How are the NRIs taxed?

Here's everything you wanted to know about taxation that NRIs are subjected to in India.

by **Riju Mehta**

To know if you, as an NRI, are supposed to pay tax in India, the first step is to determine your residency status for taxation purposes in the previous year, and whether your income falls in the taxable bracket. If you are a resident, you will have to pay tax for income earned in India and abroad, but as an NRI you don't pay tax for foreign income. Here's how to find out about your residency status, taxable income, deductions and exemptions available, and the ITR forms you need to use.

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Q Is the income that has been earned abroad taxed for NRIs in India?

No, any income earned abroad is not taxable in India for NRIs. "Section 9 of the Income-tax Act governs which income accrues or arises in India. As per this, foreign income for NRIs is exempt, barring some special cases," says Shubham Agrawal, Senior Taxation Adviser, TaxFile.

Q Which income is taxable for NRIs?

Any income that accrues or arises, or is deemed to accrue or arise in India, and any income that is received or deemed to be received in India will be taxed for NRIs. As for the income accruing outside India, from a business controlled from or a profession set up in India, will not be taxed. So the taxable income for NRIs will include:

- Any salary received or salary for service provided in India.
- Income from residential property in India (whether rented or vacant).
- Any capital gains resulting from the transfer of property or assets in India.
- Income from deposits like fixed deposits or interest on bank savings account in India.
- Interest on NRO (non-resident ordinary) accounts. However, the interest on NRE (non-resident external) and FCNR (foreign currency non-resident) accounts will be tax-free.

Q Who is a non-resident Indian (NRI)?

A non-resident Indian is an individual who is not a resident of India for tax purposes. Under Section 6 of the Income-tax Act, 1961, you are a non-resident in the financial year (not assessment year) if you don't satisfy both these conditions:

- If you are in India for 182 days or more during the previous year, or
- If you are in India for 60 days or more in the previous year and 365 days or more in four years immediately preceding the previous year.

For a person of Indian origin (PIO) who visits India during the year, or an Indian citizen who leaves the country in any previous year as a crew member or for employment, 60 days is substituted with 182 days.

- As per the Finance Act, 2020, the period of 60 days is substituted with 120 days if an Indian citizen or a PIO whose total income, other than income from foreign sources, exceeds ₹15 lakh in the previous year. Also, according to a new Section 6(1A) in the Finance Act, 2020, an Indian citizen with a total income of more than ₹15 lakh (other than income from foreign sources) shall be deemed to be resident if he is not liable to pay tax in any other country.

Q When is an NRI required to file tax returns?

Whether you are an NRI or a resident, if your total annual income is above the basic exemption limit of ₹2.5 lakh, filing of tax returns is mandatory. The last date for filing returns is 31 July of the relevant assessment year, but if you are a working partner in a firm whose accounts need to be audited, then the due date is 30 September. An NRI is exempt from filing returns under sub-Section(1) of Section 139 if:

- His total income in the previous year consisted only of investment income or income by way of long-term capital gains, or both.
- The tax deductible at source (TDS) under the provisions of Chapter XVII-B has been deducted from such income.

"In case an NRI is investing in equity or mutual funds, and there is TDS on gains, then for claiming a refund he will need to file the returns," says Kaushik. Adds Agrawal, "NRIs usually have TDS deducted on NRO bank interest at the rate of 30%. So, to claim the TDS, they should file returns even if their income is less than ₹2.5 lakh in that year."

Q Which ITR forms are they required to fill?

If the NRI does not have any income from business and profession, he can use ITR 2. If he does, he will have to use ITR 3.

Q Do NRIs need to pay advance tax?

If your tax liability as an NRI exceeds ₹10,000 in a financial year, you will have to pay advance tax. If you don't do so, interest will be levied under Sections 234B and 234C.

Q If tax has been paid abroad, will the NRIs have to pay it in India?

An NRI's foreign income is generally not taxable in India. "However, in some cases, where a person is resident in two or more countries, tax residency has to be established and DTAA (Double Taxation Avoidance Agreement) relief can be claimed if foreign income is being declared due to tax residency in India," says Kaushik. "Only a resident needs to offer his foreign income to tax and can set it off if tax has been paid abroad," agrees Agrawal.

Q Which exemptions and deductions are available to NRIs?

NRIs can opt for the old tax regime or the new regime with lower tax rate under Section 115BAC of the Income-tax Act. Under the former, they can avail of the following exemptions:

- Section 80C up to ₹1.5 lakh (children's tuition fee, premium for LIC policies, Ulips, ELSS, and principal payment of home loan).
- Section 80D (premium on medical insurance).
- Section 80E (interest on education loan).
- Section 80G (eligible donations).
- Section 80TTA (interest on savings bank account).

However, NRIs are not allowed any investment in the Senior Citizens' Savings Scheme, certificates of deposit (NSCs), five-year Post Office Deposit Scheme, and the PPF.

The following exemptions are not allowed to NRIs:

- Section 80CCG (investment in Rajiv Gandhi Equity Saving Scheme).
- Section 80 DD (deduction for medical treatment of disabled dependant as defined in the section).
- Section 80DDB (deduction for differently abled dependant as certified by a prescribed specialist).
- Section 80TTB (₹50,000 interest income on bank savings account for seniors).
- Section 80U (deduction for taxpayers who are suffering from disability).
- Section 87A (rebate up to ₹5 lakh (old regime) and ₹7 lakh (new regime)).

"The setting off of short-term capital gains of equity shares and mutual funds against the basic tax exemption limit is also not available to NRIs," says Sudhir Kaushik, CEO & Co-founder, TaxSpanner.

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