

ARTICLE · 17 JANUARY 2020

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Shah V G & Co.

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# Expatriate Tax And Regulatory Issues And Best Practices In India

SV Shah V G & Co.

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India Tax

Movement of expatriates cross borders potentially creates several tax and regulatory issues. These could involve deputation or secondments from one group entity to another, or other relatively short term arrangements where expatriates move to another country for third party client projects. Key tax, social security and exchange control issues (including applicability of tax and social security treaties) in context of inbound expatriates in India are briefly highlighted in this article. For the sake of simplicity, any movement of employees for work is referred to as deputation in the article.

## Considerations for Employer Company

Presence of expatriates in India potentially creates Permanent Establishment (PE) exposure for the foreign company in India. Similarly, in cases involving cross charges of expatriate remuneration to an Indian company (typically, intra-group deputations), such cross-charges may be taxed in India.

Intra-group deputations also involve significant transfer pricing considerations. Beneficial owner of the efforts of the deputed expatriate vis-à-vis the related costs is a key consideration. Other key question is whether there is any know-how being transferred along with the expatriate and whether a mere reimbursement of salary cost is sufficient.

There could also be withholding tax obligations on the employer company in cases where the expatriates are taxable in India.

## Considerations for Expatriate

Expatriate's remuneration could be structured efficiently. Indian tax laws provide deductions and exemptions in respect of certain expenses incurred by the expatriate employee (house rentals, living allowances etc.). Certain facilities (car, club membership, etc.) provided by employer are considered taxable perquisites. Tax reimbursed as part of tax equalisation arrangement is also considered taxable. Separately, credit of foreign taxes (taxes paid in host country) is generally available in the country of residence.

As regards social security, generally, mandatory social security contributions made overseas are not taxed while voluntary contributions are taxed in India.

In case of a long term deputation, the expatriate could become Indian tax resident, and his worldwide income could become taxable in India. Additionally, disclosure of global assets, including bank accounts is required.

Expatriates in India need to register with Foreign Regional Registration office (FRRO). They also need to open permissible bank accounts in India, and adhere to regulations regarding permissible and impermissible transactions in such accounts.

## Best Practices

Foreign Companies deputing employees to India must ably plan the nature and duration of deputation. They must have clearly documented deputation policies. Deputation letters and inter-company deputation agreements must be carefully drafted to ensure they document the correct underlying factual arrangements. Relevant tax implications must be carefully evaluated. In case of intra-group deputations, transfer pricing analysis should precede the deputation.

For the expatriates, they must understand the tax implications of the entire compensation package, including non-cash components, even before proceeding for deputation. They should also make themselves aware of key triggers, such as change in residential status, that change their tax or regulatory obligations. Knowledge of applicable tax and social security treaties would also help expatriates plan for applicable taxes and resulting cash flows better, and avoid unpleasant surprises.

*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*



Vandana Shah



Gaurav Shah

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