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## **TDS on Salary Payments to Non Residents & Expatriates**

As per Section 192 of the IT Act, any person responsible for paying any amount under the heads salaries is required to deduct tax at source at the time of payment. This section unlike some other provisions, does not distinguish between payment of salary, to a resident, non resident or expatriate. Thus all payments which are taxable under the head salaries, are also covered by the provisions of TDS, irrespective of the residential status of the recipient. However, the residential status of an individual is pertinent in determining whether the receipt itself is taxable in India or not. The various categories of residential status and statutory provisions pertaining to taxability of income in India in each case is being discussed below:

**Residential Status:** Section 6 of the Indian Income Tax Statute specifies 3 categories, as far as residential status is concerned.

**Resident** An individual is said to be resident in India in any previous year if he is in India for at least 182 days in that year or during that year he is in India for a period of at least 60 days and has been in India for at least 365 days during the 4 years preceding that year. However, the period of 60 days referred to above is increased to 182 days in case of Indian citizens who leave India as members of the crew of an Indian Ship or for Indian citizens or persons of Indian origin who being outside India, come to visit India in any previous year.

**Non-Resident** A person who is not a resident in terms of the above provisions is a non-resident.

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### **Resident but not ordinarily (RNOR)**

An individual shall be said to be RNOR if he has been a non resident in 9 out of 10 previous years preceding that year or has during the 7 years preceding that year been in India for a period of 729 days or less.

### **Scope of Taxation :**

#### **Residential Status and Taxability of Income**

**Resident** All income of the previous year wherever accruing or arising or received by him including incomes deemed to have accrued or arisen.

**Non-Resident** All income accruing, arising, to or deemed to have accrued or arisen or received in India.

**RNOR** All income accruing or arising or deemed to have accrued or arisen or received in India. Moreover, all income earned outside India will also be included if the same is **derived from a business or profession controlled or set up in India.**

**Expatriates Working in India:** In case of a foreign expatriate working in India, the remuneration received by him, assessable under the head 'Salaries', is deemed to be earned in India if it is payable to him for services rendered in India as provided in Section 9(1)(ii) of the Income Tax Act. The explanation to the aforesaid law clarifies that income in the nature of salaries payable for services rendered in India shall be regarded as income earned in India. Further the income payable for the leave period which is preceded and succeeded by services rendered in India and forms part of the service contract shall also be regarded as income earned in India.

Thus, irrespective of the residential status of the expatriate employee, the amount received by him as salary, for services rendered in India shall be liable to tax in India

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being income accruing or arising in India, ***and also be subject to TDS regardless of the place where the salary is actually received.***

**TDS in case of payment of salary in foreign currency:** Where salary is payable in foreign currency, the amount of tax deducted is to be calculated after converting the salary payable into Indian currency at the telegraphic transfer buying rate as adopted by State Bank of India on the date of deduction of tax(Rule 26) read with Section 192(6).

It may be noted that this rule is applicable only for determination of TDS. However, in computing the salary income, the rate of conversion to be applied is the telegraphic transfer buying rate on the last day of month immediately preceding the month in which the salary is due or is paid in advance or arrears(Rule 115).

**Refund of tax where the employee has left India:** Where at the time of assessment any refund has become due to a non resident, who was deputed to work in India, has left India without any bank account and his taxes were borne by the employer, then such a refund can be issued to the employer, as taxes were being paid by it. ( circular no. 707 dt. 11.7.95).

**Certain exempt incomes and allowance:**

(i) Any allowance or perquisite paid or allowed as such outside India by the Central Government or a State Government to a citizen of India for rendering service outside India, is exempt from Income-tax. The relevant provisions are contained in section 10(7) of the Income Tax Act.

(ii) In case of individuals who are assigned to duties in India in connection with any cooperative technical assistance programmes and projects, in accordance with an agreement between the Central Government and the Government of a foreign state, their foreign income is exempt from income-tax if they pay any income or social security tax on such income to the foreign state. To qualify for the exemption, such income should not be deemed to have accrued or arisen in India. Further, the terms of the

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agreement between the two governments must provide for such exemption. The relevant provisions of this exemption are contained in section 10(8) of the Income-tax Act.

(iii) Income-tax exemption on the aforesaid lines has also been provided on the foreign income of an individual who is assigned to duties in India in connection with any technical assistance programme and project in accordance with an agreement entered into by the Central Government and international organization. The exemption is availability only if the following conditions are satisfied, namely :

(a) the individual is an employee of the consultant referred to in section 10(8A) which provides that a consultant means a person engaged by an international organization in connection with any technical assistance programme in accordance with an agreement between that organization and the Central Government;

(b) he is either not a citizen of India or being a citizen of India, is not ordinarily resident in India; and

(c) the contract of service of the individual is approved by the Additional Secretary, Department of Economic Affairs, in the Ministry of Finance, Government of India in concurrence with Member (Income-tax) of the Board.

The relevant provisions of this exemption are contained in Section 10(8B) of the Income-tax Act.

(iv) The United Nations (Privileges and Immunities) Act, 1947, provides exemption from Income-tax on the salaries and emoluments paid by the United Nations to its officials. Thus, the individuals who are resident in India in any financial year and are in receipt of income by way of salaries and emoluments from the United Nations as officials thereof are exempt from income tax on such income. As the expression “salaries” under the Income-tax Act