

FAQ'S on Non-Residents

1. What are the eligibility criteria for an individual and a company to be treated as non-resident for the purpose of Indian Income Tax?

Ans.: **An individual** shall be considered to be a resident in India in any particular year if he stays in India:

- (1) For a period or periods amounting in all to **182 days or more**; or
- (2) For **60 days or more** during the relevant year **and also** for **365 days or more during 4 years preceding the relevant previous year**.

The stay of 182 days or 60 days need not be a continuous stay.

Accordingly, if any of the above condition is satisfied an individual shall be a resident for tax purposes in India. If none of the 2 conditions as mentioned above are satisfied, then the individual shall be considered as a non-resident for the relevant year for tax purposes.

Further, in case of a citizen of India, who being outside India, comes on a visit to India in any previous year, or has left India for taking up employment/ business/ profession outside India or has left India as a member of the crew of the Indian ship, in point 2, as stated above, the words 60 shall be read as 182 days.

A company is said to be a resident in India in any previous year, if it is an Indian company or during that year for which the residential status is being determined, the control and management of its affairs is situated wholly in India. In case the control and management of its affairs is located outside India, then the residential status of such company shall be that of a foreign company. In the case of a **non-resident individual and a foreign company**, the income which is received or is deemed to be received in India or income which accrues or arises or is deemed to accrue or arise in India, shall be liable to be taxed in India.

2. If an individual of Indian origin staying abroad has to remit some money to his parents in India, will such repatriation of money to India affect the taxability of the parents?

Ans.: Repatriation of money to parents of an individual will not be liable to be taxed in India in the hands of the parents. This is because gifts made to relatives are not taxable as per the Income-tax Act.

3. What is the difference between Non Resident External (NRE) and Non Resident Ordinary (NRO) accounts?

Ans.: An NRE/ NRO account is a Rupee denominated account which can be opened by Non – Resident individuals. Both these accounts can be opened as savings, current or a fixed/ term deposit accounts. If the NRI, holding the NRE/ NRO account, returns to India and becomes a resident of India, the NRE/ NRO account is converted into a regular resident account.

Difference between the two:

An NRE Account can be opened with funds either remitted form abroad or local funds which can be remitted abroad whereas NRO Account can be opened with funds either remitted from abroad or by sale of foreign exchange brought by him to India. Further, a non- resident can remit an amount not exceeding USD 1 million per financial year out of his NRO account.

Funds can be transferred from an NRE account to an NRO account whereas funds cannot be transferred from an NRO account to an NRE account.

Money once credited into NRO account cannot be transferred back to NRE account.

NRO and the NRE account is re-designated as resident Rupee account on change of the residential status of NRI to resident.

4. Is interest earned on NRE and NRO Deposits taxable?

Ans.: The interest earned on deposits in an NRE account is exempt from tax in the hands of the NRI while the interest earned on deposits in an NRO account is taxable in the hands of the NRI as per the normal income tax slab rates.

5. Is it mandatory to have a PAN to invest in Indian Mutual Funds if you are an NRI?

Ans.: It is mandatory to have a PAN in case an NRI wishes to invest in Indian Mutual Funds. Moreover a recently introduced 'Mutual Fund Identification Number' (MIN) is also required for investment in Mutual Funds.

6. If a non resident is willing to invest in the Equity Shares or debentures of an Indian Company by utilizing its foreign currency as a medium of purchase, then are there any specific provisions relating to the taxability of such shares?

Ans.: In case of non-resident capital gains arising from the sale of shares, or debentures of, an Indian company shall be computed by converting the cost of purchase, and the sale consideration received as a result of sale of such shares and debentures, into the same foreign currency as was initially utilized in the purchase of the shares or debentures, and the capital gains so computed in such foreign currency shall be reconverted into Indian currency.

Moreover the aforesaid manner of computation of capital gains shall be applicable in respect of all capital gains arising from every reinvestment thereafter in sale of shares or debentures of an Indian company.

7. If a Non-Resident sells the Global Depository Receipts (GDR's) issued by an Indian Company is it liable to any tax in India?

Ans.: If a Non-Resident sells the GDR's or ADR's in India then the same shall be taxable as capital gains under Indian Income Tax Act. However, if a Non-Resident sells the GDR's outside India and to another Non-Resident, then the same shall not be taxable under Indian Income Tax Act.

8. Whether dividend income earned by a non – resident individual or foreign company from an Indian Company is taxable?

Ans.: The dividend income earned by a non – resident individual or foreign company from an Indian Company is exempt from tax in India.

9. Can a Non-Resident become a shareholder or a director in an Indian Company?

Ans.: Yes, a Non-Resident can become a shareholder or a director in an Indian Company.

10. How can a NR file his return of income even if he is not physically present in India?

Ans.: As per the provisions of the Income Tax Act, 1961, a non – resident can file his/ her return of income by authorizing another person through a signed power of attorney to sign his/ her return of income on his/ her behalf.

A non-resident, even though he/she is not physically present in India, can himself file his return of income by furnishing the same electronically on the website of [Directorate of Income Tax](#) by following the procedure mentioned therein.

11. If a Non Resident individual of Indian origin is returning back to India with all his assets including money, then what are the tax implications on his income and assets?

Ans.: If a non-resident individual is returning back to India then for the purpose of Income Tax his residential status shall be computed as discussed above in question no. 2 and accordingly his/her income shall be taxed.

While for the purpose of wealth Tax a non- resident individual returning back to India will not have to pay Wealth Tax for seven successive years after his return to India on money and assets which have been acquired outside India one year before his return to India.

12. What is a Permanent Establishment (PE)?

Ans.: A foreign company generally carries out business operations in India by establishing a permanent establishment in India. Generally as per Double Taxation Avoidance Agreements, permanent establishment means a fixed place of business through which the business of an enterprise is wholly or partly carried on. Such fixed place of business can be a branch office, a place of management, a factory, a warehouse, a workshop etc. However the definition of permanent establishment differs in each tax treaty. As per the tax treaty, profits generated from such a permanent establishment in India are taxable as business profits in India.

13. Can a person resident outside India invest in immovable property in India?

Ans.: A non-resident individual (i.e. a foreign national of non-Indian origin) cannot invest in immovable property in India. But, he/she may take residential accommodation on lease provided the period of lease does not exceed five years.

However a Non- Resident Indians (NRIs) or a foreign national of Indian Origin (PIO) can invest in immovable property in India, other than agricultural land/ plantation property or a farm house.

14. How can a Foreign Company open Liaison/Project/Branch office in India?

Ans.: Foreign Company can set up Liaison/Project/Branch office in India after obtaining approval from Reserve Bank of India (RBI). However, the application for opening Liaison/Project/Branch office in India has to be filed to the designated Authorized Dealers (AD). Thereafter, the AD shall forward its recommendation to the RBI, and accordingly the RBI will grant the approval. However, the application from banks and insurance companies for opening Liaison/Branch office will be filed with the RBI only. The Reserve Bank of India has given general permission to foreign companies to establish project offices in India subject to certain conditions.