



# TAX STRUCTURING

## Key Issues For French Expatriates

*ORGANISER*

**Indo French Chamber of Commerce & Industries**

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*presented by*

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## PRESENTATION OUTLINE

### ▲ Overview

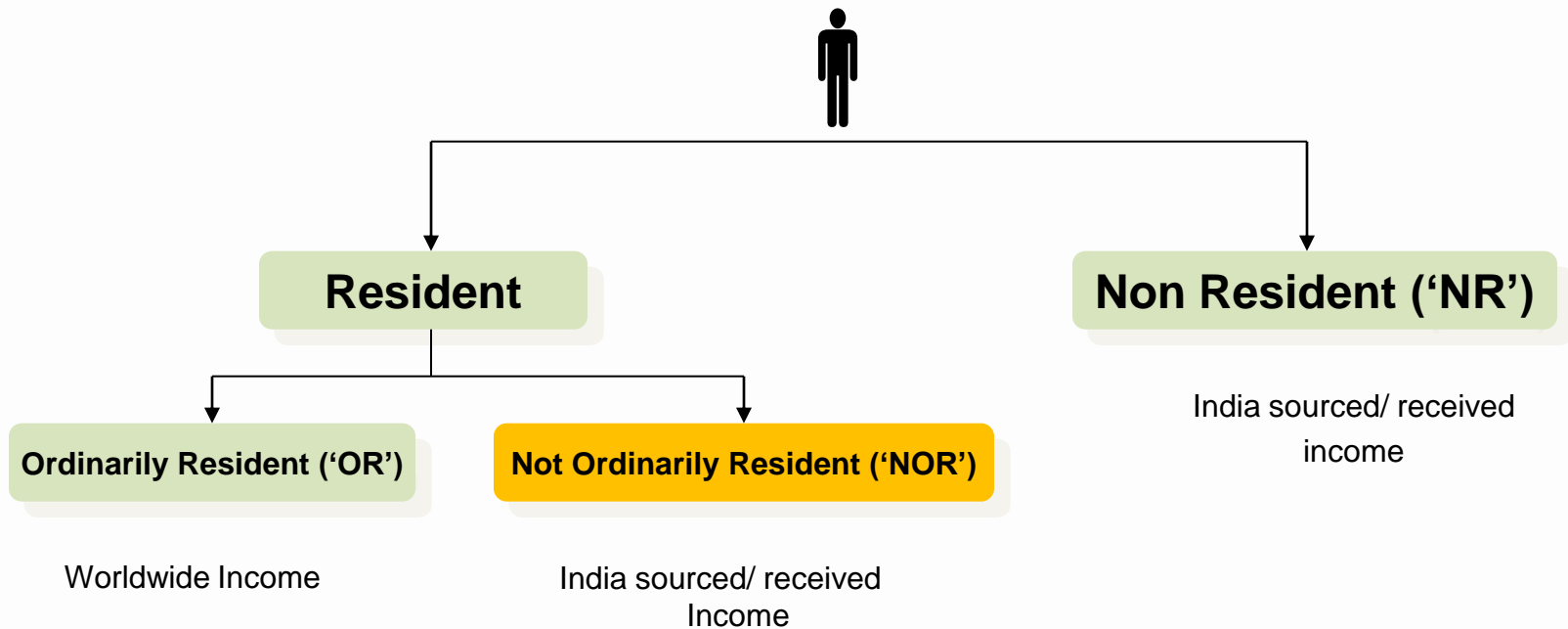
### ▲ Specific Issues

- ▶ Regional Responsibility – *extent of taxability in India*
- ▶ Short Stay Exemption – *relief under tax treaty*
- ▶ Accommodation – *who should lease*
- ▶ Social Security Contributions in France – *whether fully taxable*
- ▶ Tax Equalisation – *effective protection mechanism*
- ▶ Regulatory Issues – *payroll structuring*

### ▲ About ASA/CCI

# OVERVIEW

## Scope of Taxation



## Scope of Taxation

- ▲ Resident v Non-Resident ('NR')
  - ▶ **Primary Condition** - Stay of 182 days in a single year OR 60 days in a single year & 365 days in last four years
  - ▶ **Secondary Condition** - Stayed less than 730 days in India in last seven years OR Non resident in nine out of ten preceding years
  
- ▲ Not Ordinarily Resident ('NOR') is a privileged status which usually runs for 3-4 years from the date of first entry into India

**Losing the NOR status effectively means that global income would be reported to India. Though relief can be claimed under tax treaty, but reporting requirement remains**

## OVERVIEW

### Scope of Taxation

#### Arrival in India on April 1, 2010

Fiscal Year	Stay in India	Residential Status
2010-11	300/ 0	Resident; Not Ordinary *
2011-12	300/ 300	Resident; Not Ordinary *
2012-13	300/ 600	Resident; Not Ordinary *
<b>2013-14</b>	<b>200/ 900</b>	<b>Resident; Ordinary **</b>

\* aggregate stay in past 7 years is **less than** 729 days

\*\* aggregate stay in past 7 years is **more than** 729 days

**The NOR status is available for 3 fiscal years**

## OVERVIEW

### Scope of Taxation

Arrival in India on September 1, 2010

Fiscal Year	Stay in India	Residential Status
2010-11	190/ 0	Resident; Not Ordinary *
2011-12	260/ 190	Resident; Not Ordinary *
2012-13	260/ 450	Resident; Not Ordinary *
2013-14	260/ 710	Resident; Not Ordinary *
<b>2014-15</b>	<b>260/ 970</b>	<b>Resident; Ordinary **</b>

\* aggregate stay in past 7 years is **less than** 729 days

\*\* aggregate stay in past 7 years is **more than** 729 days

**The NOR status is available for an extended period of 4 fiscal years**

## Taxable Income

- ▲ Salary & Allowances
- ▲ Perquisites
  - ▶ Accommodation
  - ▶ Social Security Benefits
  - ▶ Any other benefit
- ▲ Tax Equalisation - To bridge parity between difference in tax rates of two or more tax jurisdictions
- ▲ Tax is computed based on [slab rates](#) applicable to individuals. Broadly, the first INR 800,000 of income attracts nearly INR 90,000 of tax amount. The balance is taxed at 30%. Aggregate tax is then enhanced by a cess (additional tax) of 3%.

# **SPECIFIC ISSUES**

# **REGIONAL RESPONSIBILITY**

*extent of tax liability in India*

## REGIONAL RESPONSIBILITY

“What will be the impact on tax of an expatriate posted to India with responsibility to servicing adjoining regions viz. Nepal, Bhutan, Sri Lanka, Bangladesh etc.?”

## REGIONAL RESPONSIBILITY – CASE STUDY

### Stephen Brandon v CIT (Income Tax Tribunal, Delhi)

- ▲ S, a foreign national **was a Not Ordinarily Resident ('NOR') in India**. His contract included servicing the South East Asia region and his remuneration was paid in foreign currency outside India. The employer's Asia office was India
- ▲ Besides servicing in India, Mr S made visits to adjoining countries viz. Nepal, Pakistan, Sri-Lanka to perform work assignments and thus **offered proportionate salary to tax in India**
- ▲ Tax officer observed that the company was headquartered in India and thus Mr S continued to render services in India even when he performs assignments in adjoining countries. Therefore, **his entire salary is taxable in India**
- ▲ The tribunal (court) relied on the contractual responsibility of Mr S and details of actual work performed in adjoining regions and taxed **only salary earned for services rendered in India**

## REGIONAL RESPONSIBILITY

### Experience Based Advice

#### *Pointers*

- ▲ Exemption only available to NOR's
- ▲ Contractual responsibility for the region is a must
- ▲ Details of work done in adjoining regions not India linked
- ▲ Period of personal visits / holidays – taxed in India
- ▲ Receive separate salary for each region serviced

#### *Documentation*

- ▲ Maintain travel log with details of services rendered in adjoining regions
- ▲ Calculation of exact days outside India reconciled to passport entries

**“Exemption available on case to case basis; likely to be challenged by revenue authorities at initial levels”**

# **SHORT STAY EXEMPTION**

*relief under tax treaty*

## SHORT STAY EXEMPTION

“What will be the impact on tax of an expatriate posted to India for short periods – projects, branch, engineering purpose etc.?”

## SHORT STAY EXEMPTION

- ▲ A specific provision under the tax treaty is relevant. It relates to ‘Dependent Personal Service’ i.e. Deputation to India on salaried basis ([article 16 of Indo-French tax treaty](#)) – Non taxable in India when
  - ▶ Stay in India < 183 days during financial year; and
  - ▶ Salary not paid by or on behalf of an Indian Co; and
  - ▶ Salary not borne by any fixed base/Permanent Establishment (‘PE’) of non-resident employer in India

## SHORT STAY EXEMPTION

- ▲ Meant for dependant personnel – salaried staff
- ▲ Prime purpose is to avoid hardship of paying individual taxes for short stay expats
- ▲ All conditions must be simultaneously fulfilled
- ▲ If short stay relief is claimed, Indian project/branch/PE cannot claim expenditure of salary paid to such expats

**“Essentially a cost benefit analysis from an individual and corporate tax perspective”**

# **ACCOMODATION**

*who should lease*

## ACCOMMODATION

“Can the lease arrangement for expatriate accommodation be optimised for tax purposes?”

## ACCOMMODATION

- ▲ **Rent Free Accommodation ('RFA')** - Accommodation provided by **employer** is treated as a perquisite and taxed at 15% of salary
  
- ▲ **House Rental Allowance ('HRA')** - Reimbursement of lease amount for accommodation leased by the **employee himself** is considered as an allowance, which is taxed on actual, as reduced by the lower of
  - ▶ 50% of salary
  - ▶ allowance received from employer
  - ▶ excess of rent paid over 10% of salary

**“Difference in tax incidence under both arrangements can cause optimisation of take home pay”**

## ACCOMMODATION

### Example

- a) Cost of Employee to Company (CTC) = € 100,000
- b) Rent paid in India = € 1,500 per month (Annually € 18,000)

### Taxability under Alternate Rental Arrangements

Particulars	Employer Lease	Employee Lease
Salary (A)	82,000	82,000
Lease Charges Paid by Employer (B)	18,000	
Lease Charges Paid by Employee; Reimbursed to Employee (B)		18,000
<b>Total CTC (A+B)</b>	<b>100,000</b>	<b>100,000</b>
Cost of Benefit (15% on Salary)	12,300	
Taxable Component of Rent Reimbursement		8,200
Taxable Salary	94,300	90,200
Tax Payable (@30.9%) (C)	29,140	27,870
<b>Effective Take Home (A-C)</b>	<b>52,860</b>	<b>54,130</b>

**“As a thumb rule, employee arranged accommodation generally provides higher tax efficiency”**

# **PENSION & MEDICAL FUND CONTRIBUTION**

*Whether fully taxable*

## **PENSION & MEDICAL FUND CONTRIBUTION**

“Whether Social Security Contributions made by employer in home country taxable in India?”

## PENSION & MEDICAL FUND CONTRIBUTION

- ▲ Employees attached to parent company generally contribute to the social security schemes in home country. The employer contributes an equal amount to such funds. Tax treatment of employer's share to such funds is the subject matter of litigation in India
- ▲ The Supreme Court of India (i.e. apex judicial body) has decided that unless, by virtue of employer's contributions, the **employee acquires vested rights in such social security funds**, such contributions cannot be taxed in India
- ▲ Applying this analogy to contribution towards pension funds, **wherein benefits are only available post retirement**, it is clear that employees do not acquire any vested right in such pension fund during their term of employment. **Thus, no taxability arises in India**

## PENSION & MEDICAL FUND CONTRIBUTION

- ▲ Applying the same analogy to Medical Insurance Contributions, wherein benefit **remains vested in the employee throughout his life**, it is clear that employees do acquire vested right during the term of employment and **thus, taxability arises**

**“Important to examine the point of vesting under the specific social security scheme”**

# **TAX EQUALISATION**

*protection mechanism*

## TAX EQUALISATION

“ An expatriate, when deputed to India may get affected by a higher rate or incidence of tax. What planning is possible so that he does not pay tax higher than what would be charged on his income in France?”

## TAX EQUALISATION – CASE STUDY

Particulars	Amount (EURO)	
Salary from Employer in France (Cash)		100,000
Add: Value of Perquisites viz		
- Accommodation (15% of salary)		15,000
<b>Total/Taxable Income</b>		<b>115,000</b>
<b>Tax on Total Income</b>		<b>35,000</b>
<b>Bifurcated Into -</b>		
<b>Tax on Salary</b>	30,000	
<b>Tax on Perquisites</b>	5,000	

## TAX EQUALISATION – CASE STUDY

### Take Home Pay in India and France

	France	India
<b>Salary</b>	100,000	100,000
Less: Tax on Salary	30,000	35,000
<b>Desired Take Home Pay</b>	<b>70,000</b>	<b>65,000</b>

### Tax On Perquisites – Reimbursed by Employer

<del>Salary (In Cash)</del>	<del>100,000</del>
<del>Add: Tax on Perquisites reimbursed</del>	<del>5,000</del>
<del>Total Salary (In Cash)</del>	<del>105,000</del>
<del>Add: Value of Benefits/Perquisites</del>	<del>15,000</del>
<del>Revised Taxable Income</del>	<del>120,000</del>
<del>Revised Tax Liability</del>	<del>37,000</del>
<del>Actual Take Home Pay (Cash Salary less Tax Liability)</del>	<del>68,000</del>

## TAX EQUALISATION – CASE STUDY

### Take Home Pay in India and France

	France	India
Salary	100,000	105,000
Less: Tax on Salary	30,000	37,000
<b>Desired Take Home Pay</b>	<b>70,000</b>	<b>68,000</b>

### Tax On Perquisites – Reimbursed by Employer

Salary (In Cash)	100,000
Add: Tax on Perquisites reimbursed	5,000
<b>ADD: ADDITIONAL COMPENSATION</b>	<b>3,000</b>
<b>Total Salary (In Cash)</b>	<b>108,000</b>
Add: Value of Benefits/Perquisites	17,000
<b>Revised Taxable Income</b>	<b>125,000</b>
Revised Tax Liability	38,000
<b>Actual Take Home Pay</b> (Cash Salary less Tax Liability)	<b>70,000</b>

# **REGULATORY ISSUES**

*payroll structuring*

## REGULATORY ISSUES

“ Is it possible to split total salary into India and France?”

“ Is it possible to pay the entire salary in an offshore jurisdiction?”

“ at what rate salary paid outside India converted for tax purposes?”

## REGULATORY ISSUES

- ▲ When deciding a split salary or an overseas salary arrangement, the **main consideration is discharge of tax liability in India**
- ▲ From a regulatory perspective, the Foreign Exchange Management Act (FEMA) allows payment of full/part salary out of India or alternatively, remittance of tax paid salary to an offshore jurisdiction. Taxability of such salary remains the only consideration (ref [Master Circular of RBI](#))

**“No regulatory hurdle in planning a split/overseas payroll”**

## REGULATORY ISSUES

- ▲ Salary paid outside India is converted into INR using the TT Buying Rate as existing on the last day of immediately preceding month

**“ Taxable salary can be marginally higher than what is actually withdrawn by the employee”**

## ABOUT US

**Corporate Catalyst India**  
*(in joint venture with SCS Global)*

&

**ASA & Associates** chartered accountants  
*(a member firm of NIS Global)*

## OUR STRENGTHS

- ❑ **CCI** – joint venture with **SCS Global**
- ❑ **ASA** - member of **NIS Global**, an international association of independent accounting firms
- ❑ Own offices in **8 cities** i.e. Delhi, Mumbai, Bangalore, Ahmedabad, Chennai, Hyderabad, Kochi and Gurgaon
- ❑ Approximately 70 per cent are **overseas clients**
- ❑ Offices across India and **affiliations worldwide**
- ❑ More than 20 years **work experience**
- ❑ Professional **staff strength** of about 350 in India & 1,500 through associate network

## OUR SERVICES



### Services

- ❑ **Business Advisory – Inbound investments**
- ❑ **Transaction Advisory – M&A, Restructuring**
- ❑ **Market Research/ Industrial Analysis**
- ❑ **Tax – Expatriates, Transfer Pricing, Corporate**
- ❑ **Compliance – Bookkeeping, IFRS, SOX**
- ❑ **Audit – Statutory, Internal**

# THANK YOU

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### Income-tax Slab Rates (FY 2011-12)

Income Range (₹)	Rate of Tax (%)
Upto 180,000*	Nil
180,001 – 500,000	10
500,001 – 800,000	20
Above 800,000	30

\* Exemption Limit for Women at INR 190,000 and for senior citizen INR 250,000

## EXCHANGE CONTROL REGULATIONS

### Extracts from Para 6 Master Circular dt July 1, 2011

As per para 6 of the master circular dated July 1, 2011 issued by Reserve Bank of India (Apex Regulatory Body) both Foreign and Indian nationals are permitted to repatriate their remuneration outside India or directly receive the same out of India. The para states that

- ▲ A citizen of a foreign state resident in India, being an employee of a foreign company and on deputation to the office/ branch/ subsidiary/ joint venture in India of such foreign company or being an employee of a company incorporated in India, may open, hold and maintain a foreign currency account with a bank outside India and receive/ remit the whole salary payable to him for the services rendered, by credit to such account, provided that income tax chargeable under the Income Tax Act, 1961 is paid on the entire salary as accrued in India.
- ▲ A citizen of India, employed by a foreign company outside India and on deputation to the office/ branch/ subsidiary/ joint venture in India of such foreign company, may open, hold and maintain a foreign currency account with a bank outside India and receive the whole salary payable to him for the services rendered to the office/ branch/ subsidiary/ joint venture in India of such foreign company, by credit to such account, provided that income tax chargeable under the Income Tax Act, 1961 is paid on the entire salary as accrued in India

## DEPENDENT PERSONAL SERVICES – ARTICLE 16

- 1) Subject to the provision of Articles 17, 18, 19, 20, 21 and 22, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that Contracting State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived there from may be taxed in that other Contracting State.
  
- 2) Notwithstanding the provisions of [paragraph 1](#), remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first mentioned Contracting State if:
  - ▲ the recipient is present in the other Contracting State for a period or periods not exceeding in the aggregate 183 days in the relevant "fiscal year"; and
  - ▲ (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other Contracting State; and
  - ▲ (c) the remuneration is not borne by the permanent establishment or a fixed base which the employer has in the other Contracting State.
  
- 3) Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed in that Contracting State.