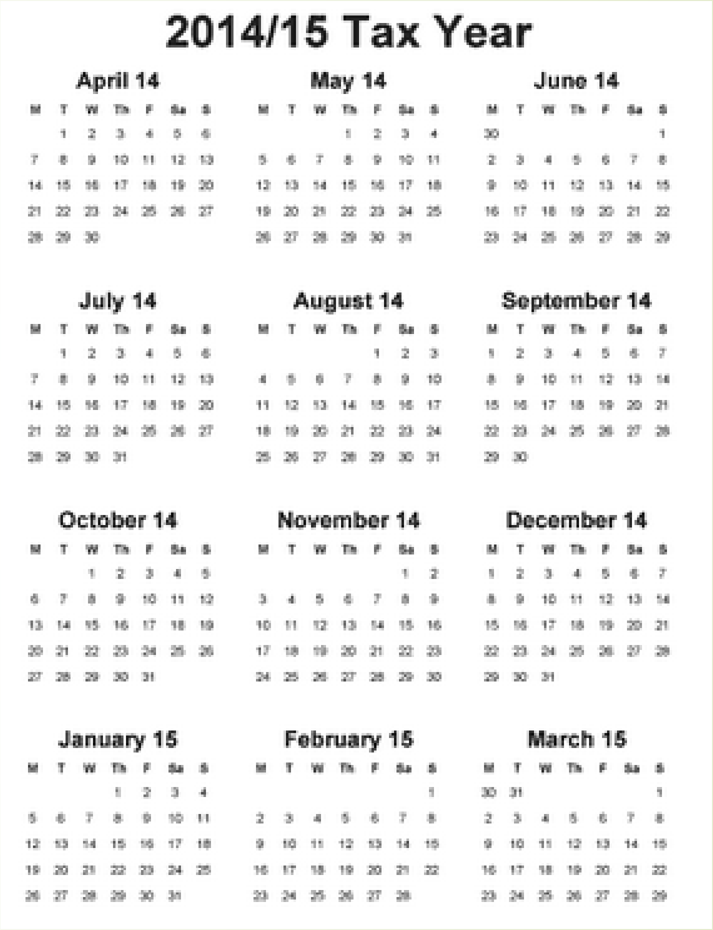
Introduction

- Tax implication of such movements are therefore an important area of concerns for the individual as well as to the organisation to which he belongs, with a view to ensure, apart from timely compliance, that all the costs relating to such movements are properly factored in decision making

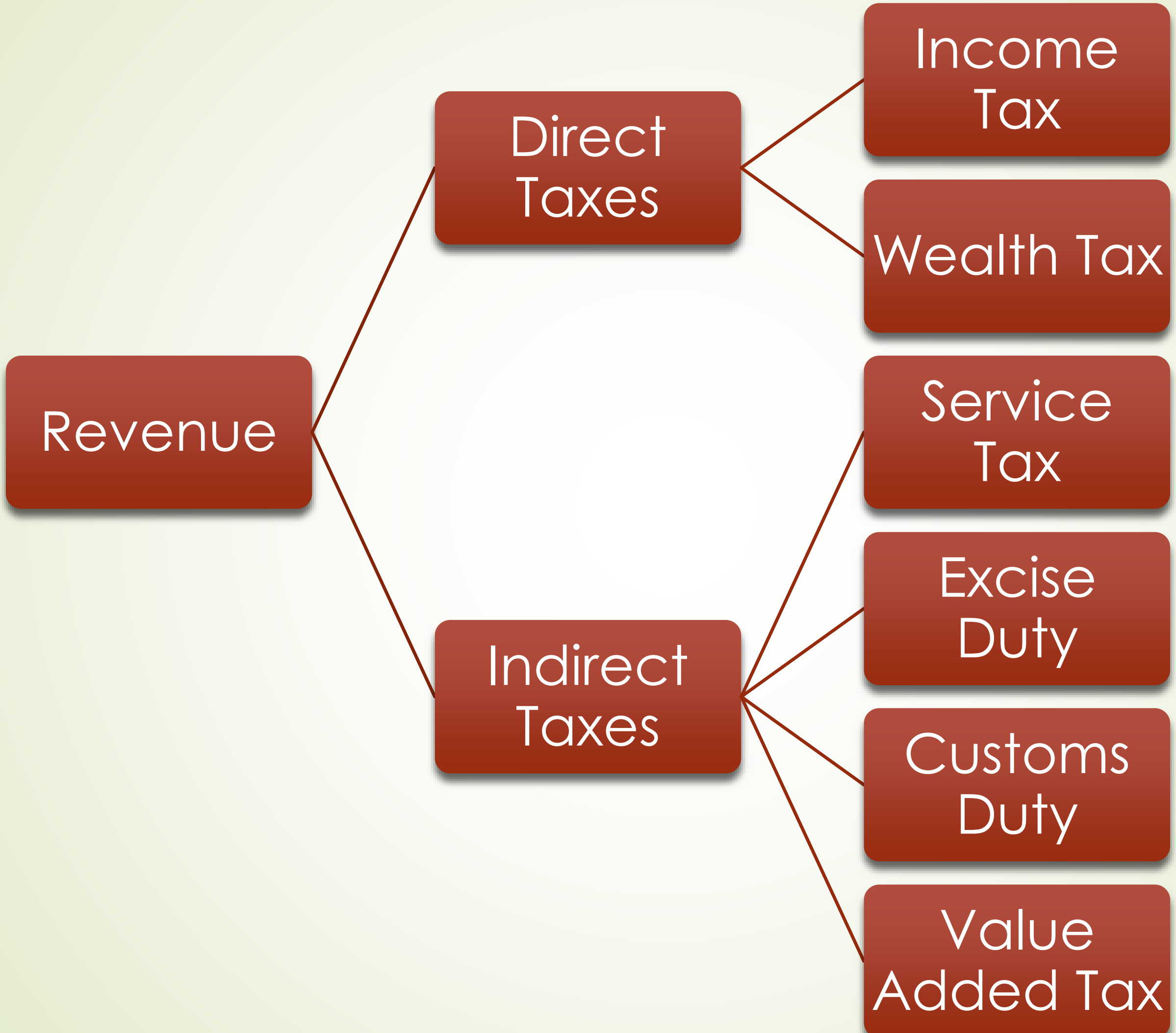
- In the upcoming slides we have tried to give a synopsis of the Indian Tax Structure which comprises of direct taxes and indirect taxes.

Tax Year

- The Indian Tax year runs from 1st April to 31st March.
- The tax year in which income is earned is known as 'Previous Year'.
- The Year in which income is taxable is known as 'Assessment Year' which begins from 1ST April following the Previous Year.



Tax Structure in India



Heads of Income

Residential Status

Scope of taxable income is determined by residential status.

Income Tax Act (ITA) categorize persons in the following categories based on their physical presence in India:

- Resident
- Resident but Not Ordinarily Resident

Resident of India

1.a) An individual is said to be resident in India in any previous year if he has been in India for a period of 182 days or more in that previous year, or

1.b) He is in India for 60 days or more during that previous year and has been in India for 365 days or more during 4 previous years immediately preceding the relevant previous year.

2.a) A Company is Resident in India in any Previous Year if it is an Indian Company, or

2.b) During the year Control and Management of its affairs is situated wholly in India.

3.a) Every person (other than and individual and company), is said to be a resident in India in the previous year except where during that year Control and Management of its affairs is situated wholly outside India.

- ✓ There are certain relaxation for Indian Citizens or persons of Indian origin.

▪Not an Ordinarily Resident (NOR)

A person is said to be Resident but **'Not Ordinary Resident'** in India if he satisfies either of the following conditions

- In any previous year, if such person is an individual who has not been a resident in India in 9 out of 10 previous years preceding to that year, or
- During the 7 previous years preceding to that year been in India for a period of 729 days or less.

Scope Of Taxable Income

I. RESIDENT

a. Income received or deemed to be received in India during the previous year by or on behalf of that person.
b. Income accrue or arise or deemed to accrue or arise in India during the financial year.
c. Accrue or arise to him outside India during such year.
d. In the case of a person not ordinarily resident, the income which accrues or arises to him outside India is not taxed unless it is derived from a business controlled in or a profession set up in India.

II. NON RESIDENT

a. All income received or deemed to be received in India during the financial year or
b. Accrue or arise or deemed to accrue or arise in India during the financial year.

Notes:

- All income accruing or arising whether directly or indirectly through or from any business connection, property, asset or source of income in India or through transfer of capital asset, situated in India are deemed to accrue or arise in India.
- Provisions of section 9 of Income Tax Act (ITA) and DTA with different jurisdiction requires a reference to determine accrual or arisal of income in India. This is of great importance for all cross border transactions.

TAX RATES/SLABS

- **Corporate Taxes**

✓ **Domestic Company**

Income Slab	Rate of Taxation
Upto ` 10 Million	30.900%
Above ` 10 Million	32.445%
Above ` 100 Million	33.990%

Income Tax Department
Department of Revenue, Ministry of Finance, Government of India
सत्यमेव जयते

✓ **Foreign Company**

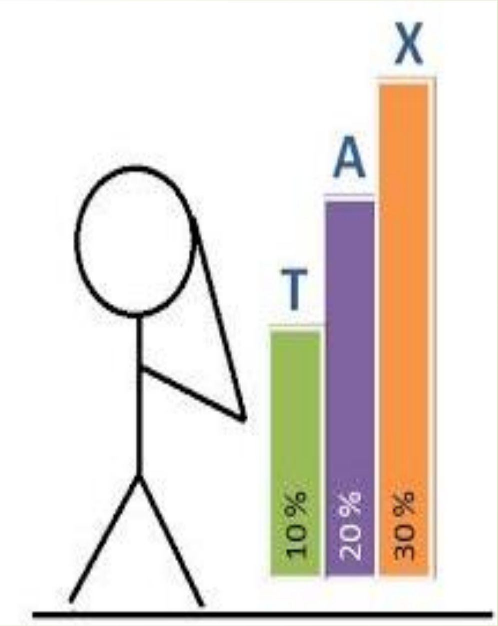
Income Slab	Rate of Taxation
Upto ` 10 Million	41.200%
Above ` 10 Million	42.024%
Above ` 100 Million	43.260%

✓ LLP and Firm

Income Slab	Rate of Taxation
Upto ` 10 Million	30.90%
Above ` 10 Million	33.99%

- **Individuals and HUF**

Income Slab	Rate of Taxation
Income between ` 0 - ` 250,000	NIL
Income between ` 250,001 - ` 500,000	10.30%
Income between ` 500,001 - ` 1 Million	20.60%
Income between ` 1 Million - ` 10 Million	30.90%
Income above ` 10 Million	33.99%



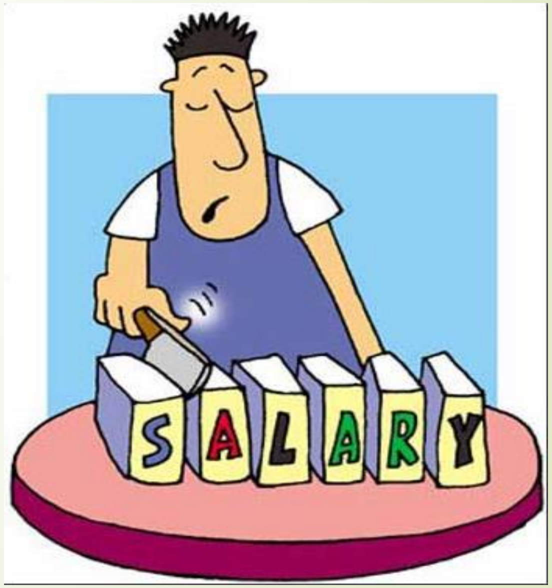
Salaries

- Section-15 of the Income Tax Act (ITA) is the charging section for income under the head `Salary'. It provides that the following will be taxable as salary income:-
- Any salary due from an employer or a former employer to an assessee in the previous year, whether paid or not;
- Any salary paid or allowed to him in the previous year by or on behalf of an employer or a former employer though not due or before it became due to him;
- Any arears of salary paid or allowed to him in the previous year by or on behalf of an employer or a former employer, if not charged to income-tax for any earlier previous year.
- Salaries earned in India for service rendered in India and for rest period or leave period connected to service in India be taxable in India.

Salaries

- As a general rule, all allowances are taxable unless specifically exempt under the ITA. Perquisites are taxable in the hands of the employees subject to limits prescribed under the rules framed under ITA which are as under:-

  - Motor car provided by the employer
  - Accommodation provided
  - Medical expenses
  - Household help
  - Fees or concessional education facilities
  - Interest-free/concessional loan
  - Free-food and non-alcoholic beverage
  - Membership and annual fees
  - Club fees
  - Gift vouchers
  - Telephone reimbursement of residence
  - Transfer of moveable assets
  - Use of moveable assets



Salaries

- There are certain exemptions provided to employees under the ITA which are again with certain limits described separately. The exemptions which are available are:

    - Leave travel concession
    - House rent allowance
    - Leave encashment
    - Children's educational allowance
    - Transport allowance
    - Special compensatory allowance for specific areas

- The salary payable to employees is subject to withholding tax u/s.192 of the ITA. The tax withheld from the monthly salary of the employee is to be deposited with the Tax authorities by 7th of the next month following the month in which the tax is withheld.

Salaries

- A quarterly statement of Withholding Tax/Tax Deducted at Source (TDS) is to be filed with the Tax authorities and a certificate of TDS is to be issued to the employee in Form-16.
- TDS from the salary to be deducted monthly is to be determined based on estimated Income computed by applying rates in force for the financial year. The total TDS so calculated is prorated to derive the TDS for the month.
- Salary paid outside India for services rendered in India be considered as part of salary for calculating TDS so deductible
- As per the provisions of Section 206AA of the ITA, if an employee does not obtain Permanent Account Number (PAN) then, higher of the following rates is to be applied while working out rate of withholding tax:
  - Normal rate in force
  - 20.60% whichever is higher

Salaries

- Structuring the tax-efficient salary package is always a challenge. The following components are generally used to structure the reimbursements:
  - Basic salary
  - Allowances
  - Perquisites in kind such as rent-free house, motor car etc.
  - Social security scheme by way of contribution to Provident Fund
  - Specific reimbursement allowance subject to limits.

Salaries

- Certain typical issues in taxation of expatriates which can be highlighted are
  - Hypothetical tax and Tax-Equalization

    Based on the various legal pronouncements it has been held that hypothetical tax and tax-equalization are not taxable in the country.
  - Contribution to social security in home-country.

    Only net salary is to be taxed in India.
  - Employees Stock Option Plan (ESOP)

    ESOP derived from the employer is taxable as salary income in the year on allotment of shares. The taxable value is the fair market value of the specific securities on the date at which the option is exercised by the employee as reduced by the exercised price recovered from the employee.

Salaries

- Conversion of salary income in foreign currency:

In certain cases employee receive salary in foreign currency. Such salary is to be converted to Indian Rupees using the telegraphic transfer of buying rate of such foreign currency as on the following date:

- In case where tax is to be withheld at source by the employer, the date on which tax is required to be so withheld.
- In other cases the last date of the month immediately preceding the month in which the salary is due or is paid in advance.

Capital Gains

- Capital Gains Arises if
  - Share Listed /Specified Units
    - Short Term, if holding period of the assets is < 12 months
      - *Rate of Capital Gain @ 15.45%
    - Long Term, if holding period of the assets is > 12 months
      - *Exempt
  - All Other Assets
    - Short Term, if holding period of the assets is < 36 months
      - Rate of Capital Gain @ slab rate
    - Long Term, if holding period of the assets is > 36 months
      - **Rate of Capital Gain @ 20.60% with indexation

*If Securities Transaction Tax paid

**In Case of Unlisted shares @ 10.30% without indexation for Non Resident

Notes:

1. Transfer of interest in a foreign company by way of shares or otherwise be taxable in India if such shares or interest in company derives directly or indirectly its value substantially from assets located in India
2. Cost and sale price to be calculated in foreign currency in which investment made.

Dividend Distribution Tax

- A company distributing divided is liable to pay tax @ 17.647% thereon on dividend distributed.
- **<u>Tax on dividend received from foreign companies</u>**
  - In case of dividend received by an Indian company from specified foreign company, income-tax payable shall be @ 15%.

Losses

- Business losses are allowed to be carried forward for a period of 8 years and unabsorbed depreciation is carried forward for unlimited period.

Minimum Alternate Tax (MAT) for Corporate Assessee

- If tax payable under normal provision of Income Tax Act is less than 18.5% of the '**Book Profit'** as per audited accounts subject to adjustments. MAT will be payable @ 18.5% of 'Book Profit' along with surcharge thereon.
- MAT credit will be available for 10 Assessment Years immediately succeeding the assessment year.

Alternate Minimum Tax (AMT) for Non Corporate Assessee

- In case of non-corporate assessee such as LLPs, Partnership firms, individuals, Association of persons,
- If tax payable be lower than 18.5% of the '**Adjusted Total Income**' computed by adding certain tax exempt income to taxable income, Alternate Minimum Tax (AMT) be payable @ 18.5% along with surcharge on its 'Adjusted Total Income'.
- A tax credit for AMT is available for a period of 10 years.

Exemptions

Sr. No	Eligible Business	Quantum of Deduction
1.	An enterprise producing eligible articles or business of Hotels, Adventure sports, Medical Services and certain other eligible activities in North Eastern States	100% profit is exempt for 10 consecutive Years
2.	Development Special Economic Zone (SEZ)	100% profit is exempt for 10 consecutive assessment Year out of 15 Years
3.	SEZ unit engaged in manufacturing of product or eligible services	Profit is exempt 100% for 5 consecutive year, 50% of profit for further 5 years and for next 5 years upto 50% of the profit as is credited to "Special Economic Zone Re-investment Allowance Reserve Account" is exempt.

Exemptions

Sr. No	Eligible Business	Quantum of Deduction
4.	Undertaking engaged in processing bio-degradable waste for generating power or producing bio-fertilizers etc.	100% profit is exempt for 5 Years from initial year
5.	Income of Venture Capital co. & Capital fund and business trust from investment	Fully exempt from tax
6.	Income of infrastructure debt fund	Fully exempt from tax

EXEMPTIONS

Sr. No	Eligible Business	Quantum of Deduction
7.	An enterprise carrying on the business of developing or operating and maintaining or developing, operating and maintaining infrastructure facility. Infrastructure facility implies. (a) A road including toll road, a bridge or a rail system (b) A highway project including housing or other activities being an integral part of the highway project (c) A water supply project, water treatment system, irrigation project, sanitation and sewerage system or solid waste management system (d) A port, airport, inland waterway, inland port or navigational channel in the sea	100% deduction for 10 consecutive years in a block of 20 years in cases falling in (a), (b) & (c) and in case of (d) in a block of 15 years.

EXEMPTIONS

Sr. No	Eligible Business	Quantum of Deduction
8.	An undertaking which begins to generate or generate and distribute power or start transmission or distribution by laying a network or substantial renovation of such network before 31st March, 2017.	100% deduction for 10 consecutive years in a block of 15 years
9.	An undertaking providing telecommunication services	100% deduction for 5 years and thereafter 30% for further 5 years
10.	In case of eligible housing project including redevelopment of slum area	100% of profit of project

EXEMPTIONS

Sr. No	Eligible Business	Quantum of Deduction
11.	Setting up and operating cold chain facility	150% deduction of capital expenditure
12.	Setting up & operating warehousing facility for storage of agricultural produce	150% deduction of capital expenditure
13.	An undertaking is engaged in laying and operating a cross country natural gas or crude or oil pipelines network for distribution chain facility.	100% deduction of capital expenditure
14.	Setting up 2 star or upper category of hotels	100% deduction of capital expenditure
15.	Operating and maintaining a hospital in rural area. - The hospital has at least 100 beds for patients	150% deduction of capital expenditure
16.	An undertaking is engaged in developing housing projects in scheme of Slum development approved by Central Government	100% deduction of capital expenditure

Exemptions

Sr. No	Eligible Business	Quantum of Deduction
17.	Building and operating housing project under scheme for affordable housing framed by Government.	150% deduction of capital expenditure
18.	Production of fertilizers	150% deduction of capital expenditure
19.	Setting up and operating inland container depot or a container freight station	100% deduction of capital expenditure
20.	An undertaking is engaged in bee – keeping and production of honey	100% deduction of capital expenditure
21.	Setting up and operating warehousing facility for storage of sugar	100% deduction of capital expenditure
22.	Laying and operating a slurry pipeline for the transportation of iron ore	100% deduction of capital expenditure

Exemptions

Sr. No	Eligible Business	Quantum of Deduction
23.	Setting up and operating a semi-conductor wafer fabrication manufacturing unit	100% deduction of capital expenditure
24.	**Research & Development Expenditure:** ▪ Expenses incurred on approved in-house Research & Development by an industrial undertaking.	200 % on capital Expenditure
	▪ Contribution made by a company to National Laboratories, Universities, Indian Institute of Technology or certain specified persons to be used for scientific research undertaken under approved programme	200% on contribution

Withholding Tax

Description	Payments to Domestic Company	Payments to Foreign Company
Dividend	NIL	NIL
Interest	10%	The rate of withholding tax is 20% except in following situations. i. Interest is paid by Infrastructure debt fund. ii. Interest paid by specific company or business trust on monies borrowed under a loan agreement at any time on or after the 1st July 2012 but before 1st July, 2017 or under certain other situations listed in ITA. In above cases withholding tax is 5%
Royalty	25%	25%
Fees for Technical Services	25%	25%
Any other services	Different Rates	30% in case of non-corporate assessee 40% in case of company.

- Note: In case a Non-resident does not have an Indian PAN, the tax deductable will not be less than @20.60%

Double Taxation Avoidance Agreements

- India is having DTA with 82 major economies of the world.
- The Provisions of Indian Income Tax Act or provisions of DTA whichever are more favorable can be availed by an assessee.
- For availing benefit of DTA a Non-resident has to submit a Tax Residency Certificate.
- In case where there is no DTA, if an income is taxed in India in case of and Indian resident as well as in a foreign country, credit be allowed for taxes paid in foreign country, not being higher to tax payable in India.

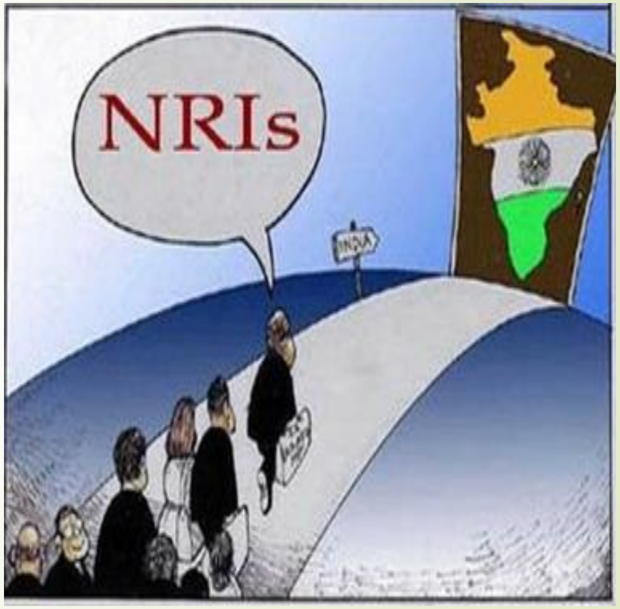
TAX ON NON RESIDENT(NR)

Tax on income of Foreign Institutional Investors from securities or capital gain

- Income by way of short term capital gain taxable @ 30% and in case of transaction of sale subject to STT then taxable @ 15%.
- Income by way of Long term capital gain taxable @ rate of 10%. In case of capital gain on securities covered under section 10(38) i.e. equity shares or units of equity oriented fund or units of business trust it is exempt from tax.
- Other taxable income from securities is taxable @ 20%.
- No Return of income to be filed for such income.
- **Tax on non-residents sportsmen or sports associations and entertainer:** Where total income of a person being a sportsman or entertainer who is not a citizen of India and is a non-resident and receives income by way of participation in any game or sports, advertisement or performance, contribution of articles etc., the tax to be withheld would be @20%.

TAX ON Non Resident Indian-NRI

- **NRI** means an individual, being a citizen of India or a person of Indian origin, who is 'not a resident'.
- **Investment Income :** Income derived from a foreign exchange asset.
- **Foreign Exchange Assets:** Specified asset acquired by NRI out of convertible foreign exchange.
- **Specified assets are** :
  - Shares of an Indian company
  - Debentures or deposits with an Indian company, not being a private company
  - Any security of the Central Government.
  - Other notified assets (no such asset has yet been notified.)
- Investment Income be taxed at 20% or at such lower rate as may be applicable.



TAX ON Non Resident Indian-NRI

- **Capital gains** arising on transfer of a specified assets, is exempt from levy of any tax on fulfillment of the following conditions:
  - The asset transferred must be a long-term capital asset.
  - Net consideration must be invested in certain specified assets.
  - Investment to be made within 6 months of transfer.
  - If only a portion of the net consideration is reinvested, then proportionate exemption is allowed.
  - New asset must be held for at least three years.

TAX ON Non Resident Indian- NRI

- An NRI is not required to file tax return in case of having only investment income and tax is deducted
- **S.115 H : Continuance of benefits after NRI becomes resident**
    - A NRI even after becoming a resident in India can continue benefit of above rate of taxes, filing a declaration for the year and subsequent years till such investment, are retained.

Wealth Tax

- Payable by Individual, HUF and Company
- On value of specified assets exceeding over `30,00,000/-
- Rate applicable is 1%
- Net wealth = NW of all specified assets (-) Value of debts owed in respect thereof
- Assets subject to Wealth tax:
  - House
  - Motor Cars
  - Jwellery, Bullion etc.
  - Yachts, Boats and Aircrafts
  - Urban Land
  - Cash in hand > 50000/-
- Valuation of Assets as per Schedule III of Wealth Tax Act

Service Tax

- **Rate:** 12.36% on value of all taxable services.
- **Taxable Service:** All services other than those specified in the negative list provided in the taxable territory by any person to another.
- Service means any activity for consideration (including non-monetary).
- **Taxable Territory:** Service Tax is applicable to the whole of India except state of Jammu & Kashmir.

CROSS BORDER TRANSACTION

- As regards Cross Border Transaction, to determine the place of provision of services concept of Import of services & Export of services is introduced.
- Import of Services
  - ✓ Any taxable service provided to any entity in India will be taxable and tax be payable by the Indian entity utilizing such services.
- Export of Services
  - ✓ Any taxable service provided by an Indian entity no Service Tax will be payable provided payment is received by an Indian entity in foreign exchange.

CENTRAL EXCISE DUTY

- All excisable goods which are produced or manufactured in India and the rates mentioned in first schedule of Excise Tariff Act,1985.
- The Basic rate of Central Excise duty is 12.36%.

VALUATION OF GOODS MANUFACTURED

- Transaction value.
- Assessable value.
- Certain specified goods are valued with reference to MRP.
- CENVAT credit on raw material and capital goods are also available.

Custom Duty

- Customs Duty is a type of indirect tax levied on goods imported into India as well as on goods exported from India.
- In India, the basic law for levy and collection of customs duty is Customs Act, 1962.
- The Basic rate of custom duty is 10%.

"I don't have anything too valuable to declare, but I do want to state that my wife is a huge financial burden."

Value Added Tax

- Value added tax (VAT) is a consumption tax (CT) levied on any value that is added to a product.
- A VAT is a state subject in India and is levied differently by each state.


THANK
YOU