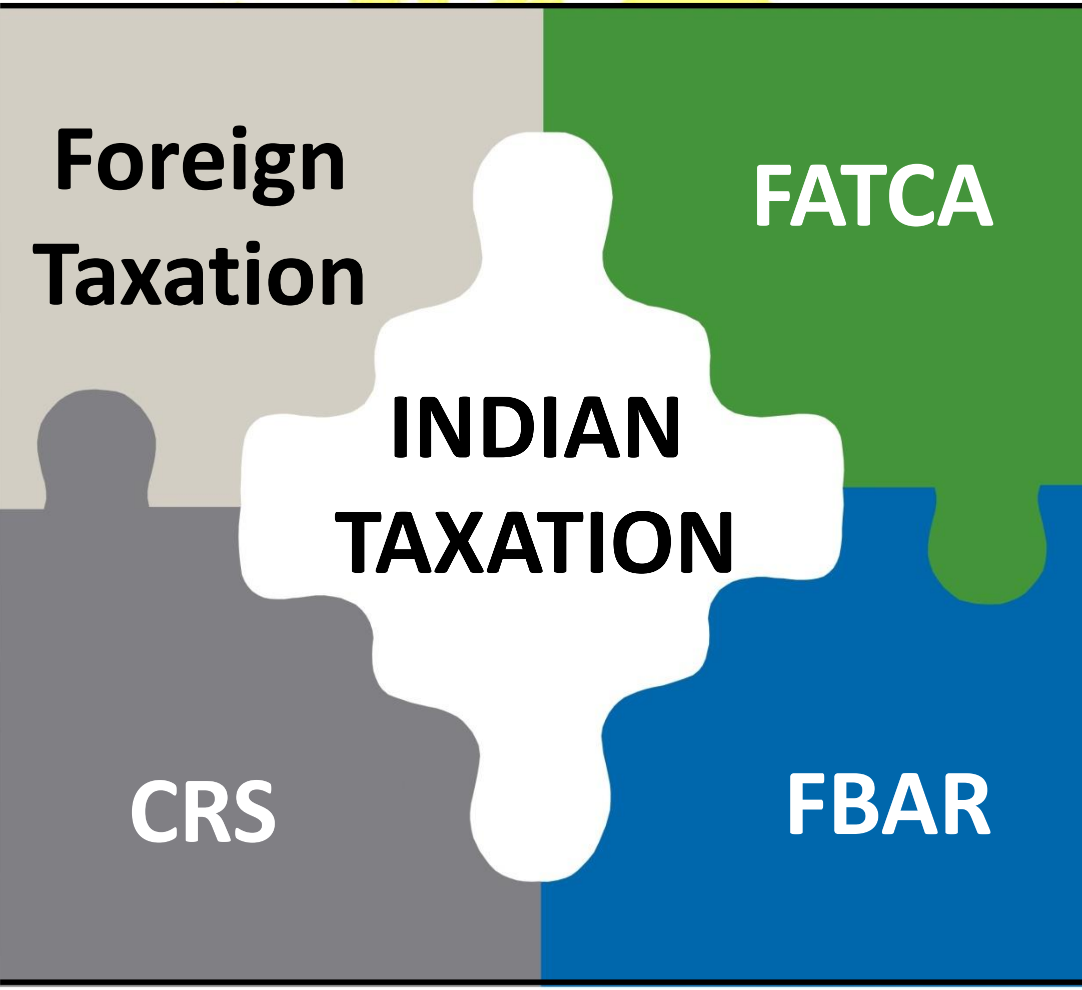


# Various kinds of income by NRI and its tax implications in India. Overview of FATCA, FBAR & CRS.

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# Income Tax liability in India

# Income Tax liability in India

## Under Section 6(1) of the Income Tax Act :

✓ An individual is <u>resident</u> in India, if he is in India for a period of 182 days or more in the previous year.

This definition <u>applies</u> to :

i) An Indian citizen who leaves India for the purposes of <u>employment</u> outside India or

ii) An Indian citizen leaving India as a member of the <u>crew of an Indian ship</u> or

iii) An <u>Indian citizen</u> or a <u>person of Indian origin</u>, who has settled abroad, comes on a visit to India.

**All other persons are Non Resident**

# Income Tax liability in India

## Under Section 6(1) of the Income Tax Act :

✓ **An individual is resident in India :**

**He is in India for a period of 60 days or more during the relevant previous year**

**and**

**365 days or more during the four years preceding that previous year.**

**This definition does not apply to :**

i) **An Indian citizen who leaves India for the purposes of employment or**

ii) **An Indian citizen leaving India as a member of the crew of an Indian ship or**

iii) **An Indian citizen or a person of Indian origin, who has settled abroad, comes on a visit to India.**

**All other persons are Non Residents**

# Income Tax liability in India

## For persons who are residents

### Resident & Ordinarily Resident (R & O R)

- <u>Resident in India at least 9 out of 10 previous</u> years preceding the relevant previous year

AND

- In India for a period of <u>730 days or more during 7 years preceding</u> the relevant previous year.

### Resident but not Ordinarily Resident (R but N O R)

- Has been a Non Resident in India in 9 out of 10 previous years preceding that previous year

OR

- Has been in India for 729 days or less in 7 immediately preceding the relevant previous year.

✓ Person who are Non Residents do not have any reason to go into the above, bifurcation of residents.

# Which Incomes of NRI are taxable in India ?

## Indian Income

✓ Income received or accrued or arised in India.

## Foreign Income

✓ Income not received nor accrued nor arises from India.

**Exceptions:-**

1 CBDT Circular-
Income received in Indian Bank Account for Seafarers working on ships - Foreign Income.

2 Pramod Kumar Sapra VS ITO 87 Taxmann 98 (Del. ITAT)

# Which Incomes of NRI are taxable in India ?

| Particular | Resident and ordinarily resident in India (R & OR) | Resident but not ordinarily resident in India (R but not OR) | Non-resident in India (NR) |
|---|---|---|---|
| Indian income | Taxable | Taxable | Taxable |
| Foreign Income | Taxable | Non Taxable | Non Taxable |
| Income from business or profession accruing or arising outside India, but business controlled from India or a professional setup in India. | Taxable | Taxable | Non Taxable |

# Double Taxation Avoidance Treaty (DTAA)

# Double Taxation Avoidance Treaty (DTAA)

## Basic of Taxation
## (When income from more than one country)

| Residence Rule | Source Rule |
| --- | --- |
| Under this rule, the country can tax persons if they are residents or domiciled in the country, regardless of the source of income. The principle of residence – based taxation of income envisages the taxation of global income. | Under this rule, importance is to the source (country) where income is generated. The principle of source – based taxation is to pay tax in country which provide opportunity for income generation. |

✓ Person who are Non Residents do not have any reason to go into the above, bifurcation of residents.

# Double Taxation Avoidance Treaty (DTAA)

## What is a Double Taxation Avoidance Agreement (DTAA) ?

- ✓ Double Taxation Avoidance Agreement (DTAA) is agreements entered into between countries, between India and another foreign state. The basic objective is to avoid, taxation of income in both the countries (i.e. Double taxation of same income) and to promote and foster economic trade and investment between the two countries.

- ✓ India has DTAA with over 89 countries such as the US, the United Kingdom, the UAE, Canada, Australia, Saudi Arabia, Singapore and New Zealand, Kenya, Tanzania, South Africa, Sudan etc.

# Double Taxation Avoidance Treaty (DTAA)

## Principle of (DTAA)

**Treaty <u>overrides</u> the local law. Local law or terms of the treaty <u>whichever is beneficial</u> shall apply to the assessee.**

## <u>Examples</u>

<table>
<tr><th>Tax Resident of Country</th><th>TDS Rate under DTAA on Interest income</th><th>Regular TDS Rate on Interest income</th></tr>
<tr><td>Australia</td><td>15%</td><td rowspan="5">30%<br>+<br>Surcharge</td></tr>
<tr><td>Singapore</td><td>15%</td></tr>
<tr><td>UAE</td><td>12.5%</td></tr>
<tr><td>United Kingdom</td><td>15%</td></tr>
<tr><td>United States</td><td>15%</td></tr>
</table>

# Double Taxation Avoidance Treaty (DTAA)

## Taxation of same income in two countries

Types of Relief

**Bilateral Relief**

U/s. 90 where DTAA exists

- Exemption Method
- Tax Credit Method

**Unilateral Relief**

U/s. 91 where DTAA does not exist

- Indian Tax Residents are supposed to <u>pay tax on foreign incomes</u> in India.
- If the said income is taxed in foreign country and there is no DTAA, then <u>credit of taxes</u> paid in foreign country is <u>available in India</u>.
- Only credit can be availed, <u>no refund of foreign taxes</u> is available in India.

# Double Taxation Avoidance Treaty (DTAA)

✓ **What can be a part of (DTAA) ?**

- Scope of the Convention
- Taxes covered
- General definition
- Resident
- Permanent Establishment
- Income from Immovable Property
- Business Profit
- Shipping, Inland waterways & Air Transport
- Associated Enterprises
- Dividend
- Interest
- Royalties
- Capital Gains
- Independent Personal Services
- Dependent Personal Services
- Directors Fees and Remuneration for Top Level Managerial official

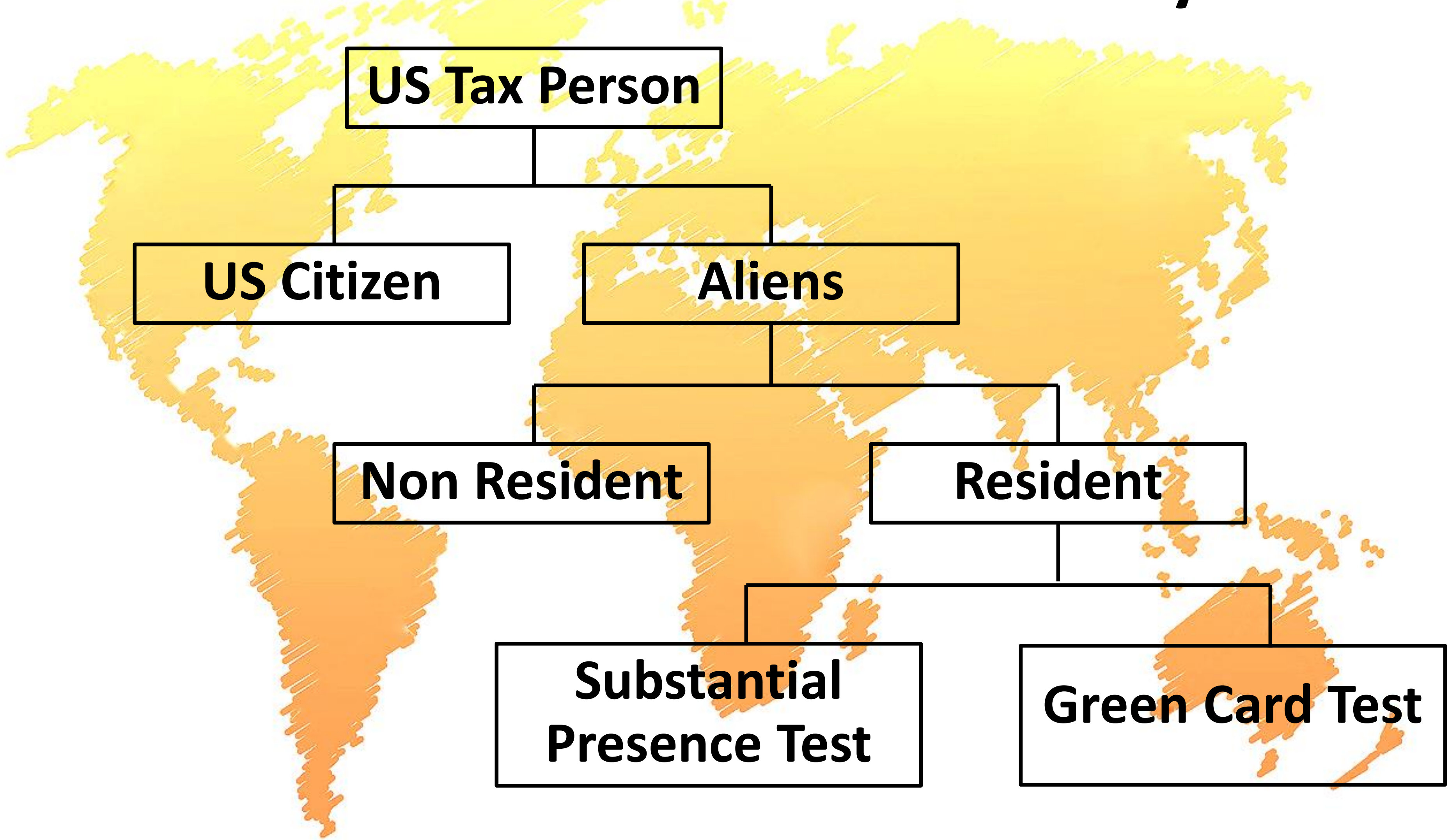
# Double Taxation Avoidance Treaty (DTAA)

## ✓ What can be a part of (DTAA) ?

- Income earned by entertainer and athletes
- Pension and social security payments
- Remuneration and pensions in respect of government services
- Payment received by students and apprentices
- Other Income
- Capital (Tax on wealth)
- Method of elimination
- Non – Discrimination
- Mutual Agreement Procedure
- Exchange of Information
- Assistance in collection of taxes
- Diplomatic agents and Consular corps (Officers)
- Territorial Extension
- Entry into force
- Termination

# Double Taxation Avoidance Treaty (DTAA)

## Tax Resident of More than One Country :



# Double Taxation Avoidance Treaty (DTAA)

## Tax Resident of More than One Country :

### Resident

| Green Card Test | Substantial Present Test |
| --- | --- |
| No matter where you live | Based on the time you spent in the US |
| A privilege is given by USCIS as a Lawful Permanent Resident | At least 31 days in the current year <u>AND</u> 183 days during last 3 years |

# Double Taxation Avoidance Treaty (DTAA)

## Tax Resident of More than One Country :

**A person can be Tax resident of both the countries:-**

- ✓ **A person acquires Green Card of USA (A special status accorded by a country) and a "Tax Resident" in India.**
- ✓ **A person satisfies Substantial Presence Test of US Tax Law (Length of stay in a country) makes an individual Tax resident of US and he/she would be Tax "Resident" in India also.**

# Double Taxation Avoidance Treaty (DTAA)

## Tax Resident of More than One Country :

**Remedies:**

- ✓ If an individual is an tax resident of more than one country, then TIE BREAKER RULE in the DTAA between both the countries will apply.

- ✓ The test specified in DTAA between US and India are as follows:

  - Place of Permanent Home, if not determinable, then Center of Vital Interest.

  - If Centre of Vital Interest cannot be determined, then Habitual Abode.

# Tax Resident of More than One Country :

## Remedies:

✓ The test specified in DTAA between US and India are as follows:

- If Habitual Abode is not possible, then the State of Nationality will be applicable.

- If Nationality is not determinable, then competent authorities of the Contracting States shall settle the question by mutual agreement.

# Double Taxation Avoidance Treaty (DTAA)

## Tax Resident of More than One Country :

- ✓ As per the test mentioned in DTAA, a person will be treated as resident of one country and non resident of another country for Income tax purposes.

- ✓ When the person will be treated as resident of a country, then his global income is taxable in that country (Residence Rule).

- ✓ The person will be treated as non resident in a country for income tax purpose and only income earned in that country will be taxable (Source Rule).

# Double Taxation Avoidance Treaty (DTAA)

## Tax Resident of More than One Country :

- ✓ **The taxes paid as source rule will be available as credit in Resident Rule country either by exemption method or Foreign Tax credit Method as per DTAA of both the countries. In USA , credit can be taken by Foreign Tax credit method and in India, credit can be taken by any of the two methods.**

- ✓ **The residency status of an individual as per other regulations like Tax on gifts, Inheritance Tax etc., will be applicable as usual.**

# Double Taxation Avoidance Treaty (DTAA)

## Tax Resident of More than One Country :

**Compliance to be done in each respective countries for application of TIE BREAKER RULE, when a person "Tax Resident" of two countries at the same time.**

| Particular | Disclosure to be made |
|---|---|
| If person elects to be tax resident of India and non resident of USA | In India – Global Income Taxable<br>In USA – Source Income Taxable<br>(While filling return in USA along with Tax Return Form 1040 NR, Form 8833 Treaty – Based Return Position Disclosure to be filed and apply on Form no. 10FA and to obtain Tax Residency Certificate from India on Form 10FB) |
| If person elects to be tax resident of USA and non resident of India | In USA – Global Income Taxable<br>In India – Source Income Taxable<br>(Tax Residency Certificate to be obtained from USA by applying on Form 8802 and obtain Tax Residency Certification Form No. 6166 and submit it to Income Tax Department along with Income Tax Return in India) |

# How to compute taxable Income when, different financial year in India & Abroad ?

# How to compute taxable Income when, different financial year in India & Abroad ?

## For Instance…

- ✓ Financial Year in India is <u>1st April to 31st March</u>.

- ✓ Financial Year (<u>Tax Year</u>) in US is <u>1st January to 31st December</u>.

# How to compute taxable Income when, different financial year in India & Abroad ?

## <u>Segregating transactions</u> in the following form :

- ✓ <u>From 1st January to 31st December</u> from the bank statement / investment statement.

- ✓ If more transactions have been <u>undertaken</u>, pass entries in <u>computerised accounting software</u>, then segregate it on <u>start</u> & <u>end</u> date basis.

- ✓ We are clear about the <u>income to be aggregated in US</u> tax return.

# How to compute taxable Income when, different financial year in India & Abroad ?

## Tax Credit of the incomes taxed in India :

- ✓ For <u>Indian incomes between 1st January to 31st March</u>, taxes & Returns would have been filed, credit of taxes (not any interest or penalty) on that basis.

- ✓ For <u>Indian incomes between 1st April to 31st December</u>, credit on the basis of withholding tax in India <u>(TDS) or advance tax paid</u>. These advances taxes should be towards final tax liability.

# Taxation of various Indian Incomes
# &
# Tax Deduction at Source (TDS)
# for
# NRI

# Taxation of various Indian Incomes & (TDS) for NRI

| Sr. No. | Type of Income | Taxation levy for NRI * | TDS rate (withholding tax rate) * |
|---|---|---|---|
| 01 | Salaries. | At normal rate, after all deductions - including standard deduction. | At normal rates (U/s. 192). |
| 02 | Rental Income Received or Annual Letting Value (ALV) on all the house property - other than one self occupied property. | At normal rate, after deduction of 30%. | 30% (U/s. 195 - any other income). |

# Taxation of various Indian Incomes & (TDS) for NRI

| Sr. No. | Type of Income | Taxation levy for NRI * | TDS rate (withholding tax rate) * |
|---|---|---|---|
| 03 | Remuneration in Partnership Firm / LLP. | At normal rate. | 30% (U/s. 195 - any other income). |
| | Interest on Capital. | | |
| | Share in profits of partnership Firm / LLP. | Exempted U/s. 10(2A). | NIL |
| 04 | Professional Fees, Business Income. | At normal rate. | 30% (U/s. 195 - any other income). |

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# Taxation of various Indian Incomes & (TDS) for NRI

| Sr. No. | Type of Income | Taxation levy for NRI * | TDS rate (withholding tax rate) * |
|---|---|---|---|
| 05 | Sale of Immovable Assets including Agricultural Land located within specified area. | Period of holding more than 2 years – Long Term Capital Gain.<br><br>20% Tax after indexation on Capital Gain | 20%<br>(U/s. 195 – Other LTCG not covered U/s 10(33), 10(36) and 112A). |
| | | Period of holding less than 2 years – Short Term Capital Gain.<br><br>At normal tax rates. | 30%<br>(U/s. 195- any other income). |

TDS to be made on entire sale consideration, unless certification U/s. 195(2) (Payer) or U/s. 197 (Payee) is obtained.

# Taxation of various Indian Incomes & (TDS) for NRI

| Sr. No. | Type of Income | Taxation levy for NRI * | TDS rate (withholding tax rate) * |
|---|---|---|---|
| 06 | Sale of Listed Shares – STT paid. | Period of holding less than 1 year – Short Term Capital Gain.<br><br>Capital gain @ 15%. | 15%<br>(U/s. 195 - STCG U/s 111A). |
| | | Period of holding more than 1 year – Long Term Capital Gain.<br><br>Capital gain @ 10%.<br><br>Exempted up to Rs. 1,00,000. | 10%<br>(U/s. 195 – income by way of LTCG referred to in Section 112A ). |

# Taxation of various Indian Incomes & (TDS) for NRI

| Sr. No. | Type of Income | Taxation levy for NRI * | TDS rate (withholding tax rate) * |
|---|---|---|---|
| 07 | Mutual Fund Investments.<br>▪ Equity Oriented. | Period of holding less than 1 year – Short Term Capital Gain.<br><br>Short Term Capital Gain @15% (U/s. 111A). | 15%<br>(U/s. 195 - STCG U/s 111A). |
| | | Period of holding more than 1 year – Long Term Capital Gain.<br><br>Capital gain @ 10%.<br><br>Exempted upto Rs. 1,00,000. | 10%<br>(U/s. 195 – income by way of LTCG referred to in Section 112A ). |

# Taxation of various Indian Incomes & (TDS) for NRI

| Sr. No. | Type of Income | Taxation levy for NRI * | TDS rate (withholding tax rate) * |
|---|---|---|---|
| 08 | Mutual Fund Investments.<br>▪ Not equity Oriented. | Period of holding less than 3 years – Short Term Capital Gain.<br>At normal rates. | 30%<br>(U/s. 195 – Any other income). |
| | | Period of holding more than 3 years – Long Term Capital Gain.<br>Capital gain @ 20% with Indexation (<u>Listed</u>) U/s. 112(1)(C)(ii) | 20%<br>(U/s. 195 – Other LTCG not covered U/s 10(33), 10(36) and 112A). |
| | | Period of holding more than 3 years – Long Term Capital Gain.<br>Capital gain @ 10% without Indexation (<u>Unlisted</u>). (U/s. 112(1)(C)(iii)). | 10%<br>(U/s. 195 – income by way of LTCG referred in Section 115E or Section 112(1)(c)(iii)). |

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# Taxation of various Indian Incomes & (TDS) for NRI

| Sr. No. | Type of Income | Taxation levy for NRI * | TDS rate (withholding tax rate) * |
|---|---|---|---|
| 09 | Interest income on Bank Deposits<br>(NRO A/c). | At normal rates. | 30%<br>(U/s. 195 - any other income). |
| 10 | Interest on Private Deposits | | |
| 11 | Interest Income on Small Savings Schemes. | | |

# * Additional levis to the above tax rates

- For Incomes Rs. 50 lakh or less. : Health and Education Cess (HEC) @ 4%.

- For Incomes more than Rs. 50 lakh but less than Rs. 1 Cr. : First add Surcharge @ 10% and then on the total of tax and surcharge a further levy of 4%.

- For Incomes more than Rs.1 Cr but less than Rs.2 Cr : First add Surcharge @ 15% and then on the total of tax and surcharge a further levy of 4%.

## * Additional levis to the above tax rates

- For Incomes more than Rs.2 Cr but less than Rs.5 Cr : <u>First add Surcharge</u> @ 25% and then on the total of tax and surcharge a <u>further levy</u> of 4%.

- Incomes more than Rs.5 Cr : <u>First add Surcharge</u> @ 37% and then on the total of tax and surcharge a <u>further levy</u> of 4%.

# Tax Deduction at source (TDS) for NRI :

# Operation of Sec. 195 of the Income Tax Act.

✓ **Sec. 195 (1) :**

- **Payer** : Any person.
- **Payee** : A NRI, not being a company or foreign company.
- **Payment** : Any sum, other than salaries and some other payment chargeable under the provision of Income Tax Act.
- **Rate of TDS** : At the prescribed rates.

# Tax Deduction at source (TDS) for NRI :

## Operation of Sec. 195 of the Income Tax Act.

✓ **Sec. 195 (2) :**

- Application by <u>Payer</u> (no prescribed format) for determination of such sum on which TDS to be deducted. Rejection is appealable.

- A certificate U/s. 197 can be obtained by the payee (On Form No. 13) for <u>lower or Nil TDS,</u> for TDS to be made U/s 195. Rejection is not appealable.

- Section 195 does <u>not apply</u> to sums paid to Non Residents which are <u>exempt from tax</u>, as it applies to only "<u>any sum chargeable to tax</u>."

# Taxation of various Indian Incomes & (TDS) for NRI

**Incomes which are <u>completely exempted</u> from Income Tax and there is no Tax Deduction at Source (TDS) on these incomes.**

| Sr. No. | Type of Income | Income exempted under the provision |
|---|---|---|
| 01 | Interest income on NRE A/c | U/s. 10(4) |
| 02 | Interest income on PPF A/c | U/s. 10(11) |
| 03 | Agricultural Income | U/s. 10(1) |
| 04 | Dividend Income on Mutual Funds | U/s. 10(35) |
| 05 | Gain on sale of Agricultural land situated beyond the below limits | Not considered as a Capital Assets U/s. 2(14)(iii), hence exempted |
| | <u>Population of a city / town etc.</u> | <u>Arial Distance</u> |
| | 10,000 to 1,00,000 | 2 kms. |
| | 1,00,000 to 10,00,000 | 6 kms. |
| | Above 10,00,000 | 8 kms. |
| 06 | Share in profits of a partnership Firm | U/s. 10(2A) |

# Taxation of various Indian Incomes & (TDS) for NRI

**Incomes which are completely exempted from Income Tax and there is no Tax Deduction at Source (TDS) on these incomes.**

| Sr. No. | Type of Income | Income exempted under the provision |
|---|---|---|
| 07 | Dividend on Shares. | Exempted U/s. 10(34). However, companies are required to pay Dividend Distribution Tax @15%.<br><br>Additional tax liability of 10% where Dividend exceeds Rs. 10,00,000 is not applicable to NRI. |

# Some important aspects of Income Tax for NRI

- Representative Assesee – Agent of a Non Resident
- PAN Card & NRI
- Aadhar Card & NRI

# Representative Assesee – Agent of a Non Resident

- ✓ Representative Assessee, in respect of Non Resident is his / her agent or person who are treated as an agent U/s. 163 of the Income Tax Act.
- ✓ Section 163 of the Income Tax Act states – agent in relation to non – resident (NR) is :
  - One who is employed by NR.
  - Having business connection with NR.
  - From or through whom NR receives income directly or indirectly.
  - Trustee of a NR.
- ✓ A broker dealing with NR through NR broker is not an agent.

# Representative Assesee – Agent of a Non Resident

- ✓ A Power of Attorney (POA) holder is an agent of a Non Resident, hence he is Representative Assesee of a Non Resident.
- ✓ Every representative assessee shall be deemed to be an assesee for the purpose of the Income Tax.
- ✓ Hence, a representative assessee's liability, duties, responsibilities are at par with his own, as if it were his own assessment proceedings.

# PAN Card & NRI

- ✓ **Permanent Account Number (PAN) is a unique code that acts as an identification for individuals for their financial transactions.**
- ✓ **It is allotted by Income Tax Department.**
- ✓ **It is similar to Tax Identification Number (TIN) in foreign countries.**
- ✓ **The application for PAN can be made by non residents by filing Form No. 49AA.**

# PAN Card & NRI

## Requirements for obtaining PAN :

✓ It is mandatory to quote PAN for below mentioned transactions :

- Several financial transactions in India.
- Opening of an account with a bank (can be opened by From no. 60), Demat Account for shares.
- Filing of Income Tax Return, if the income exceeds the minimum taxable amount. It is not compulsory to file a Return of income if you have a PAN.

# PAN Card & NRI

## Requirements for obtaining PAN :

✓ It is mandatory to quote PAN for below mentioned transactions :

- For <u>Filing a Return</u> of Income if Income is above taxable limits.
- For <u>claiming of refund of TDS</u>, if deducted.
- For <u>carry forward of losses</u>.
- All the dealings with Income Tax office eg. <u>Form 15CA – 15CB</u>.

# Aadhar Card & NRI

- ✓ **Under the Aadhar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act 2016.**
  - **Resident means an individual (any nationality) who has resided in India for a period or periods amounting in all to <u>182 days or more in 12 months immediately preceding the date of application for enrolment.</u>**

# Aadhar Card & NRI

✓ Under Sec. 139AA & Subsequent notification, all PAN Card holders, who is a NRI under the Income Tax Act 1961, are :

- Supposed to link their Aadhar Card with PAN, <u>if they hold</u> the Aadhar Card.
- <u>If they do not hold</u> the Aadhar Card, they are exempted from the requirement of linking it with the PAN Card of Income Tax.
- As per Aadhar Act, NRI / PIO are not eligible to obtain Aadhar Card, hence are <u>fully exempted</u> to produce Aadhar <u>for any verification</u>.

# Tax Planning for NRI in India

# Tax Planning for NRI in India

✓ Deduction for investments U/s. 80C maximum of Rs. 1,50,000.

- Life Insurance Premium
- Repayment of Housing Loan
- Equity Linked Savings Scheme of Mutual Fund (ELSS)
- 5 Year Bank FD
- PPF (In existing A/c)

✓ Deduction for Health Insurance U/s. 80 D.

- Maximum of Rs. 25,000 for age below 60 Years and Rs. 50,000 for age above 60 Years PLUS additional Rs. 50,000 for Senior Citizen Parents.

✓ Deduction for donation U/s. 80G – 50% of sum donated, maximum 10% of Gross Total Income.

✓ Deduction U/s. 80TTA on interest earned on Savings Bank Account (NRO A/c) maximum of Rs. 10,000.

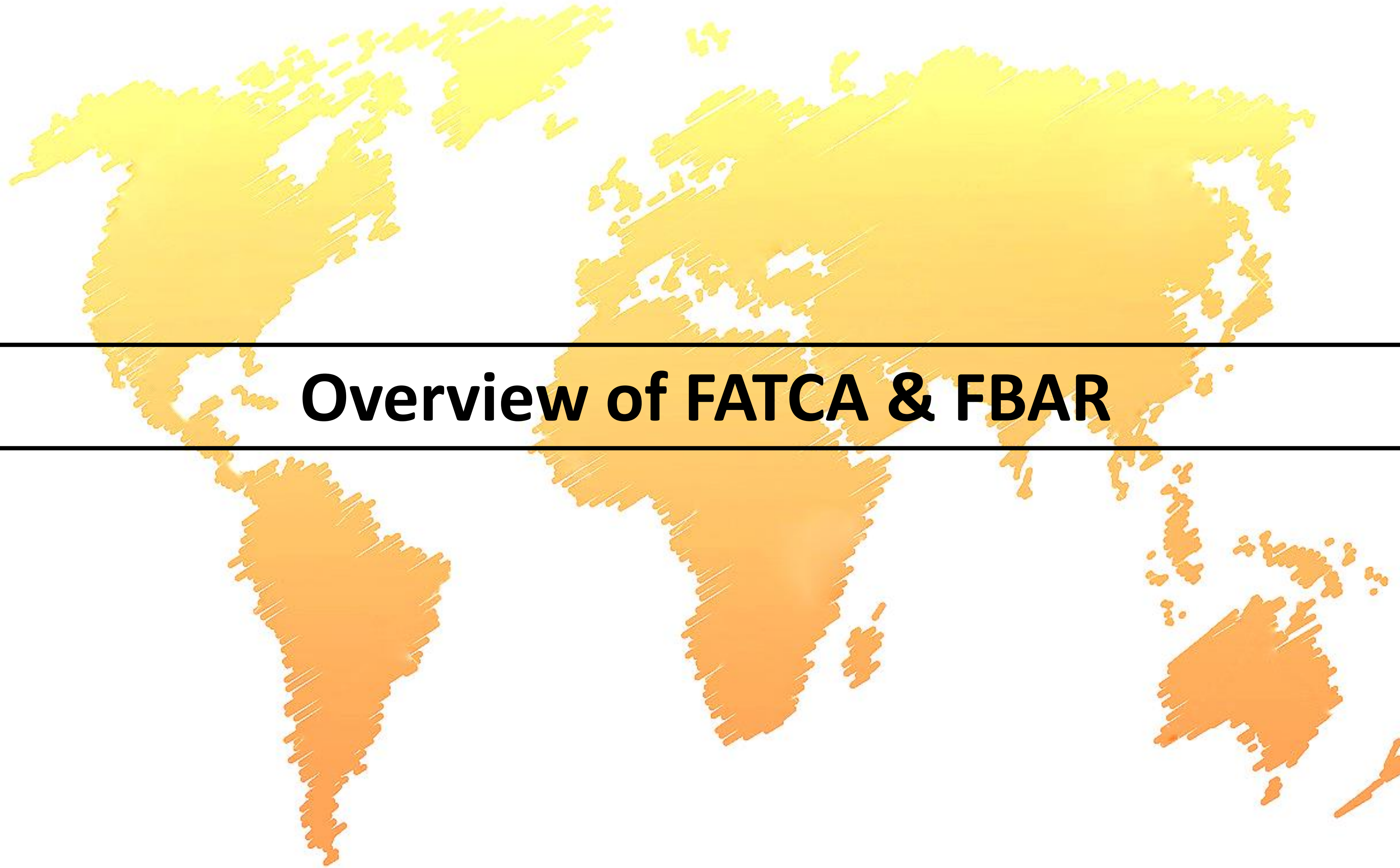
# Tax Planning for NRI in India

- ✓ Increased taxable limit is not available to Senior Citizen (above 60 years) or Super Senior Citizen (above 80 years).
- ✓ Rebate U/s. 87A of Rs. 2,500 is not available.
- ✓ Deduction U/s. 24 is available on interest paid on Housing Loan against Income from House Property. Loss under this head can be claimed, maximum of Rs. 2,00,000.
- ✓ If a NRI intends to stay for a long period in India, in order to ensure that he does not become a resident, he can split stay in two financial years.
- ✓ NRI can invest in Capital Gain Bonds U/s 54-EC to get exemption from Capital Gain.
- ✓ NRI can invest U/s 54 or 54-F in residential house to get exemption from capital gain.

# Tax Planning for NRI in India

- ✓ Non Resident should receive his incomes abroad, and then remit such incomes credited in the foreign accounts, to India. If the incomes are received in India, they become taxable in India.
- ✓ Interest on NRO A/c (Savings of Fixed Deposits) is taxable. A NRI can transfer his NRO A/c balances, within the limit of 1 Million US$, per person – per year, to NRE / FCNR A/c and make the interest income tax free.
- ✓ HUF (Hindu Undivided Family) are recognized as a separate legal entity under Indian Tax laws. Income of HUF is not the income of and individual. Utility of HUF as an entity for investments can be looked into for planning the tax liability abroad. NRO Bank A/c of HUF can be opened, if all the members are NRI.

# Overview of FATCA & FBAR



# Overview of FATCA & FBAR

## Why was FATCA and FBAR introduced ?

### Requirement of US Tax Laws

US Tax Resident Person

Income in US

Income outside of US

Global Income Taxable in US. (Aggregate of both)

# Why was FATCA and FBAR introduced ?

## On ground scenario

US Tax Resident Person

Income in US

Income outside of US

Tax paid only on US Income.

Income out of US not disclosed.

# Why was FATCA and FBAR introduced ?

## FATCA & FBAR – effective tools to check evasion of taxes on income outside of US

Financial Transactions outside of US done by US Tax Resident

Information filed by US Tax Residents in FATCA & FBAR Forms

Information obtained by FATCA from respective countries

Cross verification of both information & checking US tax compliance of all these transactions

## FBAR (Report of Foreign Bank and Financial Accounts) :

✓ **United States Persons are required to File Form 114 if :**

- **The United States person had a Financial Interest in or signature authority over at least one financial account located outside the United States**

**and**

- **The aggregate value of all foreign financial accounts exceeded US $ 10000 at any time during the calendar year reported.**

# Overview of FATCA & FBAR

## FATCA (Foreign Account Tax Compliance Act) :

- ✓ FATCA targets tax non – compliance by US tax payers with Foreign Accounts.

- ✓ FATCA requires US Tax payers to file Form 8938 on Foreign Financial Assets.

- ✓ FATCA requires Foreign Financial Institutions (FFI's) to report to the I.R.S; information about financial accounts held by US tax payers.

# Overview of FATCA & FBAR

## FATCA Compliance by Indian (FFI's) :

- ✓ Determination date for FATCA : 30th June, 2014.
- ✓ All new accounts opened after the determination date.
- ✓ Pre existing accounts electronic search of information in the system.
- ✓ High value accounts (US$ 1 mn +) paper record search + inquiry of Relationship Manager, additional requirement.
- ✓ Closed accounts also subject to the above process.

# Overview of FATCA & FBAR

| | FATCA | FBAR |
|---|---|---|
| | Form 8938, Statement of Specified Foreign Financial Assets | FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR) |
| Reporting Threshold (Total Value of Assets) | $50,000 on the last day of the tax year or $75,000 at any time during the tax year. (if you are unmarried and lived in U.S.)<br><br>$100000 on last day of the tax year or & $150000 at any time during the tax year. (if you are married and lived in U.S.)<br><br>$200000 on last day of the year or $300000 at any time during the year. (if you are unmarried and lived abroad.)<br><br>$400000 on last day the year or $600000 at any time during the year. (if you are married and lived abroad.) | $10,000 at any time during the calendar year. This is a cumulative balance, meaning if you have 2 accounts with a combined account balance greater than $10,000 at any one time, both accounts would have to be reported. |

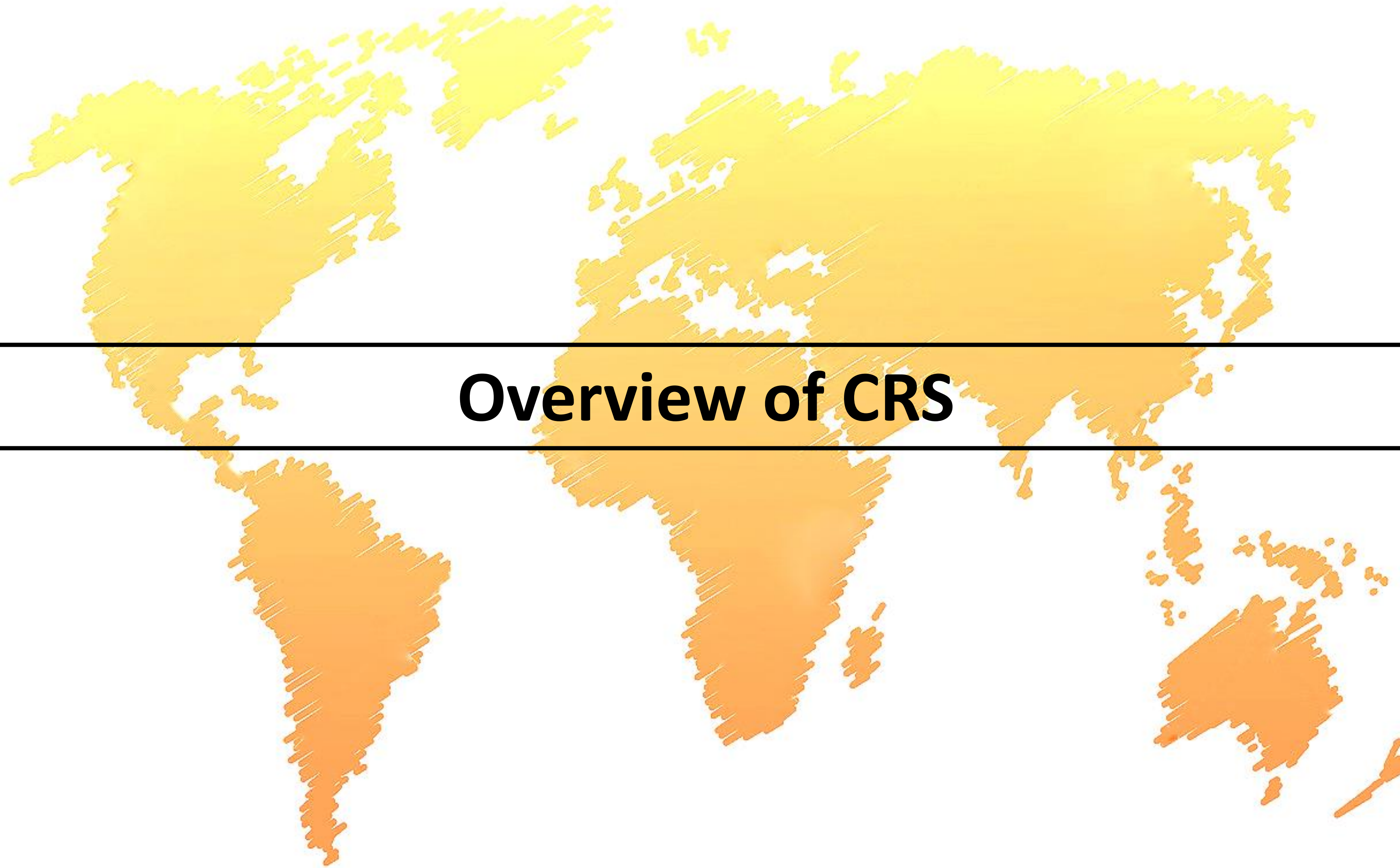
# Overview of FATCA & FBAR

| | FATCA | FBAR |
|---|---|---|
| What is Reported? | Specified foreign financial assets, and certain other foreign non-account investment assets. | Financial interest: you are the owner of record or holder of legal title. Signature authority: you have authority to control the disposition of the assets. |
| Where to File? | File with income tax return pursuant to instructions for filing the return | File electronically through FinCENs BSA E-Filing System. The FBAR is not filed with a federal tax return. |

# Overview of FATCA & FBAR

| Types of foreign assets and whether they are reportable | | |
|---|---|---|
| | FATCA | FBAR |
| Financial (deposit and custodial) accounts held at foreign financial institutions. | Yes | Yes |
| Foreign partnership interests | Yes | No |
| Foreign mutual funds | Yes | Yes |
| Foreign-issued life insurance or annuity contract with a cash-value | Yes | Yes |
| Foreign real estate held directly | No | No |
| Foreign currency held directly | No | No |
| Precious Metals held directly | No | No |
| Personal property, held directly, such as art, antiques, jewellery, cars and other collectibles | No | No |

# Overview of CRS



# Overview of CRS

## CRS – Common Reporting System :

- ✓ FATCA version of OECD (Organisation for Economic Co-operation & Development) countries.
- ✓ Platform to exchange financial information in respect of residents of 112 countries.
- ✓ Countries include – India, United Kingdom, UAE, Singapore, Hong Kong, China, Australia, Canada, Germany, Switzerland etc.
- ✓ Determination date : 31st December 2015.

# Overview of CRS

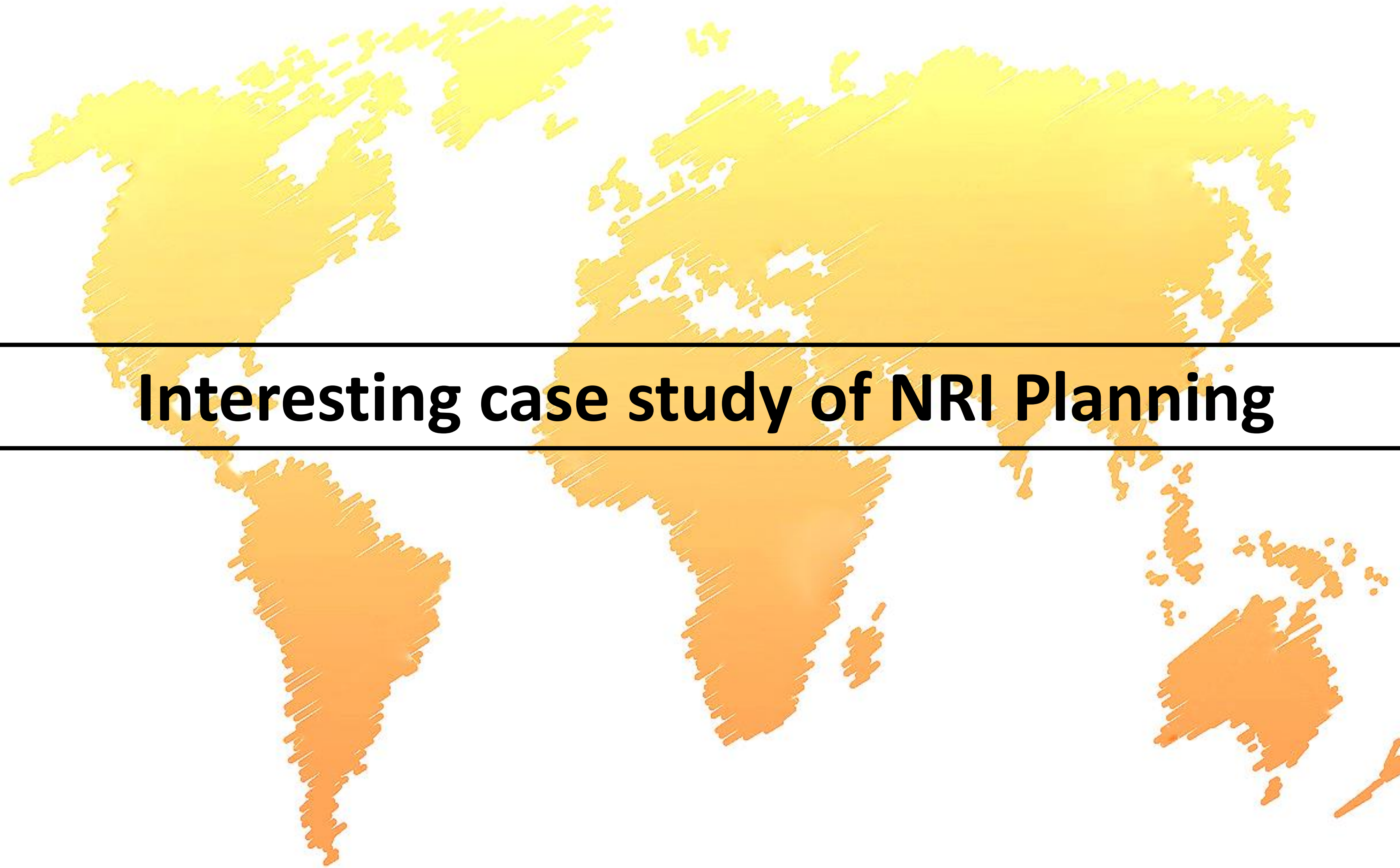
## CRS – Common Reporting System :

✓ **CRS has a broader scope than FATCA**

- **<u>All Accounts supposed</u> to be reported (<u>without minimum balance exclusion</u>).**
- **<u>Income to be reported under CRS</u> over & above the accounts and investments.**
- **<u>Transactions with all entities</u> are to be reported. FI with local client base, retirement funds etc. not exempted in CRS.**

# Reporting for foreign tax compliance

- ✓ Indian incomes need to be reported to Tax Authorities abroad.
- ✓ We (Ashutosh Financial Services Pvt. Ltd.) provide details of Indian Income as required by Tax Accountants abroad, for the relevant period and relevant items.
- ✓ The above services are complimentary to our clients for the investments made through us.



# Interesting case study of NRI Planning

# Interesting case study of NRI Planning

## Investment intended in India by NRI :

### Case 1

Funds abroad → Transferred to NRE A/c in India → Investment in India → Income from Investments → Taxation in India → Taxation and compliance abroad

# Interesting case study of NRI Planning

## Investment intended in India by NRI :

### <u>Case 2</u>

Funds in India – erstwhile Savings, Sale of Assets etc. → Balance in NRO Account → Investment in India → Income from Investments

→ Taxation in India → Taxation and compliance abroad

# Interesting case study of NRI Planning

## Investment intended in India by NRI :

## Improved version Case 1

Funds abroad → Gifts to Parents (Ownership transferred) → 
- Investment in India by parents
- Nomination of NRI
- Specific Will for investments

→ Income from Investments

Taxation in India → No taxation abroad → Redemption of Investment & Gift to NRI OR Transmission of investment & Redemption → Balance in NRO Account → Repatriation under US 1 Million $ limit

# Interesting case study of NRI Planning

## Investment intended in India by NRI :

## <u>Improved version Case 2</u>

Funds in India – erstwhile Savings, Sales of Assets etc.

Balance in NRO A/c

Gifts to Parents (Ownership transferred)

- Investment in India by parents
  - Nomination of NRI
  - Specific Will for investments

Income from Investments

Taxation in India

No taxation abroad

Redemption of Investment & Gift to NRI
OR
Transmission of investment & Redemption

Balance in NRO Account

Repatriation under US 1 Million $ limit

# Disclaimer

This Presentation aims to tell the General Views and Laws related to Non Resident Indian (NRIs).

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