

**NON-RESIDENT INDIANS -
VISITING INDIA**

**TAX CONCERNS FOR
THOSE RESIDENT IN THE
UAE (AND ELSEWHERE)**



SUMMARY

■ *In the dynamic and interconnected world of finance, taxation intricacies often pose unique challenges. For high-net-worth Non-Resident Indians, particularly those in the UAE, these complexities can have significant implications. Mark Smallwood, Engagement & Consultant Partner at Hubbis, delves deep into the tax concerns faced by NRIs in the UAE who frequently visit India. He provides a comprehensive understanding of the fiscal landscape that these individuals must consider, and the importance of meticulous planning in ensuring tax compliance.*

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Dubai, and the UAE in general, has become a haven for high-net-worth Non-Resident Indians (NRI) and their families. With flight times to Delhi, Mumbai and Bangalore under 3.5 hours and only a 1.5-hour time difference, the opportunity to move residence to the UAE and potentially reduce taxes significantly, is a very tempting proposition.

Notwithstanding this, with the lax pre-Common Reporting Standards days well behind us, and the effective implementation of enhanced digitised immigration controls making the efficient monitoring of travel flows available at the press of a button, it is vital to ensure that this planning is effectively executed as the implications for getting it wrong can be very serious.

To this end the aim of this article is to provide the NRI or prospective NRI reader and their bankers or advisors with a summary of the key factors to consider, which ensure a starting point for analysis and confirmation with their tax advisors.

The Basics

The Indian fiscal or tax year for individuals runs from 1st April to the end of March of the following year. Taxation is based on residential rules and is based on the period in which the individual is physically present in India.

A tax resident of India is taxable on their worldwide income and assets, and the reporting requirements and disclosures of interests are very comprehensive indeed.

The Complexities

To be resident for tax purposes in India, an individual is deemed to be resident in India if they are

physically present for a period of 182 days or more in the tax year (182 day rule), or if they are physically present for 60 days or more in the relevant tax year, and 365 days or more in aggregate in the four preceding tax years (60 day rule). If none of these conditions are met the individual is deemed to be a Non-Resident in that tax year.

For a person who is of Indian Origin (PIO), or an Indian citizen residing abroad and visiting India, or who is an Indian citizen and leaves India for employment abroad, the rules are slightly more liberal. So, for example, an Indian Citizen who leaves India for employment as a member of the crew of an Indian ship or for taking employment abroad will only be subject to the 182-day rule (the 60-day rule will not apply).

Similarly, if an Indian Citizen or PIO has taxable Indian sourced income of less than INR1.5 million in the tax year, and is resident outside India and visits India, then again only the 182-day rule applies. This is clearly designed to provide benefits to lower income people whilst capturing the high-net-worth NRI who is back and forth to India, typically retaining personal and economic interests in India. They are captured by the rule introduced on 1st April 2020, whereby an Indian Citizen or PIO resident overseas whose Indian sourced taxable income exceeds INR1.5 million during the relevant year will qualify as Indian resident if they are physically present in India for 120 days or more during the relevant year and 365 days during the previous four tax years.

In the above scenario there is a break given that an individual will



qualify as being Resident but Not Ordinarily Resident (RNOR) if they are resident for more than 120 days but less than 182 days. To be treated as RNOR (and as such being taxed on a similar basis to a Non-Resident Indian), the individual will need to have been non-resident in nine out of the ten tax years preceding the tax year for which residential status is being established OR their physical presence is less than or equal to 729 days during the seven tax years preceding the tax year for which residential status is being determined. If these conditions are not met, they will be considered to be Resident and Ordinarily Resident (ROR) in India (taxable on their world-wide income).

For the purpose of computing physical presence, it is not essential for the presence to be continuous or at the same place. Furthermore, the date of arrival and departure will count as full days.

Overriding citizenship-based residential status

In addition to the above physical presence-based residential rule, the law provides overarching catch-all provisions. It states that a citizen of India, having total income, other than the income from foreign sources, exceeding INR 1.5 million during the tax year shall be deemed to be resident in India if he is not liable to tax in any other country or territory by reason

of his domicile or residence or any other criteria of similar nature.

This rule is meant for an alien resident who does not have a residential-based linkage with any Country. In such a situation, he is treated as an Indian resident liable to be taxed on worldwide income. This rule is of special concern for international workers and C suite executives who need to travel around the globe for work purposes.

The Foreign Status

In addition to ensuring that the rules in India are followed, it is therefore also vital for the NRI to have clear evidence such as a Tax Residency Certificate (Dubai) that they are tax resident in UAE (or another country). For those residing in Dubai and the UAE generally this can cause another major tripping point. The India-UAE tax treaty provides that individuals will be resident in the UAE if they are present in the UAE for at least 183 days in the relevant calendar year.

In addition, these certificates are issued on an annual basis, from the date of issuance, and it is clearly important that this period is coordinated with the Indian fiscal year, and that the individual renews the certificate in a timely manner for the following time period.

The result is that whilst the NRI, resident in UAE, is wholly focused on the number of days spent in India, they also need to be focused

on ensuring qualification for the Tax Residency Certificate in the UAE, otherwise they will be unable to provide evidence of their tax residence and the Indian authorities will have grounds to determine that they are actually ROR in India.

Summary

Bhaumik Goda, formerly of EY and a founding partner of BGSS & Associates (www.bgssassociates.com), and an advisor to UHNW families that straddle India, UAE and other parts of the world, summarises the situation perfectly well - "High Net Worth Indian Citizens and Persons of Indian Origin seeking to visit India regularly must maintain a detailed record of their visits and time spent in India. If they fail to do this and become tax resident, they will be required to disclose all information on all their income producing assets outside India, including trusts where they are a settlor, beneficiary or controlling person. The stakes are very high."

The message is very clear that in an increasingly transparent world with information readily available and accessible, it is vital for high-net-worth Non-Resident Indians to carefully plan with their tax advisors their travel arrangements and that of members of their immediate families to ensure none of the trip wires are breached. ■

