



**M/s PRANJAL JOSHI & CO**  
**CHARTERED ACCOUNTANTS**

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## Taxation of Expatriate Employee

### Background -

The term 'Expatriate' is derived from Latin (ex-patria) which means "out of the country". The Income-tax Act, 1961 does not define the term 'Expatriate'. For the purpose of easy understanding, it can be said that an expatriate is a resident of a foreign country working in another country. Thus, in the Indian context expatriate means a resident of foreign country working in India (inbound) or an Indian resident working abroad (outbound).

Important issues in this regard are as follows -

**(a) Immigration:** The expatriate should travel on correct visa type (business visa /employment visa- depending upon the purpose of visit) and should get himself/herself registered with Foreign Regional Registration Office (FRRO) in India within 14 days of arrival in India, if required under his/her visa type.

**(b) Taxability of the employee:** Salary received by employee for rendering services in India would be liable to tax in India Hence, any salary/ allowance/ benefit paid to an employee outside India which is related to assignment period in India will be subject to tax in India. A short stay exemption may be claimed for the business travelers subject to satisfaction of conditions provided in the applicable tax treaty.

**(c) Social security:** A foreign passport holder, working for a 'covered establishment' in India and coming from a country with which India has not entered into a Social Security Agreement, is mandatorily required to contribute under Provident Fund Regulation.

**(d) Payment of salary outside India:** to receive their entire salary in a bank outside India provided the income tax as per the domestic tax laws of India has been duly paid on the entire salary as accrued in India.

**(e)** The reimbursement of secondment costs by Indian entity to a foreign entity is not covered under the negative list. Hence, the secondment arrangement and relationship between the foreign entity, Indian entity and the expatriate needs to be evaluated to ascertain any service tax obligation.

**(f) Tax residency certificate** - In order to claim relief under DTAA, Income Tax Act provide a condition for submission of tax residency certificate to be obtained from the Revenue Authorities of the host country.

**(g)** salary payments made to non resident expatriates are required to be reported electronically in Form 15CA and Form 15CB in case they are chargeable to tax in India.

**(h)** The expatriates who have already rendered five years of services reserve the right to claim gratuity from the Indian employer at the time of termination.

**(i) Tax clearance certificates** - For foreign nationals a foreign national who has come to India in connection with business, profession or employment and has derived income from any source in India has to furnish an undertaking in the prescribed Form 30A to the tax authorities. The tax authorities upon receipt of the undertaking and verification of the documents filed shall issue a no objection certificate in Form No. 30B to the expatriate.



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In case of a person domiciled in India, leaving India the relevant information needs to be furnished to the tax authorities in Form No. 30C which is a self declaration by the outbound expatriate that includes his/her details such as PAN, passport details, purpose of visit outside India and estimated period of stay outside India, etc.

Depending upon the entry strategy adopted by the foreign employer and work requirements, an inbound expatriate can work in India under any of the below structures. Inbound expatriate employee and various situations -

Mode / structure	Period	Employee taxation	Other points
Business visit	short business visits of 20-30 days spread over the financial year	Generally not taxable. Employee may be eligible to claim short stay exemption	If the transaction is between related parties, need to evaluate PE risk for foreign entity
Short term assignment	6-8 months He/ she would be working in India but as an employee of the foreign entity & would continue to be on its payroll. Indian entity would compensate the foreign counterpart for the services rendered by the expatriate.	Employee would be taxable on the salary income earned for services rendered in India.	There could be PE exposure for the foreign entity. Foreign entity would have to comply with the withholding tax obligation in relation to salary paid to its employees for services rendered in India.
Medium-term & Long-term Assignments – Secondment	period of 2 - 3 years or more in the capacity of Employee of Indian entity, remuneration would be solely borne by the Indian entity	Employee would be taxable on the salary income earned for services rendered in India	The foreign entity may not have any Permanent Establishment exposure in India subject to appropriate documentary evidence
Permanent Relocation	Employee will resign from home country entity and join the Indian entity as a local hire.	Employee would be taxable on the salary income earned for services rendered in India	There is no permanent establishment exposure for home country entity