

# India Tax Update



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## India Tax Update

### Income Tax Rates for India

There are different rates of income tax for men, women and senior citizens.

Income tax slabs 2010-2011 (for Men) in India:	
Income Tax Slab (in Rs.)	Tax
0 to 1,60,000	No Tax
1,60,001 to 5,00,000	10%
5,00,001 to 8,00,000	20%
Above 8,00,000	30%

Income tax slabs 2010-2011 (for Women) in India:	
Income Tax Slab (in Rs.)	Tax
0 to 1,90,000	No Tax
1,90,001 to 5,00,000	10%
5,00,001 to 8,00,000	20%
Above 8,00,000	30%

Income tax slabs 2010-2011 (for Senior Citizens) in India:	
Income Tax Slab (in Rs.)	Tax
0 to 2,40,000	No Tax
2,40,001 to 5,00,000	10%
5,00,001 to 8,00,000	20%
Above 8,00,000	30%

\*An additional educational assessment of 3% on tax payable.

## India Tax Update

### Resident Status Income Tax

#### Residential Status

1. An individual will be treated as a resident in India in any previous year if he fulfills any of the following two conditions:
  - Presence in India in a year for 182 days or more, or
  - Presence in the four preceding years in India for 365 days or more, and the person has been in India for 60 days or more in the current year.
2. An Indian citizen or a person of Indian origin who resides outside India will be treated as resident in India if he stays in India in that year for 182 days or more.

Section 6, Income Tax Act, 1961

## **India Tax Update**

Nonresident for Income Tax

An individual is a nonresident if he stays in India in that year for less than 182 days.

An individual (whether an Indian citizen or not) who is outside India and who comes on a visit to India will be treated as nonresident if he stays in India to less than 182 days subject to the condition that during the preceding four previous years his stay in India does not amount to 365 days or more.

Section 6, Income Tax Act, 1961

## **India Tax Update**

Ordinarily Resident

- (i) Resident in India in nine out of the ten previous years preceding the previous year in which he is resident, or
- (ii) Presence in India for a period or periods amounting to 730 days or more during the seven years preceding that previous year.

Section 6(6) (a), Income-tax Act, 1961

## India Tax Update

### A Hindu Undivided Family

A Hindu undivided family, firm or other association of persons will be treated as "non –resident" in India in any previous year if the control and management of its affairs is situated wholly outside India during that year.

## India Tax Update

### Indian Residency Planning

Fact:: Indian Citizen  
moving to U.S.

HSBC Shares

- ① - Transfer shares to a U.K. LLP
  - Check box election for U.S. tax
  - Taxable transfer for U.S. tax
- ② - Withdraw shares prior to move to U.S.
  - Gain recognized for U.S. to step up basis
  - No tax impact in India
- ③ - Sell shares while resident in U.S.
- ④ - Repurchase shares in U.S.
- ⑤ - Return to India with stepped up basis in shares

## India Tax Update

### Capital Gain on Transfer of Certain Capital Assets not to be Charged in Case of Investment in Residential House

Where in the case of an absentee being an individual or a Hindu undivided family,  
the capital gain arises from the transfer of any long-term capital asset,  
not being a residential house (hereafter in this section referred to as the original asset),  
and the absentee has, within a period of one year before or two years after the date on which the transfer took place purchased, or has within a period of three years after that date constructed, a residential house (hereafter in this section referred to as the new asset),  
If the cost of the new asset is not less than the net consideration in respect of the original asset, the whole of such capital gain shall not be charged.

Section 54F, Income Tax Act 1961

## India Tax Update

### Foreign Exchange Regulation Act (FERA)

A Person subject to Foreign Exchange Control is a "person resident in India"

(i) A citizen of India, who has, at any time after the 25th day of March, 1947, been staying in India.

Excludes: Citizens of India that are outside of India:

- (a) for employment outside India, or
- (b) for carrying on a business outside India, or
- (c) for any other purpose, that would indicate intentions to stay outside India for an uncertain period.

(ii) A citizen of India, who having ceased by virtue of paragraphs (a), (b) or (c) to be resident in India, returns to, or stays in, India:

- (a) for or on taking up employment in India, or
- (b) for carrying on in India a business or vocation in India, or
- (c) for any other purposes, in such circumstances as would indicate his intention to stay in India for an uncertain period.

Section 2 (p) and 2 (q) of FERA

## India Tax Update

### Exchange Control Issues

Residence under Regulations will impact the ability of Indian residents to transfer funds outside of India

#### Residents

- Restrictions relaxed if funds outside of India inherited or acquired by gift

#### Nonresidents

- No limitations

## India Tax Update

### Succession Planning

No uniform civil code in India

- Succession depends on laws of religions
- Trusts can take precedence
- Succession rules differ with
  1. Hindus – Mitakshara system
  2. All Others: Dayabhaga system – region of Bengal only
  3. Different rules for non Hindu (Christians, Pasis, Muslims)
- Transfers of property can be restricted
- Hindu Undivided Family: all members have an ownership or “coparcenors”
- Restrictions may exist for foreign ownership of an Indian company
- Foreign Investment Policy may restrict ownership
- Restrictions generally apply to real estate, retail and agricultural enterprises

## India Tax Update

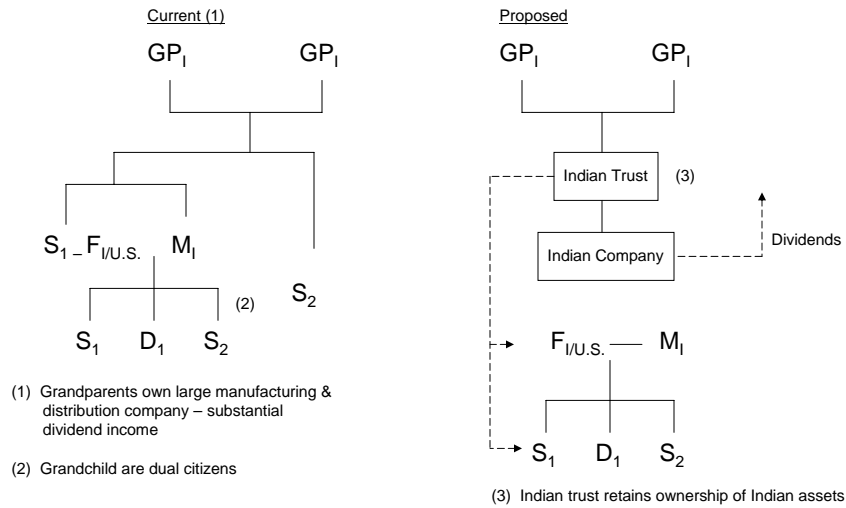
### Succession Planning (continued)

#### Trusts

- Terms and provisions can override religious and intestacy laws
- Revocable and irrevocable trusts permitted
- Trusts not frequently used in part due to
  - Culture
  - No gift or estate tax

## India Tax Update

### Succession Planning



## India Tax Update

### Forms of Doing Business in India

- Local Representative Office
  - Limited to marketing, coordinating services
  - Not taxable in India
- Branch of Foreign Corporation
- Limited Company
  - Wholly owned by foreign investor
  - Joint venture with Indian ownership
- Public Limited Company
- Project Office
  - For executing contracts awarded for work in India

## India Tax Update

### Corporate Taxes

#### Business Income

- Domestic Company 30%
- Foreign company (branch ) 40%
  - Surcharges on income exceeding Rs. 10 million
    - Domestic 7.5%
    - Foreign 2.5%
  - Additional 3% charge imposed on aggregate tax

#### Dividends

- Not taxable to individuals
- Additional 16.61% internal withholding

#### Issue in the U.S.:

- Are taxes internally withheld creditable?
- No U.S. ruling specifically on point
- Similar withholding structure as used in Australia
- "Franced dividends" withholding tax is creditable
- IRS ruling Rev. Rul. 56-288, 1956-1, CB 321.

## India Tax Update

### Income Tax Treaties

Most foreign corporate investments into India come through treaty countries:

- Mauritius
- Singapore
- Cyprus
- Netherlands

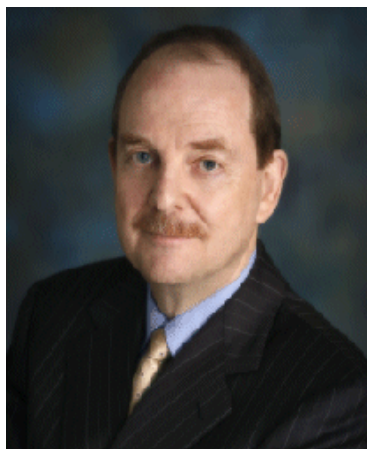
Mauritius due to:

- Zero tax on Indian capital gains
- Dividends: no withholding to outside, taken at source
- Treaty with Mauritius: 5%
- Conditions needed to qualify for the treaty benefits
- Scrutiny now with substance and form of holding company
- New limitation of benefits provisions cover shell conduit companies

For example:

- Singapore company with annual expenditures of at least S\$ 200,000 for two years prior to sale of Indian assets deemed to be substantive

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Brian Rowbotham is a CPA with 33 years of experience advising businesses and individuals on complex domestic and international income and estate tax planning. He is the founding partner of Rowbotham & Company LLP which is almost exclusively dedicated to businesses and investors needing both domestic and international tax and accounting services.

His clients include private and public companies around the globe which consist of: U.S. and foreign institutional investors, multinational families and executives and non-U.S. investors doing business in the U.S. Mr. Rowbotham has advised clients in major domestic and international litigation and has also served on the boards of both privately held and publicly traded companies. From 1992 to 2006, he directly supervised his firm's engagement by trustees in Europe to assist with the recoveries of funds from one of the largest frauds in U.K. history. Over the past 20 years, he has represented large European and Middle Eastern institutional investors and numerous Asian families investing in U.S. Real Estate transactions.

Mr. Rowbotham has been a frequent guest lecturer at the Haas School of Business, University of California Berkeley, and at the University of San Francisco. He taught graduate courses on corporate and partnership taxation at the University of California Extension. He has been a speaker for several U.S. and international tax planning organizations, including the ITPA and STEP, in Europe, Asia and the U.S. He presented in-house training lectures on investment structures for acquisitions of U.S. property at major European trust companies and banking institutions.

Mr. Rowbotham is a frequent commentator on international tax topics of interest. He submitted proposed legislation to the U.S. Treasury in the FIRPTA arena which resulted in changes to final regulations on withholding tax on foreign partnerships with investments in U.S. Real Property. This past year he issued several commentaries that were critical of IRS procedures and policies in the FBAR amnesty program.

He is member of the Tax Division of the AICPA and a past president of the San Francisco Tax Club. Mr. Rowbotham is a former featured columnist for Outlook, the official journal for the California Society of CPAs. He has been a contributor to the Journal of Accountancy and several international tax and investment journals. In 2005, he was profiled in the San Francisco Business Times as an entrepreneur of the accounting profession. In April 2009, his article "Doing Business in China" was featured on the cover of the California CPA Journal.

Mr. Rowbotham began his career in national accounting firms in San Francisco and London, specializing in international tax, before founding Rowbotham & Company in 1991. He was born in Buenos Aires with British citizenship, and became a naturalized U.S. citizen in 1969. He earned his bachelors degree and MBA, with honors, from the University of California, Berkeley.



# Rowbotham & Company LLP

Rowbotham & Company is a Certified Public Accounting firm that provides accounting services and domestic and international tax consulting to individuals and businesses of all sizes, including large multi-national companies. The firm takes a global approach to client services and responds to complex business challenges with experience and care.

The firm provides a full range of audit and tax services. Frequent engagements include:

- ❖ Income and estate planning for executives and investors – domestic and international
- ❖ Audit services, Pre-IPO consulting services, and Sarbanes-Oxley compliance
- ❖ Merger and acquisition services, including due diligence and business valuations
- ❖ International tax planning and compliance
- ❖ Litigation support
- ❖ Assistance with federal and state tax audits

The firm works closely with client audit committees, CEOs, CFOs, and controllers and coordinates with foreign accountants or service providers, as needed. Industry experience includes:

- ❖ Distribution
- ❖ Financial Services
- ❖ Information Technology
- ❖ Investment Funds
- ❖ Life Sciences
- ❖ Real Estate
- ❖ Software

Founded in 1991, Rowbotham & Company has offices in San Francisco and Santa Clara and is a member of the Polaris International, a worldwide network of accounting and consulting firms. The firm is a member of the American Institute of Certified Public Accountants and is also registered with the Public Company Accounting Oversight Board, which entitles it to practice before the SEC. The firm maintains close ties to the legal, banking, and venture capital communities and frequently makes strategic introductions for its clients.

