Sharing our experience

Friends Provident International

Your guide to taxation in India

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The tax treatment of our products if you return to India

Whilst tax planning might be an important part of your overall financial planning process, it is not the only issue to consider. It is not enough for an investment to just be tax efficient; it should also be a good investment. It helps if plans to secure your financial wellbeing and to provide protection for your family and other dependants are flexible. They are then more suited to your mobile lifestyle and ever-changing needs, wherever you choose to live and work.

We provide life insurance, savings and investment products for expatriate clients in Asia, the Middle East, the United Kingdom and other selected markets. With over 35 years' experience in the offshore financial services market place, we have developed an award-winning range of solutions that is flexible enough to suit your financial planning requirements.

As this document is only a guide and we do not give taxation and/or legal advice, please ensure you always speak with your financial adviser before making any investment decisions.

The information provided in this document is based on our current understanding of Indian tax law as at September 2019. which may change in the future.

Paying tax in India

The extent of your liability to tax in India depends on your residency status, which in turn depends upon the number of days physically spent in India. Legislation determines whether you are Resident or Not Ordinarily Resident.

R = Resident
NR = Non-Resident
NOR = Resident Not Ordinarily Resident

The definition of residence is contained in the Income Tax Act 1961 (the Act) and is used to determine whether an individual is Resident in the tax year under review.

Resident (R)

You are considered Resident if:

a) you are present in India for 182 days or more during the tax year under review; or

b) during the 4 tax years prior to the year under review you were present in India for a period or periods totalling 365 days or more and during the year under review were present for a period or periods totalling 60 days or more.

If you are Resident in India, you are liable to Indian tax on your worldwide income.

Non-Resident (NR)

If you do not fulfil both the above conditions, you will be NR in the year under review.

If you are NR in India, you are liable to Indian tax only on income that is received or is deemed to be received in India, or accrues or arises or is deemed to accrue or arise in India.

Resident Not Ordinarily Resident (NOR)

You are considered NOR if:

a) you have been NR in India in 9 out of the 10 tax years preceding the year under review; or

b) during the 7 tax years immediately prior to the year under review, you were present for a period or periods totalling 729 days or less.

You may be NOR for up to three tax years if, for each of those tax years under review, you pass either of the above tests.

If you are NOR in India, you are liable to Indian tax only on income that:

- is received or is deemed to be received in India;
- accrues or arises in India;
- is deemed to accrue or arise in India; or
- accrues or arises outside of India,but which was generated by a business you control in India;

The following example shows how the rules operate:

Tahir returns to India on 16 April 2012 to live and work permanently in the country. He has not been present in India in any of the previous 10 tax years.

Tax year	Presence	NOR tests	NOR test results	Residence status
2002/3 to 2011/12	0 days	Not applicable		NR
2012/13	188 days	9 out of 10 previous tax years NR	Yes	NOR
		Less than 730 days in India in previous 7 tax years	Yes	
2013/14	365 days	9 out of 10 previous tax years NR	Yes	NOR
		Less than 730 days in India in previous 7 tax years	Yes	
2014/15	365 days	9 out of 10 previous tax years NR	No	NOR
		Less than 730 days in India in previous 7 tax years	Yes	
2015/16	365 days	9 out of 10 previous tax years NR	No	R
		Less than 730 days in India in previous 7 tax years	No	

Please note that the tax provisions stated with respect to our policies, will apply if you qualify as an R in India.

If you qualify as an NR or NOR, the provisions will only apply if you pay the insurance premiums through a bank account in India or receive the maturity/surrender proceeds of the policy in your bank account in India.

In case of any double taxation, you may be able to claim credit under the Act or applicable Treaty, subject to fulfilment of the conditions specified in the Act or Treaty.

The Indian tax system

The Indian system of direct taxation is administered by the Ministry of Finance through the Central Board of Direct Taxes (CBDT). The tax year runs from 1 April to 31 March.

- Income Tax is levied on income taxable under the Act.
- Tax is payable on short-term or long-term capital gains at differential rates.
- Certain gifts are taxable in the hands of the recipient.
- There is no estate duty payable by the deceased's estate.

Income Tax

Currently legislation to tax individuals on their income and capital gains is contained within the Act.

Tax on income other than capital gains

2019/20 income tax rates:

Taxable Income Band INR	National Income Tax Rates[1]
1 - 250,000	0%
250,001 - 500,000	5%
500,001 - 1,000,000	20%
1,000,001+	30%

A surcharge is applicable on the national income tax rates.

Taxable Income Band INR	National Surcharge Rates
1 - 5,000,000	0%
5,000,001-10,000,000	10%
10,000,000+	15%

Health and Education cess (HEC) at the rate of 4% is payable on the total amount of tax (inclusive of surcharge, if any). Marginal relief is available in certain cases.

If you are Resident:

- between 60 and 80 years old, no tax is payable until taxable income is INR 300,000;
- over 80 years old, no tax is payable until your taxable income is INR 500,000.

A tax rebate of up to INR 2,500 is available if your income is below INR 350,000.

Dividends

When a Resident receives dividends declared, distributed or paid by a domestic company or companies of more than INR 1,000,000, such excess over INR 1,000,000 will be taxable at 10% (plus surcharge and HEC).

Tax on capital gains

When you dispose of a capital asset realising a profit, tax is payable:

- on short-term capital gains (other than equity shares, equity oriented mutual funds and units of a business trust) at your normal progressive income tax rates (plus the surcharge as applicable and HEC); or
- on long-term capital gains (other than equity shares, equity oriented mutual funds and units of a business trust) at a flat rate of 20% (plus the surcharge as applicable and HEC). Further, indexation benefit should be available.

Short-term capital gains arise when the asset has been held from the initial purchase for 36 months or less. This is except for shares listed on the Indian stock exchange, Unit Trust of India, zero coupon bonds and specified mutual funds, for which the term is 12 months or less. Generally, long term capital gains arise when the asset has been held for more than 36 months. However, in the case of immovable property and unlisted shares, long term capital gains shall arise if the asset has been held for more than 24 months.Certain tax exemptions are available with respect to capital gains on long-term assets subject to fulfillment of the specified conditions.

The disposal of a listed equity share, equity oriented mutual fund or unit of a business trust where there is a gain of more than INR 100,000 will be subject to a 10% tax (plus surcharge if any and HEC) with no indexation benefit (although there may be different treatment for shares owned at 31st January 2018).

Tax on gifts

While there is no gift tax charged on donors in India, recipients of certain gifts, made without consideration or inadequate consideration, are subject to an income-tax charge if:

- the fair market value of the gift is more than INR 50,000; or
- the consideration received is less than the fair market value of the gift by INR 50,000.

The gifts covered by the legislation will include policies provided by us, but there are certain exceptions in place whereby no tax is payable. Please see page 6 for more information.

Inheritance Tax

Estate duty was removed in 1985, so if property is inherited by an individual as the result of a death, the estate does not need to pay Inheritance Tax.

[1] No income taxes are levied separately by the states.

The taxation of our policies in India

As residents of India, you and your beneficiaries will be taxed in accordance with the Act, although the specific nature of the policy will determine whether the benefits will be subject to normal Income Tax or Capital Gains Tax.

We offer various policies including:

a) Life insurance and critical illness, which are designed to pay a lump sum on the death or earlier critical illness of the life insured.

b) Unit-linked in the following formats:

   (i) Whole of life – the value is determined by the underlying investments. These pay out on the death of the last life insured.

   (ii) Capital redemption – the value is determined by the underlying investments. A benefit is not payable on death.

Life insurance and critical illness policies

The amount received in the event of a claim from these policies will be treated for tax under the Act as Income from Other Sources and taxed at normal progressive rates of tax (plus the surcharge as applicable and HEC).

However, the amount received will be exempt from tax in accordance with section 10 (10D) of the Act provided, for policies with a commencement date:

- **before** 1 April 2012, the annual premium amount in any policy year does not exceed 20% of the actual capital sum assured;

  on or after 1 April 2012, the annual premium amount in any policy year does not exceed 10% of the actual capital sum assured.

Where the policy, issued on or after the 1 April 2013, is for insurance on life of a person with specified disability/severe disability or suffering from disease/ailment as referred in the Act, exemption under section 10 (10D) of the Act shall be available only if the annual premium amount in any policy year does not exceed 15% of the actual capital sum assured.

However, in case of death of the insured, policy proceeds received by the nominee should be exempt under section 10 (10D) of the Act and the above mentioned conditions should not apply.

Any sum (including bonus) received by a resident life insurance policy holder, may be subject to one percent with-holding tax depending upon the law and facts prevailing at the time of payment. However, no such withholding is applicable where the sum payable in a year is below INR 100,000 or is exempt under section 10(10D) of the Act.

Therefore, please get advice before proceeding with the policy specifically, to ensure that in the event of a claim, the benefits payable will not be taxed to the extent that your dependants and nominees are left without sufficient protection.
As the policy owner, you will be entitled to claim a deduction up to a maximum of INR 150,000 from your total taxable income per tax year, in respect of the premium paid by you to the policy. This deduction can only apply to premium amounts paid up to the value of:

- 10% of the actual capital sum assured (for policies with a commencement date on or after 1 April 2012)
- 20% of the sum assured (for policies with a commencement date before 1 April 2012).

Please note that this deduction is subject to approval by the Indian Income Tax Authorities. They may rule that such relief is only available to owners of life insurance policies purchased from Indian companies.

Unit-linked life insurance and capital redemption policies

Our unit-linked savings and investment policies include regular premium plans and single premium bonds. For the purposes of taxation in India, these are capital assets subject to Capital Gains Tax in accordance with section 45 of the Act.

These policies are written on a whole of life basis, which means they will terminate on the death of the last surviving life insured, when the death benefit is payable to the beneficiaries. Some single premium products can be written as capital redemption contracts, which means there are no lives insured and the contract has a maximum duration of 99 years if not surrendered earlier.

Establishing the investment

There is no tax on the initial investment, additional single premium investments or ongoing contributions when setting up a single premium bond or regular savings policy.

Investment growth inside the policy

Provided the funds held under the policy are for a personal investment and are not business assets, there is no Indian tax liability on the growth inside the policy, prior to withdrawing capital.

No tax is payable by us, in the Isle of Man, on income and gains. So, you benefit from gross returns on your investment, except for any non-recoverable withholding taxes – for example, on US share dividends.

Withdrawing money from the policy

You can make withdrawals from savings and investment policies in a number of ways:

- regular periodic withdrawals
- partial lump-sum withdrawals
- full surrender, which brings the policy to an end
- on the maturity date, when relevant.

You will be liable to Capital Gains Tax, at a flat rate of 20% (plus surcharge as applicable and HEC) on any profit arising (after applying the benefit of cost inflation indexation) when money is withdrawn after 36 months from the commencement date. Certain tax exemptions are available, with respect to capital gains, on long-term assets subject to fulfilment of the specified conditions.

Should money be withdrawn within 36 months, any profit will be taxable at your progressive rate of Income Tax (plus surcharge as applicable and HEC).

Death

As there is no Inheritance Tax in India, when the owner of a savings and investment policy dies, the tax position of the deceased's beneficiaries will depend on:

- the type of policy
- whether the last life assured has died resulting in a death benefit being payable.

If the savings and investment policy pays out a death benefit to your dependants or nominees, it will be treated as capital gains for tax purposes. Tax will therefore be payable on the amount received as outlined on page 4.

When the policy does not pay a death benefit because the last life insured has not died or it is a capital redemption contract, it will be transferred as explained below.

Making a gift of the policy to another individual – transferring a capital asset

An individual transfers a capital asset when they sell, transfer or relinquish it, giving up all rights to benefit from that asset. Savings and investment policies can be transferred by way of assignment, during the lifetime of the policy owner, or on death.

When a gift is made of a capital asset without consideration, it does not create a liability to Capital Gains Tax for the donor.

However, the tax position for the recipient varies depending on their residency status and relationship to the donor. Individuals who qualify as NR/NOR are not liable to pay tax on receiving one of our policies as a gift.

The general rule is that a gift for no consideration, the fair market value of which is in excess of INR 50,000, is taxable in full on the recipient at the normal progressive rates of Income Tax.

There are exceptions to the above, where the recipient is not chargeable to tax, provided the gift meets one of the following criteria:

a) from any relative

b) on the occasion of marriage of the recipient

c) made under a will

d) by way of inheritance

e) made in contemplation of the death of the donor.

Continuing with our policy when you become an Indian resident

The Foreign Exchange Management (Insurance) Regulations 2000, as amended, prohibit a resident from purchasing a new life insurance policy from an insurer outside India, without first obtaining Reserve Bank of India (RBI) approval.

However, the rules are different when the insurance policy was purchased whilst Non-Resident and do allow the owner to continue with the insurance policy on return to India, without first having to obtain RBI approval.

Residence for the above regulations is not the same as described earlier in this guide. For this regulation, it is defined as a person:

- residing in India for more than 182 days during the previous financial year;
- staying in India on taking up employment; or
- carrying on a business or vocation in India; or
- for any other purpose in such circumstances as would indicate their intention to stay in India for an uncertain period.

The Liberalised Remittance Scheme (LRS) enables further investment to be made up to USD 250,000 each financial year from funds held in India, for any permissible capital investment including our policies or current account transactions.

Using the LRS, further investment can be made and ongoing contributions continued so that a return to India doesn't mean having to terminate existing offshore investments. So, if you return to India, you can continue to make payments to your existing insurance policies either using money in overseas foreign currency accounts, or resident foreign currency accounts maintained with an authorised dealer or as a remittance from India using the LRS.

If you become an Indian resident and continue to fund your life insurance policy using the LRS, under current regulations, it is a requirement that any money received from the policy as;

- part of a claim; or
- full surrender; or
- partial withdrawal; or
- on maturity,

be repatriated to India through normal banking channels within seven days of receipt of the money.

This document outlines some key things to consider before taking out a life insurance policy or a savings or investment plan when outside of India – if there is a likelihood you will return there at some stage in the future.

It is not exhaustive and should not be relied upon when making a decision on whether or not to invest, or to take out a life insurance policy.

This guide is for information only and does not constitute investment advice or an offer to provide any product or service by Friends Provident International. You should seek professional advice before making investment or other decisions, and take your personal circumstances into account. The value of investments may go up as well as down and you could get less back than you've paid in. We accept no liability for loss of any kind incurred as a result of reliance on this guide.

www.fpinternational.com

Visit our website to learn more about our range of flexible savings, investment and protection plans.

Speak to your financial adviser today to see how we could help you plan for your return to India.

About Friends Provident International

We are a leading financial services provider, with a reputation of trust, commitment and integrity, offering financial solutions to customers throughout their lives.

Friends Provident International has over 35 years of international experience and our heritage dates back over 180 years.

All currency conversions correct as of September 2019.
All figures are rounded off to nearest zero.

This document is for information only. It does not constitute advice or an offer to provide any product or service by Friends Provident International.

Please seek professional advice, taking into account your personal circumstances, before making investment decisions. We cannot accept liability for loss of any kind incurred as a result of reliance on the information or opinions provided in this document.

Please remember that investment involves risk. Fund prices may go up and down and you could get back less than you paid in.

***Terms and Conditions apply.**

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