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Global talent mobility and India's tax landscape: key considerations for inbound employees

Introduction

Cross-border talent mobility almost always begins with a deceptively simple question: will India tax this individual and, if so, on what basis? The answer is rarely straightforward. International taxation operates based on two primary principles: residence-based taxation, where a country taxes its residents on their worldwide income, and source-based taxation, where a country taxes income generated within its borders, regardless of the recipient's residence. India, like many other jurisdictions, employs a hybrid model, taxing its residents on their global income, while taxing non-residents on income sourced or deemed to be sourced in India. Together, these two concepts have historically shaped individual taxation in India under the income tax law.

At the heart of this approach is residential status. A person's residential status determines how much of that individual's income India seeks to tax, the reliefs and exemptions that may be claimed and whether any foreign taxes can be credited. For employees working across borders, especially those on short assignments or project driven stays, even a small change in the number of days spent in India can significantly alter the applicable tax outcomes.

This article focuses on inbound employee mobility into India and the tax issues that commonly arise for foreign employees and their overseas employers. In addition to individual income tax considerations, it examines how the activities and presence of foreign employees in India can, in certain situations, create permanent establishment (PE) risks for the foreign employer in India. Against this background, the article explains why these rules matter, what income and activities are typically affected and how foreign employers and their employees can better understand the personal tax, business tax and compliance implications of working in India

Residential status and its practical impact

Indian tax law classifies individuals annually as resident and ordinarily resident (ROR), resident but not ordinarily resident (RNOR) or non-resident (NR).

A person's residential status is the legal filter through which the scope of taxation, reporting obligations and even employer exposure must be assessed. For foreign employees working in India, the residential status is often the single most consequential tax determination in a given year, impacting how wide the tax net will be cast. Employees who are resident and ordinarily resident are exposed to the broadest tax base, while non-residents are taxed on a much narrower footprint linked to India-sourced income.

An individual is regarded as resident if they are present in India for 182 days or more during the year or if they satisfy the alternative test of being present for 60 days in the year and 365 days in aggregate

over the preceding four years, subject to prescribed relaxations for specified categories of visitors. This determination is made separately for each tax year.

Where an individual satisfies the residence test, the law then draws a further distinction based on the depth and continuity of their historical connection with India. A resident who has only a limited residence history is classified as a RNOR. This status reflects the legislature's intent to treat newly resident individuals differently from those who are fully integrated into the Indian tax base. While an RNOR is treated as resident for domestic law purposes, Indian taxation largely remains source based. Income earned or sourced in India and certain specified foreign income connected with India is subject to tax, while other overseas income generally remains outside the Indian tax net. For foreign employees in the early years of an India assignment, this classification often plays a critical role in limiting their tax exposure.

Once the historical residence thresholds are met, the individual is classified as an ROR. At this stage, the link with India is regarded as sufficiently strong to justify full taxation. An ROR is subject to Indian tax on their global income, irrespective of where such income is earned or received. This status also triggers extensive disclosure obligations, including the reporting of foreign assets and financial interests. From both an individual and employer perspective, this represents the highest level of tax and compliance exposure.

Conversely, where an individual does not satisfy the residence tests, they remain a non-resident. A non-resident is taxed in India only on income that is sourced in India or deemed to accrue or arise in India. Offshore salary, foreign bonuses and non-Indian investment income remain outside the Indian tax net unless directly linked to duties performed in India. For short-term inbound assignees and business visitors, remaining within the non-resident category is often a key planning objective.

Taxation of employment income: rates, withholding and treaty relief

While residents face a wider scope of taxation, Indian tax law provides limited relief to inbound employees.

The short-stay exemption is provided for foreign employees. Any remuneration received by an employee of a foreign enterprise for services rendered during their stay in India is exempt from tax if all of the following conditions are satisfied cumulatively: (1) the foreign enterprise is not engaged in any trade or business in India; (2) the individual's stay in India does not exceed, in aggregate, a period of 90 days during the relevant tax year; and (3) such remuneration is not liable to be deducted from the income of the employer chargeable for taxation purposes in India.

Relief for short-term assignments also comes from India's tax treaties, which exempt salary if the stay is brief and the cost is not borne by an Indian employer or PE. In addition to this short-stay exemption, tax treaties that India has entered into with other countries offer other forms of relief. Treaty relief generally applies in three broad situations. The first is where the remuneration is not connected with an Indian PE. The second is where treaty tie breaker rules place tax residence only in the employee's home country. The third is where the applicable duties are performed entirely outside India, even if the salary is received in India. In these cases, the treaty may prevent India from taxing the individual's employment income. If none of these treaty level protections apply, salary for services performed in India becomes fully taxable, with any relief thereafter available only through foreign tax credit mechanisms.

In addition to the above, a new targeted exemption has been introduced for expatriates who visit India to render services in connection with a notified central government scheme. An exemption is in respect of any foreign-sourced income, which is not deemed to accrue or arise in India. The exemption is available for a maximum period of five consecutive tax years, beginning with the year of first arrival and is subject to the condition that the individual has been a non-resident for five consecutive tax years

preceding the year of their arrival. This measure aims to enable foreign professionals to take up assignments in India under notified schemes without the risk that their foreign income will be taxed merely due to a change in their residential status.

Where exemptions are not available, employment income taxable in India is generally subject to tax at slab rates applicable to individuals, together with the applicable surcharge and cess. These rates apply equally to residents and non-residents in respect of India-sourced salary. India does not offer a preferential expatriate tax regime, meaning that even short-term assignments can give rise to full Indian tax exposure when domestic or treaty exemptions are unavailable.

Indian tax law also places a strong emphasis on withholding at source. Employers are required to deduct tax on salary income subject to taxation in India irrespective of whether the employer has a registered presence in India or whether the salary is paid offshore. In practice, inadequate withholding can trigger audits in situations involving the cross-border movement of employees.

Scope of income for inbound employees

An inbound employee is taxed on the income that is chargeable under the head 'salary' to the extent it relates to services rendered in India. Salary is taxable when it is due from an employer or paid or allowed to an employee, irrespective of the place of payment. 'Salary' covers all forms of remuneration arising from the employment relationship unless specifically excluded and such income is chargeable in India to the extent it is linked to services rendered in India.

Where a foreign employer continues to make social security or pension contributions in their home country during an employee's secondment to India, the question often arises whether such contributions are taxable in India as part of the individual's salary. It has been held by several courts[1] that such contributions are taxable in India only when the employee obtains a vested right to receive them. During a secondment, the employee generally has no right to withdraw or access these amounts, making the right merely contingent. As a result, foreign social security contributions made while the employee is working in India are not taxable unless a vested right actually arises in that year.

PE risks: business connection, treaty PE and attribution

The presence of cross-border employees in India affects not only individual taxation, but can also have business tax consequences for the foreign employer. In simple terms, the activities performed by foreign employees in India may, under domestic law, give India a basis to tax the foreign enterprise. Income is deemed to accrue or arise in India where a business connection exists and operations are carried out in India. The concept of a business connection as mentioned in Indian law is interpreted widely and is largely fact driven, focusing inter alia on factors such as the existence of a real and intimate commercial relationship between the foreign enterprise and the relevant Indian activities.

By contrast, where India has entered into a tax treaty, the domestic law charge is restricted by the applicable treaty provisions. Such treaties require the satisfaction of the narrower and more specific PE thresholds, such as the existence of a fixed place of business or personnel rendering services or a dependent agent exercising defined authority. Accordingly, while the same underlying facts, particularly the nature, continuity and authority of employee functions, are examined under both regimes, tax treaties operate as a limiting mechanism, coming to the rescue of the taxpayer by confining India's taxing rights to situations where a PE is established, notwithstanding the broader sweep of the domestic law business connection concept.

[1] *LW Russel v CIT* [1964] 53 ITR 91 (SC); *Yoshio Kubo v CIT* [2013] 36 taxmann.com 1 (Delhi)

In practice, PE risks usually arise from a combination of the following common factual situations:

- dependent agent PE: arises where employees or representatives in India are commercially involved in concluding contracts or play a key role in finalising them. The emphasis is on substance and authority, not formal contract signing;
- fixed-place PE: arises where business is carried on through premises in India that are available for use by the foreign enterprise, such as sustained home office use, customer locations or project sites, even without legal ownership; and
- service PE: arises under certain tax treaties where services are performed in India through employees or personnel for a specified cumulative duration, even in the absence of offices or agents.

The Apex Court in a landmark decision[2] examined secondment arrangements from a services tax perspective. In that case, despite the fact that the overseas home company deputed its employee to work completely under the control and supervision of the Indian company, factors such as the continued presence of the secondees on the foreign payroll, overseas social security coverage and the right given to secondees to return to their home country on expiry of the secondment period, led to the conclusion that the employment relationship effectively remained with the foreign enterprise. The Apex Court noted that although the Indian company had operational and functional control over the seconded employee, by applying the 'substance over form test' it was held that the overseas home company, being the real employer of the seconded employees, was providing a manpower supply service to the Indian company. Secondment arrangements also pose a risk from an income tax perspective, depending on the specific facts and circumstances involved, the overseas employer could be considered to be rendering technical services through seconded employees. Such arrangements can also pose PE risks for the overseas home country depending on the duration of stay by the employees and the activities performed by them.

Judicial trends

India's recent jurisprudence shows a clear movement towards a substance-oriented interpretation of PE. This means that courts focus on what foreign enterprises and their employees actually do in India, rather than how contracts are written. The Supreme Court's ruling in *Hyatt International Southwest Asia Ltd*[3] is central to this shift. Hyatt, a UAE-based entity, provided long-term strategic oversight to an Indian hotel. Its employees visited India regularly and exercised control over brand standards, management decisions and core functions (however, the length of stay of the employees in India was below the threshold limits). Although Hyatt had no dedicated office or formal right to use the premises, the Court held that the hotel was effectively at its disposal.

The Apex Court in *Hyatt* (supra) clarified three essential points. First, the Court broadened the 'disposal test' by holding that a fixed-place PE may arise, even without owned or leased premises, where the foreign enterprise consistently uses Indian premises to carry out core functions. Second, the Court applied the 'control test' and held that Hyatt's authority over branding, personnel, pricing and operational decisions amounted to substantive managerial control in India. Third, despite not meeting the traditional fixed-place PE criteria or the service PE duration threshold, the Court treated Hyatt's recurring presence and operational control as sufficient to establish a PE.

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[2] *CC, CE and ST-Bangalore (Adjudication) etc v Northern Operating Systems Pvt Ltd* Civil Appeal Nos 2289-2293/2021.
[3] Civil Appeal No 9766 to 9773 of 2025 (SC).

In *Formula One World Championship Ltd,*[4] the Apex Court in another landmark ruling held that even temporary access to a racetrack constituted a PE, even though it was only used for a few days, because the underlying business that is the conduct of the race occurred during that short period.

In *Morgan Stanley & Co,*[5] the Court held that a service PE may arise only when seconded employees remain under the foreign employer's control and perform core activities on behalf of the foreign employer and not when rendering activities that are intended solely to safeguard group standards (stewardship activities). Further, in *E-Funds IT Solutions Inc,*[6] the Court reiterated that a fixed-place PE requires premises to be at the disposal of the foreign enterprise and that the mere existence of a subsidiary in India does not create a PE for the parent company. Further, the Indian subsidiary, providing back-office support services to its United States parent, did not create a fixed-place PE for the parent company because the subsidiary was conducting its own business of providing services, which was not the parent firm's core business.

In another interesting case, in *Clifford Chance Pte Ltd,* the High Court of Delhi dealt with the issue of whether the employees of a Singapore tax resident by virtue of providing legal advisory services to clients in India constituted a 'virtual service PE' in India. The High Court held that Article 5 of the India–Singapore Double Taxation Avoidance Agreement (DTAA) specifically requires the services to be 'furnished within' the contracting state through employees 'present' in that state and noted that the term 'virtual service PE' is not mentioned in the DTAA and, hence, the judiciary cannot insert new concepts into a treaty. The ruling reaffirms the principle that although businesses are increasingly shifting to virtual modes, the legal threshold for triggering a service PE continues to rest on the firm's actual physical presence in India.

From a talent mobility perspective, the above rulings indicate that PE risk is not assessed merely by counting the number of days or visits made by individual foreign employees. The focus is on the nature of the functions performed in India and whether those functions reflect a continued presence of the foreign enterprise in the country. Where employees visit India to exercise operational or strategic control, even on short or rotational assignments, such activities may contribute to the existence of a PE. By contrast, activities that are purely advisory or preparatory, without any decision-making authority, are less likely to do so.

Reporting and exit considerations

India does not levy a formal exit tax on individuals. However, an individual's tax and reporting obligations do not necessarily end at the time of their physical departure. Deferred bonuses, equity compensation or other employment-linked payouts may remain taxable after the person's exit where the underlying services were rendered in India. For example, if an employee benefits from an employee stock ownership plan (ESOP) that vests a year after they leave India, the portion of the vesting period attributable to their service rendered in India remains taxable in India, even if the employee has already relocated. Similar rules apply where bonuses or other compensation relate to work performed during a period when the employee was working partly in India.

In addition, once the applicable residential thresholds are met, individuals may be subject to enhanced disclosure obligations relating to their foreign assets, bank accounts and overseas income. Timely tax closure at the end of an assignment covering filings and disclosures remains critical to mitigating any future disputes and compliance exposure. Similarly, employer withholding obligations may also continue to apply in respect of post-departure payments linked to services rendered in India, requiring withholding and filing compliance even after the employee has exited India.

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[4] [2017] 394 ITR 80 (SC).
[5] [2007] 292 ITR 416 (SC).
[6] [2017] 399 ITR 34 (SC).

Conclusion

In sum, an inbound employee's tax position in India turns on a few practical factors: the number of days spent in India, the nature of the duties performed and the link between those duties and Indian-sourced income. While residency follows a clear statutory test, the treatment of employment income and the risk of creating a PE depend on the actual activities conducted in India. The Supreme Court's decision in *Hyatt* (supra) reinforces the fact that the Indian authorities focus on real conduct rather than formal structures. With a clear understanding of the relevant responsibilities and proper documentation, foreign employees and employers can approach India assignments with greater certainty.