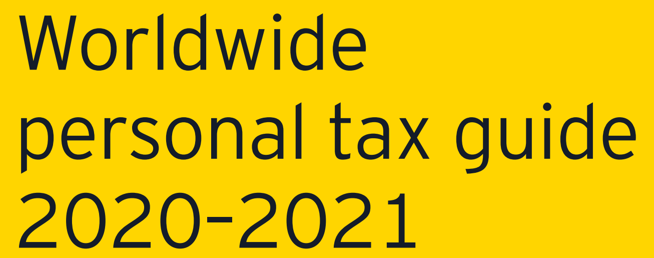

Worldwide personal tax guide 2020–2021

Going to/leaving India

EY
Building a better working world

Local information	
Tax Authority	Income Tax Department, Department of Revenue, Ministry of Finance
Website	www.incometaxindia.gov.in
Tax Year	1 April to 31 March
Tax Return due date	31 July
Is joint filing possible	No
Are tax return extensions possible	Yes, to 30 September if income includes business income and accounts are subject to a tax audit.

2020/21 income tax rates

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

For individuals whose total taxable income exceeds INR 5 million, a surcharge applies at a rate of 10% of the total tax payable. If the total taxable income exceeds INR 10 million, the rate of the surcharge is increased to 15% of the total tax payable. If total taxable income exceeds INR 20 million, the rate of the surcharge is increased to 25% of the total tax payable. If the total taxable income exceeds INR 50 million, the rate of the surcharge is increased to 37% of the total tax payable. The increased rate of the surcharge to 25% and 37% is not applicable to capital gains earned on the sale of some specific assets. Marginal relief is allowed to ensure that the additional amount of income tax payable, including the surcharge, on the excess of income over the respective limits of INR 5 million, INR 10 million, INR 20 million and INR 50 million is limited to the amount by which the income exceeds such limits.

Health and education cess is levied at a rate of 4% on the tax payable and surcharge. The following are maximum marginal tax rates:

- If total annual income is INR 5 million or less, the maximum marginal tax rate is effectively 31.2% (30% + 4% health and education cess).
- If total annual income is more than INR 5 million but less than INR 10 million, the maximum marginal tax rate is effectively 34.32% (30% + 10% surcharge + 4% health and education cess).
- If total annual income is more than INR 10 million, the maximum marginal tax rate is effectively 35.88% (30% + 15% surcharge + 4% health and education cess).
- If the total annual income is more than INR 20 million (excluding capital gains on specified assets), the maximum marginal tax rate is effectively 39% (30% + 25% surcharge + 4% health and education cess).
- If the total annual income is more than INR 50 million (excluding capital gains on specified assets), the maximum marginal tax rate is effectively 42.74% (30% + 37% surcharge + 4% health and education cess).

Who is liable?

Residents are subject to tax on their worldwide income. Persons who are resident but not ordinarily resident are taxed only on Indian-source income, income deemed to accrue or arise in India, income received in India or income received outside India arising from either a business controlled, or a profession established, in India. Non-residents are taxed only on Indian-source income and on income received, accruing or arising in India. Non-residents may also be taxed on income deemed to accrue or arise in India through a business connection, through or from any asset or source of income in India, or through the transfer of a capital asset situated in India (including a share in a company incorporated in India).

Effective from the tax year beginning on 1 April 2020, an individual can opt for a new concessional tax regime

The content of this document is current as of 1 February 2021. The content is next expected to be updated by 1 April 2023.

with reduced tax rates. An individual opting for the new concessional tax regime must forgo certain exemptions and deductions in order to claim the benefit of the reduced tax rates.

Residence status for tax purposes

Individuals are considered resident if they meet either of the following criteria:

- They are present in India for 182 days or more during the tax year.
- They are present in India for 60 days or more during the tax year and present in India for at least 365 days in aggregate during the preceding four tax years (the 60 days' condition is increased to 182 days in certain cases).

Individuals who do not meet the above criteria are considered to be non-residents.

Individuals are considered not ordinarily resident if, in addition to meeting one of the above tests, they satisfy either of the following conditions:

- They were non-resident in India in 9 out of the preceding 10 tax years.
- They were present in India for 729 days or less during the previous 7 tax years.
- They are Indian citizens or persons of Indian origin who come for a visit to India for 120 days or more but less than 182 days, and whose total India-source income exceeds INR1.5 million during the relevant tax year.
- They are Indian Citizens qualifying as resident in India on account of the deemed residency provision described above.

All employees are subject to tax, unless they are exempt under the Income Tax Act, 1961 or applicable tax treaties.

Income subject to tax

In general, all income received or accrued in India is subject to tax.

Employment income — All salary income relating to services rendered in India is deemed to accrue or arise in India regardless of where it is received or the residential status of the recipient.

Employees of foreign enterprises who are citizens of foreign jurisdictions are not subject to tax if all of the following conditions are satisfied:

- The foreign enterprise is not engaged in a trade or business in India.
- The employee does not stay in India for more than 90 days in the tax year.
- The compensation paid is not claimed by the employer as a deduction from taxable income in India.

Similar exemptions are available under tax treaties if the stay is less than 183 days, but conditions vary. Non-resident foreign citizens employed on foreign ships who stay in India no longer than 90 days in a tax year are also exempt from tax on their earnings.

In general, most elements of compensation are taxable in India. However, certain benefits may receive preferential tax treatment.

A standard deduction of the lower of INR 50,000 or the amount of salary received, is allowed in computing the income chargeable under the salaries head. The standard deduction was introduced, effective from 1 April 2018, in lieu of the earlier exemption with respect to the transport allowance of up to INR 19,200 per year (except in the case of disabled persons)

and reimbursement of medical expenses up to INR 15,000 per year. This standard deduction needs to be forgone if an individual opts for the new concessional tax regime.

Any compensation or related income due or received by individuals in connection with termination or modification of their employment that is not otherwise covered under the specific measure relating to salary taxation is taxed as income from other sources.

Self-employment and business income — All individuals who are self-employed or in business in India are subject to tax.

Business losses incurred in the current year can be set off against income under any other head except the salaries head. If business losses in the current year cannot be wholly set off, such business losses may be carried forward for eight years if the income tax return for the year of the losses is filed on time. However, the losses carried forward can be set off against business income only. Unabsorbed losses from speculative transactions may be carried forward for four years only and can be set off against profits from speculative business only. Unabsorbed depreciation may be carried forward indefinitely.

Investment income — Effective from 1 April 2020, dividends income that was earlier exempt in the hands of recipients is now taxable in their hands. Dividend income is subject to withholding tax. The withholding tax rate for resident shareholders is 10% (in view of the COVID-19 pandemic, withholding tax was reduced to 7.5% for the period of 14 May 2020 to 31 March 2021). No tax withholding is required if the payment of dividends does not exceed INR5,000 during a given tax year. Non-residents are subject to a withholding tax rate of 20%. Non-residents can opt for the lower tax withholding rate as prescribed under a tax treaty, subject to furnishing of necessary documentation.

Dividends received from Indian and foreign companies are subject to tax in the hands of shareholders at the normal tax rates. Dividends are taxable in the hands of non-residents at the lower of 20% (plus surcharge [if applicable] and health and education cess) or the applicable treaty rate.

Interest earned on securities, investments, advances and bank deposits in India is taxable. Taxes are withheld at source by the banks, cooperative societies and post offices if the interest exceeds INR 40,000 (INR 5,000 in other cases) in the tax year except in certain specified cases. The limit of INR 40,000 is increased to INR50,000 for resident senior citizen individuals who are age 60 or older. The rate of the withholding tax is 10% (in view of the COVID-19 pandemic, withholding tax was reduced to 7.5% for the period of 14 May 2020 to 31 March 2021). This withholding tax is not a final tax.

Interest earned on certain types of accounts is exempt from tax for non-residents.

Non-resident Indian nationals (including persons of Indian origin) may exercise an option to be taxed at a flat rate of 20% on gross investment income (without any deductions) arising from foreign currency assets acquired in India through remittances in convertible foreign exchange.

Effective from 1 October 2020, a remittance from India of a sum of INR700,000 or more is subject to tax collection at source at a rate of 5% of the amount of the remittance.

Special rates for non-residents — For non-resident taxpayers, the tax rate for income from royalties and fees for technical services is 10%.

Directors' fees — Directors' fees are taxed at the usual progressive rates. Tax is required to be withheld at source at a rate or 10% from directors' fees paid to residents (in view of the COVID-19 pandemic, withholding tax was reduced to 7.5% for the period of 14 May 2020 to 31 March 2021). Expenses incurred wholly and exclusively for earning fees are allowed as deductions.

Rental income — Rental income received by an individual from the leasing of house property (including buildings or land appurtenant thereto) is taxable at the value determined in accordance with specific provisions. The following deductions from such value are allowed:

- Taxes paid to local authorities on such property.
- A sum equal to 30% of the value.
- Interest payable on capital borrowed for the purpose of purchase, construction, repair, renewal or reconstruction of property.

An individual owning up to two house properties is not required to offer any notional rent (rent that a similar property would fetch) to tax, unless the house properties are actually leased out.

Losses from house property incurred in the current year can be set off against income under any other head of income, up to INR 200,000. The balance of losses that cannot be

wholly set off in the current year can be carried forward for eight years. However, the losses carried forward can be set off against income from house property only. Losses from house property cannot be set off or carried forward if an individual opts for the new concessional tax regime.

Taxation of employer-provided stock options — Income arising from Long Term Incentive Plans (LTIPs) is taxed as salary income in the hands of the employees. The value of the Long Term Incentive (LTI) for tax purposes is the fair market value (FMV) as of the date on which the options are exercised by the employee, reduced by the amount of the exercise price paid by the employee.

In calculating the capital gains arising at the time of sale of shares acquired under schemes referred to in the preceding paragraph, the acquisition cost is the FMV as of the date of exercise that was taken into account to determine the taxable income at the time of allotment of shares.

Capital gains

Capital gains on assets other than shares and securities — Capital gains derived from the transfer of short-term assets are taxed at normal rates.

Long-term capital gains are gains on assets that have been held for more than three years. Long-term capital gains are exempt from tax in certain cases if the gains are reinvested within a prescribed time period.

Capital gains (not exceeding INR20 million) accruing to an individual on the sale of a residential house are exempt if such capital gain is invested in two residential house properties in India. This option can be used by an individual only once in their lifetime.

Capital gains on shares and securities listed on a stock exchange in India — Long-term capital gains (gains derived from listed securities held longer than one year) derived in excess of INR 100,000 from the transfer of equity shares or units of an equity-oriented fund listed on a recognized stock exchange in India or units of a business trust in India, on which Securities Transaction Tax (STT) has been paid at the time of transfer and acquisition, are taxed at a rate of 10% (plus surcharge [if applicable] and health and education cess). However, the requirement of STT paid at the time of acquisition of equity shares applies only to shares acquired on or after 1 October 2004. In addition, for equity shares or units acquired before 1 February 2018, gains earned are grandfathered as per the prescribed mechanism.

Short-term capital gains derived from the transfer of equity shares or units of equity-oriented funds on a recognised stock exchange in India are taxable at a reduced rate of 15% (plus education cess) if STT is payable on such transaction.

In calculating long-term capital gains, the cost of assets may be adjusted for inflation. For assets held on or before 1 April 2001, the market value on 1 April 2001 may be substituted for cost in calculating gains, with certain exceptions.

Capital gains on unlisted shares and securities in India — Long-term capital gains (from shares not listed on any stock exchange in India, including shares of a foreign company listed on stock exchange outside India, and other specified securities held longer than two years) are taxable at a rate of 20% (plus surcharge and health and education cess) after inflation adjustments. For non-residents, the gains are taxable at a reduced rate of 10% (plus surcharge and health and education cess) without inflation adjustments.

Short-term capital gains derived from the transfer of above shares and securities are taxed at normal rates.

Capital gains on foreign-exchange assets — Non-resident Indian nationals may be subject to a 10% withholding tax on long-term capital gains on specified foreign-exchange assets.

Non-residents are protected from fluctuations in the value of the Indian rupee on sales of shares or debentures of an Indian company because the capital gains are computed in the currency used to acquire the shares or debentures. After being computed, the capital gains are converted into Indian rupees. Inflation adjustments are not permitted for this computation.

Net wealth tax

Wealth tax was abolished, effective from 1 April 2015.

Estate and gift taxes

India does not impose tax on estates, inheritances or gifts. However, any sum of money received by an individual in excess of INR 50,000 without consideration is taxable in the hands of the recipient.

Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act

In 2015, the Indian Government enacted the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act to tax undisclosed foreign income and assets (UFIA) held outside India by individuals who qualify as resident and ordinary resident. An individual who has UFIA is taxed at a rate of 30% with a penalty of 300% of the tax. In addition, imprisonment of up to 10 years is possible.

If income from any foreign source is not reported on the taxpayer's income tax return, or if a failure to file an income tax return declaring such income occurs, the overseas income is considered to be undisclosed income. Overseas assets include assets, such as financial interests in entities, movable and immovable assets and bank accounts, held directly or beneficially by the taxpayer. The asset is deemed to be undisclosed if the tax payer is unable to satisfactorily explain the source of the investment.

Taxpayers who are ordinarily resident in India have additional disclosure requirements with respect to foreign assets held by them. Failure to comply with such disclosure requirements results in a penalty of INR 1 million in addition to tax and a penalty under the Black Money Act.

Social security

Social security in India is governed by the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (EPF Act). The EPF Act contains the following three principal schemes:

- Employees' Provident Fund Scheme, 1952.
- Employees' Pension Scheme, 1995.
- Employees' Deposit-Linked Insurance, 1976.

Covered employers must make a contribution toward the Provident Fund and Pension Scheme for their employees who are "International Workers." Under the EPF Act, the following employees are considered to be "International Workers":

- An Indian employee (an Indian passport holder) who has worked or is going to work in a foreign country with which India has entered into a social security agreement and who is or will be eligible to avail of the benefits under a social security program of that country, in accordance with such agreement.
- A person who holds a foreign passport and is working for an establishment in India to which the EPF Act applies.

An "excluded employee" is not covered by the EPF Act. An employee is considered to be an "excluded employee" if both of the following conditions are satisfied:

- The employee is an International Worker who is contributing to a social security program of his or her country of origin, either as citizen or resident.
- The employee's home country has entered into a social security agreement with India on a reciprocity basis and the employee is considered to be a detached worker under the social security agreement and has obtained a Certificate of Coverages from the home country security authorities.

India has entered into social security agreements with 18 countries with a further two agreements soon to come into force.

Every covered employer is required to contribute 24% (12% each for the employer's and the employee's share) of the employee's "monthly pay" (as defined) towards the Provident Fund and Pension Fund. The employer has the option to recover the employee's share from the employee.

For employees who are existing members as of 1 September 2014, out of the employer's 12% share of the contribution, 8.33% of monthly pay is allocated to the Employees' Pension Fund. The balance of the contributions is deposited into the Employees' Provident Fund.

For employees (including International Workers) who become members on or after 1 September 2014 and draw monthly salary exceeding INR 15,000, the entire contribution is allocated to the Employees' Provident Fund.

Local employees who draw a monthly salary of INR 15,000 or more are excluded from the legislation, but this exclusion does not apply to International Workers even if the monthly pay of the employee exceeds INR 15,000.

Tax filing and payment procedures

All taxpayers, including non-residents, must file returns if their taxable income exceeds the exempt amount. Resident and ordinarily resident individuals who have an asset (including a financial interest in an entity) located outside India or signing authority in an account outside India or income from any source outside India must file a return even if they do not have any taxable income.

The following category of taxpayers must file returns if any of the following conditions are met during the tax year:

- The taxpayer's deposits in one or more current accounts exceeds INR 10 million.
- The taxpayer's expenditure incurred on foreign travel exceeds INR 200,000.
- The taxpayer's electricity expenditure exceeds INR 100,000.
- Other prescribed conditions are satisfied.

Taxpayers who have filed their tax returns after the due date are now eligible to revise such returns at any time within one year after the end of the tax year or before completion of a tax audit by the tax authorities.

Taxpayers with employment income pay tax through tax withheld by employers from monthly salaries each pay period. Taxpayers with tax liability exceeding INR 10,000 must make advance payments, after deducting credit for tax withheld, in four instalments on 15 June, 15 September, 15 December and 15 March.

Non-residents are subject to the same filing requirements as residents. However, non-resident citizens (including persons of Indian origin) who have only investment income or long-term capital gains on foreign-exchange assets need not file returns if the required tax is withheld at source. Non-residents are subject to assessment procedures in the same manner as residents.

Before leaving the country, any individual not domiciled in India is required to furnish an undertaking to the prescribed authority and obtain a No Objection Certificate if he or she is in India for business, professional or employment activities and has derived income from any source in India. Such undertaking must be obtained from the individual's employer or the payer of the income, and the undertaking must state that the employer or the payer of income will pay the tax payable by the individual. An exemption from obtaining the No Objection Certificate is granted to foreign tourists or individuals visiting India for purposes other than business or employment, regardless of the number of days spent by them in India. At the time of departure of an individual domiciled in India, the individual must provide his or her permanent account number, the purpose of the visit outside India and the estimated time period for the stay outside India to the prescribed authority. However, a person domiciled in India may also be required to obtain a No Objection Certificate in certain specified circumstances.

For taxpayers whose total income exceeds INR5 million, an additional disclosure of immovable property (land and buildings) and movable assets (for example, archaeological collections, such as drawings and paintings), jewellery, bullion, vehicles, boats, yachts, aircraft and financial assets, including all bank deposits, mutual funds, shares, securities, insurance policies, loans and advances, and cash in hand and similar items, must be made in the income tax return. The taxpayer must also provide the liabilities (if any) with respect to the reported assets.

Double tax relief and tax treaties

Tax treaties provide varying relief for tax on income derived from personal services in specified circumstances. In certain circumstances, the treaties also provide tax relief for business income if no permanent establishment exists in India. India has entered into comprehensive double tax treaties with 94 countries. India has entered into limited double tax treaties with a further eight countries.

If no double tax treaty applies, resident taxpayers may claim a tax credit on foreign-source income equal to the lower of the tax imposed by the foreign country or the tax imposed by India on the foreign income.

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