



Overseas Indian Facilitation Centre

A Public Private Partnership of Ministry of Overseas Indian Affairs  
and Confederation of Indian Industry



## GUIDE BOOK FOR OVERSEAS INDIANS ON TAXATION AND OTHER IMPORTANT MATTERS



प्रजातीय भारतीय आर्थ संबलप  
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Confederation of Indian Industry

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GUIDE BOOK FOR OVERSEAS INDIANS  
ON  
TAXATION AND OTHER IMPORTANT MATTERS

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*Price: 500.00 (INR)*

## ***DISCLAIMER***

*This Guide Book has been compiled/summarised from information available in official documents/circulars/websites of the Govt. of India, RBI and other reliable sources. Every possible care has been taken to provide current and authentic information. This Guide Book for Overseas Indians is intended to serve as a guide to them and does not purport to be a legal document. In case of any variation between what has been stated in this Guide Book and the relevant Act, Rules, Regulations, Policy Statements etc., the latter shall prevail.*





## Overseas Indian Facilitation Centre

The Indian Diaspora is the largest in the world today after China and has roots in every country in the globe. The Diaspora contribution to their state of origin has been made in various ways, through remittances, foreign direct investment (FDI), transfer of knowledge and entrepreneurial networks.

In order to expand the entrepreneurial ties and engage them as partners in India's progress, an Overseas Indian Facilitation Centre, a not for profit public private initiative of Ministry of Overseas Indian Affairs (MOIA) and Confederation of Indian Industry (CII), was launched on 28th May 2007.

With a strong intention to facilitate and bridge the gap between the Overseas Indians and India, OIFC has a mandate to cover broad areas: investment facilitation, knowledge networking and ensuring business-to-business partnerships in focus sectors like real estate, wealth management, taxation, legal, healthcare, education and infrastructure.

### **The key objectives of OIFC are:**

- Promote overseas Indian investment into India and facilitate business partnership by giving authentic & real time information
- Establish and maintain a Diaspora Knowledge Network by creating a database of Overseas Indians
- Function as a clearing house for all investment related information
- Assist States to project and promote investment opportunities to overseas Indians in key focus sectors.

In line with the above objectives, OIFC provides the following services:

- To appraise the Indian Diaspora with the up-to-date investment opportunities existing in India provide hand-holding services via its knowledge partners
- To provide customized services in the form of finding sector and state specific investment projects, preparing feasibility reports and organizing and assisting in overseas road shows to attract FDI
- To assist in effective business-to-business partnerships
- To maintain a strong Diaspora Knowledge Network
- To provide consular services in the long run



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PART - I

# TAXATION



# RESIDENTIAL STATUS FOR TAX PURPOSES

In India, as in many other countries, the charge of income tax and the scope of taxable income varies with the factor of residence. There are two categories of taxable entities viz. (1) residents and (2) non-residents. Residents are further classified into two sub-categories (i) resident and ordinarily resident and (ii) resident but not ordinarily resident. The law prescribes two alternative technical tests of residence for individual taxpayers. Each of the two tests relate to the physical presence of the taxpayer in India in the course of the “previous year” which would be the twelve months from April 1 to March 31.

A person is said to be “resident” in India in any previous year if he

- (a) is in India in that year for an aggregate period of 182 days or more; or
- (b) having within the four years preceding that year been in India for a period of 365 days or more, is in India in that year for an aggregate period of 60 days or more.

The above provisions are applicable to all individuals irrespective of their nationality. However, as a special concession for Indian citizens and foreign citizens of Indian origin, the period of 60 days referred to in Clause

- (b) above, will be extended to 182 days in two cases: (i) where an Indian citizen leaves India in any year for employment outside India; and (ii) where an Indian citizen or a foreign citizen of Indian origin (NRI), who is outside India, comes on a visit to India.

In the above context, an individual visiting India several times during the relevant “previous year” should note that judicial authorities in India have held that both the days of entry and exit are counted while calculating the number of days stay in India, irrespective of however short the time spent in India on those two days may be.

A “non-resident” is merely defined as a person who is not a “resident” i.e. one who does not satisfy either of the two prescribed tests of residence.

An individual, who is defined as Resident in a given financial year is said to be “not ordinarily resident” in any previous year if he has been a non-resident in India 9 out of the 10 preceding previous years or he has during the 7 preceding previous years been in India for a period of, or periods amounting in all to, 729 days or less.

Till 31st March 2003, “not ordinarily resident” was defined as a person who has not been resident in India in 9 out of 10 preceding previous years or he has not during the 7 preceding previous years been in India for a period of, or periods amounting in all to, 730 days or more.

Section 6 of the Income-tax Act, 1961, prescribes the tests for determining the residential status of a person. Section 6, as amended, reads as follows:

For the purposes of this Act,

- (1) An individual is said to be resident in India in any previous year, if he-

- a) is in India in that year for a period or periods amounting in all to one hundred and eighty-two days or more; or
- b) [\*\*\*]
- c) having within the four years preceding that year been in India for a period or periods amounting in all to three hundred and sixty five days or more, is in India for a period or periods amounting in all to sixty days or more in that year.

Explanation.- In the case of an individual,

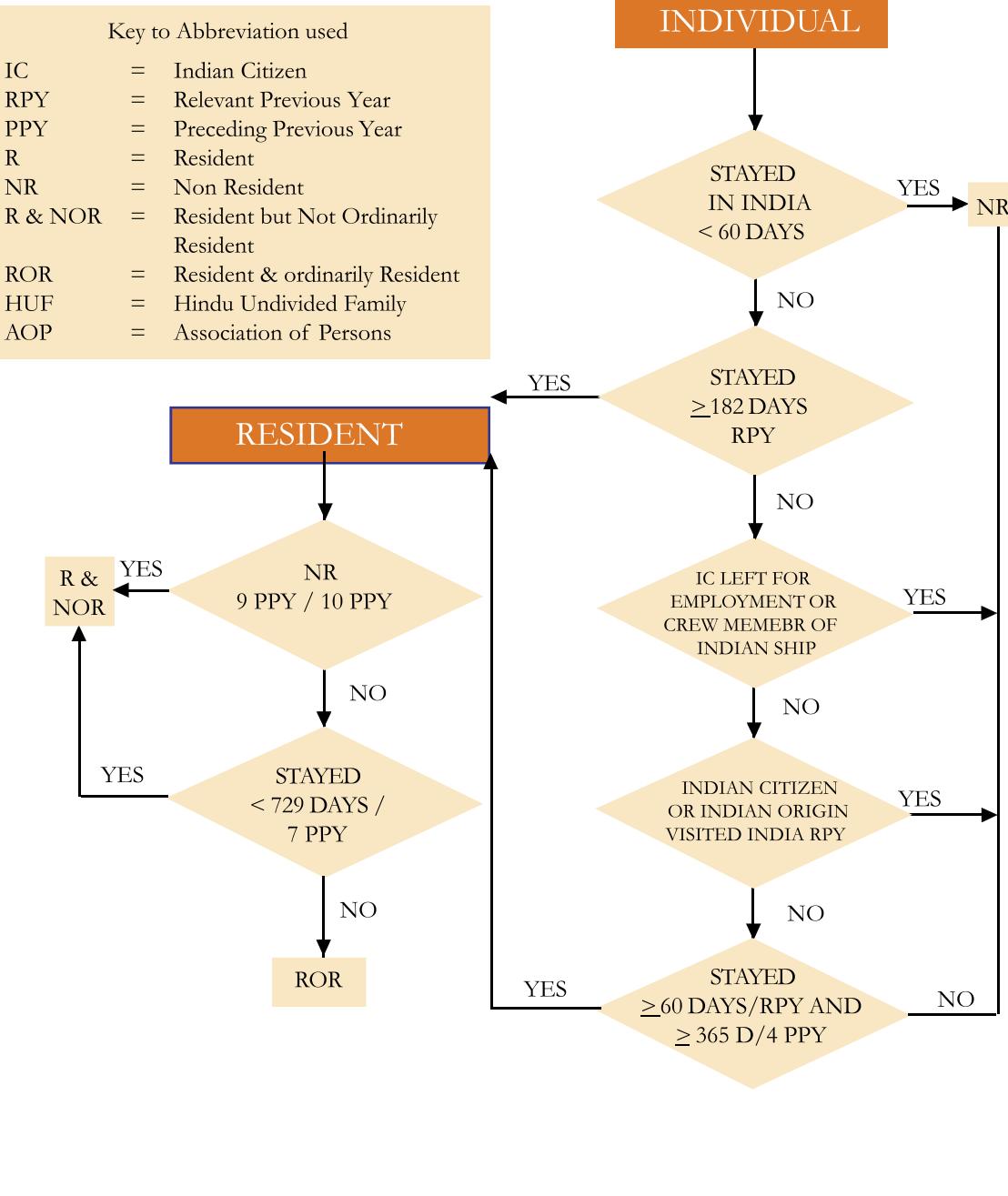
- (a) being a citizen of India, who leaves India in any previous year [as a member of the crew of an Indian ship as defined in clause (18) of section 3 of the Merchant Shipping Act, 1958 (44 of 1958), or] for the purpose of employment outside India, the provisions of sub-clause (c) shall apply in relation to that year as if for the words "sixty days", occurring therein, the words "one hundred and eighty-two days" had been substituted
- (b) being a citizen of India, or a person of Indian origin within the meaning of Explanation to clause (e) of section 115C, who, being outside India, comes on a visit to India in any previous year, the provisions of sub-clause (c) shall apply in relation to that year as if for the words "sixty days", occurring therein, the words "one hundred and eighty-two days" had been substituted.
- (2) A Hindu undivided family, firm or other association of persons is said to be resident in India in any previous year in every case except where during that

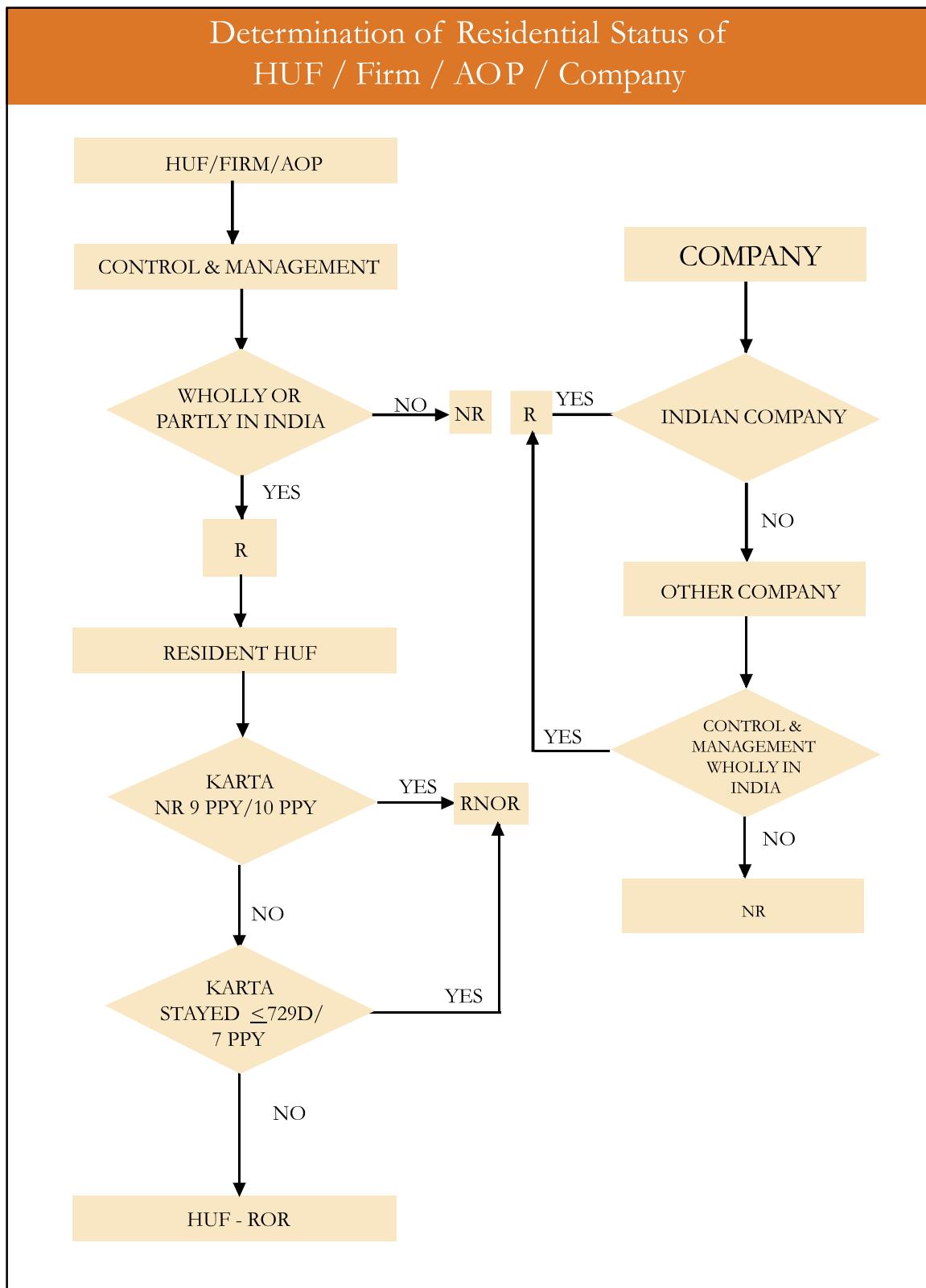
year the control and management of its affairs is situated wholly outside India.

- (3) A company is said to be resident in India in any previous year, if
  - (a) it is an Indian company; or
  - (b) during that year, the control and management of its affairs is situated wholly in India.
- (4) Every other person is said to be resident in India in any previous year in every case, except where during that year the control and management of his affairs is situated wholly outside India.
- (5) If a person is resident in India in a previous year relevant to an assessment year in respect of any source of income, he shall be deemed to be resident in India in the previous year relevant to the assessment year in respect of each of his other sources of income.
- (6) A person is said to be "not ordinarily resident" in India in any previous year if such person is
  - (a) an individual who has not been a non-resident in India in nine out of the ten previous years preceding that year, or has not during the seven previous years preceding that year been in India for a period of, or periods amounting in all to, seven hundred and twenty-nine days or less; or
  - (b) a Hindu undivided family whose

## Determination of Residential Status of An Assessee Under the Income Tax Act

The Tests for determining the Residential status of an assessee under the Income Tax Act can be explained with the help of Flow Charts as follows:





manager has not been non-resident in India in nine out of the ten previous years preceding that year, or has not during the seven previous years preceding that year been in India for a period of, or periods amounting in all to, seven hundred and twenty-nine days or less.

An analysis of the above provisions would indicate that -

1. To become a non-resident for income-tax purposes, an Indian citizen leaving India for the first time to take up employment abroad should be out of the country latest by 28th September and should not return to India before 1st April of the next year. However, in case of a person leaving India for taking up a business or profession, the criteria of 60 days will apply, as defined earlier.
2. An NRI individual, whose total stay in India in 4 preceding years exceeds 364 days, will not lose his non-resident status in the following year(s) if his total stay in India in that year (from April 1 to March 31) does not exceed-
  - (a) 181 days, if he is on a "visit" to India; or
  - (b) 59 days, if he comes to India on "transfer of residence".
3. An NRI who has returned to India for settlement, whose total stay in India for 4 preceding years does not exceed 364 days will not lose his non-resident status in the following year(s) if his total stay in India in such year(s) (from April 1 to March 31) does not exceed 181 days.
4. A new-comer to India would be treated as "not ordinarily resident" for the first two years of his stay in India or if treated as Non Resident in the year of arrival

then for the second and third year of his stay in India. An individual (whether Indian or foreign citizen) who has left India and remains non-resident for at least nine years preceding his return to India or whose stay in 7 years preceding the year of return has not exceeded 729 days would, upon his return, be treated as "non-resident" or "not ordinarily resident" depending upon the number of days stay in India in the year of return. The status of "not ordinarily resident" will remain effective for 2 years including or following the year of return as the case may be.

### **Important Points to be Borne in Mind while Determining the Residential Status of an Individual**

- (a) Residential status is always determined for the Previous Year because the assessee has to determine the total income of the Previous Year only. In other words, as the tax is on the income of a particular Previous Year, the enquiry and determination of the residence qualification must confine to the facts obtaining in that Previous Year.
- (b) If a person is resident in India in a Previous Year in respect of any source of income, he shall be deemed to be resident in India in the Previous Year relevant to the Assessment Year in respect of each of his other sources of Income. [Section 6(5)]
- (c) Relevant Previous Year means, the Previous Year for which residential status is to be determined
- (d) It is not necessary that the stay should be for a continuous period.
- (e) It is not necessary that the stay should

- be at one place in India.
- (f) Both the day of entry and the day of departure should be treated as the day of stay in India [Petition No.7 of 1995 225 ITR 462 (AAR)]
  - (g) Presence in territorial waters in India would also be regarded as stay in India.
  - (h) A person is said to be of Indian Origin if he or either of his parents or any of his grand parents was born in undivided India [Section 115C]
  - (i) Official tours abroad in connection with employment in India shall not be regarded as employment outside India.
  - (j) A person may be resident of more than one country for any Previous Year.
  - (k) Citizenship of a country and residential status of that country are two separate concepts. A person may be an Indian national/Citizen but may not be a resident in India and vice versa.

### Points to be Considered by NRIs

- Previous Year is period of 12 months from 1st April to 31st March. Number of days stay in India is to be counted during this period.
- Both the Day of Arrival into India and the Day of Departure from India are counted as the days of stay in India (i.e. 2 days stay in India).
- Dates stamped on Passport are normally considered as proof of dates of departure from and arrival in India.
- It is advisable to keep several photocopies of the relevant passport pages for present and future use.
- Ensure that date stamped on the passport is legible.
- Keep track of no. of days in India from year to year and check the same before making the next trip to India.

It is advisable to maintain a chart for the number of days stay in the current and in the preceding seven (7) previous years.

- In the 1st year of leaving India for employment outside India, ensure that you leave before 29th September. Otherwise total income of the financial year (including the foreign income) will be taxable in India if it exceeds the basic exemption limit.
- During the last year of stay abroad, on transfer of residence to India, ensure to come back on or after Feb 1st (or Feb 2nd in case of a leap year). Since arrival before this date will result in stay in India exceeding 59 days. However, a person whose stay in India in preceding four (4) previous years does not exceed 365 days, he may return after September 30th of the relevant year without loss of non-resident status.

### Implications of Residential Status for NRIs/PIOs

The complexities of determining the residential status for individual NRI/PIO under various statutes and regulations will be obvious from the provisions outlined above and in this context it would be important to note the following:

- 1 The concepts and rules for determining the residential status income-tax laws and FEMA are quite different and it would be possible to be a resident under one law and non-resident under the other.
- 2 For exemption of income tax in respect of NRE and FCNR deposits investor should be non-resident under FEMA.
- 3 The special tax rate concessions on income and long-term capital gains on specified assets, purchased in convertible

foreign exchange are available to non-residents under the Income-tax Act.

## CHARGEABLE INCOME

Section 5 of the Income-tax Act lays down the scope of total income of any previous year of any person. The Section reads as follows:

- (1) Subject to the provisions of this Act, the total income of any previous year of a person who is a resident includes all income from whatever source derived which-
  - (a) is received or is deemed to be received in India in such year by or on behalf of such person ;or
  - (b) accrues or arises or is deemed to accrue or arise to him in India during such year; or
  - (c) accrues or arises to him outside India during such year:

Provided that, in the case of a person not ordinarily resident in India within the meaning of sub-section (6) of Section 6, the income which accrues or arises to him outside India shall not be so included unless it is derived from a business controlled in or a profession set up in India.
- (2) Subject to the provisions of this Act, the total income of any previous year of a person who is a non-resident includes all income from whatever source derived which
  - (a) is received or is deemed to be received in India in such year by or on behalf of such person; or

- (b) accrues or arises or is deemed to accrue or arise to him in India during such year.

**Explanation 1.**-Income accruing or arising outside India shall not be deemed to be received in India within the meaning of this section by reason only of the fact that it is taken into account in a balance sheet prepared in India.

**Explanation 2.**-For the removal of doubts, it is hereby declared that income which has been included in the total income of a person on the basis that it has accrued or arisen or is deemed to have accrued or arisen to him shall not again be so included on the basis that it is received or deemed to be received by him in India.”

Thus, it is clear from the above that the incidence of tax depends upon a person's Residential Status and also upon the place and time of accrual and receipt of income.

As stated earlier, the charge of income tax varies with the factor of residence in the previous year and the general position with regard to the three categories of taxpayers can be summarised as follows:

1. Taxpayers in all categories are chargeable on income, from whatever source derived, which is received or is deemed to be received in India by or on behalf of them or which accrues or arises or is deemed to accrue or arise to them in India other than income specified as exempt income.

In tabular form, the above may be stated as under:

Sources of Income	R & OR	R & NOR	NR
<b>Indian Income</b>			
Income received or deemed to be received in India during the current financial year.	Taxable in India	Taxable in India	Taxable in India
Income accruing or arising or deemed to accrue or arise in India during the current financial year.	Taxable in India	Taxable in India	Taxable in India
Income accruing or arising or deemed to accrue or arise outside India, but first receipt is in India during the current financial year	Taxable in India	Taxable in India	Taxable in India
<b>Foreign Income</b>			
Income accruing or arising or deemed to accrue or arise outside India and received outside India, during the current financial year.	Taxable in India	Taxable in India	Not Taxable in India
Income accruing or arising or outside India from a Business/profession controlled in/from India during the current financial year.	Taxable in India	Taxable in India	Not Taxable in India
Income accruing or arising outside India from any source other than Business Profession controlled from India	Taxable in India	Taxable in India	Not Taxable in India.

In the above context, it may be noted that the ‘receipt’ of income refers to the first occasion when the recipient gets the money under his own control and it is the first receipt that determines the year and place of receipt for the purposes of taxation. If the income is already received outside India, no tax liability will arise when the whole or any part of such income is remitted to India.

2. A “resident and ordinarily resident” pays tax in India on his entire world income, wherever accrued or received.
3. A “non-resident” pays tax only on his taxable Indian income and his foreign income (earned and received outside India) is totally exempt from Indian taxes.
4. A “not ordinarily resident” pays tax on taxable Indian income and on

- foreign income derived from a business controlled in or a profession set up in India
5. An individual upon acquiring the status of “not ordinarily resident” would not pay tax, for a period of two years, on the interest on :
    - a) the continued Foreign Currency Non-Resident (FCNR) account;
    - (b) the Resident Foreign Currency (RFC) account; and
    - (c) on income earned from foreign sources unless such income is directly received in India or is earned from a business controlled in or a profession set up in India.

# SPECIAL PROVISIONS RELATING TO CERTAIN INCOME OF NRIs

Some of the special tax concessions for NRIs/ PIO investing in India were introduced in the Finance Act, 1983, which became effective on June 1, 1983. The tax provisions were further liberalised by subsequent Finance Acts and other amending laws.

## Special Concessions

Investment income from 'foreign exchange assets' comprising shares and debenture of and deposits with Indian companies and central government securities, subscribed to or purchased in convertible foreign exchange, is charged to income tax at a flat rate of 20%. No deductions are, however, allowed and tax is levied on gross income. The basic exemption, below which income is not taxed in India, is also not allowed.

Under these special concessions a reduced rate of 10% is applied to the long-term capital gains on transfer of any foreign exchange asset held by the NRI/PIO. In order to qualify for long-term capital gains, the minimum holding period for shares held in a company or any other security listed in a recognised Stock Exchange in India or units of Unit Trust of India or of a specified Mutual Fund is 12 months and for other assets it is 36 months. Long-term capital gains on foreign exchange assets are, however, exempted from tax if the net proceeds realized on transfer are re-invested, within six months of such transfer, in any specified securities and the new assets are retained for at least three years.

The Finance Act, 2003 has withdrawn the taxing provision in respect of dividend received by the shareholders on shares held in Indian

companies. Accordingly, dividend received by the shareholders of Indian companies will be exempt from tax. The income received from units of Unit Trust of India and of specified mutual funds will also be exempt.

Finance Act 2004 has:

- (a) granted tax exemption as regards long term capital gains arising from transfer of equity shares in a company and/or units of equity oriented schemes of Mutual Funds, which are subject to securities transaction tax; and
- (b) fixed at 10% the tax on short-term capital gains arising from such shares and/or units.

The tax concessions in respect of investment income (and not long term capital gain) will continue to apply even after the NRI/PIO returns to India but such exemption would be available only in respect of foreign exchange assets other than shares in Indian companies and the exemption will continue until such time as the assets are transferred or converted into money. However, as dividend is exempt income from 1st April 2003, exclusion of shares from said provision is redundant.

In the circumstances where the income of NRI/ PIO from such foreign exchange assets is below the taxable limit or the average level of tax is below 20%, he may elect not to be governed by the special tax concessions referred to above. He would then have to furnish a Return of Income in the normal course together with a declaration of such election and he would be entitled to claim a refund of the whole or a part of the tax

deducted at source, as may be appropriate.

As mentioned above, short-term capital gains arising from transfer of equity shares and/or units of equity-oriented schemes of Mutual Funds, which are subject to securities transaction tax, are taxed at 10%. Other Short-term capital gain is taxable at normal slab rates as applicable to residents, and the return of income has to be filed by the NRI/ PIO making such gain.

Capital gain from transfer of shares or debentures of Indian companies will be computed by converting the cost of acquisition, expenses incurred in connection with such transfer and the sale price of the capital asset into the same foreign currency as was initially used in

the purchase of these assets and the capital gain so computed in such foreign currency will be reconverted into Indian currency. This computation effectively gives the NRI/PIO the benefit of claiming exchange loss, if any, on all capital gains arising from sale of shares or debentures of Indian companies, whether these are long term or short term. It may be noted that the aforesaid benefit is available only if the investment is made from convertible foreign exchange. In respect of investment made from funds other than convertible foreign exchange, and if the asset is a long-term capital asset benefit of indexation can be availed. However, indexation is not available in respect of debentures.

# TAX EXEMPTIONS FROM INCOME TAX, WEALTH TAX AND GIFT TAX

## Tax exemptions from income tax

Income from the following investments made by NRIs/PIO out of convertible foreign exchange is totally exempt from tax.

- (a) Deposits in under mentioned bank accounts :
  - (i) Non Resident External Rupee Account (NRE)
  - (ii) Foreign Currency Non-resident Account (FCNR)
- (b) Units of Unit Trust of India and specified mutual funds, other specific securities, bonds and savings certificates (subject to conditions and prescribed limits under the Income-tax laws and regulations).
- (c) Dividend declared by Indian company.
- (d) Long term capital gains arising from transfer of equity shares in a company and/or equity oriented schemes of Mutual Funds, which are subject to securities transaction tax.

It should be noted that the tax exemptions relating to NRE bank deposits will cease immediately upon the NRI/PIO becoming a resident in India whereas the interest on FCNR bank deposits will continue to be tax free as long as the NRI maintains the status of Resident but Not Ordinarily Resident or until maturity, whichever is earlier.

## Tax exemptions from wealth tax

Where an NRI/PIO returns to India for permanent residence, moneys and the value of assets brought by him into India and the value of assets acquired by him out of such moneys

within one year immediately preceding the date of his return and at any time thereafter are totally exempt from Wealth-tax for a period of seven years after return to India.

The above exemption may not have much relevance now since the Finance Act 1992 has considerably reduced the scope of Wealth-tax. With effect from 1st April, 1993, Wealth-tax is being levied only on non-productive assets like urban land, buildings (except one house property), jewellery, bullion and vehicles, cash over Rs.50,000- etc. The current rate of Wealth-tax is 1 % on the aggregate market value of chargeable assets as on 31st March every year in excess of Rs.1.5 million.

However, it may be noted that NRIs are also liable to pay wealth tax if the market value of taxable assets as on 31st March exceeds Rs.1.5 million.

## Tax exemptions from gift tax

Gift Tax Act, 1958 has been repealed with effect from 1st October, 1998 and as such, Gift Tax is not chargeable on any gifts made on or after that date.

With regard to gifts of foreign exchange or specified assets made by NRIs to their relatives in India, it should be noted that

- 1 Gifts made by an NRI/PIO to his or her spouse, minor children or son's wife will involve clubbing of income and wealth in the hands of the donor-NRI/ PIO.
- 2 In the case of gifts to minor children the clubbing of income, as above, will cease upon such children attaining the age of

18 years.

3. The clubbing provisions will apply, in case of gift to spouse or son's wife in India, only to the first-stage of income from the original gift. Second-stage income arising from investment of the income from the original gift is not clubbed and this will constitute the separate wealth/income of the donee spouse.

Generally, the income of minor children, from any source (including income from gifts from parents) is clubbed with the income of the parent whose total chargeable income is greater.

Other matters to be noted regarding gifts are

- 1 All gifts received by residents from NRIs/PIO may be subject to the tax authorities requiring the recipient to provide evidence as regards the identity and financial capacity of the donor and genuineness of the gift.
- 2 Under the Foreign Exchange Management Act, 1999 no approval from Reserve Bank of India (RBI) is necessary for the resident donee to hold gifted immovable property outside India provided the said property is gifted by a person resident outside India. General permission, subject to certain conditions, is granted by RBI for the resident donees to hold foreign moveable properties such as shares and securities gifted by NRI/PIO donors.
- 3 The Income Tax Act has provided that any sum of money exceeding Rs.50,000 received without consideration (i.e., gift) by an individual or Hindu undivided Family from any person on or after 1st April, 2006 the whole of such sum will be chargeable to income-tax in the

assessment of recipient (i.e., donee) under that head "Income from other sources" for and from assessment year 2007-08 and onwards. Any sum of money exceeding Rs. 25,000 received without consideration (i.e. gift) by an individual or Hindu undivided family from any person on or after September 1, 2004 but before April 1, 2006, the whole of sum will be chargeable to income tax.

However, the above provisions will not apply to any sum of money /gift received:

- (a) from any relative; or
- (b) on the occasion of the marriage of the individual; or
- (c) under a will or by way of inheritance; or
- (d) in contemplation of death of the payer; or
- (e) from a local authority; or
- (f) from any fund, foundation, university, other educational institution, hospital, medical institution, any trust or institution referred to in section 10 (23C); or
- (g) from a charitable institute registered under section 12AA.

The term "relative" is defined as:

- (1) spouse of the individual;
- (2) brother or sister of the individual;
- (3) brother or sister of the spouse of the individual;
- (4) brother or sister of either of the parents of the individual;
- (5) any lineal ascendant or descendant of the individual;
- (6) any lineal ascendant or descendant of the spouse of the individual; and
- (7) spouse of the person referred to in (2) to (6).

### Scope of Receipts

- As per plain reading of the provision, any receipt without consideration, save exclusions, whether capital or otherwise, may be considered as income.<sup>1</sup>
- Similar receipts by any person (such as, a partnership firm, a company, and AOP etc.), other than an individual or a Hindu undivided Family, would not constitute income in its hands.
- The provision would apply to an individual irrespective of his residential status. Accordingly, any receipt in India by a non-resident of the nature discussed above would be considered as income in his hands.
- Gifts on occasion other than marriage, for example, birthday, marriage anniversary and other social occasions, religious ceremonies etc., would be taxable as income. Gifts received on the occasion of the marriage of the individual, irrespective of any limit, (but within reasonable limits) would not constitute income.
- The receipts should be in the form of money. Accordingly, any gift in kind would not be taxable.
- The receipts must be without consideration, implying in the nature of gift.

# PRESUMPTIVE TAX PROVISIONS

Certain provisions have been incorporated in the Income-tax Act whereby the total income of certain non-resident assessee is computed on the basis of certain percentage of their gross total receipts. This estimated income approach is expected to reduce areas of uncertainty and resultant tax litigation. However, a non-resident assessee has the option to maintain books of account and get his books of account audited u/s 44AB (“Tax Audit”) and offer lower profits and gains for taxation in India than the profits and gains estimated under Sections 44BB and 44BBB on presumptive basis.

Special provisions applicable to non-residents for computing their income under the head “Business Income”

## **Shipping Business (Sections 44B & 172)**

Section 44B contains special provisions for computing profits and gains of shipping business of a non-resident assessee. In the case of non-residents, such profits and gains will be taken at an amount equal to 7.5% (seven and a half per cent) of the amount paid or payable to the non-resident or to any other person on his behalf on account of the carriage of passengers, livestock, mail or goods shipped at any Indian port as also of the amount received or deemed to be received in India on account of the carriage of passengers, livestock, mail or goods shipped at any port outside India.

Section 172, which is a complete code in itself, contains provisions for taxation of occasional shipping business of non-residents in respect of profits made by them from carriage of passengers, livestock, mail or goods shipped at a port in India.

## **Business of Providing Services and Facilities in Connection with Exploration etc. of Mineral Oils (Section 44BB)**

Section 44BB contains special provisions for computation of taxable income of a non-resident assessee engaged in the business of providing services or facilities in connection with, or supplying plant and machinery on hire, used or to be used, in the prospecting for, or extraction or production of, mineral oils. It provides that 10% of the amount paid or payable to, or the amount received or receivable by, the assessee for provision of such services or facilities or supply of plant and machinery shall be deemed to be the taxable income of such non-resident assessee.

## **Business of Operation of Aircraft (Section 44BBA)**

Section 44BBA contains special provisions for computing profits and gains of the business of operation of aircraft of non-residents. It provides for determination of the income of non-resident taxpayers on presumptive basis at a flat rate of 5% of the amount received or receivable for carriage of persons, livestock, mail or goods from any place in India or the amount received or deemed to be received within India on account of such carriage from any place outside India.

## **Profits and Gains of Foreign Companies Engaged in the Business of Civil Construction or Erection of Plant and Machinery or Testing or Commissioning thereof, in Connection with certain Turnkey Power Projects (Section 44BBB)**

Section 44BBB provides that, notwithstanding anything to the contrary contained in Sections

28 to 44AA of the Income-tax Act, the income of foreign companies who are engaged in the business of civil construction or erection or testing or commissioning of plant or machinery in connection with a turnkey power project shall be deemed at 10 per cent of the amount paid or payable to such assessee or to any person on his behalf, whether in or out of India. For this purpose, the turnkey power project should be approved by the Central Government. It has also been clarified that erection of plant or machinery or testing or commissioning thereof will include laying of transmission lines and systems.

### **Taxation of Non-Resident's Royalty Income or Fees for Technical Services (Section 44DA)**

Royalties and fees for Technical Services received from the Government or an Indian concern by a Non-Resident or a foreign company in pursuance of an agreement entered into after 31-3-2003 shall be computed under the head "Business Income" in accordance with the provisions of the Income Tax Act i.e. after allowing deduction for various permissible expenses and allowances.

### **Section 44DA does not Permit Deduction of following Expenses**

- (i) expenditure which is not wholly and exclusively incurred for the business of such permanent establishment or fixed place of profession in India, and
- (ii) amounts reimbursed by permanent establishment to its head office or to any of its other offices (Other than, reimbursement of actual expenses).

### **Restriction on Deduction of Head Office Expenses (Section 44C)**

Section 44C is intended to be made applicable only in the cases of those non-residents who carry on business in India through their branches.

The deduction in respect of head office expenses will be limited to:

- a) An amount equal to 5 per cent of the "adjusted total income" for the relevant year: or
- b) The actual amount of head office expenditure attributable to the business in India, whichever is least.

# TAX INCENTIVES FOR INDUSTRIES

Tax holidays in the form of deductions are available for private sectors and incentives to industries located in special area/regions are listed below:

## Infrastructure Sectors (Section 80-IA)

Deduction of 100% of the profits from business for a period of 10 years for:

- (a) Development or operation and maintenance of ports, airports, roads, highways, bridges, rail systems, inland water ways, inland port or navigational channel in sea, water supply projects, water treatment systems, irrigation projects, sanitation and sewage projects, and solid waste management systems.
- (b) Generation and distribution of power that commence before March 31, 2010
- (c) Laying and operating a cross country natural gas distribution network.

## Mineral Oil (Section 80-IB)

Deduction of 100% of profits from the Business of Refining Mineral Oil for a period of 10 Years for:

- a. Undertaking wholly owned by a public sector Company or any other company in which Public Sector Company hold Forty Nine Percent of voting rights.
- b. Undertaking starts Refining on or before March 31, 2012.

## Hospital (Section 80-IB)

Deduction of 100% of profits from business of operating and maintaining Hospital for a period of 5 years for:

- a. Hospital is constructed and has started or starts functioning at any time during April 1, 2008 & March 31, 2013.
- b. Hospital has at least one hundred beds

for patients.

- c. Hospital is located anywhere in India other than excluded area.

## Hotels and Convention Centre in NCR (Sec 80-ID)

Deduction of 100% of the profits from business of hotels and convention centres for a period of 5 years for

- a. Hotel and Convention Centre located in National Capital Territory of Delhi and the districts of Faridabad, Gurgaon, Gautam Budh Nagar and Ghaziabad.  
Hotel is constructed and has started or starts functioning at any time during April 1, 2007 and March 31, 2010. Likewise, the Convention Centre is constructed at any time during April 1, 2007 and March 31, 2010.
- b. Hotel located in the specified district having a World Heritage site. Hotel is constructed and has started or starts functioning at any time during April 1, 2008 and March 31, 2013.

## Undertakings in North Eastern States (Sec 80-IE)

Deduction of 100% of the profits from business for a period of 10 years for:

- a. Manufacture or production of goods or undertakes substantial expansion during April 1, 2007 and March 31, 2017. Providing eligible services during April 1, 2007 and March 31, 2017.
- b. Deduction is not available in respect of manufacture or production of tobacco, pan masala, plastic carry bag of less than 20 microns or goods produced by petroleum and gas refineries.

- c. Eligible services are hotel (2 star or above), nursing home (25 beds or more), old age homes, vocational training institutes for hotel management, catering and food crafts, entrepreneurship development, nursing and paramedical, civil aviation related training, fashion designing and industrial training, IT related training centres, IT hardware manufacture units and bio-technology.
- d. The aforesaid activity takes place in any North-Eastern States (i.e., Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim and Tripura).

### Tax Exemptions

Following tax exemptions are available in different sectors:

### Deduction of 100% of the Profit from Business of

- (a) Development or operation and maintenance of ports, airports, roads, highways, bridges etc. (Sec 80-IA).
- (b) Generation, distribution and transmission of power (Sec 80-IA).
- (c) Development, operation and maintenance of an Industrial Park or SEZ (Sec 80-IAB).

- (d) By undertakings set up in certain notified areas or in certain thrust sector industries in the North Eastern states and Sikkim (Sec 80-IC).
- (e) By undertakings set up in certain notified areas or in certain thrust sector industries in Uttaranchal and Himachal Pradesh (Sec 80-IC).
- (f) Derived from export of articles or software by undertakings in FTZ, EHTP/STP (Sec 10A).
- (g) Derived from export of articles or software by undertakings in SEZ (Sec 10AA).
- (h) Derived from export of articles or software by 100% EOU (Sec 10B).
- (i) An offshore banking unit situated in SEZ from business activities with units located in the SEZ (Sec 80LA).
- (j) Derived by undertakings engaged in Business of operating and maintaining Hospital located anywhere in India other than excluded area. (Sec 80-IB)
- (k) Derived by an undertaking engaged in the integrated business of handling, storage and transportation of food grains (Sec 80-IB).
- (l) Derived by an undertaking engaged in the commercial production or refining of mineral oil (Sec 80-IB).
- (m) Derived by an undertaking from export of wood based handicraft (Sec 10BA).

# AUTHORITY FOR ADVANCE RULINGS

## Introduction

The scheme of advance rulings was introduced by the Finance Act, 1993, Chapter XIX-B of the Income-tax Act, which deals with advance rulings, came into force with effect from 1-6-1993. Under the scheme, the power of giving advance rulings has been entrusted to an independent adjudicatory body. Accordingly, a high level body headed by a retired judge of the Supreme Court has been set up. This is empowered to issue rulings, which are binding both on the Income-tax Department and the applicant. The procedure prescribed is simple, inexpensive, expeditious and authoritative.

Advance Ruling, means written opinion or authoritative decision by an Authority empowered to render it with regard to the tax consequences of a transaction or proposed transaction or an assessment in regard thereto. It has been defined in section 245N(a) of the Income-tax Act, 1961 as amended from time to time. Under section 245N, a ruling can be obtained by an applicant (who may be either a non-resident or a resident having a transaction with a non-resident) in respect of any question of law or fact in relation to the tax liability of the non-resident arising out of a transaction undertaken or proposed to be undertaken.

### Salient features:

- Available only for Income-tax:—

The procedure of advance ruling is available only under the Income-tax Act, 1961.

- Must relate to a transaction entered into or proposed to be entered into by the applicant: -

The advance ruling is to be given on questions specified in relation to such a transaction by the applicant.

- Questions on which ruling can be sought:—
  - Even though the word used in the definition is the word “question”, it is clear that the non-resident can raise more than one question in one application. This has been made amply clear by Column No. 8 of the form of application for obtaining an advance ruling (Form No. 34C)
  - Though the word “question” is unqualified, it is only proper to read it as a reference to questions of law or fact, pertaining to the income tax liability of the non-resident qua the transaction undertaken or proposed to be undertaken.
  - The question may be on points of law as well as on fact; therefore, mixed questions of law and fact can also be included in the application. The questions should be so drafted that each question is capable of a brief answer. This may need breaking-up of complex question into two or more simple questions.
  - The questions should arise out of the statement of facts given with the application. No ruling will be given on a purely hypothetical question. No question not specified in the application can be urged. Normally a question is not allowed to be amended but in deserving cases the Authority may allow amendment of one or more questions.

- v. Subject to the limitations to be presently referred to, the question may relate to any aspect of the non-resident's liability including international aspects and aspects governed by double tax agreements. The questions may even cover aspects of allied laws that may have a bearing on tax liability such as the law of contracts, the law of trusts and the like, but the question must have a direct bearing, on and nexus with the interpretation of the Indian Income-tax Act.
- d. Time limit for ruling:  
The Authority shall pronounce its advance ruling within 6 months of receipt of the application.
- e. Binding nature of advance ruling:  
The effect of the ruling is stated to be limited to the parties appear before the authority and the transaction in relation to which the ruling was given. This is because the ruling was rendered on a set of facts before the Authority and can not be of general application.

**Question precluded:** Under section 245R, certain restrictions have been imposed on the admissibility of an application, if the question concerned is pending before other authorities. According to it, the authority shall not allow an application where the question raised by the non-resident applicant (or a resident applicant having transaction with a non-resident) is already pending before any income-tax authority or appellate Tribunal or any court of law. Further, the authority shall not allow the application where the question raised in it:—

- i. involves determination of fair market value of any property; or
- ii. it relates to a transaction or issue which

is designed *prima facie* for the avoidance of income-tax.

### The Authority and Its Powers

The authority is constituted by the Central Government and is known as "Authority for Advance Ruling" (AAR) [Section 245-O (1)].

AAR consist of three members, viz :

- Chairman (who is a retired judge of the Supreme Court)
- An IRS officer (who is qualified to be a member of CBDT); and
- An ILS officer (who is qualified to be an additional secretary to the Government of India) [Section 245-O(2)]

The AAR enjoys all powers of a Civil Court under the code of Civil Procedure, 1908, as are referred to in Section 131 of the Income Tax Act, 1961 [Section 245U(1)]

The AAR also enjoys the status of a Civil Court for the purpose of section 195 of the Code of Criminal Procedure, 1973. [Section 245U(2)].

Every proceedings before the AAR is deemed to be a judicial proceedings within the meaning of Sections 193 & 228 and for the purpose of Section 196 of the Indian Penal Code, 1860.

### Meaning of "Advance Ruling"

The term "Advance ruling" is defined in Section 245N(a) of the Act. Following are the main features of the definition:

- Advance ruling means the determination of a question specified in the application by the applicant;
- Such question may be a question of law or a question of fact. Such question must be in relation to a transaction and cannot be a hypothetical or academic question;

- The transaction may be the one which is already undertaken or the one which is proposed to be undertaken by the applicant;
- The determination of such question on such a transaction is to be done by the AAR.

This term also indicates the determination or decision in respect of an issue pending before:

- (i) An Income-tax Authority; or
- (ii) The Appellate Tribunal.

Such determination could be determination on a question of law or on a question of fact.

### **Who can Apply**

An application for advance ruling can be made by a NON-RESIDENT as also by a resident in respect of a transaction with a non-resident. Besides, a resident falling within a notified class or category may also make an application. The class or category so notified by the Government till date are:

- Public Sector Company; and
- A resident seeking advance ruling in relation to the tax liability of a non-resident arising out of a transaction with a non-resident.

In case of resident applicants, no Income-tax Authority or the Appellate Tribunal shall proceed to decide any issue in respect of which an application has been made.

### **Procedure for Making an Application**

The application has to be made in following forms:

- By Non-Residents : Form 34C
- By resident in relation to transaction with Non-Residents : Form 34D

- By residents notified by the Government : Form 34E
- Application must be made in quadruplicate.
- It should be presented by the applicant in person or by an authorized representative or may be sent by post;
- The AAR, at present, holds its sittings at its headquarters at Delhi.
- The application must be accompanied by draft of Rs. 2500 drawn in favor of “Authority of Advance Ruling” payable at New Delhi.
- The secretary may send the application back to the applicant if it is defective in any manner for removing the defect.

The application must be signed as per the provisions of Rule 44E (2) of the Income Tax Rule, 1962.

### **Enclosures to the Application**

- A statement listing question(s) in relation to the transaction on which the advance ruling is required. This is optional. The question(s) may be stated in the application form itself. If, however, space provided is insufficient, separate enclosure may be used for this purpose.

It may be noted that the question(s) raised in the application should be exhaustively drafted covering all aspects of the issue involved and all alternative claims that the applicant may wish to make without prejudice to each other. This is because if at a later stage the applicant desires to raise any additional question which is not set-forth in the application, he may have to obtain permission of the AAR. Granting of such permission is at the discretion of the AAR.

- A statement of relevant facts having a bearing on the question(s) on which the advance ruling is required.
- A statement containing the applicant's interpretation of law or facts, as the case may be, in respect of the question(s) on which the advance ruling is required.
- Where the application is signed by an authorized representative, the power of attorney authorizing him to sign.
- Where the application is signed by an authorized representative, an affidavit setting out the unavoidable reasons which entitles him to sign.
- Separate enclosures may be used where the space provided for any of the items in the relevant forms is insufficient.
- In the covering letter, the applicant may make a request for being heard before pronouncing the ruling.

### **Procedure After Making of the Application**

- On receipt of the application, the AAR will forward a copy to the Commissioner.
- Commissioner may be called upon to furnish the relevant records.
- AAR shall examine the application and such records.
- After examination, an order shall be passed u/s 245R(2) to either allow or reject the application
- A copy of order u/s 245R(2) is sent to the applicant and to the commissioner.
- If the application is allowed vide order u/s 245R(2), the AAR shall :
  - (i) Examine such further material as may be placed before it by the applicant;
  - (ii) Examine such further material as may be obtained by the Authority suo moto; and
  - (iii) Pronounce its advance ruling on the question specified in the application within six months of the receipt of the application either with or without giving the assessee a hearing.

# TRANSFER PRICING

## Meaning

Commercial transactions between the different parts of the multinational groups may not be subject to the same market forces shaping relations between the two independent firms. One party transfers to another goods or services, for a price. That price is known as transfer price. This may be arbitrary and dictated, with no relation to cost and added value, diverge from the market forces. Transfer price is, thus, a price which represents the value of goods; or services between independently operating units of an organisation. But, the expression transfer pricing generally refers to prices of transactions between associated enterprises which may take place under conditions differing from those taking place between independent enterprises. It refers to the value attached to transfers of goods, services and technology between related entities. It also refers to the value attached to transfers between unrelated parties which are controlled by a common entity.

Suppose a company A purchases goods for 100 rupees and sales it to its associated company B in another country for 200 rupees, who in turn sells in the open market for 400 rupees. Had A sold it direct, it would have made a profit of 300 rupees. But by routing it through B, it restricted it to 100 rupees, permitting B to appropriate the balance. The transaction between A and B is arranged and not governed by market forces. The profit of 200 rupees is, thereby, shifted to the country of B. The goods are transferred on a price (transfer price) which is arbitrary or dictated (200 hundred rupees), but not on the market price (400 rupees).

Thus, the effect of transfer pricing is that the parent company or a specific subsidiary tends to

produce insufficient taxable income or excessive loss on a transaction. For instance, profits accruing to the parent can be increased by setting high transfer prices siphon profits from subsidiaries domiciled in high tax countries, and low transfer prices to move profits to subsidiaries located in low tax jurisdiction. As an example of this, a group which manufacture products in a high tax countries may decide to sell them at a low profit to its affiliate sales company based in a tax heaven country. That company would in turn sell the product at an arm's length price and the resulting (inflated) profit would be subject to little or no tax in that country. The result is revenue loss and also a drain on foreign exchange reserves.

## Transfer pricing – Arm's length price

92F(ii) Arms length price means a price which is applied or proposed to be applied in a transaction between persons other than associated enterprises, in uncontrolled conditions;

## Enterprise

92F(iii) enterprises means a person (including a permanent establishment of such person) who is, or has been, or is proposed to be, engaged in any activity, relating to the production storage, supply, distribution, acquisition or control of articles or goods, or know-how, patents, copyright, trademarks, licences, franchises or any other business or commercial rights of similar nature, or any data, documentation, drawing or specification relating to any patent, invention, model, design, secret formula or process, of which the other enterprise is the owner or in respect of which the other enterprise has exclusive rights, or the provision of service of any kind, [or in carrying out any work in pursuance of a contract,] or in Investment, or

providing loan or in the business of acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate, whether such activity or business is carried on, directly or through one or more of its units or divisions or subsidiaries, or whether such unit or division or subsidiary is located at the same place where the enterprise is located or at a different place or places;

### **Permanent establishment**

92F [(iiia) permanent establishment, referred to in clause (iii), includes a fixed place of business through which the business of the enterprise is wholly or partly carried on;

### **Transaction**

92F (v) transaction includes an arrangement, understanding or action in concert,

- (a) whether or not such arrangement, understanding or action is formal or in writing; or
- (b) Whether or not such arrangement, understanding or action is intended to be enforceable by legal proceeding.

### **Computation of arms length price.**

92C. (1) The arms length price in relation to an international transaction shall be determined by any of the following methods, being the most appropriate method, having regard to the nature of transaction or class of transaction or class of associated persons or functions performed by such persons or such other relevant factors as the Board may prescribe, namely :

- (a) comparable uncontrolled price method;
- (b) resale price method;
- (c) cost plus method;
- (d) profit split method;
- (e) transactional net margin method;
- (f) such other method as may be prescribed by the Board.

- (2) The most appropriate method referred to in sub-section (1) shall be applied, for determination of arms length price, in the manner as may be prescribed :

Provided that where more than one price is determined by the most appropriate method, the arms length price shall be taken to be the arithmetical mean of such prices, or, at the option of the assessee, a price which may vary from the arithmetical mean by an amount not exceeding five per cent of such arithmetical mean.

- (3) Where during the course of any proceeding for the assessment of income, the Assessing Officer is, on the basis of material or information or document in his possession, of the opinion that
  - (a) the price charged or paid in an international transaction has not been determined in accordance with sub-sections (1) and (2); or
  - (b) any information and document relating to an international transaction have not been kept and maintained by the assessee in accordance with the provisions contained in sub-section (1) of section 92D and the rules made in this behalf; or
  - (c) the information or data used in computation of the arms length price is not reliable or correct; or
  - (d) the assessee has failed to furnish, within the specified time, any information or document which he was required to furnish by a notice issued under sub-section (3) of section 92D. the Assessing Officer may proceed to determine the arms length price in relation to

the said international transaction in accordance with sub-sections (1) and (2), on the basis of such material or information or document available with him:

Provided that an opportunity shall be given by the Assessing Officer by serving a notice calling upon the assessee to show cause, on a date and time to be specified in the notice, why the arms length price should not be so determined on the basis of material or information or document in the possession of the Assessing Officer.

(4) Where an arm's length price is determined by the Assessing Officer under sub-section (3), the Assessing Officer may compute the total income of the assessee having regard to the arms length price so determined :

Provided that no deduction under section 10A [or section 10AA] or section 10B or under Chapter VI-A shall be allowed in respect of the amount of income by which the total income of the assessee is enhanced after computation of income under this sub-section :

Provided further that where the total income of an associated enterprise is computed under this sub-section on determination of the arms length price paid to another associated enterprise from which tax has been deducted [or was deductible] under the provisions of Chapter XVIIB, the income of the other associated enterprise shall not be recomputed by reason of such determination of arms length price in the case of the first mentioned enterprise.

#### **Meaning of international transaction.**

92B. (1) For the purposes of this section and sections 92, 92B, 92C, 92D and 92E, international transaction means

a transaction between two or more associated enterprises, either or both of whom are non-residents, in the nature of purchase, sale or lease of tangible or intangible property, or provision of services, or lending or borrowing money, or any other transaction having a bearing on the profits, income, losses or assets of such enterprises, and shall include a mutual agreement or arrangement between two or more associated enterprises for the allocation or apportionment of, or any contribution to, any cost or expense incurred or to be incurred in connection with a benefit, service or facility provided or to be provided to any one or more of such enterprises.

(2) A transaction entered into by an enterprise with a person other than an associated enterprise shall, for the purposes of sub-section (1), be deemed to be a transaction entered into between two associated enterprises, if there exists a prior agreement in relation to the relevant transaction between such other person and the associated enterprise, or the terms of the relevant transaction are determined in substance between such other person and the associated enterprise.

#### **Meaning of associated enterprise.**

92A. (1) For the purposes of this section and sections 92, 92B, 92C, 92D, 92E and 92F, associated enterprise, in relation to another enterprise, means an enterprise

- (a) which participates, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise; or
- (b) in respect of which one or more persons

who participate, directly or indirectly, or through one or more intermediaries, in its management or control or capital, are the same persons who participate, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise.

- (2) For the purposes of sub-section (1), two enterprises shall be deemed to be associated enterprises if, at any time during the previous year,
  - (a) one enterprise holds, directly or indirectly, shares carrying not less than twenty-six per cent of the voting power in the other enterprise; or
  - (b) any person or enterprise holds, directly or indirectly, shares carrying not less than twenty-six per cent of the voting power in each of such enterprises; or
  - (c) a loan advanced by one enterprise to the other enterprise constitutes not less than fifty-one per cent of the book value of the total assets of the other enterprise; or
  - (d) one enterprise guarantees not less than ten per cent of the total borrowings of the other enterprise; or
  - (e) more than half of the board of directors or members of the governing board, or one or more executive directors or executive members of the governing board of one enterprise, are appointed by the other enterprise; or
  - (f) more than half of the directors or members of the governing board, or one or more of the executive directors or members of the

governing board, of each of the two enterprises are appointed by the same person or persons; or

- (g) the manufacture or processing of goods or articles or business carried out by one enterprise is wholly dependent on the use of know-how, patents, copyrights, trade-marks, licences, franchises or any other business or commercial rights of similar nature, or any data, documentation, drawing or specification relating to any patent, invention, model, design, secret formula or process, of which the other enterprise is the owner or in respect of which the other enterprise has exclusive rights; or
- (h) ninety per cent or more of the raw materials and consumables required for the manufacture or processing of goods or articles carried out by one enterprise, are supplied by the other enterprise, or by persons specified by the other enterprise, and the prices and other conditions relating to the supply are influenced by such other enterprise; or
- (i) the goods or articles manufactured or processed by one enterprise, are sold to the other enterprise or to persons specified by the other enterprise, and the prices and other conditions relating thereto are influenced by such other enterprise; or
- (j) where one enterprise is controlled by an individual, the other enterprise is also controlled by such individual or his relative or jointly by such individual and relative of such individual; or
- (k) where one enterprise is controlled by

a Hindu undivided family, the other enterprise is controlled by a member of such Hindu undivided family or by a relative of a member of such Hindu undivided family or jointly by such member and his relative; or

- (l) where one enterprise is a firm, association of persons or body of individuals, the other enterprise holds not less than ten per cent interest in such firm, association of persons or body of individuals; or
- (m) there exists between the two enterprises, any relationship of mutual interest, as may be prescribed.

### **Reference to Transfer Pricing Officer.**

92CA. (1) Where any person, being the assessee, has entered into an international transaction in any previous year, and the Assessing Officer considers it necessary or expedient so to do, he may, with the previous approval of the Commissioner, refer the computation of the arms length price in relation to the said international transaction under section 92C to the Transfer Pricing Officer.

(2) Where a reference is made under sub-section (1), the Transfer Pricing Officer shall serve a notice on the assessee requiring him to produce or cause to be produced on a date to be specified therein, any evidence on which the assessee may rely in support of the computation made by him of the arms length price in relation to the international transaction referred to in sub-section (1).

(3) On the date specified in the notice under sub-section (2), or as soon thereafter as may be, after hearing such evidence as the assessee may produce, including any

information or documents referred to in sub-section (3) of section 92D and after considering such evidence as the Transfer Pricing Officer may require on any specified points and after taking into account all relevant materials which he has gathered, the Transfer Pricing Officer shall, by order in writing, determine the arms length price in relation to the international transaction in accordance with sub-section (3) of section 92C and send a copy of his order to the Assessing Officer and to the assessee.

(3A) Where a reference was made under sub-section (1) before the 1st day of June, 2007 but the order under sub-section (3) has not been made by the Transfer Pricing Officer before the said date, or a reference under sub-section (1) is made on or after the 1st day of June, 2007, an order under sub-section (3) may be made at any time before sixty days prior to the date on which the period of limitation referred to in section 153, or as the case may be, in section 153B for making the order of assessment or reassessment or recomputation or fresh assessment, as the case may be, expires.

- (4) On receipt of the order under sub-section (3), the Assessing Officer shall proceed to compute the total income of the assessee under sub-section (4) of section 92C in conformity with the arms length price as so determined by the Transfer Pricing Officer.
- (5) With a view to rectifying any mistake apparent from the record, the Transfer Pricing Officer may amend any order passed by him under sub-section (3), and the provisions of section 154 shall, so far as may be, apply accordingly.
- (6) Where any amendment is made by the Transfer Pricing Officer under sub-

section (5), he shall send a copy of his order to the Assessing Officer who shall thereafter proceed to amend the order of assessment in conformity with such order of the Transfer Pricing Officer.

- (7) The Transfer Pricing Officer may, for the purposes of determining the arms length price under this section, exercise all or any of the powers specified in clauses (a) to (d) of sub-section (1) of section 131 or sub-section (6) of section 133.

**Explanation.**For the purposes of this section, Transfer Pricing Officer means a Joint Commissioner or Deputy Commissioner or Assistant Commissioner authorised by the Board<sup>85</sup> to perform all or any of the functions of an Assessing Officer specified in sections 92C and 92D in respect of any person or class of persons.

Maintenance and keeping of information and document by persons entering into an international transaction.

92D. (1) Every person who has entered into an international transaction shall keep and maintain such information and document in respect thereof, as may be prescribed

(2) Without prejudice to the provisions contained in sub-section (1), the Board may prescribe the period for which the information and document shall be kept and maintained under that sub-section.

(3) The Assessing Officer or the Commissioner (Appeals) may, in the course of any proceeding under this Act, require any person who has entered into an international transaction to furnish any information or document in respect thereof, as may be prescribed under sub-section (1), within a period of thirty

days from the date of receipt of a notice issued in this regard :

Provided that the Assessing Officer or the Commissioner (Appeals) may, on an application made by such person, extend the period of thirty days by a further period not exceeding thirty days.

Report from an accountant to be furnished by persons entering into international transaction.

92E. Every person who has entered into an international transaction during a previous year shall obtain a report from an accountant and furnish such report on or before the specified date in the prescribed form duly signed and verified in the prescribed manner by such accountant and setting forth such particulars as may be prescribed

Penalty for failure to keep and maintain information and document in respect of international transaction.

271AA. Without prejudice to the provisions of section 271, if any person fails to keep and maintain any such information and document as required by sub-section (1) or sub-section (2) of section 92D, the Assessing Officer or Commissioner (Appeals) may direct that such person shall pay, by way of penalty, a sum equal to two per cent of the value of each international transaction entered into by such person.

Penalty for failure to furnish information or document under section 92D

271G. If any person who has entered into an international transaction fails to furnish any such information or document as required by sub-section (3)

of section 92D, the Assessing Officer or the Commissioner (Appeals) may direct that such person shall pay, by way of penalty, a sum equal to two per cent of the value of the international transaction for each such failure.]

Penalty for failure to furnish report under section 92E.

271BA. If any person fails to furnish a

report from an accountant as required by section 92E, the Assessing Officer may direct that such person shall pay, by way of penalty, a sum of one hundred thousand rupees.

#### Time Limit for furnishing Form No. 3CEB

On or before 31st October of the relevant Assessment Year.

# DOUBLE TAX AVOIDANCE AGREEMENTS (DTAA)

The Government of India has entered into double taxation avoidance agreements (tax treaties) with several countries with the principal objective of evolving a system for the respective countries to allocate the right to tax different types of income on an equitable basis. Tax treaties serve the purpose of providing full protection to taxpayers against double taxation and also aim at preventing discrimination between the taxpayers in the international field. The NRIs/ PIO would, therefore, be well advised to take advantage of such treaties in tax planning for their investments in India.

DTAA can be defined as an “international agreement between two sovereign States reaching an understanding as to how their residents will be taxed in respect of cross border transactions in order to avoid double taxation on the same income”.

In yet another way, DTAA can be defined as “an agreement of compromise between two

contracting States whereby each country agrees to give up something in consideration of the other country giving up something in its favour”.

It may sometimes happen that owing to reduction in tax rates under the domestic law-taking place after coming into existence of the treaty, the domestic rates become more favorable to the NRIs/PIO. Since the object of the tax treaties is to benefit the NRIs/PIO, they have, under such circumstances, the option to be assessed either as per the provisions of the treaty or the domestic law of the land.

In order to avoid any demand or refund consequent to assessment and to facilitate the process of assessment, the concerned authorities in India have provided that tax shall be deducted at source out of payments to NRIs/PIO at the prevailing rates at which the particular income is made taxable under the tax treaties.

PART - II

# OTHER IMPORTANT MATTERS



# OVERSEAS CITIZENSHIP OF INDIA (OCI)

## **OCI Scheme Is Operational From 02.12.2005**

The Constitution of India does not allow holding Indian citizenship and citizenship of a foreign country simultaneously. Based on the recommendation of the High Level committee on Indian Diaspora, the Government of India decided to grant **Overseas Citizenship Of India (OCI) commonly known as 'dual Citizenship'**. Persons of Indian Origin (PIOs) of certain category as has been specified in the Brochure who migrated from India and acquired citizenship of a foreign country other than Pakistan and Bangladesh, are eligible for grant of OCI as long as their home countries allow dual citizenship in some form or the other under their local laws.

1. Application for registration as OCI can be made online. Before filing the application, Instructions may be perused so that there is no mistake in submission of application. Further the details regarding Fee and offices where applications have to be filed may also be perused.
2. Persons registered as OCI have not been given any voting rights, election to Lok Sabha / Rajya Sabha / Legislative Assembly / Council, holding Constitutional posts such as President, Vice President, Judge of Supreme Court / High Court etc. Registered OCIs shall be entitled to following benefits:
  - (i) Multiple entry, multi-purpose life long visa to visit India;
  - (ii) Exemption from reporting to Police authorities for any length of stay in India; and

(iii) Parity with NRIs in financial, economic and educational fields except in the acquisition of agricultural or plantation properties.

3. Any further benefits to OCIs will be notified by the Ministry of Overseas Indian affairs (MOIA) under section 7B (1) of the citizenship Act, 1955.
4. A person registered as OCI is eligible to apply for grant of Indian citizenship under section 5(1) (g) of the citizenship Act, 1955 if he/she is registered as OCI for five years and has been residing in India for one year out of the five years before making the application.

## **Brochure on Overseas Citizenship of India (OCI)**

### **1. Eligibility Criteria**

A foreign national, who was eligible to become citizen of India on 26.01.1950 or was a citizen of India on or at anytime after 26.01.1950 or belonged to a territory that became part of India after 15.08.1947 and his/her children and grand children, provided his/her country of citizenship allows dual citizenship in some form or other under the local laws, is eligible for registration as Overseas Citizenship Of India (OCI). Minor children of such person are also eligible for OCI. However, if the applicant had ever been a citizen of Pakistan or Bangladesh, he/she will not be eligible for OCI.

### **2. Application Form and Procedure**

A family consisting of spouses and upto two minor children can apply in the same form i.e.

Form XIX. The form can be filed online or downloaded from our website [www.mha.nic.in](http://www.mha.nic.in).

The following documents shall be enclosed for each application:

- 1 Proof of present citizenship.
- 2 Evidence of self or parents or grandparents,
  - (a) Being eligible to become a citizen of India at the time of commencement of the Constitution; or
  - (b) Belonging to a territory that became part of India after 15th August, 1947; or
  - (c) Being citizen of India on or after 26th January, 1950

These could be:

- (i) Copy of the passport; or
  - (ii) Copy of the domicile certificate issued by the Competent authority; or
  - (iii) Any other proof.
- 1 Evidence of relationship as parent / grand parent, if their Indian origin is claimed as basis for grant of OCI.
  - 2 Application fee by way of Demand Draft (US \$ 275 for each applicant or equivalent in local Currency; US \$ 25 or equivalent in local currency for each PIO cardholder.)
  - 3 PIO cardholders should submit a copy of his/her PIO card.

The application form completed in all respects along with enclosures should be submitted in duplicate to the Indian Mission / Post of the country of applicant's citizenship or where he/ she is not in the country of citizenship to the Indian Mission / Post of the country in which he / she is ordinarily resident. If the applicant is in India, he / she can apply to the Foreigners Regional Registration Officer (FRRO) at

Delhi, Mumbai, Kolkata or Amritsar or Chief Immigration Officer (CIO) Chennai or to the Under Secretary, OCI Cell, Citizenship Section, Foreigners Division, Ministry of Home Affairs (MHA), Jaisalmer House, 26 Mansingh Road, New Delhi – 110011.

### **3. Procedure for Granting Registration**

After Preliminary scrutiny, if there is no adverse information available against the applicant, the Indian Mission / Post shall register a person as OCI within 30 days of application and the case shall be referred to MHA for post verification of the antecedents of the applicant. If during the post verification, any adverse information comes to the knowledge of the MHA, the registration as OCI already granted by the Indian Mission / Post shall be cancelled by an order under section 7D of the Citizenship Act, 1955.

After preliminary scrutiny, if there is any adverse information against the applicant, prior approval of MHA, shall be required before grant of registration. MHA may approve or reject the grant of registration within 120 days from the date of the receipt of the application. If the grant of registration as OCI is approved by MHA, the Indian Mission / Post shall register the person as OCI.

If the application is filed in India, registration shall be granted by MHA by following the above procedure.

After grant of registration, a registration certificate in the form of booklet will be issued and a multiple entry, multi-purpose life long OCI 'U' visa sticker will be pasted on the foreign passport of the applicant.

#### **4. OCI for PIO Card Holders**

PIO card holders who are otherwise eligible for registration as OCI may apply in the same Form i.e. Form XIX and they will be considered for grant of registration in the same manner as other applicants. PIO card holders have to pay a fee of US \$ 25 or equivalent in local currency instead of US \$ 275 for normal applicant. PIO cardholders will have to surrender his/her PIO card after knowledge of acceptance of application.

#### **5. OCI for Persons who have Applied on the Earlier Prescribed Application Form**

All such applications will be considered for grant of OCI on the same line as in 3 above without seeking fresh application and fees.

#### **6. Cancellation of OCI Registration**

If it has been found that the registration as an OCI was obtained by means of fraud, false representation or concealment of any material fact or the registered OCI has shown disaffection towards the Constitution of India or comes under any of the provisions of section 7D of the Citizenship Act, the registration of such person will not only be cancelled forthwith but he / she will also be blacklisted for visiting India.

#### **7. Benefits to OCI**

Following benefits will accrue to OCI:

- (i) A Multiple entry, multi purpose life long visa for visiting India.
- (ii) Exemption from registration with local police authority for any length of stay in India.
- (iii) Parity with Non resident Indians (NRIs) in respect of economic, financial and

educational fields except in relation to acquisition of agricultural or plantation properties.

Any other benefits to OCIs will be notified by the Ministry of Overseas Indian Affairs (MOIA) under Section 7B(1) of the Citizenship Act, 1955.

#### **8. Benefits to which OCI is Not Entitled to**

The OCI is not entitled to vote, be a member of Legislative Assembly or Legislative Council or Parliament, cannot hold constitutional posts such as President, Vice President, Judge of Supreme Court or High Court etc. and he / she cannot normally hold employment in the Government.

#### **9. Help Desk**

For any clarification/query on the scheme, please visit our website [www.mha.nic.in](http://www.mha.nic.in). or visit the website of the local Indian Mission / Post or contact the Indian Mission / Post or OCI Cell,Citizenship Section, Foreigners Division, Ministry of Home Affairs, Jaisalmer House, 26 Mansingh Road, New Delhi – 110011.

#### **APPLICATION FEES**

**For application to be filled in India**, an amount of Rs. 12,650 has to be paid for each applicant by demand Draft in Favour of “**Pay and Account Officer (Secretariat), Ministry of Home Affairs**” payable at New Delhi. In case of PIO Card holder, an amount of Rs 1,150 has to be paid.

**In case of application to be filled outside India**, for the amount of fee to be paid in local currency, please visit the web site of the respective Indian Mission / Post.

## FREQUENTLY ASKED QUESTION

### **Q.1. Who is eligible to apply?**

A.1 A foreign national, who was eligible to become citizen of India on 26.01.1950 or was a citizen of India on or at any time after 26.01.1950 or belonged to a territory that became part of India after 15.08.1947 and his/her children and grand children, provided his/her country of citizenship allows dual citizenship in some form or other under local laws, is eligible for registration as Overseas citizen of India (OCI). Minor children of such person are also eligible for OCI. However, if the applicant had ever been a citizen of Pakistan or Bangladesh, he/she will not be eligible for OCI.

### **Q.2 Who was eligible to become Citizen of India on 26.01.1950?**

A.2 Any person who or either of whose parents or grand-parents were born in India as defined in the Government of India Act, 1935(as originally enacted), and who was ordinarily residing in any country outside India was eligible to become citizen of India on 26.01.1950.

### **Q.3 Which territories became part of India after 15.08.1947 and from what date?**

A.3 The territories, which became part of India after 15.08.1947 are:

(i) Sikkim 26.04.1975

(ii) Pondicherry 16.08.1962

(iii) Dadra & Nagar Haveli 11.08.1961

(iv) Goa, Daman and Diu 20.12.1961

### **Q.4 Can the spouse of the eligible person apply for OCI?**

A.4 Yes, if he/she is eligible in his /her own capacity.

### **Q.5 Can children of parents, wherein one of the parents is eligible for OCI, apply for OCI?**

A.5 Yes.

### **Q.6 In what form should a person apply for OCI and where are the forms available?**

A.6 A family consisting of spouses and upto two minor children can apply in the same form i.e. Form XIX, which can be filed online or downloaded from our website [www.mha.nic.in./oci/oci-main.htm](http://www.mha.nic.in./oci/oci-main.htm)

### **Q.7 Can application form be filled and submitted on line?**

A.7 Yes. Part A of the application form can be filed online. Upon submission of part A online, Part B is downloaded instantly and it can be printed on computer or by hand in Block letters. Printed Part A and Part B of the application form have to be submitted to the Indian Mission/ Post/Office.

### **Q.8 What documents have to be submitted with the application?**

A.8 The following documents shall be enclosed for each applicant:

1. Proof of present citizenship
  2. Evidence of self or parents or grand parents,
- (a) Being eligible to become a citizen of India at the time of commencement of the Constitution; or
  - (b) Belonging to a territory that became part of India after 15th August,

1947; or

- (c) Being citizen of India on after 26th January, 1950

These could be:

- (i) Copy of the passport: or
  - (ii) Copy of the domicile certificate issued by the Competent authority; or
  - (iii) Any other proof.
3. Evidence of relationship as parent / grand parent, if their Indian origin is claimed as basis for grant of OCI.
  4. Application fee by way of Demand Draft (US \$ 275 for each applicant or equivalent in local currency; US \$ 25 or equivalent in local currency for each PIO cardholder)
  5. PIO cardholders should submit a copy of his/her PIO card.

**Q.9. What documents would qualify for “Any other proof” for evidence of self or parents or grand parents being eligible for grant of OCI?**

- A.9. Any documentary evidence like a school certificate, land ownership certificate, birth certificate, etc. which may reasonably ascertain eligibility.

**Q.10. How many copies of application have to be submitted?**

- A.10. Application has to be submitted in duplicate for each applicant.

**Q.11. Whether applicant(s) have to go in person to submit the application(s)?**

- A.11. No. Application(s) can be sent by post.

**Q.12. Whether the applicant(s) have to take oath before the Counsel of the Indian Mission/Post?**

- A.12. No. Earlier provision in this regard has

been done away with.

**Q.13. Where to submit the application?**

- A.13. To the Indian Mission / Post of the country of citizenship of the applicant. If the applicant is not in the country of citizenship, to the Indian Mission / Post of the country where he is ordinarily residing. If the applicant is in India, to the FRRO Delhi, Mumbai, Kolkata or Amritsar or to the Under Secretary, OCI Cell, Citizenship Section, Foreigners Division, Ministry of Home Affairs (MHA), Jaisalmer House, 26 Mansingh Road, New Delhi – 110011

**Q.14. Can a person apply in the country where he is ordinarily residing?**

- A.14. Yes.

**Q.15. What are the consequences of furnishing wrong information or suppressing material information?**

- A.15. All the applications will be subject to pre or post enquiry depending on whether any adverse information is voluntarily reported in the application or not. If the Government comes to the know that any false information was furnished or material information was suppressed, the registration as OCI already granted shall be cancelled by an order under section 7D of the Citizenship Act, 1955. The persons will also be blacklisted thereby banning his/her entry into India.

**Q.16. What is the fee for application for registration as an OCI?**

- A.16. US \$ 275 or equivalent in local currency for each applicant. In case of PIO card holder, US \$ 25 or equivalent in local currency for each applicant.

**Q.17. What is the time taken for registration as OCI?**

A.17. Within 30 days of the application, if there is no adverse information available against the applicant. If any adverse information is available against the applicant, the decision to grant or otherwise is taken within 120 days.

**Q.18. If the registration as OCI is not granted, what amount will be refunded?**

A.18. An amount of US \$ 250 or equivalent in local currency shall be refunded, if registration is refused. US \$ 25 is the processing fees, which is non-refundable.

**Q.19. Can a PIO cardholder apply?**

A.19. Yes, provided he/she is otherwise eligible for grant of OCI like any other applicant.

**Q.20. Will the PIO Cardholder be granted an OCI registration gratis?**

A.20. No. He/she has to make a payment of US \$ 25 equivalent in local currency along with the application.

**Q.21. Will the PIO Card be honored till the time they are valid even after acquisition of OCI?**

A.21. No. PIO Card will have surrendered to Indian Mission/Post/MHA for grant of OCI registration certificate and OCI 'U' visa sticker.

**Q.22. What will be issued after registration as an OCI?**

A.22. A registration certificate in the form of a booklet will be issued and a multiple entry, multi-purpose OCI 'U' visa sticker will be pasted on the foreign passport

of the applicant. For this purpose, the applicant has to send the original passport to the Indian Mission / Post after receipt of the acceptance letter/ verifying the status of the application online.

**Q.23. Will a separate OCI passport be issued?**

A.23. No.

**Q.24. Will a duplicate certificate of registration, as an OCI will be issued?**

A.24. Yes. For this purpose, an application has to be made to the Indian Mission / Post with evidence for loss of certificate. In case of mutilated/ damaged certificate an application has to be made enclosing the same. The applications in both the cases have to be made to the same Indian Mission / Post which issued the certificate alongwith with payment of fee of US \$ 25 or equivalent in local currency.

**Q.25. Will a new OCI visa sticker be issued on the new foreign passport after the expiry of the old passport?**

A.25. Yes. On payment of requisite fee, a new OCI 'U' visa sticker will be issued. However, the applicant can continue to carry the old passport wherein the OCI 'U' Visa sticker was pasted along with new passport for visiting India without seeking a new visa, as the visa is lifelong.

**Q.26. Will the applicant lose his citizenship after registering as an OCI?**

A.26. No. As only citizen of the country which allows dual citizenship under the local laws in some form or the other are

eligible for applying for registration as an OCI, losing foreign citizenship does not arise.

**Q.27. Can a person registered as an OCI travel to protected area/restricted area without permission?**

A.27. No. He/she will be required to seek PAP/RAP for such visits.

**Q.28. Would the Indian civil/criminal laws be applicable to persons registered as OCI?**

A.28. Yes. For the period OCI is living in India.

**Q.29. Can a person registered as an OCI be granted Indian citizenship?**

A.29. Yes. As per the provisions of section 5(1)(g) of the citizenship Act, 1955, a person who is registered as an OCI for 5 years and residing in India for 1 Year out of the above 5 Years, is eligible to apply for Indian citizenship.

**Q.30. Will OCI be granted gratis to certain categories of people?**

A.30. No.

**Q.31. Can OCI be granted to foreign nationals who are not eligible for OCI, but married to persons who are eligible for OCI?**

A.31. No.

**Q.32. Will foreign-born children of PIOs be eligible to become an OCI?**

A.32 Yes, provided one of the parents is eligible to become an OCI.

**Q.33. What are the benefits of an OCI?**

A.33. Following benefits will be allowed to an OCI:

- a. Multi-purpose, multiple entries, lifelong visa for visiting India.
- b. Exemption from NRIs with local police authority for any length of stay in India.
- c. Parity with NRIs in respect of economic, financial and educational fields except in matters relating to acquisition of agricultural/plantation properties.

**Q.34. Will any other benefit be granted to OCI?**

A.34. Any other benefits to OCI will be notified by the ministry of Overseas Indian Affairs (MOIA) under Section 7B (1) of the Citizenship Act, 1955.

**Q.35. Is the OCI is entitled to voting rights?**

A.35. No.

**Q.36. Is the OCI is entitled to hold Constitutional post in India?**

A.36. No.

**Q.37. Is the OCI is entitled to hold Government post in India?**

A.37. No, except for the posts specified by an order by the Central Government.

**Q.38. If a person is already holding more than one nationality, can he/she apply for OCI?**

A.38. Yes, as long as the local laws of at least one of the countries allow dual citizenship in some form or the other.

**Q.39. What are the advantages of OCI when compared to PIO carholders?**

A.39. (a) An OCI is entitled to life long visa with free travel to India whereas for

PIO cardholder, it is only valid for 15 years.

- (b) PIO cardholder is required to register with the local police authority for any stay exceeding 180 days in India on any single visit whereas an OCI is exempted from registration with police authority for any length of stay in India.
- (c) An OCI gets a specific right to become an Indian Citizen as in 31, whereas the PIO card holder does not have this.

**Q.40. Whether an OCI be entitled to apply for and obtain a normal Indian passport, which is given to a citizen of India?**

- A.40. No. Indian Passport is given only to Indian citizen.

**Q.41. Whether national of commonwealth countries are eligible for OCI?**

- A.41. Yes, if they fulfill the eligibility criteria.

**Q.42. Can a person renounce OCI?**

- A.42. Yes. He/she has to declare intention of renunciation in Form XXII to the Indian Mission /Post where OCI registration was granted. After receipt of the declaration, the Indian Mission/Post shall issue an acknowledgement in Form XXII A.

**Q.43. Do the applicants who have applied on the earlier prescribed application form have to apply again in the new form?**

- A.43. No. All such application will be considered for registration as OCI without seeking fresh applications and fee.

## ADDRESSES OF OFFICES TO FILE OCI APPLICATIONS

### Applicants Outside India

Applicants outside India can submit applications to

- The Indian Mission /Post having jurisdiction over the country of which applicant is a citizen; or
- If he/she is not living in the country of his/her citizenship, to the Indian Mission /post having jurisdiction over the country of which the applicant is **ordinarily resident**.

### Applicants in India

Applicants in india can submit the applications in person or by speed post/registered post only

Applicants anywhere in India can File with Ministry of Home Affairs (MHA) at the following Address:

UnderSecretary(OCI),Foreigners Division, Ministry of Home Affairs, 26-Mansingh Road, Jaisalmer House, New Delhi-110011. Tel. No. 011-23387436 e-mail: usocimha@nic.in

Applicants in Delhi, Mumbai, Chennai, Kolkata and Amritsar can also file with respective Foreigners Regional Registration Officers (FRROs) at the following addresses:

- i. FRRO, East Block- VIII Level-2 Sector-1, R.K. Puram, New Delhi-110066. Tel.No. 011-26711384
  - ii. FRRO, Badruddin Tayyabji Marg, Mumbai-1 Tel.No. 022-26571998
  - iii. FRRO, Shastri Bhavan Annexe, 26, Haddows Road, Chennai. Tel. No. 044-28232642
- FRRO, 237, A.J.C. Bose Road, Kolkata. Tel.No. 033-22470549
- FRRO, D-123,Ranjeet Avenue, Amritsar. Tel.No. 0183-2508250.

### Comparative chart on NRI/PIO/PIO CARD HOLDERS/OCI

	<b>NRI</b>	<b>PIO</b>	<b>PIO Card holder</b>	<b>OCI</b>
1. Who?	An Indian citizen who is ordinarily residing outside India and holds an Indian passport	A person who or whose any of ancestors was an Indian national and who is presently holding another country's citizenship/nationality i.e. he/she is holding foreign passport	A person registered as PIO card Holder under MHA's scheme vide Notification No. 26011/4/98-FI dated 19.08.2002.	A person registered as Overseas Citizen of India (OCI) under section 7A of the citizenship Act,1955
2. Who is eligible?	-	-	Any person who at any time held an Indian passport; or he or either of his parents or grandparents was born in or was permanently resident in India as defined in government of India Act, 1935 and other territories that become part of India thereafter provided neither was at any time a citizen of Afghanistan, Bhutan, China, Nepal, Pakistan and Sri Lanka; or who is a spouse of a citizen of India or a person of Indian origin as mentioned above.	A foreign national, who was eligible to become citizen of India on 26.01.1950 or was a citizen of India on or at anytime after 26.01.1950 or belonged to a territory that became part of India after 15.08.1947 and his/her children and grand children, provided his/her country of citizenship allows dual citizenship in some form or other under the local laws, is eligible for registration as overseas citizen of India (OCI) Minor children of such person are also eligible for OCI. However, if the applicant had ever been a citizen of Pakistan or Bangladesh, he/she will not be eligible for OCI.
How can one get?	-	-	Eligible persons to apply in the prescribed form along with enclosures. Form available on MHA's website: <a href="http://www.mha.nic.in">www.mha.nic.in</a> .	Eligible persons to apply online /down load application form from MHA's website: <a href="http://www.mha.nic.in">www.mha.nic.in</a> .

4. Where to apply?	-	-	To the Indian Mission/Post in the country where the applicant is ordinarily resident; if in India on long term visa (more than one year), to the FRRO, Delhi, Mumbai, Kolkata, Amritsar, CHIO, Chennai or to the joint secretary (foreigners), MHA.	To the Indian Mission/Post of the country of applicant's citizenship or where he/she is not in the country of citizenship, to the Indian Mission/Post of the country in which he/she is ordinarily resident. If the applicant is in India he/she can apply to the FRRO at Delhi, Mumbai, Kolkata, Amritsar, CHIO, Chennai or to the Under Secretary, OCI Cell, Citizenship Section Foreigners Division, Ministry of Home Affairs, Jaisalmer House, 26 Mansingh Road, New Delhi-110011.
5. Fees?	-	-	Rs. 15000/-or equivalent in local currency for adults. For the children upto the age of 18 years, the fee is Rs. 7500/-or equivalent in local currency.	US \$ 275 or equivalent in local currency. In case of PIO card holders, it is US \$ 25 or equivalent in local currency.
6. Which nationals are eligible?	-	-	PIO of all countries except Afghanistan, Bangladesh, Bhutan, China, Nepal, Pakistan and Sri Lanka	PIOs of all countries except Pakistan and Bangladesh provided the country of nationality allows dual citizenship in some form or other under local laws.

7. What benefits one is entitled to?	All benefits as available to Indian citizen subject to notification issued by the Government from time to time.	No specific benefits.	<p>(1) Shall not require a separate visa to visit India. (2) Will be exempt from the requirements of registration if his/her stay on any single visit in India does not exceed 180 days.</p> <p>(3) In the event of continuous stay in India exceeding 180 days, he/she shall have to get himself/herself registered within 30 days of the expiry of 180 days with the concerned FRRO/ FRO.</p> <p>(4) Parity with NRIs in respect of all facilities available to the later in the economic, financial and educational fields except in matters relating to the acquisition of agricultural / plantation properties. No parity shall be allowed in the sphere of political rights.</p>	<p>(1) A multiple entry multi-purpose life long visa for visiting India. (2) Exemption from registration with local police authority for any length of stay in India.</p> <p>(3) Parity with non resident Indians (NRIs) in respect of economics financial and educational fields except in relation to the acquisition of agricultural or plantation properties.</p> <p>No parity shall be allowed in the sphere of political rights. Any other benefit to OCIs will be notified by the Ministry of Overseas Indian Affairs (MOIA) under section 7B (1) of the Citizenship Act 1955.</p>
8. Does he/ she require visa for visiting India?	No	Yes and of specific type depending on his /her purpose of visit.	Can visit India without visa for 15 years from the date of issue of PIO card.	Can visit India without visa for life long.

9. Is he required to register with local police authorities in India ?	No	Yes	Yes one time when the stay in India exceeds 180 days for the first time	No
10. What activities can be undertaken in India?	All activities	Activity as specified in the visa	All activities except mountaineering, missionary and research work and existing PAP/RAP Which require specific permit.	All activities except mountaineering, missionary and research work and existing PAP/RAP Which require specific permit.
11. How can one acquire Indian citizenship?	He/she is an Indian citizen	As per section 5 (1) (a) & 5(1) (c) of the Citizenship Act, he/she has to reside in India for minimum 7 years before making application for granting Indian citizenship.	As per section 5 (1) (a) & 5(1) (c) of the Citizenship Act, he/she has to reside in India for minimum 7 years before making application for granting Indian citizenship.	Registered OCI may be granted Indian citizenship after 5 years from date of registration provided he/she stays for one year in India before making application.

# PIO CARD

The Government of India has revised the PIO Card, Scheme, which was launched in 1999, aimed at making the journey back to your roots, simpler, easier, flexible and absolutely hassle free. The PIO card will entitle you a set of privileges.

## Who is Eligible?

Any person:

- who at any time held an Indian Passport; or
- he/she or either of his/her parents or grand parents or great grand parents was born in an permanently resident in India as defined in the Government of India Act, 1935 and other territories that became part of India thereafter provided neither was at any time a citizen of any country as may be specified by Central Government from time to time; or
- who is a spouse of a citizen of India or a Person of Indian Origin as mentioned above.

The scheme is broad-based, covers up to four generations and also the foreign spouse of a citizen of India or a PIO

What Benefits accrue to a PIO card Holder

\*No visa required for visiting India.

\*No separate “Student Visa” or “Employment Visa” required for admissions in Colleges/ Institutions or for taking up employment respectively.

\* A PIO Card holder will be exempt from the requirement of registration if his stay on any single visit in India does not exceed 180 days.

- In the event of continuous stay in India of the PIO Card holder exceeding 180 days, he/she shall have to get himself/herself registered within 30 days of the expiry of 180 days with the concerned Foreigners Regional Registration Officer / Foreigners Registration Officer
- Parity with non-resident Indians in respect of facilities available to the latter in economic, financial and educational field.
- All PIOs including PIO Card holders shall enjoy parity with NRIs in respect of all facilities in the matter of acquisition, holding, transfer and disposal of immovable properties in India except in matters relating to the acquisition of agricultural/plantation properties. No parity shall be allowed in the sphere of political rights.
- Facilities available to children of NRIs for getting admission to educational institutions in India including medical colleges, engineering colleges, Institute of Technology, Institute of Management, etc. under the general categories.
- Facilities available under the various housing scheme of LIC, State Government and other Government Agencies.
- Special counters at the immigration check posts for speedy clearance.

## How to apply?

An application for issue/renewal of a PIO Card shall be made in the prescribed form and shall be accompanied by documentary evidence to show that the applicant is a person of Indian origin as defined. Prescribed application form can be obtained from the office of Indian Embassies

abroad, Foreign Regional Registration Officer, Delhi/Mumbai/Kolkata/Chennai/ Amritsar and also from the Ministry of Home Affairs, Foreigners Division, Lok Nayak Bhawan, Khan Market, New Delhi-110 003.

### **Where to apply for the PIO card**

- (i) An application for issue of a PIO Card shall be made to an Indian Mission in the country where the applicant is ordinarily resident.
- (ii) Applications already in India on Long Term Visa (more than one year) shall make the application for issue of a PIO Card to the following authorities:-

(A) Those residing in :-

- (a) Delhi: - Foreigners Regional Registration Officer, Level -II, East Block VIII, R.K. Puram Sector – I, New Delhi.
- (b) Mumbai: - Foreigners Regional Registration Officer, Annexe – II, Commissioner of Police, Crawford Market, Mumbai – 400001.
- (c) Kolkata: - Foreigners Regional Registration Officer, 237, Acharya Jagdish Chandra Bose Road, Kolkata – 700020.
- (d) Amritsar: - Additional Deputy Director, Bureau of Immigration,

B/123 Ranjeet Avenue, Amritsar.

- (e) Chennai: - Chief Immigration Officer, Bureau of Immigration, Shastri Bhavan Annex, No. 26, Haddows Road, Chennai – 600006.  
(Those residing in areas other than (A) above :-  
Joint Secretary (Foreigners), Ministry of Home Affairs,

Jaisalmer House, 26, Man Singh Road, New Delhi – 110011.

### **What is the validity of the PIO card?**

A PIO Card shall be valid for a period of fifteen years from the date of issue subject to the validity of the passport of the applicant.

### **What is the fee payable for obtaining the PIO card**

The fee for a PIO Card would be Rs. 15000/- (or its equivalent in local foreign currency of the country concerned), payable alongwith the application. PIO Card to children upto the age of 18 years will be issued at a fee of Rs. 7,500/- (or its equivalent in local foreign currency of the country concerned) for a fifteen year card.

### **Mode of payment of fee**

The prescribed fee shall be paid by way of a Demand Draft in favour of the Indian Mission Concerned / FRRO, Delhi, Mumbai, Kolkata, Amritsar and CHIO, Chennai, where the application for issue of PIO-Card is required to be submitted. Applications required to be submitted to Joint Secretary, (foreigners), Ministry of Home Affairs, Jaisalmer House, 26, Man Singh Road, New Delhi - 110011, shall be accompanied with a Bank Draft of the required amount drawn in favour of FRRO, Delhi.

### **What will be the status of PIO cards issued earlier as per PIO card Scheme (1999)**

PIO Cards issued earlier for US \$ 1000 will continue to remain valid and no refund shall be admissible.. However, the validity of such cards shall be extendable by 10 more years without charging any fee.

### **Who are eligible for issue of gratis PIO card**

Gratis PIO Card may be issued to an exceptionally eminent person of Indian Origin who plays an important role in building bridges between India and the country of his/her adoption, if he/she expresses a desire to obtain the PIO Card.

#### **Acquisition of Duplicate PIO Card in case of loss etc:**

On a request supported by FIR and other documents, a duplicate PIO card shall be issued on depositing a fee of US \$ 100. Duplicate PIO cards will be issued by the same office that issued the original one.

# FOREIGN CONTRIBUTION (REGULATION) ACT, 1976

## INTRODUCTION

Foreign Contribution (Regulation) Act, 1976 (FCRA) was enacted in the year 1976 with the prime objective of regulating the acceptance and utilization of foreign contribution and foreign hospitality by persons and associations working in the important areas of national life. The focus of this Act is to ensure that the foreign contribution and foreign hospitality is not utilized to affect or influence electoral politics, public servants, judges and other people working the important areas of national life like journalists, printers and publishers of newspapers, etc. The Act also seeks to regulate flow of foreign funds to voluntary organizations with objective of preventing any possible diversion of such funds towards activities detrimental to the national interest and to ensure that such individuals and organizations may function in a manner consistent with the values of sovereign democratic republic.

The organizations seeking foreign contributions for definite cultural, social, economic, educational or religious programmes may either obtain registration or prior permission to receive foreign contribution from Ministry of Home Affairs by making application in the prescribed format and furnishing details of the activities and audited accounts. The registration is granted only to such association, which has proven track record of functioning in the chosen field of work during last three years, and after registration, such organization is free to receive foreign contribution from any foreign source for stated objectives. Registration is granted only after thorough security vetting of the activities and antecedents of the organization and office bearers thereof. However, such organizations

which are newly established and do not have proven track record of functioning may also receive foreign contribution for specific activities, for a specific purpose and from a specific source after seeking project based prior permission (PP) from the Ministry of Home Affairs.

In order to bring in transparency in the administration of the Foreign Contribution (Regulation) Act, 1976 and the Rules framed there under, improve the functioning, disseminate the information and enhance user friendliness of the various procedures the web-site is uploaded with all the FCRA forms, Citizens' Charter, list of registered associations, State-wise status of application for registration/ prior permission, etc. In our efforts to bring in further improvements in the system, the following additional charters/ materials are uploaded for information and guidance of all concerned:

- Citizens charter
- Charter for NGO/Associations applying for grant of Prior permission/ Registration under the FCRA.
- Charter for NGOs/Associations granted Prior permission/Registration under the FCRA.
- Charter for the Chartered Accountants.
- Charter for the Banks.
- Dealing officers

## Citizens Charter

## Receipt of Foreign Contribution

The provisions of the Foreign Contribution (Regulation) Act, 1976 regulate the receipt of foreign contribution in the country. The Foreign

Contribution (Regulation) Rules 1976 contain the various forms prescribed for this purpose.

### **What is Foreign Contribution**

Foreign contribution means the donation, delivery or transfer, made by any foreign source of any,

- a) Article, not given to a person as a gift, for personal use, if the market value, in India, of such article exceeds one thousand rupees;
- b) Currency, whether Indian or foreign; or,
- c) Foreign security as defined in clause 2(i) of the Foreign Exchange Regulation Act, 1973.

**NOTE:** Contributions made by a citizen of India living in another country, from his personal savings, through the normal banking channels, is not treated as foreign contribution. It is advisable to obtain the passport details of the concerned citizen of India before accepting such contributions.

### **What is a Foreign Source**

Foreign source means the government of any foreign country or territory or its agency; international agency; a foreign company; citizen of a foreign country. For more details see section 2(1)(e) of the Foreign Contribution (Regulation) Act, 1976.

### **Who cannot Receive Foreign Contribution**

Foreign contribution cannot be accepted by a candidate for election; correspondent, columnist, cartoonist, editor, owner, printer or publisher of a registered newspaper; judge, government servant or employee of any corporation; member of any legislature; political party or office bearer thereof.

### **Who can Receive Foreign Contribution**

An association having a definite cultural, economic, educational, religious or social programme can receive foreign contribution after it obtains the prior permission of the Central Government, or gets itself registered with the Central Government.

### **Forms Prescribed for this Purpose**

An application for seeking prior permission to accept foreign contribution is to be made in Form FC – 1A and for grant of registration in Form FC – 8 respectively.

### **Designated Bank Account**

An association granted prior permission or registration under the Act can receive the foreign contribution and subsequently utilise it using a single designated bank account, as intimated in the application form. Do not deposit any local funds in this bank account.

### **Maintenance of Accounts**

An association granted prior permission or registration under the Act must maintain a separate set of accounts and records exclusively for the foreign contribution received and utilised in the prescribed manner. For more details see rule 8 of the Foreign Contribution (Regulation) Rules, 1976.

### **Receipt of Scholarships etc**

A citizen of India receiving any scholarship, stipend or any payment of a like nature from any foreign source is required to give, within thirty days of such a receipt, an intimation

to the Central Government as to the amount of the scholarship, stipend or other payment received; the foreign source from which and the purpose for which, such scholarship, stipend or other payment has been, or is being received. The intimation is to be given in Form FC – 5.

### **Time Taken to Dispose Application**

An application for registration is normally disposed within six months. An application seeking prior permission is disposed within 90/120 days. It is advisable to obtain a certificate, in the format incorporated at the end of the application form, from any of the competent authority mentioned therein viz., Any concerned Collector of District; Department of the State Government; Ministry / Department of the Government of India.

### **Where should the Application be Sent**

An application (one copy only) for seeking prior permission or registration is to be sent by registered post to the Secretary, Ministry of Home Affairs, Foreigners Division, Jaisalmer House, 26 Man Singh Road, New Delhi 110011.

### **Proper Filing of Application**

Please familiarise yourself with the provisions of the Foreign Contribution (Regulation) Act, 1976 and the Foreign Contribution (Regulation) Rules, 1976 before making an application. Please fill the relevant application form with due care. Ensure that you furnish information exactly in the manner stated in the form. An incomplete application will be summarily rejected.

### **Filing of Returns**

An association permitted to accept foreign contribution is required to submit an annual return, duly certified by a Chartered Accountant, giving details of the receipt and purpose-wise utilization of the foreign contribution. The return is to be filed for every year (1st April to 31st March) within a period of four months from the closure of the year i.e. by 31st July of each year. The return is to be submitted, in duplicate, in Form FC–3. It is to be accompanied with the balance sheet and statement of receipt and payment, duly certified by a Chartered Accountant, also in duplicate.

### **Availability of Forms**

Please use the correct and current form. The forms can be obtained, free of cost, from the above-mentioned address. The forms are also available on the Ministry of Home Affairs' web site – <http://mha.nic.in/fore.htm>

### **Penalties for Violation**

Whoever accepts, or assists any person, political party or organisation in accepting any foreign contribution or any currency from a foreign source, in contravention of the provisions of the Foreign Contribution (Regulation) Act, 1976, or the rules made thereunder, shall be punished with imprisonment for a term, which may extend to five years, or with fine or with both. "All the above services & commitments will be honoured without the citizens having to pay any bribe."

**Charter for Ngos/Associations  
Applying For Grant of Prior Permission  
/Registration under the Foreign  
Contribution (Regulation) Act, 1976.**

- Any NGO wishing to receive Foreign Contribution (FC) must have a definite cultural, economic, educational, religious or social programme.
- It shall neither receive nor utilise any FC without obtaining either prior permission or registration from the Central Government.
- Details of FC received prior to obtaining either prior permission or registration should be mentioned clearly at the time of applying for prior permission or registration, as the case may be.
- An application for seeking prior permission to accept foreign contribution is to be made in Form FC- 1A, and for grant of registration in Form FC-8, respectively. The forms can be downloaded from Ministry of Home Affairs Web Site at [http:// mha.nic.in/fcra.htm](http://mha.nic.in/fcra.htm)
- The application should be complete in all respects and no column should be left blank.
- Each Prior permission application should be sent for receiving a specific amount, for a specific purpose and from a specific donor. The donor's commitment letter specifying the amount of FC and copy of project for which FC is solicited should invariably be sent along with the FC-1A form.
- Copies of following documents are required to be sent along with FC-1A and FC-8 form.
  1. Copy of certificate of registration issued under the Societies Registration Act, 1860 or Trust deed,

- as the case may be;
- 2. Details of activities during the last three years;
- 3. Copies of audited statement of accounts for the past three years (Asset and Liabilities, Receipt and Payment, Income and Expenditure);
- 4. If any printed work is brought out by the association, a certificate from the Press Registrar that the publication is not a newspaper in terms of section 1(1) of the Press Registration of Books Act, 1867.

**Charter for Ngos / Associations Granted  
Prior Permission or Registration Under  
the Foreign Contribution (Regulation)  
Act, 1976.**

- An association granted prior permission or registration under the Foreign Contribution (Regulation) Act, 1976 (FCRA) should receive the FC and subsequently utilise it using an exclusive designated bank account, as intimated in the application form. Do not deposit any local funds in this bank account.
- An association granted prior permission or registration under FCRA is required to carry out the activities, for which FC is received, in India only and the amount should not be utilised for purposes other than for which it is received.
- Any fixed asset acquired out of the FC and any article received in kind from the foreign source should be in the name of the association and not in the name of any individual in the association.
- Not more than 30% of the FC shall be defrayed to meet administrative expenses of the association.
- An association granted prior permission or registration under FCRA should

- maintain a separate set of accounts and records, exclusively for foreign contribution received and utilised.
- i. In Form FC-6, where the FC relates only to articles;
  - ii. In the cash book and ledger account on double entry basis, where the FC relates to currency received and utilised.
  - iii. In Form FC-7, where the FC relates to foreign securities.
  - Every accountgiving details of the receipt and purpose-wise utilisation of the FC, including the interest earned on the FC amount, should be maintained on an yearly basis, commencing on the 1st day of April each year and every such yearly account, duly certified by a chartered accountant in Form FC-3 along with a balance sheet and statement of receipt and payment should be furnished in duplicate, within four months of the closure of the year i.e. before 31st July. Even if no FC is received during a year, a 'Nil' return is required to be filed with the Ministry of Home Affairs within the prescribed time limit.
  - No FC should be transferred to an association, which has not obtained either prior permission or registration under FCRA or to any person or association, prohibited under FCRA from receiving any FC.
  - Change of name, address, registration, nature of activities or aims and objectives of an association should be intimated to the Ministry of Home Affairs within 30 days of effecting the change, alongwith the documentary evidence effecting the change.
  - Prior permission of Ministry of Home Affairs should be obtained for replacing 50% or more of the office bearers.
  - Prior permission of Ministry of Home Affairs should be obtained for changing bank account for valid and convincing reasons.
  - The forms can be downloaded from Ministry of Home Affairs Web Site at <http://mha.nic.in/fcra.htm>.

### **Charter for the Chartered Accountants**

Since the FCRA Act, 1976 is national security legislation; NGOs are required to exercise extreme care and caution in dealing with foreign contribution from the time of its receipt to its final utilization. As the Chartered Accountants (CA's) audit the accounts of the NGOs and they certify the accounts before being submitted to the FCRA division, CA's are required to provide meaningful guidance to the NGOs.

- To verify whether the associations are eligible to receive foreign contribution
- To guide the applicant organization to apply to the Home Ministry for necessary registration / prior permission;
- To assist in the proper maintenance of prescribed books of accounts;
- To furnish the required certificate in the prescribed format after careful scrutiny of the accounts of the NGO;
- Before certifying the accounts of an association in FC-3 returns, the CA concerned must ensure that they have been prepared in accordance with the provisions of FC(R) Act, 1976 and Rules framed thereunder.

### **Charter for the Banks**

- No bank should credit any foreign contribution to the account of an association/NGO unless it produces documentary evidence of having obtained registration/prior permission from the Central Government for the same.

- In case any foreign contribution is credited to the account of an NGO/ Association/Trust directly, the bank should not allow utilization of such fund and inform the NGO/ Association/ Trust concerned to obtain necessary permission/registration from the Central Government for the same. Simultaneously, the bank should inform the Deputy Secretary (FCRA), Ministry of Home Affairs, Govt. of India, New Delhi about such receipt.
- Non-compliance of the above by the bank will constitute a violation and will render the defaulting bank liable for appropriate action by the Reserve Bank of India.

**Checklist for Ensuring Proper Submission of Applications, Under the Provisions of the Foreign Contribution (Regulation) Act, 1976, for Acceptance of Foreign Contribution**

**Eligible Category**

An association with a definite cultural, economic, educational, religious or social programme.

**Types of Permission**

- (i) Registration under section 6(1)(a); and,
- (ii) Prior permission under section 6 (1A).

**Application Form**

- (i) For grant of registration in form FC- 8 and,
- (ii) For grant of prior permission in form FC-1A.

## Essential Requirements

### (A) Bank Account

Open a separate bank account for the receipt and utilisation of foreign contribution in a bank of your choice and furnish particulars of the same at the appropriate place.

**Note:** Do not deposit any local funds, other than the essential initial deposit specified by the bank for opening an account, in this account.

### (B) Documents

Remember to enclose copies of the following documents with your application –

- a) Certified copy of registration certificate or Trust deed, as the case may be;
- b) Details of activities during the last three years;
- c) Copies of audited statement of accounts for the past three years (Asset and Liabilities, Receipt and Payment, Income and Expenditure);
- d) Commitment letter from foreign donor specifying the amount of foreign contribution (only with prior permission application);
- e) Copy of project for which foreign contribution was solicited is being offered (only with prior permission application);
- f) If functioning as editor, owner, printer or publisher of a publication registered under the Press and Registration of Books Act, 1867, a certificate from the Press Registrar that the publication is not a newspaper in terms of section 1(1) of the said Act.

## Miscellaneous

Furnish information exactly in the manner asked for in the form, especially the names and addresses of the members of the Executive Committee/Governing Council etc. The forms can be downloaded from Ministry of Home Affairs Web Site at <http://mha.nic.in/fcra/intro/forms.htm>

## Chartered Accountants / Banks

Chartered Accountants, before certifying the accounts of an association in form FC – 3, must ensure that they have been prepared in accordance with the provisions of the Foreign Contribution (Regulation) Act, 1976 and the Rules framed thereunder.

No bank should credit any foreign contribution to the account of an association/ organisation unless it produces documentary proof of having obtained registration/prior permission from the Central Government for the same. Crediting of foreign contribution by a bank to the account of an association / organisation that has not obtained registration or prior permission from the Central Government constitutes a violation and will render the defaulting bank liable for action by the Reserve Bank of India.

## Common Ground for Rejection of Application Under FCRA

To remove certain lacunae noticed during administration of the FCRA and the Rules made there under, certain guidelines were laid down for considering applications for grant of prior permission /registration under the Act. Some of the common grounds for rejection of applications are enlisted below as illustrations to bring in transparency and benefit the applicants in taking due care and caution:

- If the association is not registered under the Societies Registration Act, 1860 or Indian Trusts Act, 1882 or section 25 of the Companies Act, 1956.
- If any of the office bearers/trustees, including the chief functionary is a foreign national, other than of Indian origin.
- If the association has a single office bearer/member.
- If the association is found to have been formed for personal gain or for diversion of the funds for undesirable purposes.
- If the association is found to be fictitious or ‘benami’ in nature.
- If the credibility of any member of the governing body is in doubt.
- If the association has close links with another association which has been refused registration under FCRA or prohibited under FCRA or violated the provisions of FCRA.
- If the association has links with any banned organization.
- If the principal office bearers of the association have been convicted by any court of law under any act or if a prosecution for any offence is pending against them.
- If the principal office bearers of the association have been found guilty of diversion or misutilisation of funds of the said association or any other association in the past.
- If the activities of the association are found to be aimed at conversion through inducement or force, either directly or indirectly, from one religious faith to another.
- If the association is found to be propagate sedition or to advocate violent methods to achieve its ends.

- If the association is found to be creating communal tensions or disharmony.
- If the office bearers of the association are also office bearers of another association and one of these associations has come to adverse notice.
- If the association's printed work is not certified by the Press registrar of India not to be a newspaper in terms of section 1(1) of the Press Registration of Books Act, 1867.
- If the source of foreign contribution is found to be adverse to the interests of the country.
- If the acceptance of foreign contribution by the association is likely to be prejudicial to (a) the sovereignty and integrity of India; (b) free and fair election to any Legislature or House of Parliament; (c) public interest; (d) friendly relations with a foreign state; or (e) harmony between any religious, social, linguistic, regional groups, caste or community.
- If the association has not filed its annual FC-3 returns, of receipt and utilization of foreign contribution received with prior permission, within the stipulated period.
- If the association has violated any provisions of the Act or Rules in the preceding three years and the said violation has not been remedied or rectified.
- during the preceding three years.
- If the association has not made any substantial contribution, excluding expenditure on administration, (Rs.6,00,000 over a period of three years or Rs.2,00,000 per year) in its field of interest.

### **Additional Grounds for Rejection of Applications for Prior Permission**

- If the application is not accompanied by the 'commitment letter' of the donor.
- If the application is not accompanied by the copy of project for which foreign contribution was solicited/is being offered.

### **Frequently Asked Questions (FAQs)**

#### **Q.1. What is foreign contribution?**

- A.1. Foreign contribution means the donation, delivery or transfer, made by any foreign source of any,
- a) Article, not given to a person as a gift for personal use, if the market value, in India, of such article exceeds one thousand rupees;
  - b) Currency, whether Indian or foreign; or
  - c) Foreign security

#### **Q.2. What is foreign source?**

- A.2. Foreign source includes the Government of any foreign country or territory or its agency; an international agency; a foreign company; and citizen of a foreign country. Agencies of the United Nations, World Bank and some other International agencies/multilateral organisations are exempted from the definition of 'foreign source'. List of such exempted agencies/ organisations is available on the website <http://mha.nic.in/fore.htm>

### **Additional Grounds for Rejection of Applications for Registration**

- If the association is not in existence for three years at least.
- If the association has not carried on any activity in chosen field during the last three years.
- If the association has not received foreign contribution with prior permission,

**Q.3. Whether donation given by Non-Resident Indians (NRIs) is treated as 'foreign contribution'?**

A.3. Contributions made by a citizen of India living in another country (i.e. Non-Resident Indian), from his personal saving, through the normal banking channels, is not treated as foreign contribution. However, while accepting any donations from such NRI, it is advisable to obtain his passport details to ascertain that he/ she is an Indian passport holder.

**Q.4. Whether donations by person of Indian Origin (PIO) Card holder or Persons of Indian Origin (PIO) who hold other country's passports or registered Overseas Citizens of India (OCI) would be considered 'foreign source'?**

A.4. Yes, because persons under all these three categories are foreign nationals and hold passports of the country of their nationality.

**Q.5. Whether foreigners can be appointed as Executive Committee members?**

A.5. Foreign nationals are generally discouraged from being appointed as member of Executive Committee by an association. However, foreign nationals, fulfilling the following conditions, may be appointed as Executive Committee members, after obtaining prior permission of the Central Government:

- a) The foreigner is married to an Indian citizen;
- b) The foreigner has been living and working in India for at least five years;
- c) The foreigner has made available

his/her specialised knowledge, especially in the medical and health related fields on a voluntary basis in India, in the past;

- d) The foreigner is part of the Board of Trustees/Executive Committee in terms of the provisions in an inter governmental agreement;
- e) The foreigner is part of the Board of Trustee/Executive Committee, in an ex-officio capacity representing a multilateral body which is exempted from the definition of foreign source.

The need for such an appointment should, however, be adequately justified.

**Q.6. Who can receive foreign contribution?**

A.6. An association having a definite cultural, economic, educational, religious or social programme can receive foreign contribution after it obtains the prior permission of the Central Government, or gets itself registered with the Central Government. An illustrative but not exhaustive list of activities which are permissible and may be carried out by associations of different nature are available on the website <http://mha.nic.in/fore.him>

**Q.7. Who cannot receive foreign contribution?**

A.7. Foreign contribution cannot be accepted by:

- i. A candidate for election;
- ii. Correspondent, columnist, cartoonist, editor, owner, printer or publisher of a registered newspaper;

- iii. Judge, Government servant or employee of any Corporation;
- iv Member of any legislature;
- v Political party or office bearer thereof; and
- vi. Individuals or associations specifically notified under section 10 (a) of foreign contribution (Regulation) Act, 1976 who have been prohibited from receiving foreign contribution.

**Q.8. Can foreign contribution be received in and utilised from multiple Bank Accounts?**

- A.8. No, All foreign contribution should be received in and utilised from same single Bank Account mentioned in the order for registration or prior permission granted by MHA. This account number is same as has been intimated by the organisation in their application for registration/prior permission. Use of multiple bank accounts is legally prohibited.

**Q.9. Can foreign contribution be mixed with local receipts?**

- A.9. No, foreign contribution should not be mixed with local funds being handled by the organisation.

**Q.10. Can foreign contribution be received in rupees?**

- A.10 Yes. Any amount received from 'foreign source' in rupees or foreign currency is construed as 'foreign contribution' under law. Such transactions even in rupees term are considered foreign contribution.

**Q.11. Will interest earned from foreign contribution be considered foreign contribution?**

- A.11. Yes.

**Q.12. What is the Procedure for change of designated Bank Account?**

- A.12. For the change of Bank account, an application in prescribed form mentioning the details if the old bank account and the proposed new bank account alongwith justification for change may be submitted to MHA alongwith copy of resolution of the executive committee for such change. This form is available on website <http://mha.nic.in/fore.htm>. This new account may be made operational only after seeking MHA's approval.

**Q.13. What are the eligibility criteria for registration?**

- A.13. An organisation in formative stage is not eligible for registration. Such organisation may apply for grant of prior permission under the law. For grant of registration, the association should:
- a) be registered under the Societies Registration Act, 1860 or the Indian Trusts Act, 1882 or section 25 of the Companies Act, 1956;
  - b) be in existence for at least three years and have made significant contribution in chosen area of activity. For this purpose, the association should have spent at least Rs. 6,00,000 over last three years on its activities, excluding administrative expenditure. Statement of Income

& Expenditure duly audited by Chartered Accountant for last three years may be enclosed to substantiate financial parameter.

**Q.14. Whether recommendation of District Collector, etc. is mandatory?**

A.14. No, Submission of verification certificate from the District Collector, etc. is not mandatory. However, in certain cases, if the area of activity of an association is in non-border/coastal/tribal region and amount applied for prior permission is less than Rs.50 lakhs, submission of such a certificate assists in speedy clearance of the application

**Q.15. What are the eligibility criteria for grant of prior permission?**

A.15. Prior permission is granted for receipt of specific amount from specific donor for carrying out specific activities/projects. For this purpose, the association should:

- A.15. a) be registered under the Societies Registration Act, 1860 or the Indian Trusts Act, 1882 or section 25 of the Companies Act, 1956;
- b) submit commitment letter from the donor; and
- c) submit copy of project for which foreign contribution is solicited/is being offered.

**Q.16. What are the documents to be enclosed with the application?**

- A.16. i. Following documents should be enclosed with the application for grant of registration:
  - a) certified copy of registration certificate or Trust deed, as the case

- may be;
- b) details of activities during last three years;
- c) copies of audited statement of accounts for the past three years (Assets and Liabilities, Receipt and Payment, Income and Expenditure);
- d) if functioning as editor, owner, printer or publisher of a publication registered under the Press and Registration of Books Act, 1867, a certificate from the Press Registrar that the publication is not a newspaper in terms of section 1(1) of the said Act.
- ii. Following documents should be enclosed with the application for grant of prior permission:
  - a) certified copy of registration certificate or Trust deed, as the case may be;
  - b) commitment letter from foreign donor specifying the amount of foreign contribution;
  - c) copy of project for which foreign contribution was solicited/is being offered;
  - d) if functioning as editor, owner, printer or publisher of a publication registered under the Press and Registration of Books Act, 1867, a certificate from the Press Registrar that the publication is not a newspaper in terms of section 1(1) of the said Act.

**Q.17. Is there any restriction on transfer of funds to other organizations?**

- A.17. Yes, No foreign contribution can be transferred from an association granted registration or prior permission under FCRA to another association unless the

letter has also obtained either registration or prior permission under FCRA.

**Q.18. How to find the status of pending application for registration/prior permission?**

- A.18. Status of pending application for grant of registration or prior permission may be checked on line from the Ministry of Home Affairs website <http://mha.nic.in/fore.htm>. One needs to fill in the numbers on acknowledgement letter or any correspondence from MHA (Foreigners Division) in the blank format, which pops on the screen after selection of status enquiry icon (registration/prior permission, as the case may be).

**Q.19. What is the procedure to be followed by a Liaison Office to receive foreign contribution?**

- A.19. Prior permission under FCRA is required by a Liaison Office of a foreign company for receiving remittances from its Head Office abroad for conducting conferences or carrying out other activities/ programmes, etc. in India.

**Q.20. What is the procedure for filing of FC -3 returns ?**

- A.20. An association permitted to accept foreign contribution is required under law to maintain separate set of accounts and records exclusively for the foreign contribution received and utilized and submit an annual return, duly certified by a Chartered Accountant, giving details of the receipt and purpose-wise utilization of the foreign contribution. The return is to be filed for every financial year (1st April to 31st March) within a period of four months from

the closure of the year i.e. by 31st July of the year. Submission of even a 'Nil' return if there is no receipt/utilization of foreign contribution during the year, is mandatory, under law.

The return is to be submitted, in prescribed Form FC-3, duly accompanied with the balance sheet and statement of receipt and payment, which is certified by a Chartered Accountant. The form is available on MHA's website – <http://mha.nic.in/fore.htm>

**Q.21. What is foreign hospitality?**

- A.21. Foreign hospitality means any offer, not being a purely casual one, made by a foreign source for providing a person with the cost of travel to any foreign country or territory or with free board, lodging, transport or medical treatment.

**Q.22. Who cannot accept foreign hospitality without prior approval of MHA ?**

- A.22. No member of a legislature, office bearer of a political party, judge, Government servant or employee of any corporation shall, while visiting

**Q.23. How one can seek permission of the Government for receiving foreign hospitality?**

- A.23. Application form (form FC-2) for his purpose is available on MHA's website – <http://mha.nic.in/fore.htm>. One must apply on this form through the controlling officer at least three weeks in advance to seek prior approval of the Government for receiving foreign hospitality.

**Q.24. Where should the applications be sent?**

A.24. All applications be sent to the Secretary, Ministry of Home Affairs, Foreigners, Division, Jaisalmer House, 26, Man Singh Road, New Delhi – 110011. The forms can be downloaded from the website–<http://mha.nic.in/fore.htm>.

**Q.25. What is the procedure for seeking change in the name/address of the association?**

A.25. For seeking change in the name/ address of the association, one should use the prescribed form available on MHA's web-site – <http://mha.nic.in/fore.htm>.

**Q. 26. Who should be contacted for any information on FCRA?**

A.26. Names of the officers, their contact details including telephone numbers are available on MHA's web-site – <http://mha.nic.in/fore.htm>.

**Q.27. Which other materials on FCRA are available on the MHA's website?**

A.27. Following material on FCRA are available on MHA's web-site – <http://mha.nic.in/fore.htm>.

1. Foreign Contribution (Regulation) Act, 1976
2. Foreign Contribution (Regulation) Rules, 1976
3. Citizens charter, Charter for NGOs/ Associations applying for grant of prior permission/ registration under FCRA
4. Charter for NGOs/ Associations granted prior permission/ registrations under FCRA
5. Charter for the Chartered Accountants
6. Charter for the Banks
7. Illustrative programmes permitted to

be carried out by association having different nature.

8. Check List for ensuring proper submission of applications
9. Agencies not covered by the definition of 'foreign source'
10. Common grounds for rejection of applications
11. Details of registered associations
12. On-Line status of pending applications
13. Annual summary on FCRA, FC forms
14. List of associations placed in prohibited category/prior permission category u/s 6(1), 10 (a) and 10 (b) of the Act
15. Directory of officers dealing with FCRA.

**Q.28. Can an organization, whose violation under FCRA has been condoned, apply for registration/ prior permission?**

A.28. After the violation committed by an association has been condoned, the association can apply for prior permission (PP) only by submitting an application in form FC 1-A. Once the PP has been granted and foreign contribution received for specific purpose has been fully/partially utilised and organisation has submitted annual FC3 returns and accounts in prescribed format pertaining to the PP, it becomes eligible for consideration of registration under FCRA. Registration would be granted under FCRA, if other parameters are fulfilled by the association.

**Q.29. Can NGOs use the foreign contributions for investment in Mutual Funds and other speculative investments?**

A.29. No. The foreign contributions received after prior permission/grant of registration under the Act are to utilise for the purpose for which they have been received and they are not to be invested in any speculative investments. Further, it is clarified that foreign contributions can be received through a single Bank Account designated for the purpose under the order for registration/prior permission or changed thereafter with prior approval of the Government.

**Q.30. Whether Capital Assets purchased with the help of foreign contributions can be acquired in the name of the office bearers of the association?**

A.30. No. Every assets acquired out of foreign contributions should be acquired and possessed in the name of the association since association has a separate legal entity distinct from its members.

**Q.31. Can the NGOs/Trusts invest in profitable ventures and proceeds can be utilised for welfare activities?**

A.31. No. The NGOs/Trusts should utilise the funds for the welfare purpose or related activities for which it is received. The utilization should be in line with the objectives of the association. However, foreign contributions can be utilised for self-sustaining activities, not meant for commercial purposes.

**Q.32. Whether interest earned out of foreign contribution be shown as fresh foreign contribution receipt during that year or not?**

A.32. Yes, the interest earned out of such deposit should be shown as second/subsequent foreign contribution receipt in the FC-3 returns during the year in which it is earned.

**Q.33. Whether grant received from MNCs be treated as FC or not?**

A.33. If the funds are received from an Indian Company incorporated under the Company Act, 1956 the same will not be treated as foreign contribution. But if the ownership and control rights of the company are vested in foreign source, it will be treated as foreign contribution.

**Q.34. If an application for registration is submitted on-line by an NGO, does it need to submit the application in physical form also?**

A.34. Yes. When an application is filed on-line, a printout of the same may be taken after submission and thereafter, it should be submitted alongwith the requisite enclosure, duly signed, to Ministry of Home Affairs.

**Q.35. Can the fee paid by the Foreign delegates/participants attending/participating in a conference/seminar etc. be termed as foreign contribution and thus require permission from FCRA?**

A.35. Foreign delegates/participants paying “delegate & participation fees” in foreign currency for participation in a conference, seminar which is utilized for the purpose of meeting the expenditure of hosting the conference/seminar is not treated as foreign contribution and as such no permission under FCRA is required.

# SPECIAL ECONOMIC ZONES

## INTRODUCTION

India was one of the first in Asia to recognize the effectiveness of the Export Processing Zone (EPZ) model in promoting exports, with Asia's first EPZ set up in Kandla in 1965. With a view to overcome the shortcomings experienced on account of the multiplicity of controls and clearances; absence of world-class infrastructure, and an unstable fiscal regime and with a view to attract larger foreign investment in India, the Special Economic Zone (SEZs) policy was announced in April 2000.

The policy intended to make SEZs an engine for economic growth supported by quality infrastructure complemented by an attractive fiscal package, both at the Centre and State level, with the minimum possible regulations. SEZs in India functioned from 1.11.2000. to 09.02.2006 under the provisions of the Foreign Trade Policy and fiscal incentives were made effective through the provisions of relevant statutes.

To instill confidence in investors and signal the Government's commitment to a stable SEZ policy regime and with a view to impart stability to the SEZ regime thereby generating greater economic activity and employment through the establishment of SEZs, a comprehensive draft SEZ Bill prepared after extensive discussions with the stakeholders. A number of meetings were held in various parts of the country both by the Minister for Commerce and Industry as well as senior officials for this purpose. The Special Economic Zones Act, 2005, was passed by Parliament in May, 2005 which received Presidential assent on the 23rd of June, 2005. The draft SEZ Rules were widely discussed and put on the website of the Department of Commerce

offering suggestions/comments. Around 800 suggestions were received on the draft rules.

After extensive consultations the SEZ Act, 2005, supported by SEZ Rules, came into effect on 10th February 2006, providing for drastic simplification of procedures and for single window clearance on matters relating to central as well as state governments. The main objectives of the SEZ Act are:

- a) Generation of additional economic activity
- b) Promotion of exports of goods and services;
- c) Promotion of investment from domestic and foreign sources;
- d) Creation of employment opportunities;
- e) Development of infrastructure facilities;

It is expected that this will trigger a large flow of foreign and domestic investment in SEZs, in infrastructure and productive capacity, leading to generation of additional economic activity and creation of employment opportunities.

The SEZ Act 2005 envisages key role for the State Governments in export promotion and creation of related infrastructure. A single window SEZ approval mechanism has been provided through a 19 member inter-ministerial SEZ Board of approval (BOA). The application duly recommended by the respective State Government/UT Administration are considered by this BOA periodically. All decisions of the Board of approvals are with consensus.

The SEZ Rules provide for different minimum land requirement for different class of SEZs.

Every SEZ is divided into a processing area where alone the SEZ units would come up and the non-processing area where the supporting infrastructure is to be created.

The SEZ Rules provide for:

- Simplified procedure for development, operation, and maintenance of the Special Economic Zones and for setting up units and conducting business in SEZs;
- Single window clearance for setting up of an SEZ;
- Single window clearance for setting up a unit in a Special Economic Zone
- Single window clearance on matters relating to Central as well as State Governments;
- Simplified compliance procedures and documentation with an emphasis on self certification.

## Approval Mechanism and Administrative set up of SEZs

### (a) Approval Mechanism

The developer submits the proposal for establishment of SEZ to the concerned State Government. The State Government has to forward the proposal with its recommendation within 45 days from the date of receipt of such proposal to the Board of Approval. The applicant also has the option to submit the proposal directly to the Board of Approval.

The Board of Approval has been constituted by the Central Government in the exercise of the powers conferred under the SEZ Act. All the decisions are taken in the Board of Approval by consensus. The Board of Approval has 19 members. Its constitution is as follows:

1.	Secretary, Department of Commerce	Chairman
2.	Member, CBEC	Member
3.	Member, IT, CBDT	Member
4.	Joint Secretary (Banking Division) Department of Economic Affairs, Ministry of Finance	Member
5.	Joint Secretary (SEZ), Department of Commerce	Member
6.	Joint Secretary, DIPP	Member
7.	Joint Secretary, Ministry of Science and Technology	Member
8.	Joint Secretary, Ministry of Small Scale Industries and Agro and Rural Industries	Member
9.	Joint Secretary, Ministry of Home Affairs	Member
10.	Joint Secretary, Ministry of Defence	Member
11.	Joint Secretary, Ministry of Environment and Forests	Member
12.	Joint Secretary, Ministry of Law and Justice	Member
13.	Joint Secretary, Ministry of Overseas Indian Affairs	Member
14.	Joint Secretary, Ministry of Urban Developme	Member
15.	A nominee of the State Government concerned	Member

16.	Director General of Foreign Trade or his nominee	Member
17.	Development Commissioner concerned	Member
18.	A professor in the Indian Institute of Management or the Indian Institute of Foreign	Member
19.	Director or Deputy Secretary, Ministry of Commerce and Industry, Department of Commerce	Member Secretary

### (b) Administrative Set Up

The functioning of the SEZs is governed by a three tier administrative set up. The Board of approval is the apex body and is headed by the Secretary, Department of Commerce. The Approval Committee at the Zone level deals with approval of units in the SEZs and other related issues. Each Zone is headed by a Development Commissioner, who is ex-officio chairperson of the Approval Committee.

Once an SEZ has been approved by the Board of Approval and Central Government has notified the area of the SEZ, units are allowed to be set up in the SEZ. All the proposal for setting up of units in the SEZ are approved at the Zone level by the Approval Committee consisting of Development Commissioner, Customs Authorities and representatives of State Government. All post approval clearances including grant of importer-exporter code number, change in the name of the company or implementing agency, broad banding diversification, etc. are given at the Zone level by the Development Commissioner. The performance of the SEZ units are periodically monitored by the Approval Committee and units are liable for penal action under the provision of Foreign Trade (Development and Regulation) Act, in case of violation of the conditions of the approval.

### Incentive And Facilities offered to the SEZs

The incentives and facilities offered to the units in SEZs for attracting investments into the SEZs, including foreign investment include:-

- Duty free import/domestic procurement of goods for development, operation and maintenance of SEZ units.
- 100% Income Tax exemption on export income for SEZ units under Section 10AA of the Income Tax Act for first 5 years, 50% for next 5 years thereafter and 50% of the ploughed back export profit for next 5 years.
- Exemption from minimum alternative tax under section 115JB of the Income Tax Act.
- External commercial borrowing by SEZ units upto US \$500 million in a year without any maturity restriction through recognized banking channels.
- Exemption from Central Sales Tax.
- Exemption from Service Tax.
- Single window clearance for Central and State level approvals.
- Exemption from State Sales Tax and other levies as extended by the respective State Governments.

The major incentives and facilities available to **SEZ developers** include:

- Exemption from customs/excise duties for development of SEZs for authorized operations approved by the BOA.

- Income Tax exemption on export income for a block of 10 years in 15 years under section 80-IAB of the Income Tax Act.
- Exemption from minimum alternate tax under section 115JB of the Income Tax Act.
- Exemption from dividend distribution tax under section 115O of the Income Tax Act.
- Exemption from Central Sales Tax (CST).
- Exemption from Service Tax (Section 7, 26 and Second Schedule of the SEZ Act).

### **SEZ Approval Status**

Consequent upon the SEZ Rules coming into effect w.e.f. 10th February 2006, twenty eight meetings of the Board of Approvals have since been held. During these meetings, formal approval has been granted to 531 SEZ proposals. There are 143 valid in principle approvals. Out of the 531 formal approvals, 260 SEZs have been notified.

### **Land requirements for approved Special Economic Zones:**

The total land requirement for the formal approvals granted till date is approximately 67680 hectares out of which about 109 approvals are for State Industrial Development Corporations/ State Government Ventures which account for over 20853 hectares. In these cases, the land already available with the State Governments or SIDCs or with private companies has been utilized for setting up SEZ. The land for the 270 notified SEZs where operations have since commenced involved is approximately over 31405 hectares only.

Out of the total land area of 2973190 sq km in India, total agricultural land is of the order of 1620388 sq km (54.5%). It is interesting to note that out of this total land area, the land in possession of the 270 SEZs notified amounts to approximately over 314 sq km only. The formal approvals granted also works out to only around 676 sq km.

### **SEZs- leading to the growth of labour intensive manufacturing industry:**

Out of the 531 formal approvals given till date, 174 approvals are for sector specific and multi product SEZs for manufacture of Textiles & Apparels, Leather Footwear, Automobile components, Engineering etc.. which would involve labour intensive manufacturing. SEZs are going to lead to creation of employment for large number of unemployed rural youth. Nokia and Flextronics electronics hardware SEZs in Sriperumbudur are already providing employment to 14577 and 1058 persons. Hyderabad Gems SEZ for Jewellery manufacturing in Hyderabad has already employed 2145 persons. majority of whom are from landless families, after providing training to them. They have a projected direct employment for about 2267 persons. Apache SEZ being set up in Andhra Pradesh will employ 20,000 persons to manufacture 10,00,000 pairs of shoes every month. Current employment in Apache SEZ is 5536 persons. Brandix Apparels, a Sri Lankan FDI project would provide employment to 60,000 workers over a period of 3 years. Even in the services sector, 12.5 million sq meters space is expected in the IT/ITES SEZs which as per the NASSCOM standards translates into 12.5 lakh jobs. It is, therefore, expected that establishment of SEZs would lead to fast growth of labour intensive manufacturing and services in the country.

## Benefits Derived from SEZs

Benefits derived from SEZs are evident from the investment, employment, exports and infrastructural developments additionally generated. The benefits derived from multiplier effect of the investments and additional economic activity in the SEZs and the employment generated thus will far outweigh the tax exemptions and the losses on account of land acquisition. Stability in fiscal concession is absolutely essential to ensure credibility of Government intensions.

**(a) Exports from the Functioning SEZs during the Last Five Years are as under:**

Year (Rs. Crore)	Value	Growth rate (over the previous year)
2003-2004	13,854	39%
2004-2005	18,314	32%
2005-2006	22,840	25%
2006-2007	34,615	52%
2007-2008	66,638	92%

**b) Investment and Employment in the SEZs Set up Prior to the SEZ Act, 2005**

At present, 1943 units are in operation in the SEZs. In the SEZs established prior to the Act coming into force, there are 1143 units providing direct employment to over 1097 lakh persons; about 37% of whom are women. Private investment by entrepreneurs in these SEZs established prior to the SEZ Act is of the order of over Rs. 5626.24 crore.

**(c) Investment and Employment in the SEZs notified under the SEZ Act 2005:**

**Current investment and employment:**

Investment	Rs. 83450 Crores
Employment	1,13,426 Persons

**Impact of the Scheme**

The overwhelming response to the SEZ scheme is evident from the flow of investment and creation of additional employment in the country. The SEZ scheme has generated tremendous response amongst the investors, both in India and abroad, which is evident from the list of Developers who have set up SEZs:

- Nokia SEZ in Tamilnadu
- Quark city SEZ in Chandigarh
- Flextronics SEZ in Tamilnadu
- Mahindra world city in Tamilnadu
- Motorola DELL and Foxconn
- Apache SEZ (Adidas Group) in Andhra Pradesh
- Divvy's Laboratories, Andhra Pradesh
- Rajiv Gandhi Technology Park, Chandigarh
- ETL Infrastructure IT SEZ, Chennai
- Hyderabad Gems limited, Hyderabad

# LIST OF IMPORTANT WEBSITES

## Website Addresses Of Important Ministries/Departments

OVERSEAS INDIAN FACILITATION CENTER	<a href="http://www.oifc.in">http://www.oifc.in</a>
MINISTRY OF OVERSEAS INDIAN AFFAIRS	<a href="http://www.moia.gov.in">http://www.moia.gov.in</a>
CONFEDERATION OF INDIAN INDUSTRY	<a href="http://www.ciionline.org">http://www.ciionline.org</a>
Ministry of Biotechnology	<a href="http://dbtindia.nic.in">http://dbtindia.nic.in</a>
Bureau of Indian Standards	<a href="http://www.bis.org.in">http://www.bis.org.in</a>
Ministry of Chemicals & Petrochemicals	<a href="http://chemicals.nic.in">http://chemicals.nic.in</a>
Ministry of Civil Aviation	<a href="http://civilaviation.nic.in">http://civilaviation.nic.in</a>
Department of Commerce	<a href="http://commerce.nic.in">http://commerce.nic.in</a>
Ministry of Coal	<a href="http://coal.nic.in">http://coal.nic.in</a>
Ministry of Company Affairs	<a href="http://dca.nic.in">http://dca.nic.in</a>
Department of Education	<a href="http://education.nic.in">http://education.nic.in</a>
Ministry of Environment and Forests	<a href="http://envfor.nic.in">http://envfor.nic.in</a>
Department of Explosives	<a href="http://explosives.nic.in">http://explosives.nic.in</a>
Ministry of External Affairs	<a href="http://www.meanindia.nic.in">http://www.meanindia.nic.in</a>
Ministry of Finance	<a href="http://finmin.nic.in">http://finmin.nic.in</a>
Directorate General of Foreign Trade	<a href="http://dgft.delhi.nic.in">http://dgft.delhi.nic.in</a>
Department of Heavy Industries	<a href="http://dhi.nic.in">http://dhi.nic.in</a>
Department of Industrial Policy & Promotion	<a href="http://dipp.nic.in">http://dipp.nic.in</a>
Ministry of Information and Broadcasting	<a href="http://mib.nic.in">http://mib.nic.in</a>
Department of Information Technology	<a href="http://www.mit.gov.in">http://www.mit.gov.in</a>
Ministry of Labour	<a href="http://labour.nic.in">http://labour.nic.in</a>
Department of Mines	<a href="http://mines.nic.in">http://mines.nic.in</a>
Ministry of Non-Conventional Energy Sources	<a href="http://mnes.nic.in">http://mnes.nic.in</a>
Office of The Controller General Of Patents	<a href="http://patentoffice.nic.in">http://patentoffice.nic.in</a>
Ministry of Petroleum And Natural Gas	<a href="http://petroleum.nic.in">http://petroleum.nic.in</a>
Ministry of Power	<a href="http://powermin.nic.in">http://powermin.nic.in</a>
Ministry of Railways	<a href="http://www.indianrailways.gov.in">http://www.indianrailways.gov.in</a>
Reserve Bank of India	<a href="http://www.rbi.org.in">http://www.rbi.org.in</a>
Ministry of Road Transport & Highways	<a href="http://morth.nic.in">http://morth.nic.in</a>
Department of Shipping	<a href="http://shipping.nic.in">http://shipping.nic.in</a>
Ministry of Small Scale Industries & Agro and Rural Industries	<a href="http://ssi.nic.in">http://ssi.nic.in</a>
Ministry of Statistics and Programme Implementation	<a href="http://mospi.nic.in">http://mospi.nic.in</a>
Department of Telecommunication	<a href="http://www.dotindia.com">http://www.dotindia.com</a>
Ministry of Textile	<a href="http://texmin.nic.in">http://texmin.nic.in</a>
Ministry of Tourism	<a href="http://tourismofindia.com">http://tourismofindia.com</a>
Ministry of Urban Development	<a href="http://urbanindia.nic.in">http://urbanindia.nic.in</a>
Ministry of Water Resources	<a href="http://wrmin.nic.in">http://wrmin.nic.in</a>

### Website Address of States/Union Territories

Andaman & Nicobar (UT)	<a href="http://andaman.nic.in">http://andaman.nic.in</a>
Andhra Pradesh	<a href="http://www.andhrapradesh.com">http://www.andhrapradesh.com</a>
Arunachal Pardesh	<a href="http://arunachalpradesh.nic.in">http://arunachalpradesh.nic.in</a>
Assam	<a href="http://assamgovt.nic.in">http://assamgovt.nic.in</a>
Bihar	<a href="http://bihar.nic.in">http://bihar.nic.in</a>
Chandigarh (UT)	<a href="http://chandigarh.nic.in">http://chandigarh.nic.in</a>
Chhattisgarh	<a href="http://chattisgarh.nic.in">http://chattisgarh.nic.in</a>
Dadra & Nagar Haveli	<a href="http://oidc.nic.in">http://oidc.nic.in</a>
Daman & Diu	<a href="http://daman.nic.in">http://daman.nic.in</a>
Delhi	<a href="http://delhigovt.nic.in">http://delhigovt.nic.in</a>
Goa	<a href="http://goagovt.nic.in">http://goagovt.nic.in</a>
Gujarat	<a href="http://www.gujaratindia.com">http://www.gujaratindia.com</a>
Haryana	<a href="http://haryana.nic.in">http://haryana.nic.in</a>
Himachal Pradesh	<a href="http://himachal.nic.in">http://himachal.nic.in</a>
Jammu & Kashmir	<a href="http://jammukashmir.nic.in">http://jammukashmir.nic.in</a>
Jharkhand	<a href="http://jharkhand.nic.in">http://jharkhand.nic.in</a>
Karnataka	<a href="http://www.karnataka.nic.in">http://www.karnataka.nic.in</a>
Kerala	<a href="http://www.kerala.gov.in">http://www.kerala.gov.in</a>
Lakshdweep(UT)	<a href="http://lakshadweep.nic.in">http://lakshadweep.nic.in</a>
Madhya Prdesh	<a href="http://www.mp.nic.in">http://www.mp.nic.in</a>
Maharashtra	<a href="http://maharashtra.gov.in">http://maharashtra.gov.in</a>
Manipur	<a href="http://manipur.nic.in">http://manipur.nic.in</a>
Meghalaya	<a href="http://meghalaya.nic.in">http://meghalaya.nic.in</a>
Mizoram	<a href="http://mizoram.nic.in">http://mizoram.nic.in</a>
Nagaland	<a href="http://nagaland.nic.in">http://nagaland.nic.in</a>
Orissa	<a href="http://orissagov.nic.in">http://orissagov.nic.in</a>
Pondicherry(UT)	<a href="http://pondicherry.nic.in">http://pondicherry.nic.in</a>
Punjab	<a href="http://punjabgovt.nic.in">http://punjabgovt.nic.in</a>
Rajasthan	<a href="http://www.rajasthan.gov.in">http://www.rajasthan.gov.in</a>
Sikkim	<a href="http://sikkimgov.nic.in">http://sikkimgov.nic.in</a>
Tamil Nadu	<a href="http://www.tn.gov.in">http://www.tn.gov.in</a>
Tripura	<a href="http://tripura.nic.in">http://tripura.nic.in</a>
Uttar Pradesh	<a href="http://upgov.nic.in">http://upgov.nic.in</a>
Uttranchal	<a href="http://gov.ua.nic.in">http://gov.ua.nic.in</a>
West Bengal	<a href="http://www.wbgov.com">http://www.wbgov.com</a>

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