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India News:

Income Tax: New Disclosure Requirements for Expats

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Introduction

On April 5, 2019 the Central Board of Direct Taxes (CBDT) has notified the new income tax return (ITR) forms for the Financial Year (FY) 2018-19. The last date of filing the ITR is July 31 for individual taxpayers and enterprises which are not required to get their accounts audited.

The new ITR forms aim at improving tax collection and diminishing tax evasion practices but also to reduce income tax return processing time.

According to the amended ITR forms expats and other taxpayers who claim tax relief in India under a double taxation avoidance agreement (DTAA) will have to disclose more details like income earned through various sources and tax paid on them during the last FY 2018-19, tax identification number of their home country, overseas assets and tax residency certificate.

Key Changes

Form ITR-1

Form ITR 1 can be used by a resident and ordinarily resident (ROR) salaried individual with a total income of up to approx. 64,000 EUR. It cannot be used by non-residents or residents but non-ordinarily residents (RNOR).

Until last year the individual only needed to insert the amount of income from other sources. The amended forms require extensive information about the nature of income as well as details of any exempt income under a DTAA and the clause under which the tax benefit is allowed.

Under the heading foreign assets and income from any source outside India it is now required to include details of Foreign Depository Accounts, Foreign Custodial Accounts etc.

The form will be no longer applicable to a taxpayer who is a director in a company or has held unlisted equity shares at any time during the FY.

Form ITR-2

Salaried individuals who are not eligible to file ITR-1 will have to file ITR-2.

Until last year taxpayers had to mark only their status as ROR, RNOR or non-resident. From AY 2019-20 they also need to furnish information of the total days of stay in India in order to determine their residential status. A non-resident will have to provide also details of the jurisdiction of residence and his/her taxpayer identification number in the home country.

An individual who is a director of a company will have to furnish his Director Identification Number (DIN) and PAN of the company.

The newly notified form ITR-2 also requires detailed disclosures for various transactions such as investments in unlisted equity shares and changes thereof or transactions with immovable property.

ITR-3

Taxpayers having income from business or profession will have to use ITR-3 form to file their returns. All the additional information and disclosures required in ITR-2 is applicable to ITR-3.

ITR-4

ROR having an income from business or profession of up to approx. 64,000 EUR can file ITR-4 form. Directors or individuals who held unlisted equity shares at any time during the FY 2018-19 cannot use ITR-4 for filing their returns; they have to file ITR 3 form.

Overview - Taxation of Expats in India

Generally, under the Indian Income Tax Act, 1961, income is subject to income tax based on the residential status of a person.

Resident and ordinarily residents (ROR) are taxable on the worldwide income whereas NROR/Non-residents only on their India sourced income.

Residential Status

- Resident – if the person's aggregate stay in India is more than 182 days in the relevant FY. Further if the individual has been in India for more than 60 days in the relevant FY and in aggregate more than 365 days in the preceding four tax years. A bilateral DTAA might provide a differing definition of the term „resident“, in which case the regulations which are more beneficial would be applicable.
- Non-Resident – if neither of the conditions above are fulfilled.
- Resident but Not Ordinarily Resident (NROR) – if the person has been a “non-resident” in India for 9 out of the last 10 previous FYs or she/he has been in India for a period of 729 days or less during the previous 7 FYs.

India Sourced Income

Income which has accrued or arisen in India is liable to income tax and withholding tax in India, regardless of the residential status or place of salary payment.

Foreign nationals visiting India on short term business trips can claim tax exemptions under the Income Tax Act, 1961 or the applicable Double Taxation Avoidance Agreement (DTAA).

Further, there are statutory exemptions for foreign diplomatic missions and their staff as well as for international organizations under a technical assistance grant agreement subject to certain conditions.

Recommendation:

Global mobility of employees is vital for companies and organizations doing business in different countries. When planning international assignments it is important to find the appropriate employment structure to serve best the company's business objectives and the employee while keeping in mind the specific legal framework in India.

Luther can assist you with structuring expatriate and secondment arrangements as well as with tax planning, tax filings and reporting compliances.

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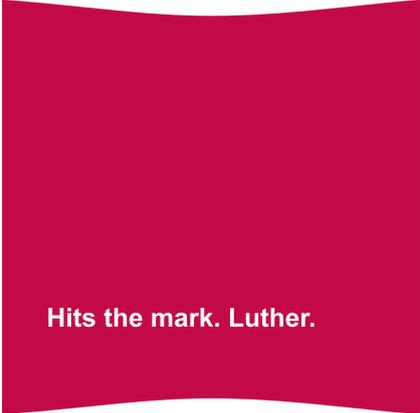
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