



## Taxation of Non-Resident

### TAXATION OF NON-RESIDENT PERSONS

#### Introduction

A non-resident is taxed in India only on income that is received, deemed received, accrued, or deemed accrued in India. Taxability is also influenced by Double Taxation Avoidance Agreements (DTAAs) between India and other countries.

#### Determination of Non-Resident Status

A person is classified as a non-resident under Section 6 of the Income-tax Act if he does not meet the criteria for residency based on his physical stay in India. The residential status of entities depends on the location of control, management, or effective place of business.

#### Taxable Income of Non-Residents

The following categories of income are taxable in India for non-residents:

- **Salary:** Taxable if services are rendered in India, regardless of the place of receipt. Certain exemptions apply under Section 10(6).
- **House Property:** Income from properties in India is taxable, even if received outside India.
- **Business or Profession:** Taxable if the business has a permanent establishment in India or if it has a business connection in India.
- **Capital Gains:** Taxable if the asset is located in India. Shares in a foreign entity deriving substantial value from Indian assets are also taxable. DTAA provisions may provide relief.
- **Other Sources:** Passive income like dividends, interest, royalties, and fees for technical services (FTS) is taxable in India if deemed to accrue or arise in India.

#### Computation of Total Income

Total income is determined as follows:

- **Calculate income under five heads** (Salary, House Property, Business/Profession, Capital Gains, Other Sources).
- **Apply clubbing provisions** if applicable.
- **Set off and carry forward losses** as per tax provisions.
- **Apply deductions under Chapter VI-A** to compute Gross Total Income.
- **Determine total taxable income** after deductions.

#### Tax Computation for Non-Residents

- Tax is levied at normal rates for regular income and special rates for specific incomes.
- **Minimum Alternate Tax (MAT)** applies to foreign companies with a permanent establishment in India. Certain incomes like dividends, royalties, and capital gains may be excluded if taxed at lower rates.
- **Alternate Minimum Tax (AMT)** applies to non-corporate assesseees at 18.5% on adjusted total income.

#### Compliance Requirements for Non-Residents

- **Permanent Account Number (PAN):** PAN is required for all communications with the Income-tax Department and for specified financial transactions. However, a non-resident is not required to have a PAN in the following cases:
  - Income from investment in Category I or II AIFs located in IFSC (if TDS is deducted and foreign residency details are given).
  - Receipt of passive income like interest, dividend, royalty, FTS, or capital gains (if foreign residency details are furnished).
  - Opening a bank account with an IFSC banking unit (if no taxable income in India and Form 60 is submitted).
- **Filing of Return:** Non-residents are required to file income-tax return unless they have only specified incomes (e.g., under Section 115A) with tax already deducted.
- **Tax Residency Certificate (TRC):** Required to claim DTAA benefits.
- **Tax Clearance Certificate:** Non-residents may need this certificate before leaving India to confirm tax compliance.

#### Taxation of Dividend Income of Non-Residents

#### Taxation of Dividend Income of Non-Residents

Dividend income received by a non-resident from an Indian company is always taxable in India. However, dividends from a foreign company are taxable in India only if received in India. Unlike regular income, dividends for non-residents are taxed on a gross basis at concessional rates.

#### Taxability of Dividend Income

- **Dividend from an Indian Company:** Always deemed to accrue in India and taxable in India, regardless of where it is received.



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- **Dividend from a Foreign Company:** Not taxable in India unless received in India.
- **DTAA Applicability:** If a tax treaty between India and the recipient's country provides a lower tax rate, DTAA provisions prevail.

## Recognition of Dividend Income

- **Final and Deemed Dividend:** Taxable in the year it is declared, distributed, or paid.
- **Interim Dividend:** Taxable when unconditionally made available to the shareholder.

## Taxation and Deductions

- Taxable under "Income from Other Sources"
- Non-residents cannot claim deductions for expenses related to earning dividend income.
- Chapter VI-A Deductions are not allowed for non-residents, except for units in an International Financial Services Centre (IFSC) under Section 80LA.

## Applicable Tax Rates

Section	Assessee	Tax Rate
115A	Non-resident/Foreign company	10% (IFSC units), otherwise 20%
115AB	Offshore fund (Mutual Fund units)	10%
115AC	Non-resident (GDRs of Indian companies/PSUs)	10%
115AD	Foreign Portfolio Investors (FPIs)	20%
115E	Non-Resident Indians (NRIs)	20%

- If DTAA offers lower rates, DTAA rates override the above rates.

## Minimum Alternate Tax (MAT) on Dividends

- MAT applies to foreign companies only if they have a Permanent Establishment (PE) in India and income is not taxable under the presumptive tax scheme.
- Dividend adjustments for MAT are made if the tax rate is lower than the MAT rate.

## Exemptions from Tax on Dividend Income

- Income of European Economic Community (Section 10(23BBB)).
- Income from specified fund located in IFSCs (Section 10(23FBC)).
- Dividend from business trusts (REITs/InvITs) (Section 10(23FC)/10(23FD)).
- Dividends received by wholly owned subsidiary of the Abu Dhabi Investment Authority (ADIA), Sovereign Wealth Funds and Pension Funds (Section 10(23FE)).
- Dividend received by IFSC units engaged in aircraft or ship leasing business from another IFSC unit engaged in same business (Section 10(34B)).

## TDS on Dividend Payments to Non-Residents

Tax is deducted at source (TDS) under the following provisions:

Section	Nature of Income
194LBA	Dividend received from SPV distributed by the business trust to the non-resident
194LBB	Dividend distributed by Category-I or Category-II AIFs
196A	Dividend distributed by mutual funds
196B	Dividend income of Offshore Fund in respect of units of mutual fund purchased in foreign currency
196C	Dividend on GDRs purchased in foreign currency
196D	Dividend income of FPIs from securities (other than mutual funds purchased in foreign currency)
195	Dividend in any other case

## Return Filing Requirements



A non-resident must file an income tax return if his income is taxable in India. However, return filing is not required if:

- The non-resident individual, AOP, or BOI has total income (before specified exemptions/deductions) below the basic exemption limit.
- The non-resident or foreign company earns only specified income (like dividend, interest) under Sections 115A / 115AC and TDS on such income is deducted at the rates not lower than the tax rates provided under such sections.
- An NRI opts for the special regime (Chapter XII-A) and earns only foreign exchange asset income, with TDS deducted.
- Income is only from investment in Category III AIF (specified fund under Section 10(4D)).

**Taxation of Interest Income of Non-Residents**

**Taxation of Interest Income of Non-Residents**

A non-resident is taxed in India on interest income that accrues, arises, or is deemed to accrue or arise in India. Interest received in India is also taxable. While interest is generally taxed at normal rates, certain categories of interest income are subject to concessional tax rates on a gross basis.

**Taxability of Interest Income**

- **Interest from Indian Sources:** Always taxable in India.
- **Interest from Foreign Sources:** Taxable in India only if received in India.
- **DTAA Applicability:** Provisions of the Double Taxation Avoidance Agreement (DTAA) apply if they are more beneficial.

The source of interest income is treated in India if it is payable by:

- The Government of India.
- A resident, unless the loan is for a business/profession or income source outside India.
- A non-resident, if the loan is for a business/profession in India.

**Recognition of Interest Income**

- **Mercantile Accounting:** Taxable on an accrual basis.
- **Cash Accounting:** Taxable on a receipt basis.

**Taxation and Deductions**

- **Taxable under "Income from Other Sources"** unless classified as business income.
- **Deductions:** Generally, expenses related to earning interest income are allowed. However, non-residents are taxed on a gross basis under Sections 115A, 115AC, and 115AD, with no deductions allowed.
- **Chapter VI-A Deductions:** Not allowed except for IFSC units under Section 80LA.

**Applicable Tax Rates**

Section	Assessee	Particulars	Tax Rate
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Section 115A	Non-resident or Foreign Co.	Interest on monies borrowed or debt incurred by Government or Indian concern in foreign currency	20%
	Non-resident or Foreign Co.	Interest received from notified Infrastructure Debt Fund as referred to in Section 10(47)	5%
	Non-resident or Foreign Co.	Interest received from an Indian Co. or business trust in respect of: <i>(a)</i> Monies borrowed in foreign currency; <i>(b)</i> Long-term Infrastructure Bonds; or <i>(c)</i> Rupee Denominated Bonds. <i>(If the borrowing is made or bonds are issued during the period specified under Section 194LC)</i>	<ul style="list-style-type: none"><li>• Interest payable in respect of long-term bond or rupee denominated bonds listed on a recognised stock exchange in IFSC- 4% if bonds are issued before 01-07-2023 and 9% if bonds are issued on or after 01-07-2023[1] ;</li><li>• In any other case 5%</li></ul>
	FPI or QFI	Interest on Rupee Denominated Bonds of an Indian Co. or Government Securities or Municipal Debt Securities as referred to in Section 194LD	5%
	Non-resident or Foreign Co.	Interest income distributed by business trust to its unit holders as referred to in Section 194LBA.	5%
Section 115AC	Non-resident	Interest on bonds of an Indian Company or Public Sector Company (PSU) purchased in foreign currency	10%



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Section 115AD	FPI	Interest from securities	<ul style="list-style-type: none"> <li>• 5%- Rupee Denominated Bonds of an Indian Company or Government Securities or Municipal Debt Securities;</li> <li>• 20%- In any other case</li> </ul>
Section 115E	Non-resident Indian	Interest on debentures or deposits of public company or Government security purchase in foreign currency	20%

**Note:** If DTAA provides a lower tax rate, it prevails.

## Minimum Alternate Tax (MAT) on Interest Income

- Applicable to foreign companies with a Permanent Establishment (PE) in India.
- Adjustments to book profit for interest income apply only when taxed at a lower rate than MAT.

## Exemptions from Tax on Interest Income

- Interest on certain securities (e.g., National Defence Loans) [Section 10(4)(i)].
- Interest on Non-Resident External (NRE) accounts [Section 10(4)(ii)].
- Interest on Rupee Denominated Bonds issued between 17-09-2018 and 31-03-2019 [Section 10(4C)].
- Interest from aircraft/ship leasing to IFSC units [Section 10(4F)].
- Interest on certain securities or deposits [Section 10(15)].
- Interest income of European Economic Community [Section 10(23BBB)].
- Income from the specified fund defined under Section 10(4D) [Section 10(23FBC)].
- Interest income of wholly owned subsidiary of ADIA or Sovereign wealth fund or pension fund from investment in Indian infrastructure entities [Section 10(23FE)]

## TDS on Interest Payments to Non-Residents

Tax is deducted at source (TDS) under the following provisions:

- **Section 195:** General provision for tax deduction from interest payments to non-residents.
- **Section 194LB:** Interest from Infrastructure Debt Funds.
- **Section 194LBA:** Interest from Special Purpose Vehicles (SPVs) distributed by business trusts.
- **Section 194LC:** Interest on foreign currency loans, bonds, or Rupee Denominated Bonds.
- **Section 194LD:** Interest on Government/Municipal Debt Securities payable to FPIs.
- **Section 196C:** TDS on interest from Foreign Currency Convertible Bonds (FCCBs) issued by an Indian company or bonds of PSUs.
- **Section 196D:** Interest on securities held by FPIs.

## Return Filing Requirements

A non-resident must file an income tax return if his income is taxable in India. However, return filing is not required if:

- The non-resident individual, AOP, or BOI has total income (before specified exemptions/deductions) below the basic exemption limit.
- The non-resident or foreign company earns only specified income (like dividend, interest) under Sections 115A / 115AC and TDS on such income is deducted at the rates not lower than the tax rates provided under such sections.
- An NRI opts for the special regime (Chapter XII-A) and earns only foreign exchange asset income, with TDS deducted.
- Income is only from investment in Category III AIF (specified fund under Section 10(4D)).

## Taxation of Royalty and Fees for Technical Services (FTS) for Non-Residents

## Taxation of Royalty and Fees for Technical Services (FTS) for Non-Residents

The taxability of royalty or FTS income for a non-resident depends on factors such as the place of accrual, existence of a Permanent Establishment (PE) in India, the date of the agreement, and Double Taxation Avoidance Agreements (DTAAs). For agreements entered into on or after 01-04-2003, taxation is governed by Section 44DA, Section 56 or Section 115A.



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## Taxability of Royalty and FTS Income

- **Royalty/FTS from the Government:** Always deemed to accrue in India and taxable in India.
- **Royalty/FTS from other persons:** Taxable if used for a business/profession in India or for earning any income from any source in India.
- **DTAA Applicability:** Provisions of DTAA apply if they are more beneficial.

## Recognition of Income

- Income by way of royalty or rendering of services is recognised in accordance with ICDS-IV.
- ICDS shall also apply for computation of incomes in the nature of royalty or fees for technical services which are taxable on a gross basis in the hands of a non-resident non-corporate assessee or a foreign company under Section 115A. [Circular No. 10/2017, dated 23-3-2017]
- **Royalty Recognition:** Recognised on an accrual basis unless another systematic method is more appropriate.
- **Service Revenue Recognition:** Follows the percentage of completion method (POCM), but for short-term contracts ( $\leq 90$  days), it may be recognised upon completion.

## Taxable Head of Income and Tax Rates

- When received from the Government or an Indian concern
  - o If income is linked to PE in India, it is taxed as business income under Section 44DA at normal tax rates. Expenses are allowed except expenses not wholly/exclusively incurred for PE and payments to head office/other offices (except reimbursement).
  - o If income is not linked to PE, it is taxed under the head 'other sources' at a rate of 20% under Section 115A. Expenses are not allowed to be deducted.
- When received from others
  - o Tax at normal rates under standard provisions.
  - o If from the oil/mineral business (e.g., services, hire of plant/machinery for extraction), the presumptive tax scheme under Section 44BB applies, and 10% of receipts are deemed as income.  
(Note: 44BB not applicable if 44D / 44DA / 115A applies.)

## Deductions and Exemptions

- **Business Expenses:** Allowed if income is connected to a PE.
- **Chapter VI-A Deductions:** Allowed.
- **Exemptions:**
  - o Tax on royalty or FTS paid by the Government or an Indian concern on behalf of a foreign company (Section 10(6A)).
  - o Royalty/FTS received under agreements with the Indian government for security-related projects (Section 10(6C)).
  - o Royalty/FTS from National Technical Research Organisation (Section 10(6D))
  - o Royalty/FTS from leasing aircraft/ships to IFSC units (Section 10(4F)).

## Minimum Alternate Tax (MAT) on Royalty/FTS Income

- Applicable to foreign companies with a PE in India.
- Adjustments to book profit apply if income is taxed at a lower rate than MAT.

## TDS on Royalty/FTS Payments to Non-Residents

- Tax shall be deducted under Section 195 from royalty/FTS payments to non-residents.
- If tax is not deducted and deposited, the payer cannot claim the expense as a deduction.

## Return Filing Requirements

A non-resident must file an income tax return if his income is taxable in India. However, return filing is not required if:

- The non-resident individual, AOP, or BOI has total income (before specified exemptions/deductions) below the basic exemption limit.
- TDS on royalty/FTS is deducted at a rate not lower than the tax rate provided under Section 115A.

## Taxation of Capital Gains for Non-Residents

### Taxation of Capital Gains for Non-Residents

#### Introduction

Capital gains tax applies to income from the transfer of a capital asset. For non-residents, specific provisions govern aspects like period of holding, cost of acquisition, foreign currency fluctuations, and computation methods.



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## Taxability of Capital Gains

- **Capital gains from an asset in India:** Always taxable in India under Section 9(1)(i).
- **Indirect Transfer:** Gains from shares in a foreign entity that derive substantial value from Indian assets are also taxable in India.
- **DTAA Applicability:** The provisions of DTAA apply if they are more beneficial.

## Computation of Capital Gains

### Classification Based on Holding Period

- o **Short-Term Capital Asset:** Holding period  $\leq$  24 months (exceptions for certain securities: 12 months).
- o **Long-Term Capital Asset:** Holding period  $>$  24 months/12 months.
- o Certain securities (e.g., market-linked debentures, specified mutual funds, unlisted bonds/debentures) are always treated as short-term gains. [Section 50AA]

### Capital Gains Calculation

- o Sale Price – (Expenditure on Transfer + Cost of Acquisition + Cost of Improvement) = Capital Gains
- o No Indexation for Capital Assets Sold After 23-07-2024.

### Special Provisions for Non-Residents

- o Securities held by Foreign Portfolio Investors (FPIs) are always capital assets.
- o Certain Transfers Exempt from Tax (e.g., transfer of GDRs, Rupee Denominated Bonds, Government Securities between non-residents).

## Tax Rates on Capital Gains

Type of Capital Gain	Tax Rate
Short-Term Capital Gains (STCG)	Normal rates
STCG on equity shares, mutual funds, or business trust units (STT paid)	20%
STCG on securities held by FPIs	30%
<b>Long-Term Capital Gains (LTCG)</b>	
LTCG on equity shares, mutual funds, or business trust units (STT paid)	12.5% (on capital gain exceeding Rs. 1.25 lakh)
LTCG from other capital assets	12.5%

- **Foreign Currency Fluctuation Benefit:** Allowed to non-residents on capital gains from shares/debentures of an Indian company except where shares/debentures are unlisted or capital gain is taxable under Section 112A, Section 115AB, Section 115AC or Section 115AD.

## Deductions and Exemptions

- **Reinvestment Exemptions (Sections 54–54GB):** Available to both residents and non-residents.
- **Special NRI Deduction (Section 115F):** LTCG from foreign exchange assets reinvested in shares or securities is tax-exempt.
- **Deduction under Chapter VI-A:** Not allowed except from short-term capital gain chargeable to tax at normal rates.
- **Exemptions for Certain Investors and Funds:**
  - o Income from transfer of units of the specified fund defined under Section 10(4D) [Section 10(23FF)]
  - o European Economic Community Investments [Section 10(23BBB)]
  - o Capital Gains of wholly owned subsidiary of ADIA or Sovereign wealth fund or pension fund from investment in Indian infrastructure entities [Section 10(23FE)]
  - o Investor's income from foreign investment fund, which is relocated to IFSC [Section 10(23FF)]

## Minimum Alternate Tax (MAT) on Capital Gains

- Applicable to foreign companies with a Permanent Establishment (PE) in India.
- Adjustments to book profit apply if capital gains are taxed at a lower rate than MAT.

## TDS on Capital Gains for Non-Residents

- Sections 194LBB, 194LBC, 195, 196B, and 196C govern TDS for capital gains paid to non-residents.

## Return Filing Requirements

A non-resident must file an income tax return if his income is taxable in India. However, return filing is not required if:

- The non-resident individual, AOP, or BOI has total income (before specified exemptions/deductions) below the basic exemption limit.
- An NRI opts for the special regime (Chapter XII-A) and earns LTCG from a foreign exchange asset, provided TDS is deducted.
- Eligible foreign investor earning only capital gains from capital assets referred to in Section 47(viib).

## Special Tax Rates on Specified Income of Non-Residents



**Special Tax Rates on Specified Income of Non-Residents**

Non-residents and foreign companies are taxed at special rates as per Section 115A on certain incomes, including dividends, interest, royalty, and fees for technical services (FTS), on a gross basis without deduction of expenses. If a non-resident earns only these specified incomes and tax is deducted at the prescribed rates, return filing is not required.

**Applicability**

- **Non-resident:** A non-resident is one who does not meet the residency conditions under Section 6, based on physical presence (for individuals) or control and management (for others).
- **Foreign company:** A foreign company is any company not incorporated in India. This provision applies to a foreign company even if it becomes resident in India because the place of effective management (POEM) is in India [Notification No. 29, dated 22-6-2018].

**Special Tax Rates on Dividend Income**

- **General Rate: 20%** (plus surcharge and cess).
- **Dividend from IFSC Units: 10%** (plus surcharge and cess).

**TDS Provisions on Dividend**

- **Section 194LBA:** Dividend from business trusts.
- **Section 196A:** Dividend from mutual funds.
- **Section 195:** Other dividend payments.

**Special Tax Rates on Interest Income**

<i>Nature of Interest Income</i>	<i>Tax Rate</i>
Interest on monies borrowed or debt incurred by Government or Indian concern in foreign currency	20%
Interest received from notified Infrastructure Debt Fund as referred to in Section 10(47)	5%
Interest received from an Indian Co. or business trust in respect of: (a) Monies borrowed in foreign currency; (b) Long-term Infrastructure Bonds; or (c) Rupee Denominated Bonds. <i>(If the borrowing is made or bonds are issued during the period specified under Section 194LC)</i>	<ul style="list-style-type: none"> <li>• Interest payable in respect of long-term bond or rupee denominated bonds listed on a recognised stock exchange in IFSC- 4% if bonds are issued before 01-07-2023 and 9% if bonds are issued on or after 01-07-2023[1] ;</li> <li>• In any other case 5%</li> </ul>
Interest on Rupee Denominated Bonds of an Indian Co. or Government Securities or Municipal Debt Securities as referred to in Section 194LD	5%
Interest income distributed by business trust to its unit holders as referred to in Section 194LBA.	5%

**TDS Provisions:**

- **Section 194LB:** Interest from Infrastructure Debt Funds.
- **Section 194LBA:** Interest from SPVs to business trust unit holders.
- **Section 194LC:** Interest on foreign currency loans and bonds.
- **Section 194LD:** Interest on Govt. & municipal securities for FPIs.
- **Section 195:** Other interest payments.

**Special Tax Rates on Royalty & FTS**



- **General Rate:** 20%
- **PE Connection:** If linked to a Permanent Establishment (PE), taxed at normal rates under Section 44DA.

#### Other Provisions

- **Return Filing Exemption:** Return filing is not required if only specified incomes are earned and tax is deducted at a rate not lower than the rates prescribed in this provision.
- **MAT Adjustments:** Income taxed at special rates is adjusted when computing Minimum Alternate Tax (MAT) liability for foreign companies. However, the adjustment is made only when such income is taxable at a rate lower than the MAT rate.
- **Admissibility of expenses:** Taxable on a gross basis. Thus, no deduction is allowed for expenses.
- **Admissibility of Chapter VI-A deductions:**
  - o Dividend and interest: Not allowed except deduction u/s 80LA
  - o Royalty and FTS: Allowed

#### Taxation of Offshore Funds on Income from Units of Mutual Funds

##### Taxation of Offshore Funds on Income from Units of Mutual Funds

Offshore Funds earning income from units of mutual funds in India are subject to special tax rates. Long-term capital gains are taxed at 12.5%, while other income is taxed at 10%.

#### Applicability

Section 115AB applies to overseas financial organisations (also referred to as offshore funds) earning specified income from units of mutual funds purchased in foreign currency.

#### Meaning of Overseas Financial Organisation

An Overseas Financial Organisation is any fund or institution based outside India that invests in Indian mutual funds through proper SEBI-approved channels.

#### Tax Rates under Section 115AB

- **Dividend Income:** Taxable at 10% on a gross basis without allowing any deduction for any expenditure incurred to earn such income.
- **Long-term Capital Gains:** Taxable at 12.5% on gains from the transfer of mutual fund units purchased in foreign currency. No indexation benefit is allowed while calculating such gains.

**Note:** Gains from the transfer of units of specified mutual funds (mostly debt-oriented funds) are always treated as short-term capital gains, no matter the holding period. Such gains are taxed at normal rates, not the concessional rate under Section 115AB.

#### No deduction under Chapter VI-A

No deduction under Chapter VI-A is allowed from dividend or long-term capital gain taxable under this provision.

#### TDS

Incomes taxable under this provision are subject to TDS under Section 196B.

#### Return filing requirement

The offshore fund must file a return if its total income consists of dividend or capital gains income, even if TDS is deducted.

#### Taxation of Non-Residents on Income from GDRs, FCCBs, and FCEBs

##### Taxation of Non-Residents on Income from GDRs, FCCBs, and FCEBs

#### Introduction

Non-residents earning income from Foreign Currency Convertible Bonds (FCCBs), Foreign Currency Exchangeable Bonds (FCEBs), Public Sector Undertaking (PSU) Bonds, and Global Depository Receipts (GDRs) are subject to concessional tax rates. Interest income is taxed at 10%, while long-term capital gains are taxed at 12.5%.

#### Applicability

- **Non-Resident Individuals & Entities:** Defined as per Section 6.
- **Foreign Companies (Not Resident in India):** If a foreign company's Place of Effective Management (POEM) is in India, these provisions do not apply.

#### Tax Rates on Specified Income

Nature of Income	Tax Rate
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Interest on FCCBs/FCEBs	10%
Interest on PSU Bonds (Purchased in Foreign Currency)	10%
Dividend from GDRs	10%
Long-Term Capital Gains on FCCBs, FCEBs, PSU Bonds, or GDRs	12.5%
Short-Term Capital Gains on FCCBs, FCEBs, PSU Bonds, or GDRs	Normal tax rates

- **No Deduction for Expenses:** Interest and dividend income is taxed on a gross basis, without deductions for expenses.
- **No Deduction under Chapter VI-A:** No deduction under Chapter VI-A is allowed from dividend or long-term capital gain taxable under this provision.
- **TDS:** Incomes taxable under this provision are subject to TDS under Section 196C.
- **No Indexation or Foreign Exchange Benefit:** Long-term capital gains are computed **without** indexation or foreign currency fluctuation benefits.
- **Unlisted Bonds and Debentures Always Taxed as Short-Term Gains:** As per Section 50AA, if the bonds or debentures are unlisted, capital gains are treated as short-term irrespective of period of holding.
- **Return filing:** A non-resident must file an income tax return if his income is taxable in India. However, return filing is not required if:
  - o His income consists only of interest from FCCBs, FCEBs, PSU bonds, or dividends from GDRs, and TDS has been deducted from such income
  - o Eligible foreign investor earning only capital gains from capital assets referred to in Section 47(viiab).

## Taxation of Foreign Portfolio Investors (FPIs) and Specified Funds Under Section 115AD

## Taxation of Foreign Portfolio Investors (FPIs) and Specified Funds Under Section 115AD

Section 115AD provides special tax rates for Foreign Portfolio Investors (FPIs) and Specified Funds on income from securities (excluding mutual funds covered under Section 115AB) and capital gains from their transfer.

### Applicability

- Foreign Portfolio Investors (FPIs)
- Specified Funds as defined under Section 10(4D).

### Tax Rates Under Section 115AD

#### Tax on Interest & Dividend Income

Category	Income Type	Tax Rate
FPIs	Dividend & Interest Income	20%
FPIs (Investments in Rupee Bonds, Govt. Securities, Municipal Debt Securities – Section 194LD)	Interest Income	5%
Specified Funds	Dividend & Interest Income	10%

#### Tax on Capital Gains

Nature of Capital Gain	Tax Rate
Short-Term Capital Gains (STCG) on Specified Securities (STT Paid)	20%
STCG on Other Securities	30%
Long-Term Capital Gains (LTCG) on Specified Securities (STT Paid)	12.5% (on capital gain above Rs. 1.25 Lakh)
LTCG on other Securities	12.5%

- **Specified Securities:** Equity shares, equity-oriented mutual funds, and units of business trusts.
- **No Indexation or Foreign Currency Benefit:** Capital gains are computed without indexation or foreign exchange adjustments.
- **Market-Linked Debentures & Unlisted Bonds:** Always taxed as short-term capital gains (Section 50AA) irrespective of period of holding.
- **Computation of income in case of specified fund:** The concessional tax rate under Section 115AD applies only to income linked to non-resident unit holders (not having a PE in India) in Category III AIFs, or to securities held by the investment division of an offshore banking unit. The tax is worked out proportionately as per Rule 21AJ or Rule 21AJAA.
- **Non-admissibility of expenses:** No deduction is allowed for expenses incurred in earning income from securities.
- **Non-admissibility of deduction under Chapter VI-A:** No deduction under Chapter VI-A is allowed from any income (including capital gains) arising from securities.
- **Statement of income eligible for concessional taxation:** A specified fund (Category III AIF) must file Form No. 10-IH, and an investment division of an offshore banking unit must file Form No. 10-IK to claim concessional tax rates.
- **TDS requirement**
  - o **Section 196B:** TDS on income from units purchased in foreign currency (covered under Section 115AB).
  - o **Section 194LD:** TDS on interest from Rupee Denominated Bonds, Government Securities, or Municipal Debt Securities.
  - o **Section 196D:** TDS on other income from securities payable to FPIs or specified funds.



- **Return filing requirement:** Filing of return is mandatory even if TDS has been deducted.

## Alternative Tax Regime for Non-Resident Indians (NRIs)

### Alternative Tax Regime for Non-Resident Indians (NRIs)

Chapter XII-A of the Income-tax Act provides an alternative tax regime for NRIs earning income from foreign exchange assets. NRIs can choose to be taxed under this regime or as per the normal provisions of the Act.

#### Eligibility

- **Non-Resident Indian (NRI):** An individual who is a citizen of India or Person of Indian Origin (PIO) and is a non-resident as per Section 6.

#### Incomes Covered

- Income derived from the foreign exchange asset or long-term capital gain arising from the transfer of such asset.
- Foreign Exchange Asset means shares, debentures, deposits with an Indian public company, and securities of the Central Government acquired in convertible foreign exchange.

#### Tax Rates

##### Tax on Dividend & Interest Income (Section 115E)

- **Dividend & Interest from Foreign Exchange Assets:** 20% (plus surcharge & cess).
- **No Deduction Allowed:** Tax is calculated on a gross basis, without deductions for expenses.

##### Tax on Long-Term Capital Gains (LTCG) (Section 115E)

- **Tax Rate on LTCG:** 12.5% **No Indexation Benefit:** However, foreign currency fluctuation benefit is available.

##### Exemption on Reinvestment of Capital Gains (Section 115F)

- **Eligible Investments:** LTCG is exempt if reinvested in shares, debentures, deposits of Indian public companies, or Central Govt. securities within 6 months ('new asset').
- **Full Exemption:** If entire sale consideration is reinvested.
- **Proportionate Exemption:** If partial reinvestment is made. The exemption shall be allowed proportionately as per the formula below:  
$$\text{Investment in new asset} * \text{Long-term capital gain/Net consideration}$$
- **Withdrawal of Exemption:** If the reinvested asset is sold within 3 years, the exempted capital gain becomes taxable.

#### Other Provisions

- **Opt-Out Option (Section 115-I):** NRIs can choose not to follow this regime and pay tax as per normal provisions.
- **No Chapter VI-A Deductions (Section 115D):** Deductions under Sections 80C to 80U are not available for income under this regime.
- **Exemption from Return Filing (Section 115G):** NRIs do not need to file a return if their total income consists only of income from foreign exchange asset or long-term capital gain from transfer of such asset and full TDS has been deducted.
- **Continued Benefit for Returning NRIs (Section 115H):** If an NRI becomes a resident, the regime continues for debentures, deposits, and Central Govt. securities until they are sold, provided a declaration is made in the return. It is to be noted that the scheme doesn't apply to income from shares of Indian companies in this case.

## Taxation of Foreign Sportsmen, Sports Associations, and Entertainers

### Taxation of Foreign Sportsmen, Sports Associations, and Entertainers

Non-resident sportsmen, sports associations, and entertainers earning income from activities performed in India are taxed at 20% on a gross basis, without deductions for expenses. If tax is deducted at source, they are not required to file a return of income.

#### Applicability

- **Foreign Sportsmen:** Non-resident athletes competing in India.
- **Foreign Sports Associations:** Non-resident sports entities receiving payments for sports activities in India.
- **Foreign Entertainers:** Non-resident entertainer

#### Taxable Income Categories

##### For Foreign Sportsmen

- **Participation Income:** Earnings from playing in games or sports in India.



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- **Advertisement Income:** Endorsements and sponsorships linked to India.
- **Media Contributions:** Payments for writing articles about Indian sports.

## For Foreign Sports Associations

- **Guaranteed Payments:** Any amount received in relation to a sporting event held in India, regardless of participation.

## For Foreign Entertainers

- **Performance Fees:** Income from performances in India.
- **Exclusions:** Earnings from shooting films or advertisements in India but broadcasted only outside India are not taxable.

## Taxation and Compliance

### Computation of Income

- **Tax is levied on a gross basis**—no deductions for expenses or Chapter VI-A benefits.

### Tax Rates

- **20% (plus surcharge & cess)** on all taxable income.

### TDS & Return Filing Exemption

- **TDS Deduction (Section 194E):** Payors must deduct tax at source before making payments.
- **No Return Filing Required:** If tax is deducted at 20% under Section 194E, return filing is not necessary.

### Tax Clearance Certificate for Persons Leaving India

#### Tax Clearance Certificate for Persons Leaving India

A Tax Clearance Certificate (TCC) ensures that individuals leaving India have either paid their tax dues or made satisfactory arrangements for payment. The owner or charterer of any ship or aircraft must verify the certificate before allowing such persons to travel.

#### Who Needs a Tax Clearance Certificate?

##### 1) Persons Not Domiciled in India

- Required if they have visited India for business, profession, or employment and have income from Indian sources.
- Not Required for foreign tourists or those visiting for non-business purposes.
- Contractors need not obtain a tax clearance certificate for tenders, contracts, or registrations. However, they must quote their PAN in relevant documents [ Circular No. 2/2004, Dated 10-2-2004].

#### Process:

1. Obtain an undertaking in Form 30A from the employer or payer confirming tax payment responsibility.
2. Submit it to the Chief Commissioner (CCIT) or Director-General (DGIT) for issuance of Form 30B (No Objection Certificate).

##### 2) Persons Domiciled in India

- Generally Not Required, except in specific cases where the Assessing Officer, with approval from Principal CCIT/CCIT, believes that departure could harm tax collection.

#### Situations Where TCC May Be Required (CBDT Instruction No. 1/2004):

- If the person is involved in financial irregularities and required for an investigation.
- If the person has direct tax arrears exceeding Rs. 10 lakh, not stayed by any authority.

#### Process:

1. File an application in Form 31 with the Assessing Officer.
  2. If tax liabilities are cleared or arrangements made, the Assessing Officer issues Form 33 (TCC).
- Instead of TCC, individuals domiciled in India usually submit Form 30C (containing PAN, purpose of travel, estimated duration of stay) before departure.

#### Responsibility of Airlines & Ships

Owners or charterers of ships or aircraft must verify the Tax Clearance Certificate before allowing travel. Failure to comply makes them personally liable for the passenger's unpaid tax, recoverable as an arrear.