



Special Income Tax Benefits to non-Residents



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Who is a non-resident under Income Tax Act, 1961?

- Non-resident is a person who is not a 'resident' as per the Income Tax Act, 1961.

For detailed provisions related to residential status, reference may be made to TPI brochure titled "Determination of Residential status under Income-tax Act, 1961".

Income which are not included in Total Income of Non residents includes following:

- Interest on securities or bonds as the Central Government may by notification in Official Gazette, specify including income by way of premium on redemption of such bonds.

Sec. 10(4)(i)

- Interest on moneys standing to the credit of a non resident Individual in a Non-Resident (External) Account in any bank in India in accordance with [the Foreign Exchange Management Act, 1999(42 of 1999)] and permitted by Reserve bank of India.

Sec. 10(4)(ii)

- Income from interest on savings certificates issued by the Central Government in the case of a non resident Citizen or a non resident person of Indian Origin.

Sec. 10(4B)

- Income from interest payable to a non-resident, by any Indian company or business trust in respect of monies borrowed from a source outside India by way of issue of rupee denominated bond, as referred to in clause (ia) of sub-section (2) of 194LC, during the period beginning from the 17th day of September, 2018 and ending on the 31st day of March, 2019]

Sec. 10(4C)

- No Liability to income-tax in India for a non-resident seafarer receiving remuneration in NRE (Non Resident External) account maintained with an Indian Bank.

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Other exemptions available to Non-Residents:

Sr. No.	Section	Particulars	Available to	Exempt Income
1	10(6)(ii)	Remuneration received by Foreign Diplomats/ Consulate and their staff (Subject to conditions)	Individual (not being a citizen of India)	Remuneration
2.	10(6)(vi)	Remuneration received by non-Indian citizen as employee of a foreign enterprise for services rendered by him during his stay in India, if: a) Foreign enterprise is not engaged in any trade or business in India.	Individual – Salaried Employee (not being a citizen of India)	Remuneration

		b) His stay in India does not exceed in aggregate a period of 90 days in such previous year. c) Such remuneration is not liable to be deducted from the income of employer chargeable under this Act.		
3.	10(6)(viii)	Salary received by a non-resident, for services rendered in connection with his employment on a foreign ship if his total stay in India does not exceed 90 days in the previous year.	Non-resident Individual – Salaried Employee (not being a citizen of India)	Salary
4	10(6)(xi)	Remuneration received by an Individual, who is not a citizen of India, as an employee of the Government of a foreign state during his stay in India in connection with his training in any Government Office/ Statutory Undertaking, etc.	Individual-Salaried Employee (not being a citizen of India)	Remuneration
5.	10(15) (iid)	Interest on notified bonds (notified prior to 01-06-2002) purchased in foreign exchange (subject to certain conditions)	Individual, being a) NRI or nominee or survivor of NRI; b) Individual to whom bonds have been gifted by NRI	Interest Amount
6	10(15) (iv)(fa)	Interest payable by scheduled bank on deposits 125 in foreign currency where acceptance of such deposit by the bank is duly approved by RBI.	a) Non-resident b) Individual or HUF being a resident but not ordinary resident	Interest amount
7	10(15) (viii)	Interest on deposit made on or after 01.04.2005 in an offshore Banking Unit referred to in Section 2(u) of the Special Economic Zones Act, 2005.	Person who is a non-resident or not ordinarily resident	Interest amount

Presumptive Taxation Provisions for Non-Residents

Certain provisions have been incorporated in the Income-tax Act whereby the total income of specified non-resident assessees can be computed on the basis of prescribed percentage of their gross total receipts under certain situations. This estimated income approach

(presumptive taxation) aims to reduce areas of uncertainty and resultant tax litigation. Such special provisions applicable to non-residents for computing their income under the head "Business Income" are as under:-

1. For Non-Resident engaged in shipping business

In the case of a non-resident who is engaged in the business of shipping, profits and gains from such business will be taken at an amount equal to 7.5% of the amount paid or payable to the non-resident 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 44B of the Income Tax Act,1961 {hereafter referred as the IT Act}).

Section 172, 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.

2. For Non-Resident engaged in business of providing services and facilities in connection with exploration etc. of mineral oils

For a non-resident assessee who is 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, 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 (Sec. 44BB of the IT Act).

However, under such category, a non-resident assessee has an option to offer lower profits and gains for taxation than the profits and gains on presumptive basis as discussed above, provided it maintains books of accounts as per Sec.44A(2) of the IT Act and get them audited as per Sec. 44AB of the IT Act. Thereupon the assessing officer shall make an assessment u/s 143(3) of the IT Act determining the total income/loss of such assessee.

3. For Non-Resident engaged in business of operation of aircraft

For non-resident assessee who is engaged in the business of operation of aircraft of non-residents, 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 shall constitute income of the non-resident taxpayer (Sec.44BBA of the IT Act).

4. 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

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%** 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 (Sec. 44BBB of the IT Act).

Under this category as well, a non-resident assessee has an option to offer lower profits and gains for taxation than the profits and gains on presumptive basis as discussed above, provided it maintains books of accounts as per Sec.44A(2) of the IT Act and get them audited as per Sec. 44AB of the IT Act. Thereupon the assessing officer shall make an assessment u/s 143(3) of the of the IT Act determining the total income/loss of such assessee.

Certain Other deduction and benefits

Non-residents are given certain special income tax benefits under Income Tax Act, 1961

Sr Section	Particulars	Available to	Benefits
1. 44C	Deduction for Head office Expenditure (Subject to certain conditions and limits)	Non-resident	<p>Deduction for head-office expenditure shall be limited to lower of following:</p> <p>a) 5% of adjusted total income* ; or</p> <p>b) Head office exp. as attributable to business or profession of taxpayer in India</p> <p>* In case where adjusted total income of assessee is a loss, adjusted total income shall be substituted by average adjusted total income</p> <p>** Adjusted total income or average adjusted total income shall be computed after prescribed adjustments i.e. unabsorbed depreciations, carry forward losses, etc.</p>
2. 44DA	Deduction of expenditure from royalty and FTS received under an agreement made after 31-03-2003 which is effectively connected to the PE of non-resident in India (Subject to certain conditions)	Non-resident	Expenditure incurred wholly and exclusively for the business of PE or fixed place of profession in India shall be allowed as deduction.

3.	47(viab)	Transfer of bonds or GDRs as referred to in Sec. 115AC(1) or Rupee Denominated Bond of Indian Co. or Derivative, by a non-resident on a recognized stock exchange located in any IFSC and where the consideration is received in foreign currency.	Non-resident	No capital gains shall arise in the hands of non-resident.
4.	47(viia)	Transfer of capital asset being bonds or GDR [referred to in section 115AC(1)] outside India by one non-resident to another non-resident.	Non-resident	No capital gains shall arise in the hands of non-resident transferor
5.	47(viiaa)	Transfer of capital asset being rupee denominated bond of an Indian company issued outside India by one non-resident to another non-resident shall not be treated as 'transfer'	Non-resident	No capital gains shall arise in the hands of non-resident transferor
6.	47(viib)	Transfer of a capital asset, being a Government security carrying a periodic payment of interest, made outside Indian (through an intermediary dealing in settlement of securities) by a non-resident to another non-resident shall not be treated as 'transfer' (Subject to certain conditions).	Non-resident	No capital gains shall arise in the hands of non-resident transferor
7.	First Proviso to 48	Computation of capital gains when shares or debentures in an Indian Company which were acquired in foreign currency are transferred (Subject to certain conditions)	Non-resident	Capital gain shall be computed in same as foreign currency (as utilized for acquiring shares or debentures) and the capital gains so computed in such foreign currency shall be reconverted into Indian currency (indexation benefit is not available).
8.	115F	Long-term capital gain arising from transfer of specified	Non-resident Indian	Amount of exemption shall be computed in

		foreign exchange assets shall be exempt from tax if net consideration is invested within six months after date of transfer in any specified asset or deposited in notified saving certificates (Subject to certain conditions).		following manner: (Amount invested in new asset X Capital gains) / Net Sales consideration
9.	192	If net taxable income (being income from employment) is less than maximum amount which is not chargeable to tax (Rs. 2,50,000) no tax shall be deducted at source.	Non-resident - Individual	No deduction of tax at source from salaries
10.	245N, 245Q	A non-resident can apply before Authority for Advance Ruling for determination of tax liability that may arise out of a business carried out in India (Subject to certain conditions)	Non-resident	Non-resident can file application for Advance Ruling
11.	115G	A non-resident Indian shall not be required to file his return of income if his total income consists only following incomes and tax has been deducted therefrom: a) Income from investment in foreign exchange assets b) Long-term capital gains arising from transfer of foreign exchange assets.	Non-resident Indian	Exemption from filing of return of income
12.	115H	The benefits under chapter XIIA of Income Tax Act, 1961, will continue to apply to investment income derived from certain specified foreign exchange assets even after a Non-resident Indian becomes a resident, if he furnishes a declaration in writing in this regard to the assessing officer along with his return	Non-resident Indian	Applicability of provision of chapter XIIA

	of income. Such benefit will continue to apply to him in relation to such income until the transfer/conversion takes place into money of such asset.		
13. 115I	A non-resident Indian may, if he so desires, may choose not to be governed by the provision of Chapter XII A, for a financial year provided he furnishes a declaration in this regard to his assessing officer alongwith his return of income.	Non-resident Indian	Non applicability of provision, of chapter XIIA

NON-DEDUCTION OR LOWER DEDUCTION OF TAX

Person responsible for making any payment to a Non-Resident can apply to Assessing Officer to determine appropriate proportion of amount which will be chargeable to tax in the heads of the non-resident for the purpose of determination of the amount of TDS to be deducted thereupon.

[Section 195(2)]

Non resident recipient in certain cases can apply to Assessing Officer for issue of a certificate authorising non deduction/ non withholding of tax u/s 195.

[Section 195(3)]

Non resident recipient can apply to Assessing Officer for issue of a certificate authorising lower or non deduction of tax u/s 195.

[Section 197]

Note: The Non-resident taxpayer/deductee can also make online application for Non-deduction or lower deduction by registering at TRACES (www.tdpsc.gov.in) and following due procedure detailed therein.

Disclaimer: The above literature is intended only for general guidance and not to be used in legal matters. Whenever dispute arises, the bare Act Laws and DTAAs may be referred to.



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