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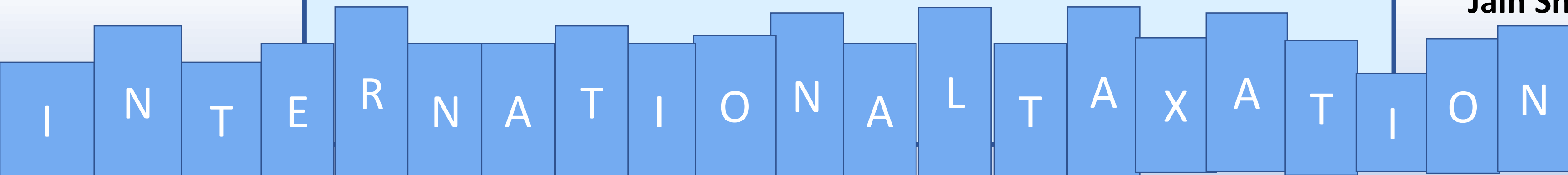
206

Taxability of salary income in India under cross border scenarios



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Scenario 1: US citizen working from India for a US company



Hello Mr. Tax expert. I am Trump. I am a citizen of US. I have been working from home in India for a US company. Will my salary be taxable in India.

Hi Trump, since you exercised your employment in India, your salary income accrue and arise in India and will be taxable in India under the head of income from salary. Further, since you have been in India for more than 182 days, you become resident in India as per section 6 of IT Act.





Ohh, I see. But I overheard that a person who is working for a foreign entity, need not pay tax in India for his salary Income. Is that correct? and will my residential status have an impact on taxability?

Trump, there is one section in Income Tax act [Sec. 9(1)(ii)], which states that services rendered in India shall be treated as salary income deemed to accrue and arise in India and as per section 5, such income deemed to accrue and arise in India shall be taxable in India. Hence your salary will be taxable in India. Further, in this case, your residential status will not have any impact on the taxability under Income Tax Act.



Scenario 2: A foreign national working for an Indian company and comes to visit in India

Hello Mr. Tax expert. I am Meloni. I am a citizen and resident of Italy. I work for an Indian company as a director and visits India for around **70 days every year** in relation to my employment. I wonder if my whole salary will be taxable in India. Can you please guide me with that.



Hi Meloni, as you stay only 70 days every year in India [$70 \times 4 = 280$ days in last 4 year], you are a **non-resident in India**. Accordingly, your global income will not be taxable in India. However, your salary for the period of your stay in India will be taxable in India because you exercised your employment in India and your employer is a resident of India also. Hence, **such portion of salary income will be treated as Income accrue and arise in India.**



Hmm, I understand what you are saying. However, a friend of mine was saying that a person, who is not a citizen of India, visits India and stays up to 90 days for employment purpose, is not liable to pay tax in India on such Income.
And what about benefit under DTAA?



Meloni, there are some exemptions. However, you are not covered under such exemptions. Section 10(6) of the Income Tax Act states that a person who is not a citizen of India renders services during his stay in India will not be taxable. However there are 2 conditions for getting covered under this section. The first one is that your **stay in India should be up to 90 days** and second condition is that your **employer should be a foreign enterprise**. In your case, you are fulfilling first condition but your employer is an India entity hence second condition is unfulfilled. Hence, your salary will be taxable in India.





Further, as per **Article 16(1)** of India-Italy DTAA, if the employment is exercised in the other contracting state [here India], such remuneration as is derived therefrom may be taxed in that other State [India]. Hence, it will be **taxable in India**. Further, article 16(2) lays down 3 conditions. If all the conditions are met, person need not to pay tax in other contracting state [India]. **Those conditions are**

- 1) the person is present in the other State for a period not exceeding in the aggregate 183 days in the fiscal year
- 2) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State ; and
- 3) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

Since, your employer is an India entity, second condition does not meet. Hence, you do not fall under Article 16(2). Therefore you can not get any benefit from DTAA and such salary income will be taxable in India.

Conclusion

Salary Income of a foreign citizen working from India for a foreign entity, and a foreign citizen & non-resident working outside India for an Indian entity, visiting India for employment purpose can be taxable in India.

Cool.. I get it.
Thanks Mr.
Tax expert.





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