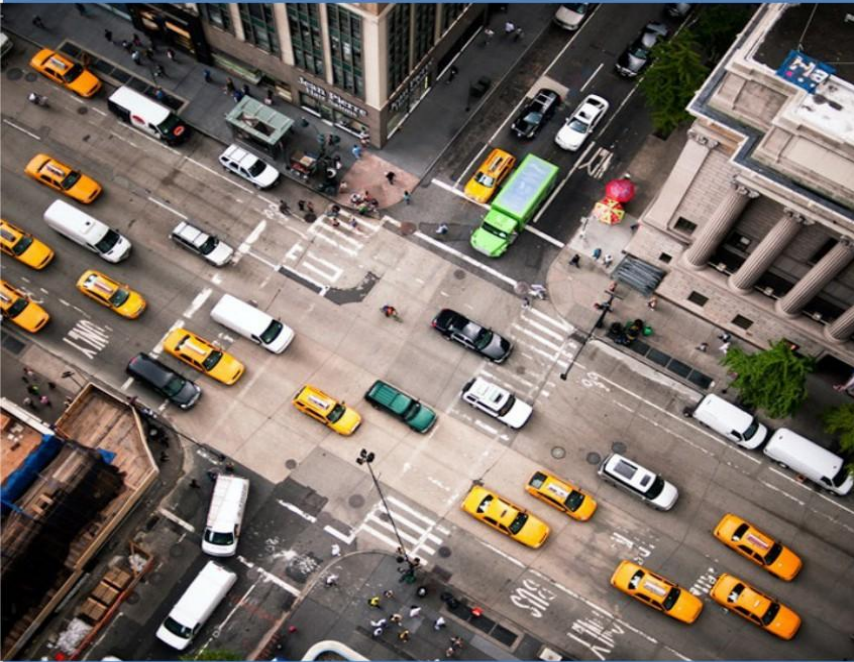




India-US Cross Border Transactions- a Taxation and Legal Overview



Main topics

Capital gains taxation or potential double taxation

Tax efficient strategies on Investing in India
Investment opportunities in India

Voluntary disclosure programs

Foreign bank reporting-issues and compliances

INDIA-USA ECONOMIC AND CULTURAL RELATIONS

- India - U.S. bilateral merchandise trade during the period January - September 2015 was \$ 51.11 billion.
- Target set during prime minister modi's US visit in september 2014- bilateral trade in goods and services \$500 billion
- FDI inflow into India from the US from April 2000 to September 2014=USD 13.9 Billion
- US 6th largest source of FDI into India
- Indian investments into the US= \$17 Billion
- 3.5 million Indians living in USA- accounting for 1% of total American population
- Strong cultural and socio-economic ties between USA and India

What does being a **Global Citizen** mean?

What does it mean to be a global citizen? It means you might have-

- **Assets** in more than one country
- **Income** from more than one country or
- You might just have a business connection in more than one country

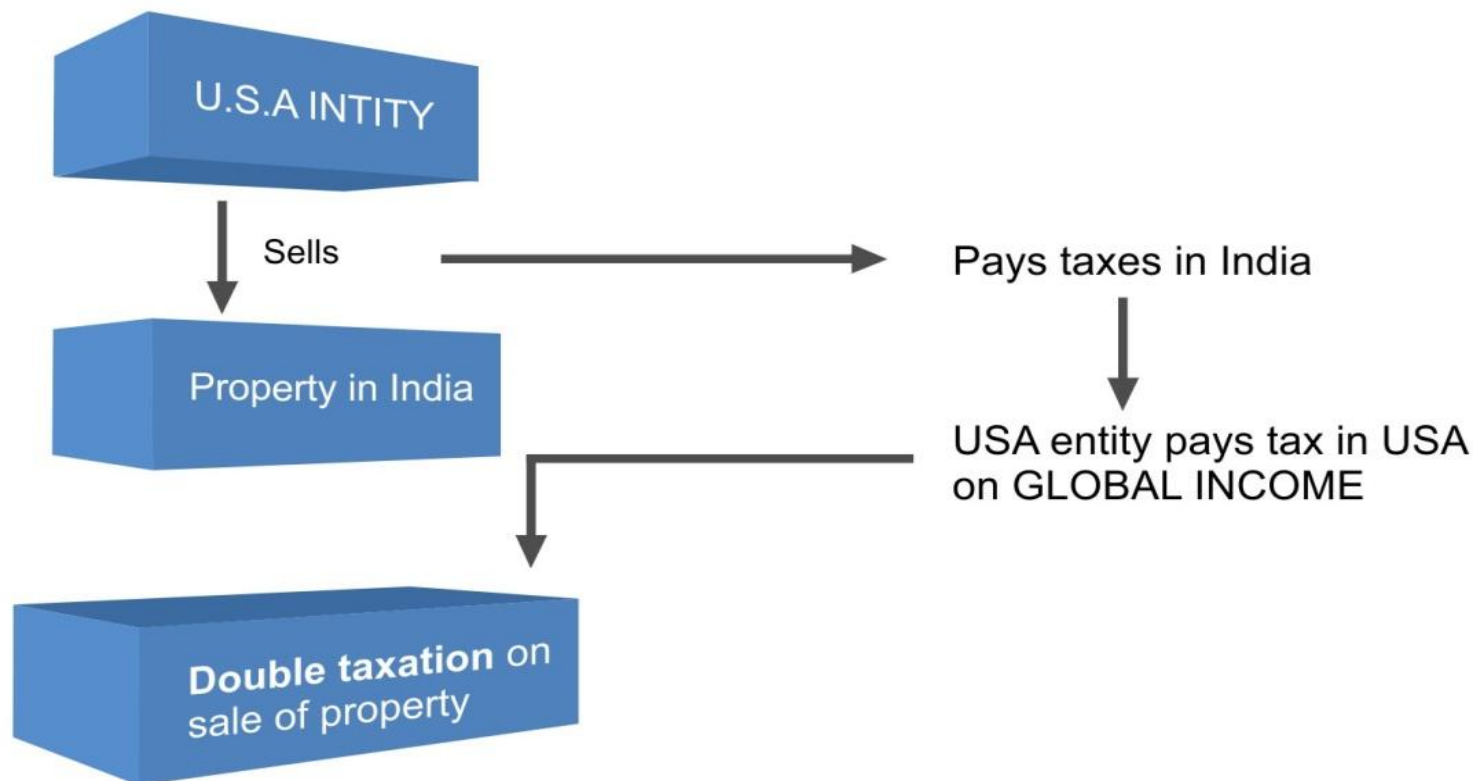
Complications arising from being a Global citizen

- Double Taxation in Source State and Resident State
- Compliance formalities in multiple countries.
- Time and effort investment before every business action strategy

The solution to all the challenges is

SELF EDUCATION AND KNOWLEDGE

THE CAPITAL GAINS CONUNDRUM



Tax implication on sale of property

Source	Residence
India	USA
Pay-tax	Pay-tax

According to Article 25 of the DTAA, the US shall allow its residents or citizens to claim a tax credit in the US on income tax paid to India.

Article 25 further states that-

“the determination of the source of income for purposes of this Article shall be subject to such source rules in the domestic laws of the Contracting States as apply for the purpose of limiting the foreign tax credit.”

According to the US tax code, in order to claim a tax credit of taxes paid in another country, the income must be 'foreign sourced.'

Also, according to IRS, 'income from sale of personal property by a US resident shall be sourced in the U.S.'

Conclusion: If you are a US person (that is US citizen, resident or green card holder) and capital gains accrues, you might end up paying double taxes on it.

Tools of Tax Planning

- Ensure proper pre-investment tax planning.
- Using an intermediate holding jurisdiction
- Recharacterization of the asset at the source level.



India now the most open economy in the world: Opportunity of Billions

- Radically liberalised Foreign Direct Investment (FDI) regime
- Most sectors to be under automatic approval route, except a small negative list
- 100% FDI under automatic route permitted in LLPs
- Conditions of area restriction of 20,000 square metres and minimum capitalization of \$5 million removed. Can exit from projects before completion.
- Non resident to Non resident transfer not subject to lock-in or government approval.

INDIAN PATENT BOX SCHEME

- India- a major global R&D hub. However, patents held outside India once they are developed.
- To encourage companies to locate high-value jobs associated with the development, manufacture, and exploitation of patents in India, Patent Box scheme introduced for the first time in India.
- All Royalties from Indian Patents to be taxed at 10% of gross value
- Global income from worldwide exploitation of patents developed and registered in India.
- Registration of Patents under Patents Act, 1970 mandatory.



Major focus sectors for FDI opportunities in India

- Infrastructure
- Construction
- Manufacturing
- Health and Medical
- Foods and Food Packaging
- Technology and e-commerce

ENTRY STRATEGY IN INDIA

U.S.A Entity

U.S.A

Holding Company

Whether to
have intermediate
entity

Tax efficient jurisdictions

India Entity

Repatriation of
fund instruction
manner

Company/JV/LLP?

ENTRY STRATEGY IN INDIA

Renegotiation of the India Mauritius treaty

Implications to India Singapore DTAA- being linked with India Mauritius treaty

Netherlands as an intermediate jurisdiction

Choice of entity- LLP vs PARTNERSHIP vs PRIVATE COMPANY vs ONE PERSON COMPANY

Choice of Debt vs Equity- No thin capitalization Rules in India

How to minimize legal risk exposure for USA residents from Indian operations?

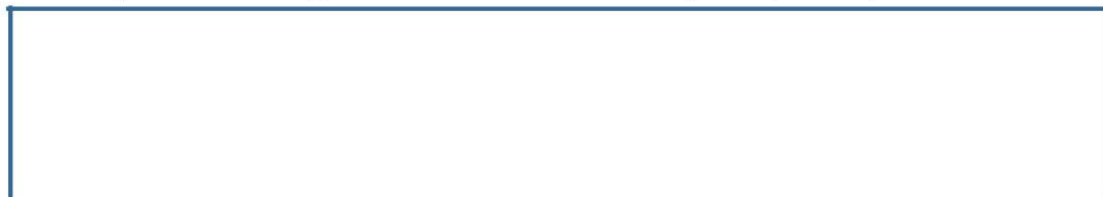
Strategy to buy immovable property in India

Value on property prices in India still very high

Preferred investment mode for Non Residents

Effective tax planning important due to high value of transactions in Real Estate

Tax planning of real estate property in India



- For consumption-
can be purchased in Individual name
- For investment/ with objective of possible resale-
purchase under a company

Foreign Tax Credit Rules (Rule 128)

For the first time, CBDT lays down clear guidelines and procedures for taking tax credit.

The scheme is for Residents including Indian incorporated companies.

Clarifies tax credit issues where there is a timing mismatch due to different tax years such as between the US (Jan- Dec) and India (April-march). Tax credit in such cases shall be proportionately distributed.

Taxes covered- Clarified that tax relief can be claimed in respect of surcharge and education cess.

The tax credit shall be the aggregate of amounts of credit computed separately for each source of income, arising from a particular country.

The Rules also provide clarity on foreign exchange fluctuation.

Credit available only when information furnished on or before the due date for filing of income-tax returns.



You can have money and investments anywhere in the world as long as you **disclose** them.

A faint world map is visible in the background of the slide, centered on the Atlantic Ocean.

Aspects of Disclosure Programs

• Income

• Assets

Income Reporting

- Applicable to US citizens and Residents
- US taxes based on Worldwide Income
 - resulting in potential Double Taxation and Tax credit
- US-India has income tax treaty to provide relief from **DOUBLE TAXATION**
 - Foreign Tax Credit in US tax return based on the nature of income
- Its Mandatory – part of annual tax return
- Applicable on both
 - Recurring
 - Dividends
 - Interests
 - Rental Income
 - Non Recurring
 - Capital Gains
 - Sale of Assets

Asset Reporting

- For Financial accounts held by U.S. taxpayers, or by foreign entities in which U.S. taxpayers hold a substantial ownership interest
- 2 Separate but related regulations
- Mandatory - Foreign Account Tax Compliance Act (FATCA)
- Voluntary - Foreign Bank Account Reporting (FBAR)
- India is a signatory to the US Inter governmental Agreements (IGA)
- Mutual assistance in tax matters based on an effective infrastructure for the automatic exchange of information

Foreign Account Tax Compliance Act (FATCA)

Introduced in 2010

Mandatory

Filed as part of US Tax return

Ownership interest and Signatory rights

- >\$75,000 Single (\$150,000 for MFJ)

Penalties – Significant financial penalty for non compliance including criminal penalties

- 10,000 failure to file penalty, an additional penalty of up to \$50,000 for continued failure to file after IRS notification, and a 40 percent penalty on an understatement of tax attributable to non-disclosed assets.

Types of Account to be reported

- Bank accounts
- Mutual funds
- Brokerage Account
- Other financial accounts



Foreign Bank Account Reporting (FBAR)

- Voluntary
- Separate filing
 - Filed by June 30th
- Cumulative balance of $> \$10,000$
- Penalties- \$100,000 or 50 percent of the balance in the account at the time of the violation



FATCA vs FBAR

FATCA

- Mandatory
- Filed as part of US Tax return
- Ownership interest and Signatory rights
 - >\$75,000 Single (\$150,000 for MFJ)
- Penalties – Significant financial penalty for non compliance including criminal penalties

FBAR

- Voluntary
- Separate filing, Current filling deadline - June 30th
- Ownership interest and Signatory rights
 - Cumulative balance of >\$10,000
- Penalties-\$100,000 or 50 percent of the balance in the account at the time of the violation

Solutions

Be in Compliance

File last 3-6 years

IRS streamlined Filing compliance

Amend tax returns-If needed

Easy flow of money

INCOME DECLARATION SCHEME 2016 ENDING 30.9.2016

APPLICABILITY & DURATION

- To every Individual, HUFs, AOP, Partnership, LLP, Companies whether Resident or Non-Resident
- The declared Income should not be of the year where Search/ Survey or Assessment of Income is pending vide a statutory notice.
- Income of any other year may be declared.
- The scheme will commence from 1.6.2016 and will close on 30.9.2016.

NATURE OF INCOME COVERED & TAX PAYABLE

- Undisclosed income invested in Properties, Benami assets, Jewellery, Bullion, Investments or cash.
- The assets as mentioned above need to be valued as on 1.6.2016 by Registered valuer which will be the amount of disclosure over which tax should be paid.
- The amount of Tax to be paid is 45% of the above disclosed income.
- Tax may be paid in installments until 31.3.2017 starting 30.11.2016.

IMMUNITY

- From prosecution, penalty, investigation, information sharing with anyone including other Government Departments.

INDIAN GST: LARGEST TAX REFORM IN DECADES TO HAVE MAJOR IMPACT ON FDI

Impact of GST on the 'Make in India' initiative

1. GST would reduce the cost of manufacturing both from a tax perspective as well as on compliance front. GST is much needed indirect tax reform to usher in a manufacturing revolution in India. It would put India as a strong global player in the global map as a manufacturing hub.
2. Replacing 17 different tax levies, the GST will instead create a nationwide tax similar to the value-added tax already in place in 160 countries.
3. Easing tax system navigation by digitalizing filings for 7.5 million businesses
4. The Modi administration predicts the successful implementation of the Indian GST will result in a 2% growth in GDP and will produce millions of new jobs.

THANK YOU



Shashwat Tulsian

For R.Tulsian and Co. LLP

Shashwat Tulsian ACA, LLB, ACS, B.Com(hnrs), CIT(ICAI), FXTM(ICAI), CIDT(BCCI): Shashwat is a Chartered Accountant (CA), Lawyer and Company Secretary. He is also a certified International tax expert as well as certified indirect tax and forex & treasury manager. He heads the international and domestic corporate practice of R.Tulsian and Co LLP, a six decade multinational Chartered Accountancy and Legal Practice based out of India. He is also a TEDx speaker. Over the past few years, he has worked on more than 5000 complex multi-disciplinary projects for multinational companies globally.



Rachana Agarwal

For Aviar Financials PC

Rachana Agarwal: Rachana is a Certified Public Accountant (CPA). She has an experience of more than 15 years in dealing with International and Domestic tax and accounting issues. She has expertise in Non resident alien and corporate taxes and has a vast knowledge in S-Corporation. Rachana is the founder of Aviar Financials PC, a Brentwood based CPA firm.