NEERAJ BHAGAT & CO.
Chartered Accountants

Expatriates working in India

- Indian Regulations and Requirements

2016 Edition 2

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In recent times, the Indian government has increased its attention towards the expatriate population. This has translated into changes in various legislations and resulted in increased responsibilities and additional compliance requirements. Given this scenario, this update was created to provide a better understanding of the tax, immigration, social security and other allied laws which are relevant for the expatriate population.

Work visas for India

Expats moving to India for professional reasons usually fall within one of the two visa categories below. Both types of visa simultaneously serve as a work permit.

I. Employment visas in India

The **employment visa** (E-visa) is granted to employees sent to India on an intra-company transfer or to expats with a guaranteed offer of employment from an Indian company. An employment visa is initially valid for one year, which can subsequently be extended at the local FRRO office. It is also available as a one-year visa to foreigners wishing to do voluntary work for a registered NGO. In addition to the documents listed above, you will need to provide additional paperwork. It mostly includes proof of employment (e.g. a signed employment contract), company information of your employer in India, and proof of your ability to do the job (e.g. academic and professional qualifications).

An employment visa will be granted to a foreign national if his or her salary exceeds US$25,000 per annum. The salary threshold of US$25,000, however, does not apply to ethnic cooks, language teachers (other than English teachers), translators and staff working for the concerned embassy or the High Commission in India.

Extensions and renewals can be obtained from the Indian Ministry of Home Affairs or an expat's local Foreign Regional Registration Office, but this is generally granted only after foreigners have worked in the country for several years.

II. Business visas in India

Business visas are available for expats who want to conduct business in India. Unlike employment visas, business visa applicants usually work on behalf of a foreign company for a limited time and won't be working for a local employer.

The **business visa** is for entrepreneurs or investors wishing to set up a business, purchase or sell industrial products, or establish business ties with a company in India. In addition to a letter from the company outlining the details of the trip, an expat also has to attach documents from Indian business contacts: he needs either a letter of invitation from the Indian business partner or a written statement from his client or contracting body, concerning the nature of the business and the length of his stay.

You cannot convert a business visa into an employment visa while staying in India.

Business visas are generally issued with six month's validity or more, and provide for multiple entries. However, business visa holders aren't allowed to remain in India for longer than six months at a time.

Applying for a visa for India

Expats coming to India for employment should apply for a visa before they arrive. They can get application forms from their local Indian Embassy, or approach a VFS Global private processing agency appointed by the Indian authorities to process visa applications.

Aside from standard documentation like passports and passport photos, the documents expats would need to provide differ depending on various factors including the type of visa.

Employment visa applicants will need to provide proof of employment such as a contract with an Indian employer.

Business visa applications may need to be accompanied by letters from the applicant's employer and the local organization they'll be doing business with.

**Visa regulations are subject to change at short notice and expats should contact their respective embassy or consulate for the latest details.*

All visa applications must consist of the following:

- a completed application form
- valid passport with two blank pages facing each other,
- the correct fee for the type of visa you are applying for,
- 2 passport-sized photographs,
- supporting documents, as may be required depending on the type of visa applied for.

All details about visa fees, registration requirements and additional guidelines are available with the Indian Embassy.

FRRO Registration

Expats who have a visa that's valid for more than 180 days (and/or those who intend to stay in India for more than 180 days) will need to register with the Foreigners' Regional Registration Office (FRRO) within 14 days of arriving to receive a residential permit.

The FRRO has branches in numerous cities, and where they don't, expats would need to visit the Superintendent of Police (SP) of the district.

The documents expats will need include application forms, passport-size photos, passport, visa in original, copy of employment contract, undertakings by the employer and proof of residence in India. The experience of applying for a residential permit will largely depend on the official handling the registration process. Some officials will ask for every possible document, and expats must have multiple copies of all documents in hand.

Applicants who are required to register at FRRO shall have to fill their application online using the web based online application submission system. Applicants, who have not filed online applications previously before coming to FRRO, shall be allowed to fill the online application form at the FRRO. The officials present at the FRRO shall facilitate and assist either to fill at the convenience of applicant or assist them at the FRRO. Applicants who have not taken prior appointment shall also be allowed to register at the FRRO.

This registration needs to be renewed periodically during their service tenure in India.
A foreigner can apply online from the website http://indianvisaonline.gov.in/frro/ for availing of visa services in the office of FRRO, Delhi.

Regardless, expats must ensure all information in their documents is correct and should bring any additional documents they think may be necessary.

- Registration is also required in the case of visa less than 180 days and if there is special endorsement "for registration required". However foreigners entering on Entry(X) and Business visas valid for more than 180 days are required to register with the FRRO, if they continuously intend to stay for more than 6 months i.e. more than 180 days on each visit. But, exempting visa bearing endorsement as "Stay not to exceed 180days hence no registration required."

- All Indian Missions shall stamp the employment visas of the foreigners mentioned at above to the effect "REGISTRATION REQUIRED WITHIN 14 DAYS FROM THE DATE OF ARRIVAL" in India. Foreigners (including minors above 16 years of age) have to report in person or through an authorized representative to the appropriate Registration Officer for registration. No registration is required in respect of children below the age of 16 years.

Residential Permit:

Residential permit is issued at the time of registration, its validity being the period of stay specified in the visa. Application for extension of the Residential Permit should be made at least TWO months before its expiry to the nearest Registration Officer in the prescribed form.

Supporting documents required for the registration:

i. Original valid passport and Visa along with 4 passport size color photographs (4 cm x 4cm with white background, ears distinctly visible without spectacles and cap).
ii. Registration form
iii. 3 photocopies of the relevant pages of passport (photo page, page indicating validity, page bearing arrival stamp of Indian Immigration.
iv. Undertaking letter (3 copies signed by Indian Host/ sponsor/ Guarantor along with any one valid identity document like passport, election identity card, official identity card, PAN card, etc.).
v. Proof of Residence (3 copies of either electricity bill/Telephone bill/ Municipal bill/ certificate of municipal authority/Leave & License agreement or any other valid proof of residence)
vi. Registration fee
vii. In case of registration on Employment visa, three copies of the terms and conditions of the contract of assignment, including salary, designation, tenure of employment etc.
viii. In case of registration on Employment or Business Visa, three copies of PAN card or of application made for grant of PAN card or an undertaking that PAN card would be applied after FRRO registration.
ix. In case of registration on Employment or Business Visa, forwarding letter of concerned company/ Firm /Business undertaking, duly signed by the authorized signatory mentioning name, designation & telephone and mobile number.

Extension of Visas:

Extensions are granted on different categories of visas as per requirements on case-to-case basis. The foreigner seeking extension must ensure that he/she submits application and the required supporting documents for extension well before date of expiry of visa.

Registration requirements for Person of Indian Origin (PIO) and Overseas Citizens of India (OCI) card holders are as follows:

Particulars	**PIO card**	**OCI card**
Visa	Not required	Not required
Registration with FRRO	Required if stay exceeds 180 days	Not required

Seek registration with tax authorities

i.e., Obtain PAN number

Person who is liable to pay taxes in India must apply for a tax registration number i.e. Permanent Account Number (PAN) with the Indian Income Tax Authorities in Form 49AA as applicable together with the prescribed documents.
It can be applied online using below link: https://tin.tin.nsdl.com/pan/form49AA.html

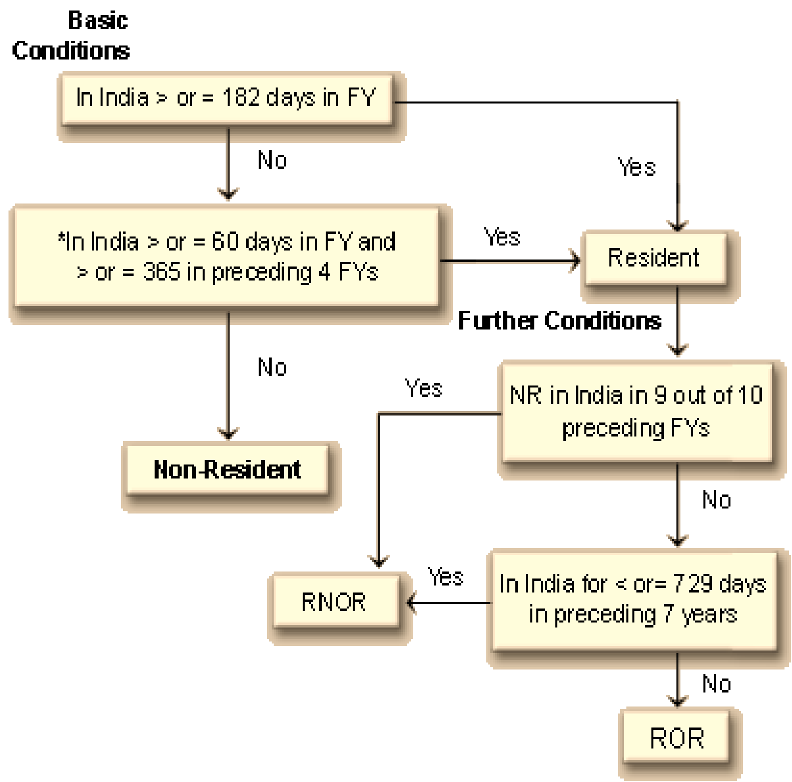
PAN is generally allotted within 15 days of submitting prescribed documents. The PAN is to be applied immediately on arrival since it is also required for foreigners' registration with the Foreigners' Regional Registration Office (FRRO).
Instructions and documents required for PAN application are provided in below link.
https://tin.tin.nsdl.com/pan/Instructions49AA.html#instruct_documents

Income Tax

The Indian fiscal year runs from 1 April to 31 March. An assignee is liable to pay taxes in India based on his/her tax residency during a fiscal year. Tax residency is dependent on the stay of the assignee in India, irrespective of the purpose of such stay. An assignee can be a Resident and Ordinarily Resident (ROR), Resident but not Ordinarily Resident (RNOR) or Non-Resident (NR) in a year.
An ROR is taxable on his/her worldwide income in India.
Conversely, an RNOR is usually taxable, and an NR is taxable only on the following incomes: •
Received or deemed to be received in India
Accrued or deemed to accrue/ arise in India

*An Expat who arrives in India for the first time on non-employment visa, he will be NR/RNOR for the first two-three fiscal years. Generally, a person who spends 182 days or more in India during a fiscal year and more than 729 days in India in the previous 7 years will be an ROR for that fiscal year. The tax residency of an individual will determine the scope of income liable to be taxed in India.

Tax residency- A major factor for determining tax incidence



Scope of Income

Source of income	ROR	RNOR/NR
Received in India	Taxable	Taxable
Sourced in India	Taxable	Taxable
Sourced and received outside India	Taxable	Non-taxable

Individual tax rates:

India follows progressive rates of taxation for individuals. The applicable tax rates for fiscal year 2015-16 (1 April 2015 to 31 March 2016) are as below:

Income tax slab (INR)	Rate %
Upto 250,000	Nil
250,001 – 500,000	10
500,001 – 10,00,000	20
10,00,001 or above	30

* Exemption limit for senior citizens of age 60 years or more is INR 300,000 and super senior citizens of age 80 years or more is INR 500,000.
Surcharge at the rate of 12% is payable on tax if income exceeds INR 10 million (for fiscal year 2015-16).
Educational cess at the rate of 3% is payable on tax plus surcharge.

Tax payments:

Taxes on income earned will be payable through the following mechanisms.

Withholding tax (TDS) on salary income	• Estimation of total income • Monthly deduction and remittance of taxes
Advance tax on personal income	• Trigger only if tax exceeds INR 10,000 • Determination of tax on estimated personal income • Payment of tax in installments due by 15th of September/ December and March of every fiscal year
Self-assessment tax	• Determination of tax on actual income • Payment of tax on or before filing return of income

Taxation principles

Salary income/ remuneration earned by an individual for services rendered in India during the assignment period is taxable in India (irrespective of where the payment has been received). This will include salary for any holiday period during the assignment. In addition, any sum that is relatable to the India service period and received preceding/ succeeding the assignment period will also form part of salary income.

Perquisites/fringe benefits such as accommodation, car, employee stock option, education benefits provided by the employer are also liable to tax. Some of the allowances/benefits like housing and leave travel are eligible for specific deductions/exemptions subject to the amount being actually expended and satisfaction of requisite conditions.

Double Taxation Avoidance Agreements (DTAA)

India has entered into 94 double taxation avoidance agreements and 10 Tax information exchange agreements. An individual who is resident of a country with which India has entered into DTAA could avail the treaty benefits to either eliminate taxation in one of the countries or avail credit of taxes paid in the country of residence. Commencing from India fiscal year 2012-13, assignees would require a **tax residency certificate (TRC)** from the tax authorities of the resident country to avail treaty benefits in the India tax return. In addition, prescribed details are to be submitted in Form 10F if not already mentioned in the TRC.

Individuals rendering services in India for a shorter span may be eligible to claim short stay exemption under the Indian Income tax Act, 1961 or the relevant DTAA provided certain conditions are satisfied.

Can I use tax planning to accelerate or defer residence?

Expats can use careful tax planning to avoid becoming a tax resident in India, and can thus avoid paying taxes on a worldwide income.

Expatriates seeking to accelerate or defer tax residence in India should consider all the rules related to the residential status mentioned above. Pay special attention to the ROR criteria, noting the number of days for which it is necessary an individual remains in India to satisfy this status.

For example, splitting the time spent in India for a lengthy assignment between two financial years can help an individual avoid tax residence status.

Grossing-up of taxes

Expatriates coming into India and working in various companies are generally tax equalized i.e., the tax payable in India on their salary and perquisites is borne by the employer. This is to ensure that they remain tax neutral in respect of their Indian assignment. In other words, the expatriate employees are assured net-of-tax salary income. Consequently, their income is grossed up for determining the tax payable in India. In other words, tax payable by them is added to their salary being remitted and determined on gross figure.
This is explained by an example below:

Particulars	Amount
Amount payable to expat (net-of-tax)	INR 100
Tax rate applicable	20% (assumed)
Gross-up income: INR 100*100/ (100-20)	INR 125
Tax payable (INR 125*20%)	INR 25
Net amount paid to expat (INR 125-INR 25)	INR 100

**Surcharge @ 12% shall be added to tax rate if total income exceeds INR 10 million. Education cess @ 3% should be added to tax rate plus surcharge in all cases.*

Further, if an expat is getting salary in India as well as his home country, then his global salary is taxable in India for the purpose of grossing-up.

What to do at the end of tax year?

Filing of Income tax returns

The due date for filing the India tax return is 31st July following the end of every fiscal year. The return can be filed either manually or electronically using the link http://www.incometaxindia.gov.in/Pages/default.aspx. However, electronic filing is mandatory in cases where the taxable income exceeds INR 500,000. There is no system of joint filing of tax return with spouse. The return may be subjected to scrutiny by revenue authorities. An assignee who qualifies as ROR in a fiscal year has to report moveable and immoveable assets held overseas along with any financial interest or signing authority abroad and trusteeship in offshore trusts in the India tax return. This requirement is independent of the assignee having taxable income for the fiscal year.

Return shall be filed in form no. ITR-1 SAHAJ, ITR-2 or ITR-2A, depending upon the nature of income as to salary, business or profession and capital gains.

Related information in detail is given in below link:

http://www.incometaxindia.gov.in/Pages/downloads/income-tax-return.aspx?c=6

What to do at the time of departure?

Providing an undertaking

Employee is required to furnish with the income tax authorities, an undertaking from the employer to the effect that the tax payable by the employee shall be paid by the employer.

This undertaking is required to be presented to the immigration authorities at the time of departure from India.

Mandatory contribution towards Social Security

As per the provisions of the Provident Fund scheme, both employer as well as employee will contribute 12% of monthly pay (as defined). Out of the employer's contribution 8.33% of monthly pay will be towards the pension fund and balance 3.67% will be towards Provident Fund.
Salary will include the total salary whether received in India or abroad.

An employer needs to deposit the PF by the 15th of the next month. The details of the assignees also need to be provided on a monthly basis in a prescribed form.

Foreign nationals i.e. International Workers (IWs) working in establishments in India to which Employees' Provident Fund (PF) regulations apply are required to contribute to the PF (on gross salary) except those who have been specifically exempted under the regulations.

Social Security Agreements (SSA)

Assignees from countries with whom India has signed an SSA, contributing towards the social security of the home country and holding Certificate of Coverage (COC) from the home country will not be required to contribute towards the Indian social security. The COC needs to be filed with the PF authorities.

Bilateral comprehensive economic agreement (BCEA)

India has entered into BCEAs with various countries. Assignees from countries with which such agreements have been entered into before 1st October, 2008 and contributing to their home country social security would also be exempt from Indian social security contributions on satisfaction of specified conditions. India has entered into a BCEA with Singapore prior to 1 October 2008. Hence, assignees from Singapore can avail exemption under the BCEA subject to fulfilling the conditions specified therein.

Exchange control

India has liberalized its exchange control provisions to allow expatriates to freely repatriate their remuneration back to the home country after payment of appropriate taxes and social security and submission of appropriate documents. The norms also permit employers to make direct payments to the employees' foreign bank accounts net of appropriate taxes and social security

Requirements at a glance:

Requirements	To be completed by	Periodicity
FRRO registration	Within 14 days of arrival	To be renewed periodically
PAN application	After FRRO registration	One time
Tax payments: **Advance tax (on Personal income)**	15th September 15th December and, 15th March	
Withholding tax (on salary income)	7th of next month (to be deducted and paid by employer)	Monthly
Income Tax Return	31st July	Annual
Social security (PF)	On a monthly basis by employer	Monthly

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