

Short-term business travelers to India

Prepared by:

Ravindra Jain, Associate Director, RSM Astute Consulting Pvt. Ltd.
ravindra.jain@rsmindia.in, + 91 98691 69381

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Short-term business travel to India

Short-term business travelers (STBTs) up to 20–30 days may not create tax implications for foreign individuals. However, if the transaction is between related parties, it is advisable to evaluate PE risk for foreign entity. Employee may be eligible to claim short stay exemption on salary income under section 10(6)(vi) of the Income–Tax Act,1961 or applicable tax treaty subject to satisfaction of given conditions and thus, salary may not be taxable in India.

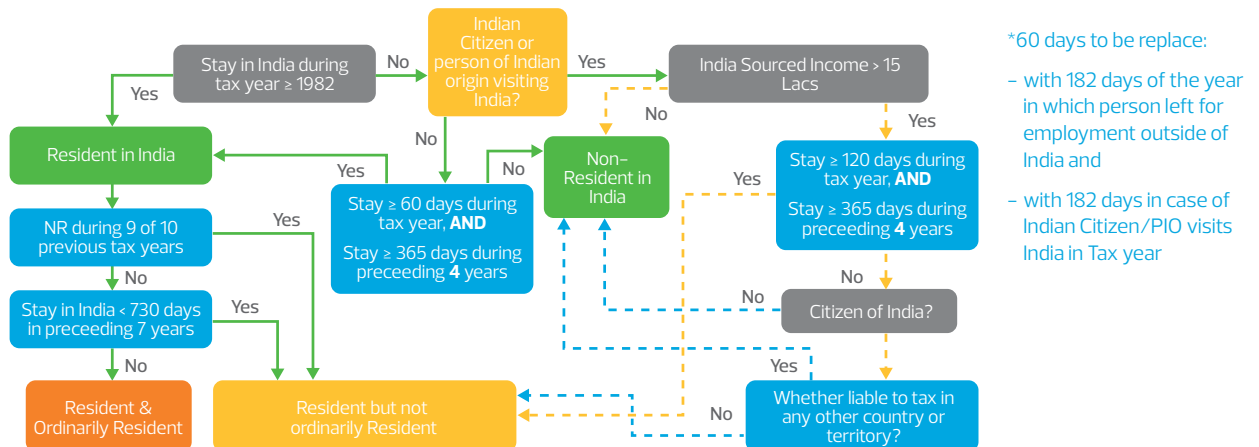
Immigration

The expatriate should travel on correct visa category (i.e., business visa or employment visa as the case may be) and should get registered with Foreign Regional Registration Office in India within 14 days of arrival in India, if required as per his/her visa endorsement.

Residential status

In India charge of income–tax is not based on domicile or citizenship. The extent of Indian tax liability depends on the residential status of an individual based on the individual's physical stay in India. Residential status is determined on the basis of the physical presence in India during each previous year i.e., the fiscal year commencing from April 1.

An individual may be Resident and Ordinarily Resident, Resident but Not Ordinarily Resident or Non-Resident. Residency rules are depicted in a flow chart for easy reference:



In case of the citizen or person of Indian origin having total income, other than the income from foreign sources, exceeding INR 1.5 million during the relevant year and if they are not liable to tax in any other country or territory by reason of their domicile or residence or any other criteria of similar nature, they shall be deemed to be RNOR in India in that previous year.

The actual number of days an individual is present in India is generally determined on the basis of entries in the passport, taking into account the day of entry as well as the day of exit. Further, stay in the territorial waters of India would also constitute presence in India for the purpose of determining the residential status.

Payroll considerations

Salary received by an employee for rendering services in India would be liable to tax in India as employment income irrespective of its place of receipt, as the source of the same lies in India. Hence, any salary/allowance/benefit paid provided to an employee outside India which is related to assignment period in India will be subject to tax in India.

Further, if, salary is received in India, the same may be taxable on receipt basis under the Indian tax laws.

Employer is required to comply with withholding tax obligation on such payments. The maximum marginal tax rate for the Financial Year 2020–21 is 42.744% for total income exceeding INR 50 million.

A short stay exemption may be claimed subject to satisfaction of conditions, as per the applicable clause of tax treaty / Income–Tax Act, 1961, as may be beneficial to the individual.

Under the Indian foreign exchange regulations, it is permissible for the employees of a foreign entity to be seconded to branch, office, joint venture, subsidiary or group company of such foreign entity in India and to receive their entire salary in a bank outside India provided the income tax as per the domestic tax laws of India has been duly paid on the entire salary as being accrued in India.

Permanent Account Number (PAN) is akin to an income–tax registration number and any person earning taxable income in India has to obtain the PAN.

Social security and certificates of coverage

Social security in India is governed by Provident Fund Regulations under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. A foreign passport holder, working for a covered establishment in India under the EPF Act, is mandatorily required to contribute under the EPF Act. A covered establishment is one which is registered under the EPF Act.

Registration is mandatory the moment employee strength (including persons employed through contractors) becomes 20 or more. The employer is mandatorily required to contribute 12% of "salary" prescribed for provident fund contribution and the employee is required to make a matching contribution. The employer has a right to recover 12% of such contribution from the employee's salary. The employer also has to make 0.5% contribution capped at a monthly salary of INR 15,000, towards an insurance scheme under the EPF Act.

In relation to the withdrawal of social security contributions, the same cannot be applied for till the foreign citizen attains 58 years of age (in case of foreign citizen is from a country with which India does not have an effective SSA) or until a SSA is signed with the respective country from which such foreign citizen has come to India. For foreign citizen coming from a country with which India has an effective SSA, provident and pension fund may be withdrawn, subject to certain restrictions/ provisions of the applicable SSA.

Other aspects

The presence of employees of a foreign entity in India may create a permanent establishment exposure for the foreign entity.

The arrangement between the foreign entity and the Indian entity to second the employees of the foreign entity to work for the Indian entity needs to be evaluated from goods and services tax perspective.

The secondment /deputation transaction between related parties would be subject to transfer pricing regulations and hence any cost sharing arrangement should satisfy arm's length principle.

Any taxable payment from Indian entity to a non–resident would be subject to withholding tax provisions.

Checklist for managing risks of noncompliance

- ☑ **Payroll related exposure:** Taxes on salary, contribution towards social security, filing of forms, etc. must be completed within the time frame else there could be additional cost to company towards interest, penalty, late fees etc.
- ☑ **Immigration risks:** It is imperative that STBTs adhere to immigration laws globally. Any visa/work permit requirements should be identified prior to traveling to the other jurisdiction.
- ☑ **Corporate tax risks:** The employee's activities in the host country can create PE risk and tax filing and payment obligations at the corporate level. The applicable income tax treaty should be reviewed, as a mitigation strategy may need to be put in place.
- ☑ **Regulatory risks:** Local requirements and registrations must be considered to reduce the possibility of triggering any regulatory issues in the host country.
- ☑ **Reputational risks:** There is increased pressure on multinationals to show that they have a process in place for monitoring STBTs and managing risks of noncompliance.

How can RSM help?

Noncompliance with local requirements may lead to financial and reputational risks and exposures that could put business objectives and projects at risk if international jurisdictions refuse an employee's entry. Failing to meet local requirements may hinder expansion to new markets, lead to monetary penalties and expose the organization to legal challenges from employees and authorities.

The reporting obligations described above need to be carefully managed to ensure that all requirements are met and that tax liabilities are minimized. Organizations may want to establish a compliance checklist in connection with their STBTs.

RSM offers a senior professional-led service that can advise on the data collation, recordkeeping and risk management surrounding your STBTs to India.

Our international professionals will provide clarity regarding the complex tax compliance requirements your business travelers face globally.

For further information please contact:

RSM Astute Consulting Pvt. Ltd.

8th Floor, Bakhtawar, 229, Nariman Point, Mumbai – 400 021.

T: (91-22) 6108 5555 / 6121 4444

F: (91-22) 2287 5771

E: emails@rsmindia.in

W: www.rsmindia.in

Offices: Mumbai, New Delhi-NCR, Chennai, Kolkata, Bengaluru, Surat, Hyderabad, Ahmedabad, Pune, Gandhidham and Jaipur

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