

TAX EXEMPTIONS FROM INCOME TAX, WEALTH TAX AND GIFT TAX

Tax exemptions from income tax

Income from the following investments made by NRIs/PIO out of convertible foreign exchange is totally exempt from tax.

- (a) Deposits in under mentioned bank accounts :
 - (i) Non Resident External Rupee Account (NRE)
 - (ii) Foreign Currency Non-resident Account (FCNR)
- (b) Units of Unit Trust of India and specified mutual funds, other specific securities, bonds and savings certificates (subject to conditions and prescribed limits under the Income-tax laws and regulations).
- (c) Dividend declared by Indian company.
- (d) Long term capital gains arising from transfer of equity shares in a company and/or equity oriented schemes of Mutual Funds, which are subject to securities transaction tax.

It should be noted that the tax exemptions relating to NRE bank deposits will cease immediately upon the NRI/PIO becoming a resident in India whereas the interest on FCNR bank deposits will continue to be tax free as long as the NRI maintains the status of Resident but Not Ordinarily Resident or until maturity, whichever is earlier.

Tax exemptions from wealth tax

Where an NRI/PIO returns to India for permanent residence, moneys and the value of assets brought by him into India and the value of assets acquired by him out of such moneys

within one year immediately preceding the date of his return and at any time thereafter are totally exempt from Wealth-tax for a period of seven years after return to India.

The above exemption may not have much relevance now since the Finance Act 1992 has considerably reduced the scope of Wealth-tax. With effect from 1st April 1993, Wealth-tax is being levied only on non-productive assets like urban land, buildings (except one house property), jewellery, bullion and vehicles, cash over Rs.50, 000- etc. The current rate of Wealth-tax is 1 % on the aggregate market value of chargeable assets as on 31st March every year in excess of Rs.1.5 million.

However, it may be noted that NRIs are also liable to pay wealth tax if the market value of taxable assets as on 31st March exceeds Rs.1.5 million.

Tax exemptions from gift tax

Gift Tax Act, 1958 has been repealed with effect from 1st October, 1998 and as such, Gift Tax is not chargeable on any gifts made on or after that date.

With regard to gifts of foreign exchange or specified assets made by NRIs to their relatives in India, it should be noted that

- 1 Gifts made by an NRI/PIO to his or her spouse, minor children or son's wife will involve clubbing of income and wealth in the hands of the donor-NRI/ PIO.
- 2 In the case of gifts to minor children the clubbing of income, as above, will cease upon such children attaining the age of

18 years. 3. The clubbing provisions will apply, in case of gift to spouse or son's wife in India, only to the first-stage of income from the original gift. Second-stage income arising from investment of the income from the original gift is not clubbed and this will constitute the separate wealth/income of the donee spouse.

Generally, the income of minor children, from any source (including income from gifts from parents) is clubbed with the income of the parent whose total chargeable income is greater.

Other matters to be noted regarding gifts are

- 1 All gifts received by residents from NRIs/PIO may be subject to the tax authorities requiring the recipient to provide evidence as regards the identity and financial capacity of the donor and genuineness of the gift.
- 2 Under the Foreign Exchange Management Act, 1999 no approval from Reserve Bank of India (RBI) is necessary for the resident donee to hold gifted immovable property outside India provided the said property is gifted by a person resident outside India. General permission, subject to certain conditions, is granted by RBI for the resident donee to hold foreign moveable properties such as shares and securities gifted by NRI/PIO donors.
- 3 The Income Tax Act has provided that any sum of money exceeding Rs.50,000 received without consideration (i.e., gift) by an individual or Hindu undivided Family from any person on or after 1st April, 2006 the whole of such sum will be chargeable to income-tax in the

Assessment of recipient (i.e., donee) under that head "Income from other sources" for and from assessment year 2007-08 and onwards. Any sum of money exceeding Rs. 25,000 received without consideration (i.e. gift) by an individual or Hindu undivided family from any person on or after September 1, 2004 but before April 1, 2006, the whole of sum will be chargeable to income tax.

However, the above provisions will not apply to any sum of money /gift received:

- (a) from any relative; or
- (b) on the occasion of the marriage of the individual; or
- (c) under a will or by way of inheritance; or
- (d) in contemplation of death of the payer; or
- (e) from a local authority; or
- (f) from any fund, foundation, university, other educational institution, hospital, medical institution, any trust or institution referred to in section 10 (23C); or
- (g) from a charitable institute registered under section 12AA.

The term "relative" is defined as:

- (1) spouse of the individual;
- (2) brother or sister of the individual;
- (3) brother or sister of the spouse of the individual;
- (4) brother or sister of either of the parents of the individual;
- (5) any lineal ascendant or descendant of the individual;
- (6) any lineal ascendant or descendant of the spouse of the individual; and
- (7) spouse of the person referred to in (2) to (6).

Scope of Receipts

| As per plain reading of the provision, any receipt without consideration, save exclusions, whether capital or otherwise, may be considered as income. |

| Similar receipts by any person (such as, a partnership firm, a company, and AOP etc.), other than an individual or a Hindu undivided Family, would not constitute income in its hands.

| The provision would apply to an individual irrespective of his residential status. Accordingly, any receipt in India by a non-resident of the nature discussed above would be considered as income in his hands.

| Gifts on occasion other than marriage, for example, birthday, marriage anniversary and other social occasions, religious ceremonies etc., would be taxable as income. Gifts received on the occasion of the marriage of the individual, irrespective of any limit, (but within reasonable limits) would not constitute income.

| The receipts should be in the form of money. Accordingly, any gift in kind would not be taxable.

| The receipts must be without consideration, implying in the nature of gift.