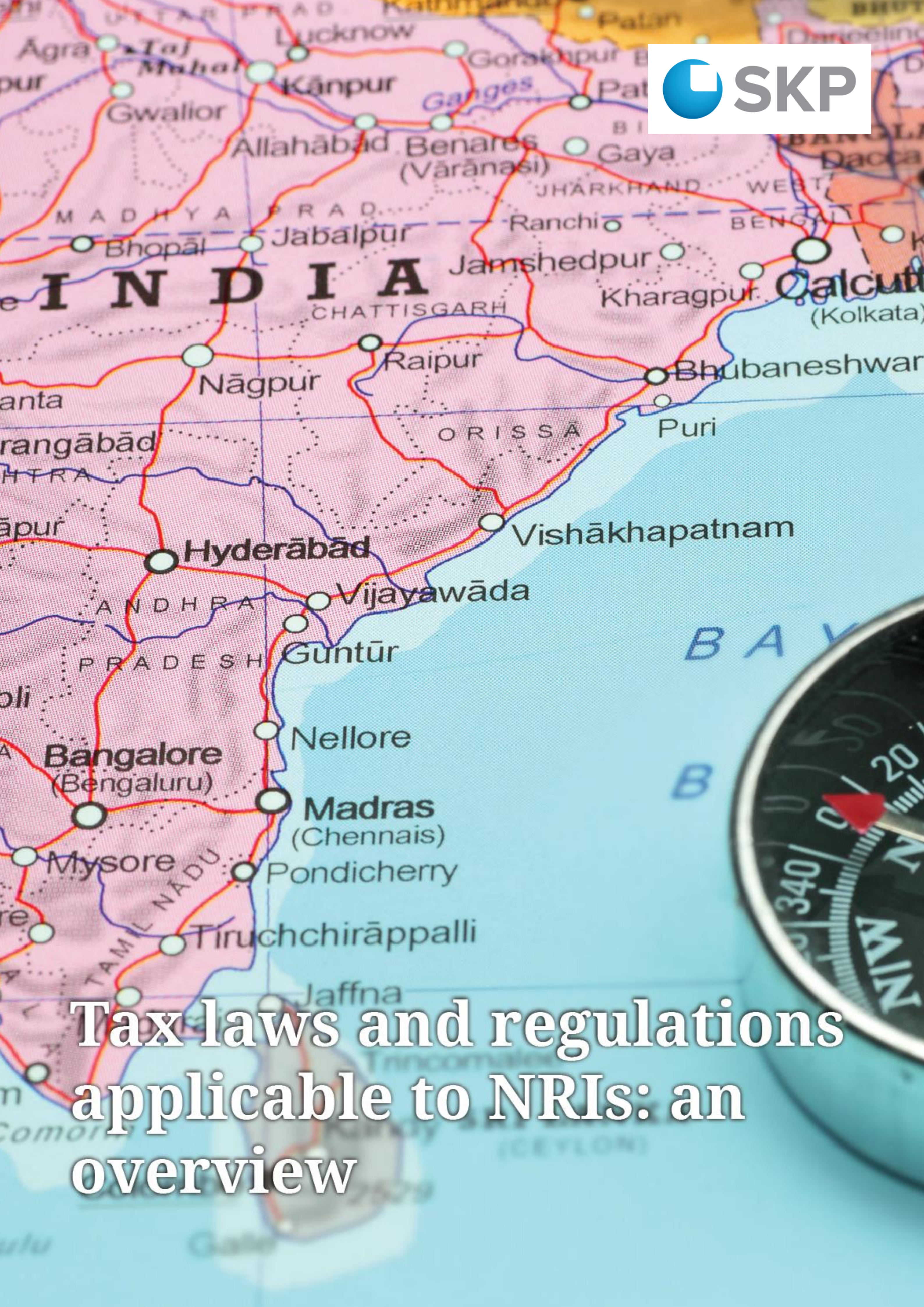

Tax laws and regulations applicable to NRIs: an overview

Tax laws and regulations applicable to NRIs: an overview

With a stable new government in power, India is progressing rapidly with a special focus on building stronger economic ties with developed and developing economies. The International Monetary Fund even stated that India is among the few bright spots in the global economy. The contribution of Non-Resident Indians (NRIs) towards India's development process has been significant. The economic connection of NRIs with India has led to a host of reporting and other compliance obligations in addition to adhering to tax laws in at least two countries.

An NRI's investments and taxation aspects are mainly governed by the following two provisions:

The Income Tax Act, 1961 (ITA) is the statute governing income tax in India. It provides for the levy, administration, collection, and recovery of taxes on various sources of income (including taxation on investment made by non-residents such as rent, interest, dividend, capital gain, etc.).

The Foreign Exchange Management Act, 1999 (FEMA) manages and governs the law relating to foreign exchange (e.g. investments, remittances, transfers, loans, advances, etc. by non-residents).

In short, FEMA is for investments and the ITA is for taxation. This distinction is critical as FEMA and ITA have different definitions, procedures, rules, regulations, and requirements.

Furthermore, provisions of the recently issued **Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (BMA)** need to be considered for certain NRIs.

These laws are explained in brief below:

Income Tax Regulations

- Before investing in India, an NRI will have to apply for a Permanent Account Number (PAN) which is essential for compliance purposes.
- NRIs are liable to pay taxes only on the income earned in India while income earned outside India remains untaxed.
- NRIs do not need to file a return of income if total income includes only investment income and long-term capital gains arising from the transfer of a foreign exchange asset wherein tax has been deducted from such income.
- The taxable incomes of NRIs include salary earned on deputation to India, capital gains earned through the sale of investments in India, regular flow of income in the nature of interest on bank deposits and rental income from real estate investments.
- The Union Budget 2015-16 abolished Wealth Tax, thus removing the hassle of filing wealth tax returns for high-net-worth individuals.
- Though India follows the source rule as explained in the ITA, NRIs are granted certain tax exemptions on fulfilling prescribed conditions and incomes such as dividend income, long-term capital gains arising from the sale of equity shares, are exempt from tax.
- Usually, any income apart from capital gains is taxed according to normal slab rates at par with Indian residents.
- As an NRI, these taxation basics are essential to understand when you are liable to pay taxes, how taxes are levied on your income earned in India, the requirements for filing a return in India, available tax deductions, and how tax returns work.

Foreign Exchange Management Regulations

- After considering the impact of Indian tax laws, an NRI would also have to view the transactions keeping in mind the exchange control regulations. Just like the ITA, FEMA has a definition of a resident, Person of Indian Origin (PIO), etc. FEMA addresses the permissible exchange allowed for certain kinds of transactions.
- NRIs can open and operate rupee accounts as well as foreign currency bank accounts in India on a repatriable or non-repatriable basis.
- NRIs can reap the benefits of tax-free repatriable interest earnings from their deposits with banks in India. Funds can be deposited in a Foreign Currency Non-Resident Bank (FCNR (B)) account in USD, GBP, EUR, etc. or as Non-Resident External (NRE) rupee deposits on a repatriable basis and in Non-Resident Ordinary (NRO) rupee accounts on a non-repatriable basis.

- NRIs are eligible to take personal loans, home loans and loans for business purposes in India on the fulfilment of certain conditions.
- NRIs can also invest in shares and securities of any Indian company through a recognised stock exchange wherein the NRI has to take the delivery of shares and the payment must be made out of foreign remittance, NRE and FCNR account. An NRI does not need prior permission of the RBI before transferring shares to any resident person in India.
- For NRIs and PIOs investing in immovable property, the repatriation of sale proceeds and rental income has been further simplified and made hassle-free.

The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (BMA)

- The objective of this legislation is to deal with the issue of undisclosed foreign income/assets of Indians/Indian entities located outside India. Effectively, the BMA looks to target foreign income that has not been offered for taxation in India or foreign assets created from such income. The BMA applies to individuals, companies, firms, trusts, etc. and brings various assets such as foreign immovable property, shares/securities, bank accounts, etc. under its ambit.
- The BMA provides stringent measures against offenders such as:
  - levy of 30% tax on undisclosed foreign income and value of foreign assets;
  - penalty of up to 300% of the tax amount;
  - penalty of INR 1 million for not filing tax returns before the end of the assessment year;
  - penalty of INR 1 million for the non-furnishing/inaccurate furnishing of particulars of foreign assets;
  - initiation of prosecution proceedings for punishment ranging from 3–10 years.
- The implications mentioned above may also apply to an NRI who has returned to India permanently after having earned income/created assets while working outside India in the past.
- These NRIs will also have to begin disclosing such assets once they become ordinary residents in India and the entire process of detailed disclosure must be followed by them.
- To mitigate the undesirable consequences of the BMA, the documentary evidence to be maintained could be in the form of detailed bank statements, copies of the agreement for purchase of properties, particulars of source of income for making such investments, copies of bills for the purchase of any other valuables, etc. (This is just an illustrative list.)

Conclusion

From the above discussion, it may be noted that India boasts of large investments due to investor-friendly norms and regulations. It is not surprising that NRIs are interested in investing their capital in India; however, ample precautions must be taken while committing funds to India. One such way is to take sound professional advice on the laws and regulations governing investments in India and the income thereon.

If you have any questions or need any assistance, please write to us at skptax@skpgroup.com.

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SKP is a long established and rapidly growing professional services group located in six major cities across India. We specialise in providing sound business and tax guidance and accounting services to international companies that are currently conducting or initiating business in India as well as those expanding overseas. We serve over 1,200 clients including multinationals, companies listed on exchanges, privately held and family-owned businesses from more than 45 countries.

From consulting on entry strategies to implementing business set-up and M&A transactional support, the SKP team assists clients with assurance, domestic and international tax, transfer pricing, corporate services, and finance and accounting outsourcing matters, all under one roof. Our team is dedicated to ensuring clients receive continuity of support, right across the business lifecycle.

Our offices

Mumbai
19, Adi Marzban Path
Ballard Estate, Fort
Mumbai 400 001
T: +91 22 6730 9000

Pune
VEN Business Centre
Baner–Pashan Link Road
Pune 411 021
T: +91 20 6720 3800

Hyderabad
6-3-249/3/1, SSK Building
Ranga Raju Lane
Road No. 1, Banjara Hills
Hyderabad 500 034
T: +91 40 2325 1800

New Delhi
B-376
Nirman Vihar
New Delhi 110 092
T: +91 11 4252 8800

Gurgaon
German Centre for Industry and Trade
Building No. 9, Tower B
Level 12, DLF Cyber City Phase III
Gurgaon 122 002
T: +91 124 463 6000

Chennai
Office No. 3, Crown Court
128 Cathedral Road
Chennai 600 086
T: +91 44 4208 0337

Bengaluru
Office No. 312/313, Barton Centre
Mahatma Gandhi Road
Bengaluru 560 001
T: +91 80 4277 7800

Toronto
269 The East Mall
Toronto
ON M9B 3Z1
Canada
T: +1 647 707 5066

www.skpgroup.com

A member of Nexia International

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