THE ULTIMATE USA-INDIA TAX GUIDE FOR NRIS

25 Things to know about the USA-India Tax for Non Resident Indians (NRIs)

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CA INDIA

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ABOUT US

ELIMINATE TAX WORRIES: EXPERT USA-INDIA TAX SOLUTIONS FROM A TEAM OF USA ENROLLED AGENTS, INTERNATIONAL TAX SPECIALISTS & CHARTERED ACCOUNTANTS

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He has authored hundreds of articles in national newspapers and journals and has conducted 100+ sessions on taxation at professional forums, industry bodies, Chambers of Commerce, TV channels, and Export Councils, contributing significantly to cross-border taxation and regulatory compliance discourse.

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DECADES OF EXPERTISE IN U.S. TAXATION & COMPLIANCE

Say Goodbye to Tax Worries: Get Your US-India Taxes Right!

Tax Forms

• 1040/1040-NR	• 1065	• 990	• 5500	• FinCEN Form 114
• 1120-S	• 1041	• 1095	• 8810	• 8865
• 1120	• 2555	• 1098	• 8938	• 8621
• 1120-H	• 1099	• 5471	• 4797	• 4868

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How We Can Help You

VERIFY OUR EXPERT TAX CREDENTIALS

01 ENROLLED AGENT (EA) – U.S. TAX EXPERT AUTHORISED BY THE IRS

- **The IRS List of Active Enrolled Agents** (updated as of September 13, 2024, under the Freedom of Information Act) includes our name.
- **Verify Here:** Download the list and refer to Row No. 39,688.
- Alternatively, use the **Active EA Lookup:** Enter “Ishan Tulsian” to confirm our credentials.

02 DIPLOMA IN INTERNATIONAL TAXATION (DIIT) – ICAI SPECIALIZATION

- Recognized by **The Institute of Chartered Accountants of India (ICAI)**, this **Post-Qualification Diploma** reflects our expertise in cross-border taxation.
- **Verify Here:** Access the **ICAI list** of DIIT-qualified professionals and find us at Serial No. 317.

Our credentials reflect our deep expertise in U.S. and international tax matters, ensuring strategic and compliant solutions for our clients.

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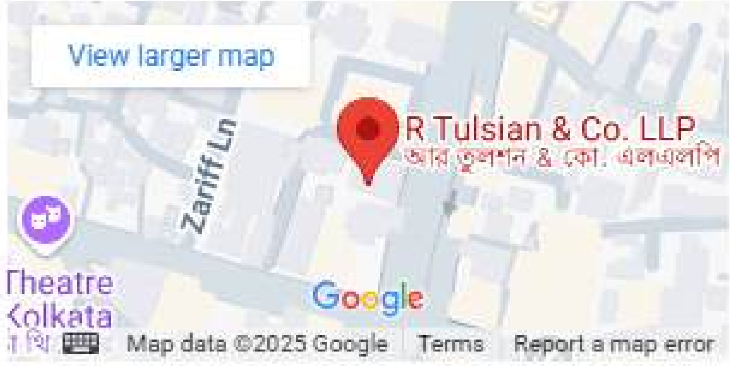

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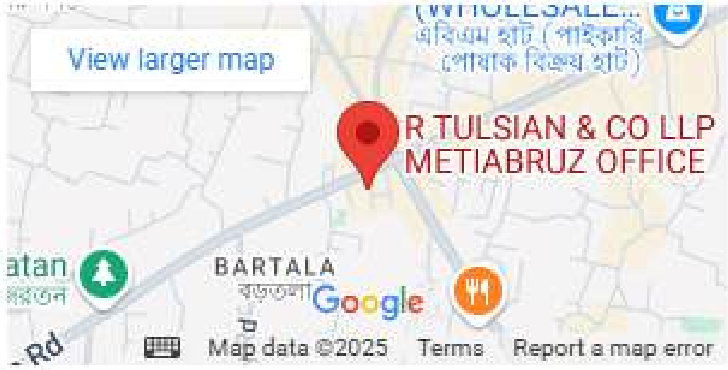

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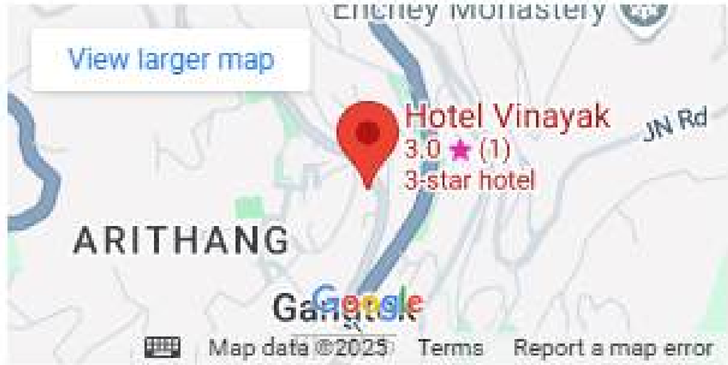

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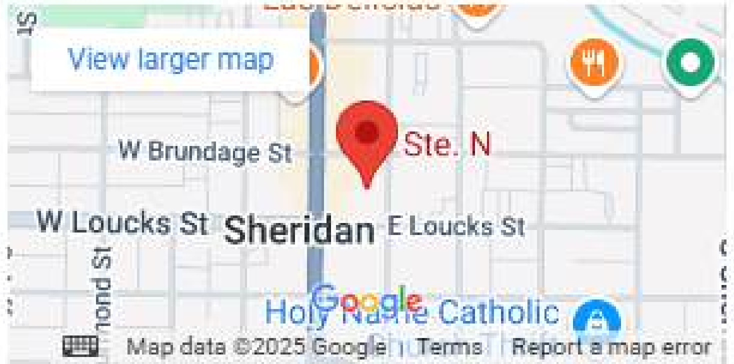
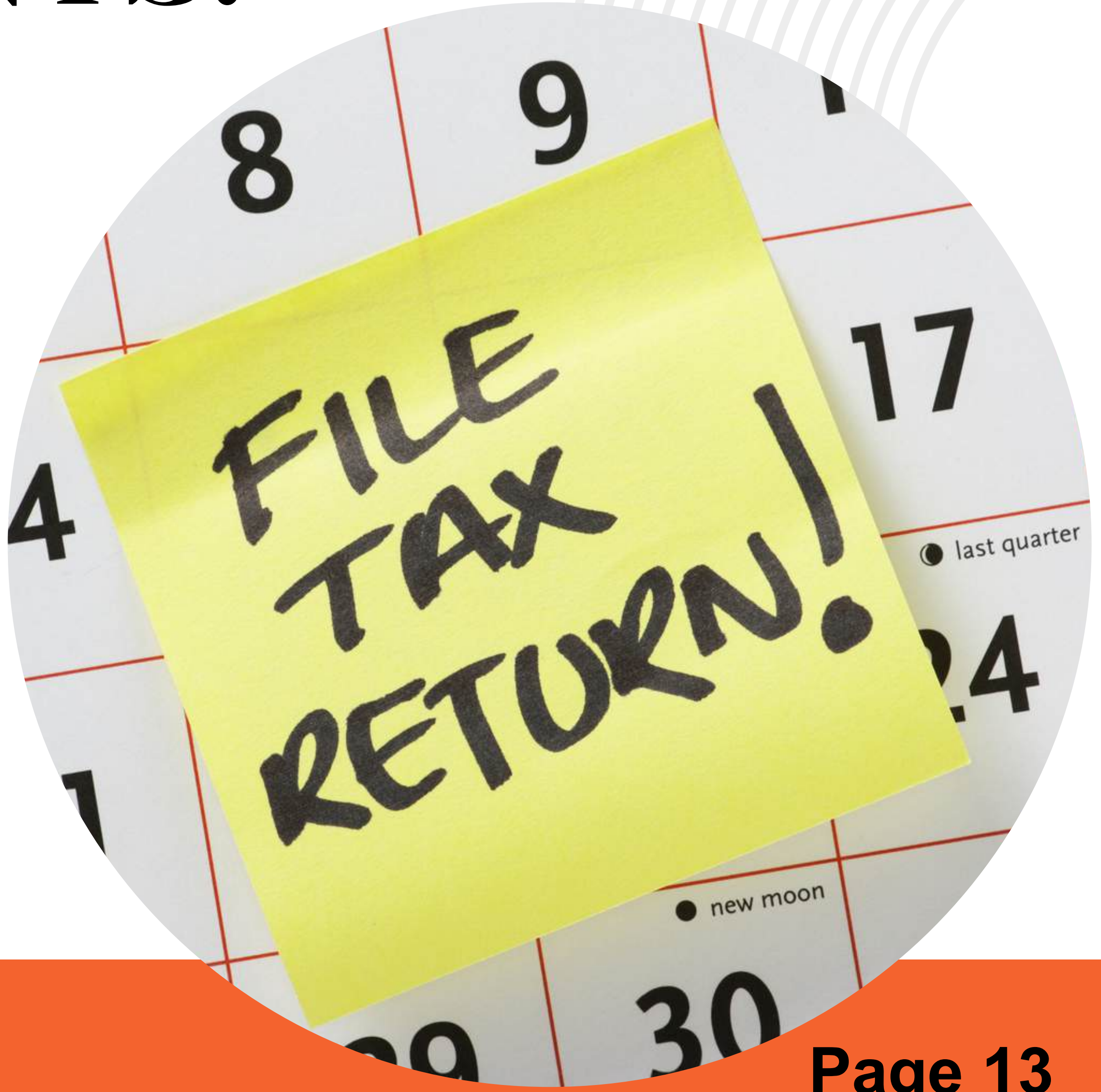


01

UNDERSTANDING NRI TAX STATUS & USA TAX FILING REQUIREMENTS:



USA TAX COMPLIANCES:

DETERMINING YOUR U.S. TAX RESIDENCY

1. **Green Card Test:** Tax resident from the day you receive a lawful permanent resident status.
2. **Substantial Presence Test:** You qualify as a U.S. tax resident if you were present in the U.S. for:

- **31 days** in the **current year**, and
- **183 days over the last three years**, calculated as:
  - All days in the current year
  - 1/3rd of the days from the previous year
  - 1/6th of the days from two years prior

Special Exemptions:

- Students **(F-1, J-1, M, Q visas)**: Exempt for **first five years**.
- Researchers **(J-1 visa)**: Exempt for **first two years.**

STATE TAX RESIDENCY RULES

State tax laws differ from federal rules. You may still owe state taxes even if you qualify as a federal nonresident.

FILING REQUIREMENTS FOR NRIS

- **Resident Aliens** – Taxed on worldwide income **(Form 1040)**.
- **Non-Resident Aliens** – Taxed only on U.S.-sourced income **(Form 1040-NR).**

ESSENTIAL TAX FILING DOCUMENTS FOR NRIS

1. **Income Documentation (Form W-2, Form 1099, Form 1099-NEC)**

2. Foreign Account Reporting

- **FBAR (FinCEN Form 114):** Required if foreign accounts exceed $10,000.
- **Form 8938 (FATCA):** Required if foreign assets exceed IRS limits.

3. Supporting Documents

- Passport & Visa (F-1, J-1, H1-B, L1, etc.)
- Social Security Number (SSN) or ITIN
- Indian Income Tax Return (ITR) for foreign income
- Investment statements for U.S.-based assets
- Form DS-2019 for J visa holders or Form I-20 for F visa holders

STEP-BY-STEP NRI TAX FILING PROCESS

Choose the Right Forms:

- **Form 1040-NR** – Nonresident Tax Return
- **Form 8843** – Required for students/scholars on F-1, J-1 visas
- **Form 8833** – To claim tax treaty benefits
- **Schedule OI** – For additional reporting

MAXIMIZING TAX BENEFITS AS AN NRI

Tax Treaty Benefits (Form W-8BEN / 8233):

- **Reduced tax rates** on interest (15%), dividends, and royalties under India-U.S. DTAA.

Deductions for Non-Residents:

- State & local income taxes
- Charitable contributions
- Investment interest expenses

Foreign Tax Credit (FTC) – Form 1116

- Claim foreign taxes paid **as a credit** to avoid double taxation.

02

SUBSTANTIAL PRESENCE TEST (SPT) FOR NRIS: GUIDE TO US TAX RESIDENCY STATUS

USA TAX COMPLIANCES:

DETERMINING U.S. TAX RESIDENCY

WHAT IS SPT?

✓ Used by the IRS to determine **if a non-U.S. citizen is a U.S. tax resident.**

✓ **Conditions**:

1. Stayed **at least 31 days** in the U.S. in the **current year**.
2. Total presence of **183+ days over a 3-year** period, using:
    - **Current year:** All days count (×1).
    - **Previous year**: One-third of the days count (×1/3).
    - **Two years ago**: One-sixth of the days count (×1/6).

IMPACT OF SPT ON NRIS

1. **Passing SPT** = U.S. tax resident → Worldwide income taxable in the U.S.
2. **Required tax forms**:

- Resident (1040) instead of Non-Resident (1040NR).
- Foreign account reporting (FBAR, FATCA).
- Tax treaty benefits may change.

EXCEPTIONS & EXEMPTIONS

✓ Days spent in the U.S. do **NOT** count toward SPT if you are:

- **Students** on F-1, J-1, M, Q visas (Exempt for 5 years).
- **Researchers & faculty** on J-1, Q visas (Exempt for 2 years in 6 years).
- **Government officials** (A, G visas).
- **Professional athletes** in charitable events.

✓ Closer Connection Exception:

- Tax home & strong ties in a foreign country.
- Spent **less than 183 days** in the U.S. in the current year.
- File **Form 8840** to claim.

PLANNING FOR TAX RESIDENCY (NRIS RETURNING TO INDIA)

RNOR Status (Resident but Not Ordinarily Resident):

-Up to 3 years of tax benefits after returning to India.

Key Tax Planning Strategies:

- Maintain records of U.S. presence.
- Sell foreign assets during RNOR period.
- Utilize DTAA (Double Taxation Avoidance Agreement).
- Time return for maximum tax benefits.
- Ensure compliance with NRI TDS regulations.

DOCUMENTATION & COMPLIANCE

Documents Required for SPT Filings:

- Form W-2, Form 1099 (U.S. income).
- FBAR (Foreign Bank Accounts > $10,000).
- Form 8938 (Foreign Assets Reporting - FATCA).
- Indian Income Tax Return (ITR) & investment records.
- Visa records, travel history, & ITIN/SSN.

03

STANDARD VS. ITEMIZED DEDUCTIONS TAX GUIDE: WHICH ONE TO CHOOSE BY NRI & OCI?

USA TAX COMPLIANCES:

UNDERSTANDING DEDUCTIONS

- Deductions reduce taxable income, lowering tax liability.
- Standard Deduction – Fixed amount based on filing status.
- Itemized Deductions – Specific expenses claimed individually.

2024 STANDARD DEDUCTION AMOUNTS

- **Single / Married Filing Separately:** $14,600
- **Married Filing Jointly / Surviving Spouse:** $29,200
- **Head of Household:** $21,900

Advantages:

✓ **Simplicity –** No need for receipts.
✓ **Time-saving –** Quicker tax filing.
✓ **Guaranteed reduction –** No expense tracking required.

COMMON ITEMIZED DEDUCTIONS FOR NRIS & OCIS

- State & Local Taxes (SALT) – **Up to $10,000**
- Mortgage Interest
- Charitable Contributions
- Medical & Dental Expenses (>7.5% of AGI)
- Investment Expenses

📌 How to Itemize?

- File Form 1040 with Schedule A
- Maintain detailed records & receipts

STANDARD VS. ITEMIZED: WHICH IS BETTER FOR NRIS & OCIS?

Aspect	Standard Deduction	Itemized Deduction
Eligibility	Indian students & apprentices under U.S.-India Tax Treaty	Available to all NRIs & OCIs
2024 Deduction Amount	$14,600 (Single) / $29,200 (Married)	Varies based on actual expenses
Deductions Covered	Fixed amount	SALT up to $10,000, mortgage interest, medical, property taxes, etc.
Documentation	Simple filing (Form 1040-NR)	Requires Schedule A, receipts, investment proofs
Best for	Those with minimal deductions	Those with high deductible expenses

WHEN SHOULD NRIS & OCIS ITEMIZE?

Example:
Single filer earning **$50,000**

Itemized Deductions:

- State taxes: $8,000
- Mortgage Interest: $7,000
- Charitable Contributions: $2,000
- Medical Expenses: $3,000

Total Itemized Deductions: **$20,000** (Greater than $14,600 standard deduction → **Itemizing is better**)

FAQS: STANDARD VS. ITEMIZED DEDUCTION

➤ Can all NRIs claim the standard deduction?

No. Only Indian students & business apprentices under the U.S.-India Tax Treaty can claim it.

➤ When should NRIs itemize?

When total qualifying expenses exceed the standard deduction amount.

04

UNDERSTANDING HOW INDIAN PROPERTY CAPITAL GAINS ARE TAXED IN THE USA AND IN INDIA

USA TAX COMPLIANCES:

Selling property in India as a Non-Resident Indian (NRI) has tax implications under U.S. federal and state laws. Key compliance areas include:

01 **REPORTING CAPITAL GAINS ON IRS FORM 1040**

02 **FOREIGN BANK ACCOUNT REPORTING (FBAR) & FORM 8938**

If sale proceeds are deposited in Indian bank accounts exceeding threshold limits, reporting is required:

- **FBAR** (FinCEN Form 114) for balances over **$10,000**.
- **Form 8938** for specified foreign financial assets exceeding IRS limits.

03 FOREIGN TAX CREDIT (FTC) FOR INDIAN TAXES PAID CAN BE CLAIMED ON U.S. TAX RETURNS USING FORM 1116.

04 REPATRIATION & GIFT TAX REPORTING

- Amounts exceeding **$100,000** sent to the U.S. must be reported on **Form 3520**.
- While no federal tax applies, certain states may impose additional requirements.

05 IMPORTANCE OF RECORD-KEEPING

Maintain documentation, including:

- Property sale agreement and ownership proof.
- Purchase price, improvements, and sale proceeds.
- Currency conversion rates used for IRS reporting.
- Indian tax receipts and compliance records.

INDIAN TAX COMPLIANCES:

LTCG & TDS on Indian Property Sales for NRIs (Finance No. 2 Act, 2024)

01 LONG-TERM CAPITAL GAINS (LTCG) TAX RATE : (HELD > 24 MONTHS)

Key Amendment (Section 112(1)(c) of Income Tax Act, 1961)

- Transfers **Before July 23, 2024: 20%** LTCG with indexation benefit.
- Transfers **On or After July 23, 2024:** 12.5% LTCG **without indexation benefit**.
- NRIs have to **mandatorily** adhere to **12.5%** LTCG without indexation benefit even for properties acquired before July 23, 2024.

No Minimum Limit for TDS Deduction- All property transactions attract TDS under **Section 195**, irrespective of the sale value.

TDS Rate for Short-Term Capital Gains (STCG):

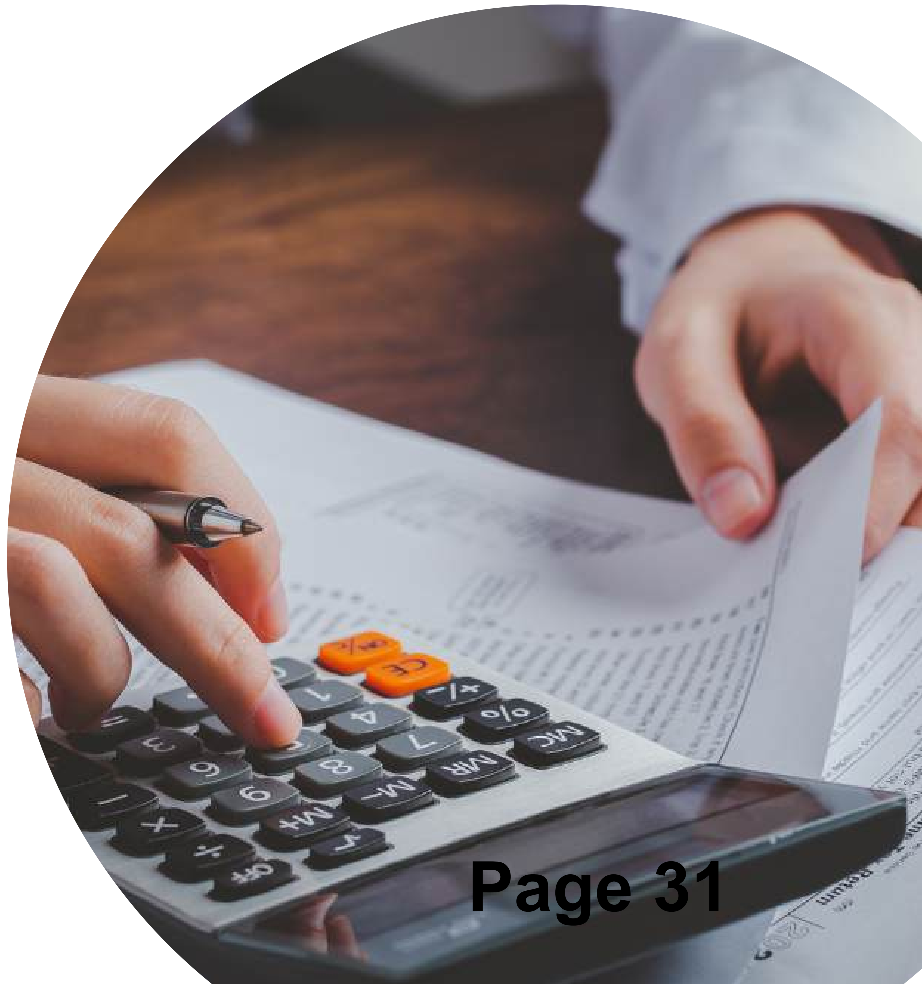
- STCG is taxed at slab rates based on the seller's taxable income in India.
- TDS is deducted at the highest slab rate **(30%)** + applicable surcharge & cess.

02 APPLICABILITY

- Non-Residents (excluding companies)
- Foreign Companies

03 TAX DEDUCTED AT SOURCE (TDS) U/S 195 ON PROPERTY SALES

- Who Must Deduct? Buyer of the property from an NRI seller.
- TDS Rate:
  - **Before July 23, 2024: 20%** on **full sale value**.
  - **On or After July 23, 2024: 12.5%** on full sale value.
- TDS is deducted on the **gross sale value, not just capital gains.**



04 KEY DIFFERENCES: NRIS VS. RESIDENTS

- **Residents:** Can choose between 12.5% without indexation or 20% with indexation for properties acquired before July 23, 2024.
- **NRIs**: Must adhere to **12.5% LTCG without indexation benefit.**

05 IMPACT & COMPLIANCE FOR NRIS

Documentation: Maintain sale agreements & TDS certificates for compliance.

LOWER TDS DEDUCTION & COMPLIANCE FOR NRIS SELLING PROPERTY IN INDIA

HOW NRIS CAN REDUCE TDS ON PROPERTY SALES

Apply for Lower/Nil TDS Deduction (Section 197)

- File **Form 13** with required documents (sale agreement, PAN, property details).
- Obtain a certificate from the Income Tax Department.
- Provide the certificate to the buyer to ensure lower TDS deduction.

If excess TDS is deducted, NRIs can claim a refund when filing their ITR.

BUYER'S RESPONSIBILITIES WHEN PURCHASING PROPERTY FROM AN NRI

- **Obtain a TAN** (Tax Deduction & Collection Account Number).
- **Deduct TDS** at prescribed rates or as per the seller's Lower TDS Certificate.
- **Deposit TDS** via e-challan by the 7th of the following month.
- **File TDS return** in the next quarter & issue Form 16A to the seller.

PENALTIES FOR NON-COMPLIANCE

Buyer's Liability:

- Failure to deduct TDS properly results in **penalty equal to the TDS amount** (Section 271C).
- Interest liability under Section 201 on the defaulted sum.

NRI Seller's Liability:

- Non-compliance may block repatriation of sale proceeds.
- Misrepresentation of tax residency can lead to prosecution.

05

FIRPTA TAX WITHHOLDING FOR NON RESIDENTS: KEY INSIGHTS FOR NRIS SELLING US REAL ESTATE

What NRIs Returning to India with US Real Estate Must Know About FIRPTA?

USA TAX COMPLIANCES:

01

WHAT IS FIRPTA?

- **Foreign Investment in Real Property Tax Act (FIRPTA)** requires buyers to withhold tax when purchasing property from nonresidents i.e. NRIs returning to India.
- Standard **15% tax withholding applies to the total sale price**, **even if no capital gains tax is due.**

02

FIRPTA WITHHOLDING RATES

- **0%** – Sale under $300,000, if the buyer intends to use it as a residence.
- **10%** – Sale between $300,000 and $1 million, if used as a residence.
- **15%** – Sale over $1 million or not intended for residential use.

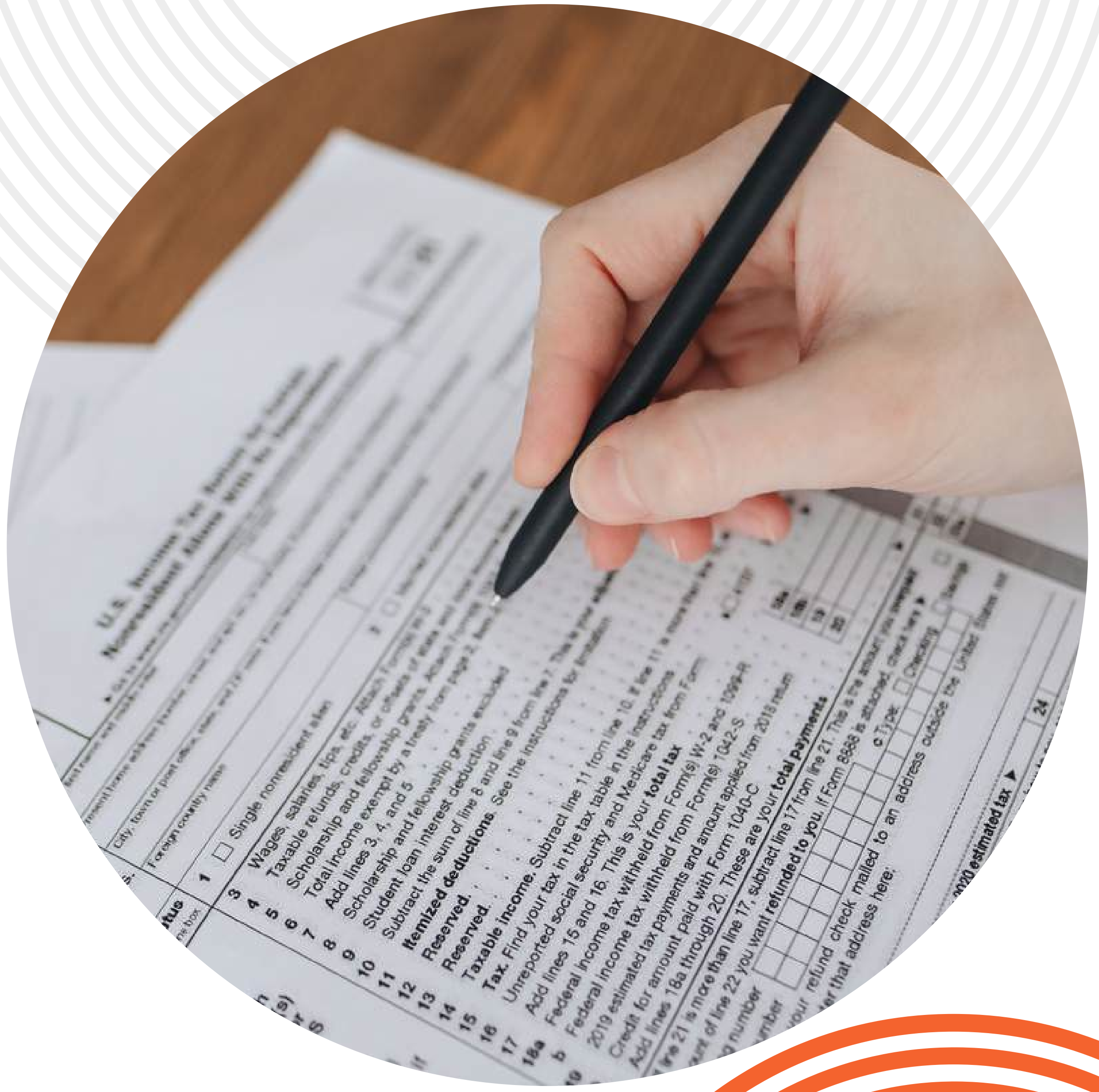
03

HOW TO REDUCE OR RECOVER FIRPTA WITHHOLDING

- **File Form 8288-B** (Before Property Selling) – Request a Withholding Certificate to reduce withholding.
- **File Form 843** (After Tax Withholding) – Request an early refund post-sale.
- **File Form 1040NR** (Tax Return) – Report the sale & claim a refund if excess tax was withheld.

04 FIRPTA & CAPITAL GAINS TAX

- Withholding does not necessarily mean tax is owed.
- Tax depends on **holding period, purchase price, depreciation, and improvements.**



05 SPECIAL CONSIDERATIONS FOR NRIS MOVING TO INDIA

- **Repatriation Compliance** – Follow US & Indian regulations (RBI guidelines).
- **DTAA Benefits** – Avoid double taxation using the India-US DTAA.
- **Capital Gains Reporting** – Report gains in India to claim tax credits.
- **Currency Planning** – Optimize exchange rates to minimize losses.

06 COMMON FIRPTA FAQS

- **Can FIRPTA be avoided**? Yes, if **sale is under $300,000** & **buyer uses it as a residence.**
- **How long for a FIRPTA refund**? Several months; early filing speeds up processing.
- **Do state taxes apply**? Yes, some states require **additional tax withholding**.
- **Is filing a tax return necessary**? Yes, **Form 1040NR** is required to claim a refund.

06

DECODING CAPITAL GAINS TAX FOR NRIS INVESTING IN INDIAN SHARES

INDIAN TAX COMPLIANCES:

1) Understanding Capital Gains Tax

✓ Capital Gains Tax applies to profits earned from selling capital assets (e.g., shares, mutual funds, real estate).

✓ Tax rates depend on the holding period and asset type.

Capital Asset Classification:

Aspect	Short-Term (STCG) Holding Period	Long-Term (LTCG) Holding Period
Listed Equity Shares & Equity Mutual Funds	< 1 year	> 1 year
Unlisted Equity Shares, Real Estate, Gold	< 2 years	>2 years

2) Capital Gains Tax Rates for NRIs

Long-Term Capital Gains (LTCG) Tax

- ✓ 12.5% Flat Rate **(No indexation benefits).**
- ✓ Exemption: First ₹1.25 lakh of LTCG on listed equity shares & equity mutual funds is tax-free.

Short-Term Capital Gains (STCG) Tax

- ✓ Listed Assets (Shares, Bonds, Mutual Funds) → 20% tax.
- ✓ Unlisted Shares, Debt-Oriented Mutual Funds, Real Estate, Gold → Taxed as per NRI's income slab.

3) TDS (Tax Deducted at Source) on NRI Capital Gains

✓ TDS ensures tax compliance on income earned in India.
✓ NRIs must file an ITR to claim TDS refunds (if excess tax is deducted).

TDS Deduction at Source – Who, When & How Much?

Asset Type	STCG TDS Rate	LTCG TDS Rate	Who Deducts TDS & When?
Listed Equity Shares, Bonds, REITs, InvITs	20%	12.5%	Broker deducts TDS at the time of sale.
Equity Mutual Funds, Gold/Silver ETFs, Overseas Funds	20%	12.5%	Mutual Fund house deducts TDS at redemption.
Debt-Oriented Mutual Funds	30%	30%	Mutual Fund house deducts TDS at redemption.
Unlisted Equity Shares, Foreign Equity, Debt	30%	12.5%	Buyer deducts TDS at payment.
Unlisted Bonds	30%	30%	Buyer deducts TDS at payment.
Physical Gold	30%	12.5%	Buyer deducts TDS at payment.
Real Estate (Property Sale)	30%	12.5%	Buyer deducts TDS at payment.
Rental Income	30%	30%	Tenant deducts TDS monthly.
Consulting/Professional Income	30%	30%	Client deducts TDS at invoice payment.

5) How NRIs Can Reduce Capital Gains

- **Use DTAA (Double Taxation Avoidance Agreements)**- NRIs from USA, UAE, UK, Canada, etc. can claim lower tax rates under DTAA.
- **Invest Through NRE PIS (Portfolio Investment Scheme) Accounts**- Capital gains tax is still applicable, but repatriation of profits is simplified.
- **Apply for a Lower TDS Deduction Certificate** (Form 13)- File **Form 13** via TRACES to request a lower TDS deduction from the payer.

6) Frequently Asked Questions (FAQs)

✓ **How can NRIs save tax on capital gains?**

- Use DTAA benefits.
- Invest through NRE PIS accounts for tax-efficient remittances.
- Claim TDS refunds via ITR filing.

✓ **Do NRIs need to file an ITR in India?**

- Yes, if total Indian income exceeds ₹2.5 lakh or to claim TDS refunds.

✓ **Can NRIs apply for a lower TDS deduction?**

- Yes, apply via Form 13 (TRACES portal) to get a Lower/NIL TDS certificate.

✓ **Is TDS applicable on NRI mutual fund redemptions?**

Yes, TDS is deducted at 12.5% (LTCG) & 20-30% (STCG), depending on fund type.

07

SMART NRI INVESTMENTS: A US RESIDENT'S GUIDE TO INDIAN MARKETS & TAXES

USA TAX COMPLIANCES:

US TAX IMPLICATIONS FOR INDIAN INVESTMENTS

- **Short-Term Capital Gains** (held ≤12 months): Taxed as ordinary income (up to **37%**).
- **Long-Term Capital Gains** (held >12 months): Taxed at **0%, 15%, or 20%**, depending on income.
- **State Taxes:** Some states impose additional tax/reporting requirements.

AVOIDING DOUBLE TAXATION WITH FOREIGN TAX CREDITS (FTC)

- FTC can offset Indian taxes, **but some states** (e.g., California) **do not recognise FTCs.**
- Maintain **proper documentation** to claim credits under the **DTAA**.

US RESIDENTS MUST BE CAUTIOUS OF PASSIVE FOREIGN INVESTMENT COMPANY (PFIC) RULES WHEN INVESTING IN:

- Indian mutual funds
- Exchange-Traded Funds (ETFs) on Indian exchanges
- Certain Alternative Investment Funds (AIFs)

PFIC RISKS WITH INDIAN MUTUAL FUNDS

PFIC rules lead to:

- High tax rates
- Complex reporting (Form 8621)
- Interest on deferred taxes

ALTERNATIVES TO AVOID PFIC ISSUES:

- Direct equity investments via PIS Demat
- Portfolio Management Services (PMS) direct equity investments
- GIFT City funds designed for US investors

FBAR & FATCA COMPLIANCE

- **FBAR Filing**: If foreign accounts exceed **$10,000.**
- **FATCA Reporting (Form 8938)** Thresholds:
  - **Single filers**: $50,000 (year-end) / $75,000 (any time).
  - **Married filing jointly**: $100,000 (year-end) / $150,000 (any time).

Non-compliance leads to severe penalties.

SMART INVESTMENT STRATEGIES FOR NRIS

✓ Convert to a **PIS Demat account** for compliance.
✓ Invest directly in **equities** to bypass PFIC rules.
✓ **Avoid pooled investments** (mutual funds, ETFs, AIFs).
✓ Consider **US-listed India ETFs** (e.g., FLIN) for simplified exposure.

INDIAN TAX COMPLIANCES:

REPATRIATION & TAXATION OF MUTUAL FUND INVESTMENTS FOR NRIS (POST-BUDGET 2024)

REPATRIATION RULES

- **NRE Account Investments:** Fully repatriable.
- **NRO Account Investments:** Repatriation capped at **$1 million per financial year**.

UPDATED TAX IMPLICATIONS (FINANCE ACT 2024)

Equity Mutual Funds

- **STCG (<12 months): 20% tax**
- **LTCG (≥12 months): 12.5% tax** on gains **exceeding ₹1.25 lakh**

Debt-Oriented Mutual Funds

- **STCG & LTCG:** Taxed as per **income tax slab rates** (unchanged).

TDS ON MUTUAL FUND REDEMPTIONS (FINANCE ACT 2024)

Equity Mutual Funds

- **STCG: 20% TDS**
- **LTCG: 12.5% TDS** on gains **exceeding ₹1.25 lakh**

Debt-Oriented Mutual Funds

- **STCG & LTCG: 30% TDS** (taxed per income slab).

TDS IS DEDUCTED AT REDEMPTION BY AMCS.

TAXATION IN OTHER COUNTRIES & DTAA BENEFITS

- **US & other tax jurisdictions may impose additional tax on mutual fund gains.**
- **NRIs can claim Foreign Tax Credit (FTC) under DTAA** to offset Indian taxes paid.

08

THE HIDDEN TAX BURDEN OF INVESTING IN US STOCKS: KEY CONSIDERATIONS FOR INDIAN INVESTORS

USA-INDIA TAX COMPLIANCES:

US INHERITANCE TAX

- **Liberalised Remittance Scheme** (LRS): Allows Indians to invest up to **$250,000** annually in global assets.
- **Tax Risk**: US inheritance tax applies if US-based assets **exceed $60,000** at the time of death.
- **Heir Liability**: Heirs, **regardless of citizenship**, may face estate tax obligations in the US.
- **Critical Consideration**: Essential for investors with significant overseas holdings to plan for tax-efficient wealth transfer.

TAX ON DIVIDENDS

- **US Withholding Tax:** 25% deducted at source.
- **India Taxation:** Added to taxable income, taxed per slab.
- **DTAA Benefit**: US tax paid can be offset against Indian tax liability.

Example:

- **Dividend Declared**: $100
- **US Tax Withheld**: $25
- **India Tax (30% slab)**: $30 – $25 (Foreign Tax credit) = $5 payable.

CAPITAL GAINS TAX

In the US: No capital gains tax for non-residents.

In India:

- **LTCG** (Held > 24 months): **12.5% tax** (+ surcharge & cess).
- **STCG** (Held ≤ 24 months): Taxed as per income slab.

Example:

- Stock Sold After 30 Months: $300 gain → $37.5 tax (12.5%).
- Stock Sold After 20 Months: $300 gain → Taxed as per slab.

IMPACT ON RETURNING NRIS

- **US dividend withholding continues.**
- **Capital gains taxable in India.**

09

WHY INVESTMENT IN INDIAN PMS IS BETTER THAN INDIAN MUTUAL FUNDS FOR US NRIS: UNDERSTANDING PFIC RULES

What is a PFIC & Why Does It Matter?

- **Passive Foreign Investment Company** (PFIC) rules prevent US taxpayers from deferring or minimizing US tax through foreign investments.

- **PFIC Classification Criteria**:
  - **Income Test:** Does at least **75% of the company's gross income** come from passive sources?
  - **Asset Test**: Do at least **50% of the company's assets** generate or hold to generate passive income?

Tax Implications of PFIC Investments

High tax burden & complex reporting:

- Annual tax on **unrealized gains (deemed sale treatment).**
- Ordinary income taxation (higher rates, limited loss deductions).
- Overall tax impact can **exceed 50%** for US investors.

Common PFIC Investments by NRIs in India

- Mutual Funds (Equity & Debt)
- ETFs Listed in India
- Alternative Investment Funds (AIFs) - Category 1 & 3
- REITs & Other Collective Investments

Investments That Avoid PFIC Classification

- Direct Equity Investments
- Portfolio Management Services (PMS)
- Direct Bonds & Debentures
- Real Estate Investments
- Fixed Deposits & Certain Pension Funds
- Category 2 AIFs (Pass-through taxation structure)

Why PMS is Better Than Mutual Funds for US NRIs

✓ **Direct Equity Structure:** Avoids PFIC classification & simplifies tax reporting.

✓ **Better Tax Compliance:** No punitive PFIC tax treatment.

✓ **Active Management & Customization:** PMS offers tailored strategies vs. pooled mutual funds.

10

GIFTING US STOCKS TO PARENTS IN INDIA BY NRI: KEY TAX & COMPLIANCE CONSIDERATIONS

USA TAX COMPLIANCES:

IS GIFTING US STOCKS TO PARENTS IN INDIA ALLOWED?

✅ Yes, but it requires compliance with FEMA, Indian tax laws, and US gift tax regulations.

STEPS FOR GIFTING US STOCKS

- **Brokerage Accounts**: Parents must have an Indian brokerage account that supports foreign stock holdings.
- **Gift Deed**: Draft a formal gift deed specifying stock details.
- **FEMA Compliance**: Gifting foreign stocks is a **capital account transaction** and may require regulatory confirmation.

TAX IMPLICATIONS IN THE USA

- **Capital Gains Tax**: No immediate tax on gifting stocks.

- **Gift Tax Reporting:**
  - **Above $19,000**: **Form 709** must be filed.
  - **For Non-US Persons**: Gifts exceeding $60,000 may attract 18%-40% US gift tax.

INDIAN TAX COMPLIANCES:

1) RECEIVING THE GIFT

Tax-free for parents (as gifts from children are exempt u/s 56(2)(x) of Income Tax Act).

2) DISCLOSURE REQUIREMENTS

- Stocks must be reported in **Schedule FA** of their tax returns.
- **Dividend income** from gifted stocks is taxed in parents' tax returns at applicable slab rates in India

3) CAPITAL GAINS TAX ON SALE BY PARENTS:

- **LTCG (held >12 months)**: 12.5% tax.
- **STCG (held ≤12 months)**: 20% tax.
- **Cost Basis**: Inherited from the donor **(NRI original cost and date shall apply).**

4) COMPLIANCE CHECKLIST

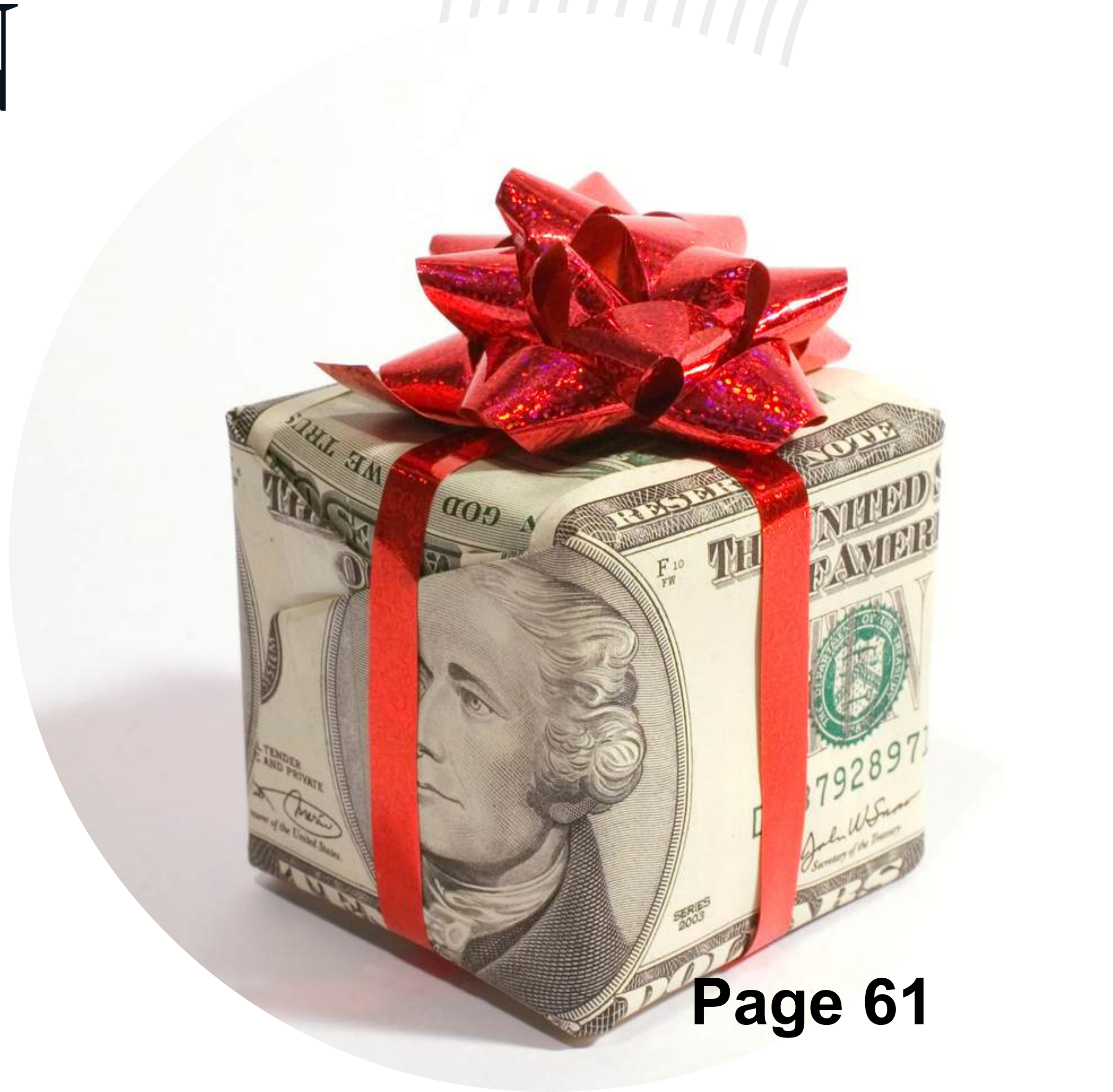
- Draft a gift deed.
- Verify brokerage account compatibility.
- Report foreign stocks & income in parent's tax filings.

5) IMPORTANT FEMA CONSIDERATION

- **Gifting foreign stocks is a capital account transaction** and are generally disallowed unless specifically permitted under Schedule 2 of FEMA regulations.

11

(A) TAXATION OF CASH GIFTS FROM NRI TO RELATIVES IN INDIA



INDIAN TAX COMPLIANCES:

DEFINITION OF A GIFT UNDER INDIAN TAX LAWS

- Includes cash, property, shares, securities, and valuables.
- Gifts exceeding ₹50,000 from non-relatives are taxable under "Income from Other Sources."

ARE GIFTS FROM NRI RELATIVES TAXABLE?

No – Gifts from close relatives (parents, siblings, spouse, etc.) are fully tax-exempt, regardless of amount (Section 56(2)(x), Income Tax Act).

EXCEPTIONS & KEY CONSIDERATIONS

- **₹50,000 Rule** – Applies only to non-relatives; NRI relatives' gifts are tax-free.
- **Marriage & Inheritance Gifts** – Fully exempt, irrespective of amount or relationship.
- **Cash Gifts Over ₹2 Lakh** – Attract penalties if **received in cash** instead of bank transfer.

COMPLIANCE & DOCUMENTATION

- **Gift Deed** – Required for high-value gifts **(Section 17, Registration Act 1908).**
- **Bank Transfer** – Gifts must be sent from **NRO/NRE accounts** for compliance.

(B) TAXATION OF CASH GIFTS RECEIVED BY NRIS IN THE USA FROM RELATIVES IN INDIA

USA TAX COMPLIANCE:

DEFINITION OF FOREIGN GIFT

- Any cash or asset received from a foreign person, estate, or entity and treated as **a gift rather than income.**
- Applies to gifts from non-**US citizens residing outside the USA.**

NO FOREIGN GIFT TAX IN THE USA

- The USA **does not impose a tax** on foreign gifts.
- However, gifts **above a threshold must be reported to the IRS.**

REPORTING THRESHOLDS

- **Gifts from foreign individuals/estates:** Report if total value **exceeds $100,000** in a tax year and identify each **gift above $ 5,000.**
- **Gifts from foreign corporations/partnerships:** Report if total value **exceeds $17,000** for tax year 2023 (adjusted annually for inflation).

MANDATORY IRS REPORTING

- **Form 3520:** Must be filed if the gift exceeds the reporting threshold.
- **Filing deadline:** April 15th of the following tax year.

PENALTIES FOR NON-COMPLIANCE

- Failure to report a foreign gift can result in penalties of 5% per month, up to a maximum of 25% of the unreported amount.

GENERAL RULES

- No tax due unless the gifted asset generates income (e.g., rental income from gifted property).
- Foreign tuition and medical payments made directly to institutions are generally exempt from reporting.

INDIAN TAX COMPLIANCES:

INDIA FEMA AND TAX COMPLIANCE:

- **No 15CA/CB Required:** Personal gifts and donations are **exempt from Form 15CA/CB** compliance under Rule 37BB(3)(ii) of the Income Tax Rules.

TCS APPLICABILITY ON REMITTANCES:

- **No TCS on remittances up to ₹7 lakh** for F.Y. 2024-25.
- **20% TCS** applicable on amounts exceeding ₹7 lakh under Section 206C(1G) from 01.10.2023.

TAX EXEMPTION FOR DONORS:

- **No tax liability in India** for relatives gifting funds, per Section 56(2)(x) of the Income Tax Act, 1961.

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UNDERSTANDING FBAR REPORTING: NRIS GUIDE TO FOREIGN BANK ACCOUNT DISCLOSURE

USA TAX COMPLIANCES:

What is FBAR & Why Does It Matter?

- **FBAR (Foreign Bank and Financial Accounts Report)** is **FinCEN Form 114**, required if foreign accounts **exceed $10,000 at any point in the year.**
- **Purpose:** Prevent offshore tax evasion & ensure financial transparency.

FBAR vs. FATCA: Key Differences

- **FBAR:** Filed with FinCEN, applies if foreign accounts exceed $10,000.
- **FATCA (Form 8938):** Filed with IRS, applies at **higher** reporting thresholds.
- FBAR must be filed **even if no tax return is required.**

Who Must File?

- U.S. Citizens, Green Card Holders & Residents (183-day rule).
- NRIs meeting these criteria must comply.

Reportable Foreign Accounts

- Bank accounts (Checking/Savings)
- Investment, brokerage & mutual fund accounts
- Foreign pension & retirement accounts
- Life insurance policies with cash value

Understanding the $10,000 Threshold

Threshold applies to **total combined balances.**
Example: 3 accounts holding $4,000 each (Total = $12,000) → FBAR required for all accounts.

Filing FBAR: Step-by-Step Guide

1. Gather Documents: Account statements, numbers, bank details.
2. Convert Balances to USD: Use Treasury's exchange rate (Dec 31st).
3. File Electronically via BSA E-Filing System.
4. Review & Submit (Save BSA ID for future reference).

Common FBAR Mistakes to Avoid

- **Not reporting** dormant/closed accounts
- **Incorrect** currency conversion
- **Missing the April 15 deadline** (Automatic extension to Oct 15 available).
- **Failure to maintain records for 5 years**

FBAR Non-Compliance Penalties

- **Non-willful violation: $10,000** per violation
- **Willful violation: $100,000 or 50%** of account balance (whichever is higher).

FATCA FORM 8938: ULTIMATE FILING GUIDE FOR NRIS

USA TAX COMPLIANCES:

WHAT IS FORM 8938?

- **Form 8938 (Statement of Specified Foreign Financial Assets)** is required under the **Foreign Account Tax Compliance Act (FATCA)**.
- U.S. taxpayers must report foreign financial assets exceeding certain thresholds to the IRS.
- Penalties for non-compliance **start at $10,000 and can reach $50,000 for continued failure.**

WHO NEEDS TO FILE FORM 8938?

- **U.S. citizens, resident** aliens, & some **non resident** aliens.
- Thresholds depend on **residency & filing status:**

Filing Status	U.S. Residents	Living Abroad
Single / Married Filing Separately	$50,000 (year-end) / $75,000 (any time)	$200,000 (year-end) / $300,000 (any time)
Married Filing Jointly	$100,000 (year-end) / $150,000 (any time)	$400,000 (year-end) / $600,000 (any time)

- Specified Domestic Entities (**Closely held corporations/partnerships with 50%+ passive income**) must file if assets exceed **$50,000 (year-end) / $75,000 (any time).**

WHAT ASSETS ARE REPORTED?

- **Foreign Financial Accounts** (Bank, brokerage, insurance, & pension accounts).
- **Investment Assets** (Foreign stocks, partnerships, bonds, & derivatives).
- **Financial Instruments** (Swaps, options, notes issued by foreign entities).

HOW TO FILE FORM 8938?

- Check If You Meet the Threshold (Convert balances using Treasury exchange rates).
- Gather Documentation (Bank statements, investment details, & insurance policies).
- Complete Form 8938 (List accounts, values, & income).
- Attach to Tax Return (Submit with Form 1040 by the tax deadline).

PENALTIES FOR NON-COMPLIANCE

- **$10,000 for failure to file + $10,000 every 30 days (max $50,000).**
- Criminal penalties (fines & imprisonment for willful non-compliance).

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DECLARE FOREIGN ASSETS IN INDIAN ITR OR FACE ₹10 LAKH PENALTY (A.Y. 2024-25)

INDIAN TAX COMPLIANCES:

MANDATORY DISCLOSURE OF FOREIGN ASSETS

Foreign assets include:

- Foreign bank accounts, investments, real estate, trusts, & capital assets.
- Accounts with signing authority & financial interests in foreign entities.

Reporting Required Even If:

- Total income is **below the taxable limit.**
- Assets were acquired **from disclosed income sources.**

PENALTY FOR NON-COMPLIANCE

- **₹10 lakh penalty** under the Black Money Act, 2015 for failing to disclose foreign assets/income.
- **Potential scrutiny & legal action** for non-compliance.

COMPLIANCE FOR AY 2024-25

- **Complete Foreign Asset (FA) & Foreign Source Income (FSI)** schedules in the ITR.
- **CBDT reminders** via SMS & email to taxpayers flagged under tax exchange agreements.
- **Deadline for revised/belated ITR:** December 31, 2024.

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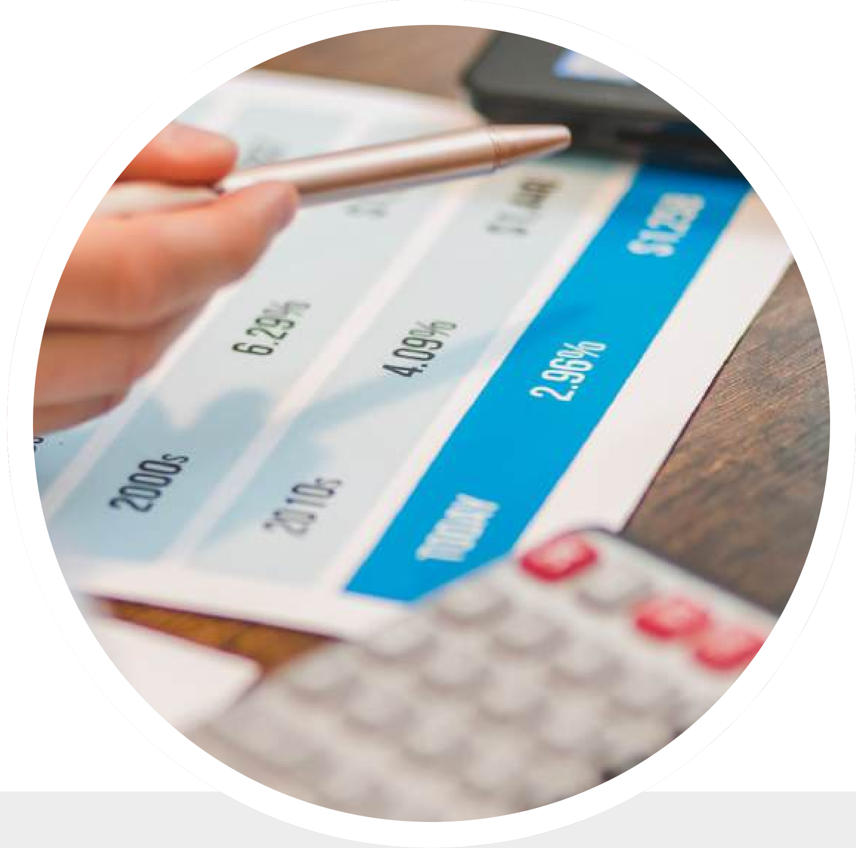
SECTION 195: TDS ON KEY NRI TRANSACTIONS

TDS RATES APPLICABLE FOR NRIS :

TYPE OF INCOME	TDS
Investment income receivable by NRI (interest/dividend)	20%
LTCG income referred to in Sec 115E or Sec 112 (1) (c) (iii)	10%
Long Term Capital Gains (LTCG) income referred to in Sec 112A **exceeding INR 1.25 Lakh** • Transfers **on or after 23/07/2024** • Transfers **before 23/07/2024**	 12.5% 10%
Any other LTCG	20%
Short Term Capital Gains from FII or specified fund on securities other than units of UTI/MF) • Transfers on or after 23/07/2024 • Transfers before 23/07/2024	 20% 15%
Interest payable by the Government or an Indian concern on money borrowed in Indian Currency	20%
Royalty and Fees for technical services payable by the Government or an Indian concern	20%

TDS RATES APPLICABLE FOR NRIS :

TYPE OF INCOME	TDS
Income in the form of winnings from crossword puzzles, lotteries, card and other games excluding online games	30%
Income in the form of winnings from horse race/ net winning from online games	30%
Dividend income as per Sec 115A (1) (a) (A)	20%
Any other income	30%



01. RENTAL INCOME

✓ Tenant must deduct TDS @ 31.2% (30% TDS + 4% cess).
✓ TDS must be deposited before rent transfer.

Example:

- Rent Received: ₹1,00,000/month
- TDS Deducted: ₹31,200
- Net Rent Credited: ₹68,800

02. SALE OF PROPERTY IN INDIA

✓ Buyer must deduct TDS before payment to NRI seller:

- Property held ≤ 24 months → TDS @ 30%.
- Property held > 24 months:

  Transfers on or after 23/07/2024 → TDS 12.5%

  Transfers before 23/07/2024 → TDS 20%

✓ NRIs can apply for Lower TDS Certificate to reduce the TDS deduction.

Example:

- Sale Price: ₹1 Crore
- Applicable TDS (20%): ₹20 Lakhs
- With Lower TDS Certificate (say 5%): ₹5 Lakhs

03. REDEMPTION OF MUTUAL FUNDS

✓ Equity Mutual Funds: TDS applies only if LTCG exceeds ₹1.25 Lakh.

Example:

- Equity MF gains = ₹90,000 → No TDS.
- Equity MF gains = ₹1,50,000 → TDS @ 10% on ₹50,000 (exceeding limit).

04. DIVIDEND INCOME

✓ TDS on dividends: 20% (Sec 195).
✓ DTAA may reduce the TDS rate.

Example:

- Dividend Declared: ₹10,000
- TDS Deducted (20%): ₹2,000
- Dividend Credited: ₹8,000

05. INTEREST ON FIXED DEPOSITS (FDS)

✓ NRO FD Interest → TDS @ 30%.
✓ NRE & FCNR FD Interest → Tax-Free in India.

Example:

- NRO FD Interest: ₹50,000 → TDS @ 30% (₹15,000 deducted).
- NRE FD Interest: ₹50,000 → No TDS.

06. TDS REFUND FOR NRIS

If excess TDS is deducted, NRIs can claim a refund by:

- Filing an Income Tax Return (ITR) in India.
- Using **Form 16A** as proof of TDS deduction.
- Declaring foreign tax credits if applicable.

Example: If TDS deducted is ₹2,00,000 and actual tax liability is ₹1,50,000. Then refund claimed shall be ₹50,000

07. CONSEQUENCES OF NON-COMPLIANCE WITH TDS RULES

Penalties & Interest for Non-Deduction of TDS:

NON-COMPLIANCE	PENALTY
Failure to deduct TDS	Expense disallowed under Sec 40(a)(i)
Late deposit of TDS	1.5% per month interest on TDS amount
Non-payment of TDS	100% penalty of TDS amount
Under-deduction of TDS	Penalty equal to the shortfall amount

TDS non-compliance may lead to legal consequences under the Income Tax Act, 1961.

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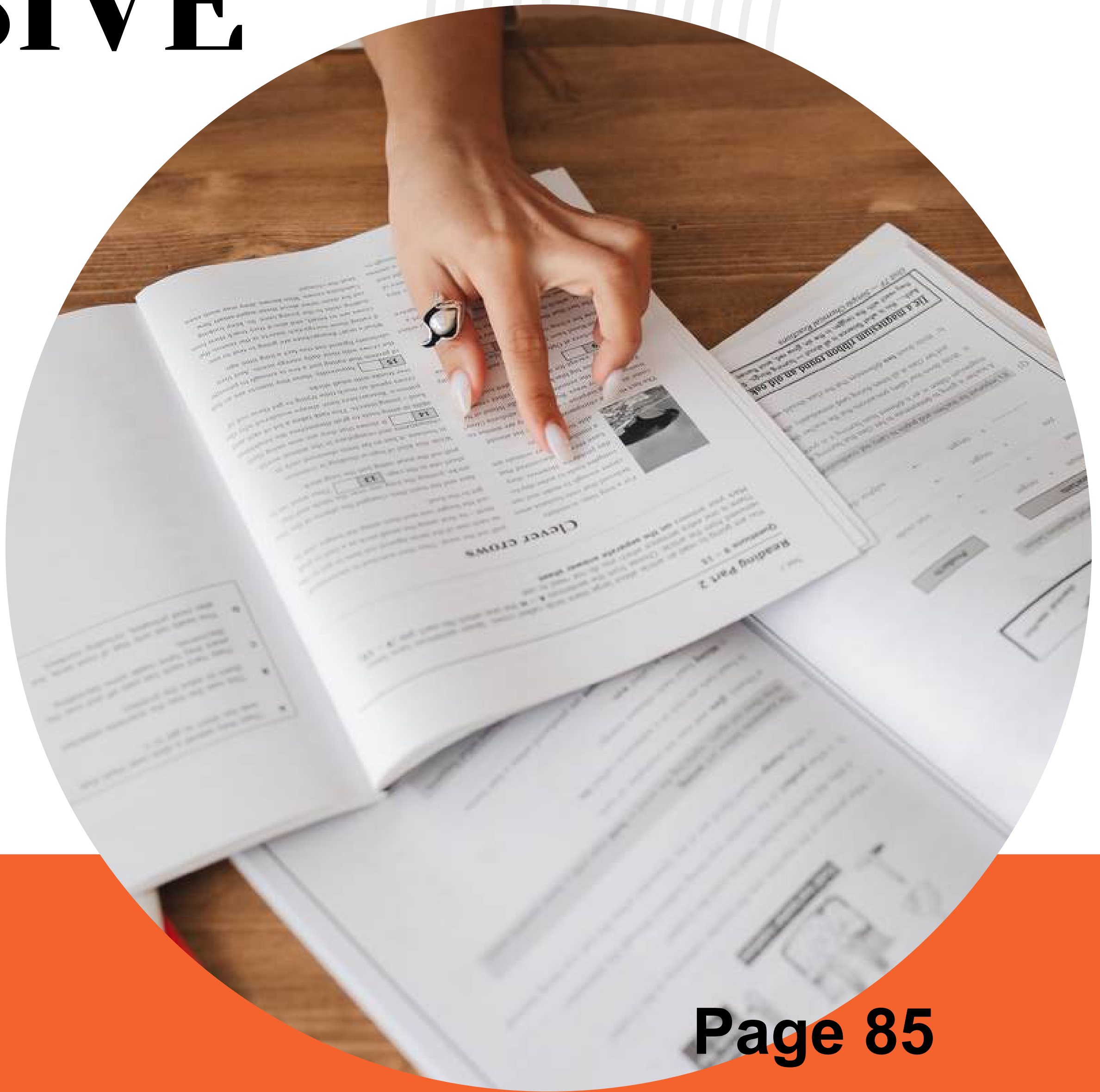
DTAA BETWEEN INDIA AND THE USA: COMPREHENSIVE GUIDE FOR NRIS



USA-INDIA TAX COMPLIANCES:

1) Key Provisions of the India-US DTAA

Relief Mechanisms

Method	How It Works
Exemption Method	Income taxed in the US is exempt from Indian taxation.
Tax Credit Method	Tax paid in the US can be credited against Indian taxes.

2) How to Claim DTAA Benefits in India

Step by step process:

Step 1: Determine Eligibility – Check if your income qualifies under DTAA.

Step 2: Obtain a Tax Residency Certificate (TRC) – This proves your tax residency in the US or India.

Step 3: Fill Form 67 – Submit Form 67 before filing your Indian ITR to claim foreign tax credit, otherwise, the tax credit may be denied.

Step 4: Gather Documentation
- US Tax Returns (Form 1040, W-2, 1099)
- Proof of US Taxes Paid (IRS Tax Transcript, Bank Statements)

Where to report in Indian ITR

Form	Purpose
Form 67	Report foreign tax paid before filing ITR.
Schedule FSI	Declare foreign income.
Schedule FA	Report Foreign Assets
Schedule TR	Claim tax credit for taxes paid abroad

3) DTAA Tax Rates Between India and USA

Dividend Income

Beneficial Owner	Maximum Tax Rate
Company (holding 10%+ shares)	15%
Other Cases	25%

Interest Income

Source	Maximum Tax Rate
Bank Loans & Financial Institutions	10%
Other Cases	15%

Royalties & Fees for Included Services

Time Period	Government/ Public Sector Tax Rate	Other Cases
First 5 years	15%	20%
After 5 years	15%	15%

Capital Gains Tax

Asset Type	Holding Period	Tax Rate
Listed Shares & Equity MFs	More than 1 year	12.5%
Unlisted Shares & Bonds	More than 2 years	12.5%
Real Estate	More than 2 years	12.5%

4) Common DTAA Reporting Mistakes to Avoid

- **Filing ITR without Form 67** → Foreign tax credit may be denied.
- **Not claiming DTAA benefits for dividends & interest income** → Paying higher taxes unnecessarily.
- **Misreporting income in Schedule FSI/TR** → Leading to tax notices & penalties.

5) FAQs on India-US DTAA

✔ **Does DTAA provide a full tax exemption?**

No. DTAA allows exemptions or tax credits but does not eliminate tax liability.

✔ **Which ITR form should NRIs use to claim DTAA benefits?**

NRIs should use **ITR-2 or ITR-3**, as ITR-1 does not support foreign income reporting.

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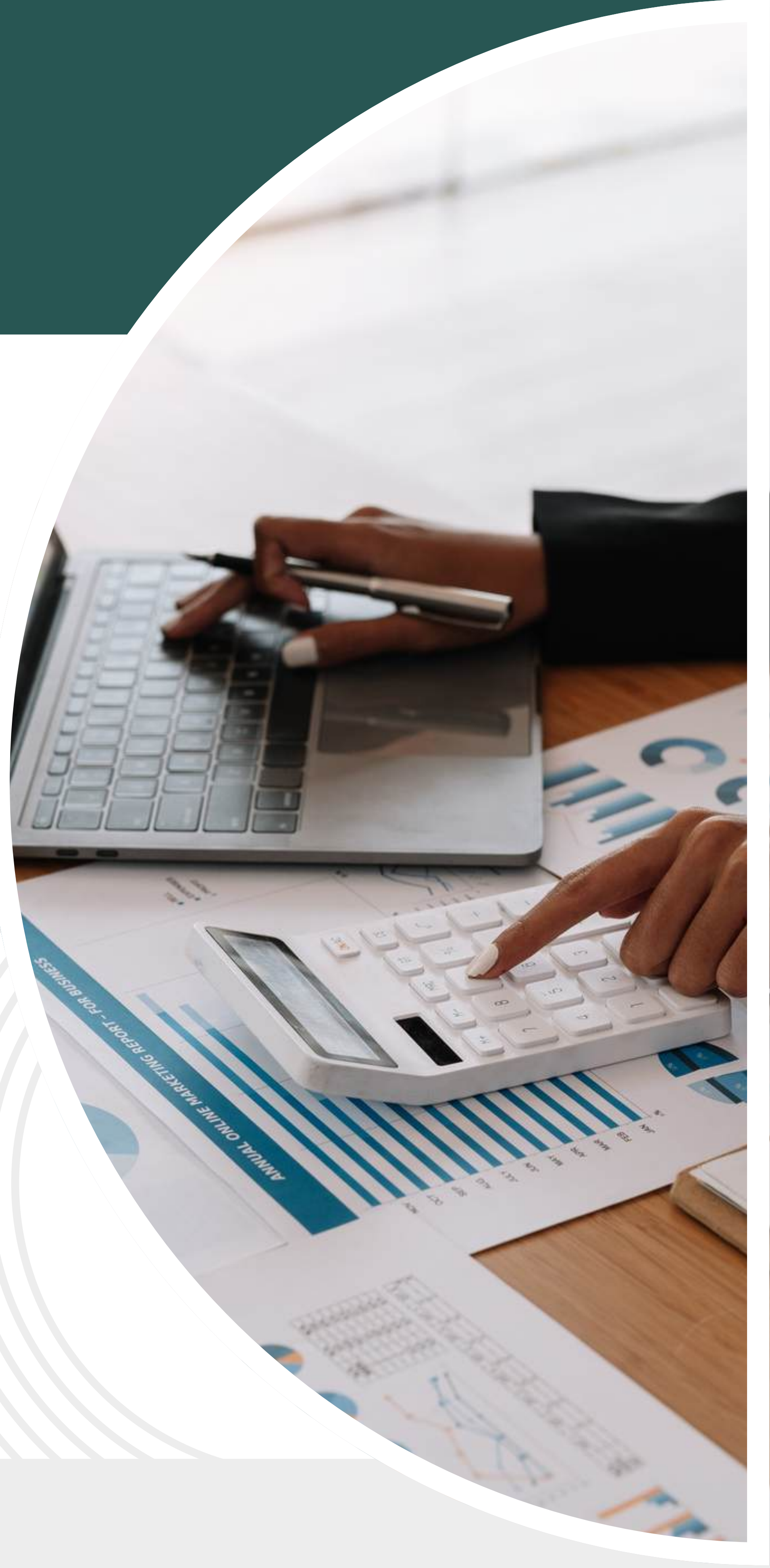
TAX RESIDENCY CERTIFICATE (TRC) FOR NRIS:
AVOID DOUBLE TAXATION & MAXIMIZE TAX SAVINGS



USA-INDIA TAX COMPLIANCES:

WHY NRIS NEED A TRC?

- Establish **tax residency for DTAA** claims.
- Reduce tax liability by preventing double taxation.
- Serve as **official proof of tax residency** for financial transactions.
- **Tax Compliance:** Required for lower TDS deductions on investments in India.

RESIDENCY STATUS IN INDIA

Your tax obligations depend on your residency status, classified as:

Residency Type	Taxation on Global Income	DTAA Eligibility
Resident & Ordinarily Resident (ROR)	Yes	Limited
Resident but Not Ordinarily Resident (RNOR)	No	Yes
Non-Resident (NR)	No	Yes

NRIs must establish their residency to claim DTAA benefits.

HOW TO OBTAIN A TRC?

Step-by-Step Process:

1. Apply to the Tax Authority in your country of residence.
2. Provide supporting documents:
   - Proof of residency (utility bills, rental agreements).
   - Tax payment records for the financial year.

Identity proof (Passport, PAN, Aadhaar if applicable).

3. Receive TRC after verification (Processing time varies by country).
4. Submit **Form 10F in India** (If TRC lacks required details).

TRC VALIDITY & RENEWAL

✓ TRC is **valid for one financial year only** and must be renewed annually.

✓ Timely renewal ensures uninterrupted tax benefits and prevents higher TDS deductions.

FORM 10F: MANDATORY FOR NRIS WITHOUT COMPLETE TRC

✓ If a TRC does not include all required details, NRIs must submit Form 10F to the Indian Income Tax Department.

✓ **Who needs Form 10F?**

- NRIs without PAN in India.
- NRIs whose TRC lacks critical information like TIN, address, or period of residence.

✓ **Form 10F Submission Process:** Available online via e-filing portal.

DUAL TAX RESIDENCY FOR US NRIS:

USA TAX COMPLIANCES:

01 WHAT IS DUAL TAX RESIDENCY?

✓ Occurs when an individual is **both a resident & non-resident in the same tax year.**

✓ **Common scenarios:**

- Arriving in or leaving the U.S. mid-year.
- Switching from non-resident to resident status (or vice versa).

✓ **It Requires filing two tax returns:** Form 1040 (Resident period) and Form 1040NR (Non-resident period).

02 HOW DUAL TAX RESIDENCY IS DETERMINED

Substantial Presence Test (SPT)

1. **At least 31 days** in the U.S. in the **current year**.
2. **183+ days over 3 years**, calculated as:

- **Current year:** All days count (×1).
- **Last year:** 1/3 of days count (×1/3).
- **Two years ago:** 1/6 of days count (×1/6).

Note: **Green Card Holders** are automatically considered U.S. tax residents. Their worldwide income is taxable until the Green Card is surrendered (Tax treaty provisions may apply.)

03 TAX OBLIGATIONS FOR DUAL RESIDENTS

1. **Resident Period:**
   - Taxed on worldwide income.
   - **Same filing rules as U.S. citizens.**
2. **Non-Resident Period:**
   - Only U.S.-sourced income is taxable.
   - Two categories:
   - **Effectively Connected Income (ECI)** – Taxed at graduated rates.
   - **Fixed/Determinable Income** – Flat 30% tax (unless treaty applies).
3. **No Standard Deduction -** Dual-status taxpayers **must itemize deductions.**
4. **No Joint Filing - Must file separately** at the highest tax rates.

04 FILING REQUIREMENTS FOR DUAL RESIDENTS

1. **Tax Form Selection**
   - **If a resident on Dec 31** → File Form 1040 + attach 1040NR statement.
   - **If a non-resident on Dec 31** → File Form 1040NR + attach 1040 statement.
   - Write "**Dual-Status Return**" at the top of the main return.

2. **Documentation Needed**
   - **Resident period:** Report worldwide income.
   - **Non-resident period:** Report only U.S. income.
   - Maintain records for travel dates, income sources, and deductions.
   - **Deadline:** April 15 (June 15 if no U.S. wage income).

3. **Must be Paper Filed** - No e-filing option, **must print and mail forms.**

05 STRATEGIC TAX PLANNING FOR DUAL RESIDENTS

Tax Treaty Benefits:

1. Many countries have tax treaties with the U.S. to reduce tax liability.
2. **Possible benefits:**

- Reduced tax rates on investment income.
- Exemptions from double taxation.
- Foreign Tax Credit (FTC) for taxes paid abroad.

State Tax Considerations:

- State residency rules may differ from federal tax residency.
- Some states do not follow tax treaties.
- States may challenge your non-residency status if you maintain ties.

DUAL RESIDENCY: GREEN CARD HOLDERS CAN CLAIM NON-RESIDENT STATUS IN THE USA UNDER DTAA TREATY TO AVOID US TAX ON INDIAN INCOME

USA TAX COMPLIANCES:

UNDERSTANDING U.S. TAX RESIDENCY

Non-U.S. citizens are **considered U.S. tax residents if they meet either:**

- **Green Card Test**: Holders of a U.S. Green Card are treated as U.S. tax residents, irrespective of where they live.
- **Substantial Presence Test**: Presence in the U.S. for at least 31 days in the current year and 183 days over the past three years (weighted formula).

CLAIMING NON-RESIDENT STATUS UNDER DTAA

1. The India-U.S. Double Taxation Avoidance Agreement (DTAA) provides **"tie-breaker**" rules to determine tax residency in case of dual residency.
2. Green Card holders residing in India can elect to be treated as **non-residents for U.S. tax purposes under DTAA** by filing **IRS Form 8833 (Treaty-Based Return Position Disclosure)**.
3. **Key criteria** for **tie-breaker rules**:

- **Permanent Home:** Country where the individual has a permanent residence.
- **Center of Vital Interests:** Location of strongest personal and economic ties.
- **Habitual Abode:** Where the individual spends more time.
- **Nationality:** If none of the above is conclusive, nationality determines residency.

TAX IMPLICATIONS OF DTAA CLAIM

If eligible under DTAA tie-breaker rules, Green Card holders can:

- **Avoid U.S. taxation** on global income, including Indian earnings.
- File **Form 1040-NR** instead of Form 1040.
- **Eliminate double taxation** while ensuring compliance with U.S. tax laws.

COMPLIANCE & REPORTING CONSIDERATIONS

1. **IRS Form 8833:** Required for claiming treaty benefits. **Penalty $1,000** in case of failure.
2. Informational Returns are still **mandatory** to file: FBAR - FinCEN 114, FATCA Form 8938, Form 5471, Form 8865, 8621 etc.
3. **Immigration & Exit Tax Considerations (Risks)**:
    - DTAA claim may impact Green Card status if disclosed to immigration authorities.
    - Long-term Green Card holders may trigger expatriation tax (Exit Tax) under U.S. tax laws.

CHILD TAX CREDIT FOR NRIS: YOUR EXPERT GUIDE

USA TAX COMPLIANCES:

01. WHAT IS THE CHILD TAX CREDIT (CTC)?

- A tax credit of up to **$2,000** per qualifying child that reduces U.S. tax liability.
- Refundable portion: **Up to $1,700 per child** through the **Additional Child Tax Credit (ACTC)**.
- **Income Limits:** Phases out **$ 50 for every $1,000 for incomes over $200,000 (single) / $400,000 (joint).**

02. WHO IS ELIGIBLE FOR THE CHILD TAX CREDIT?

1. NRIs filing as **U.S. residents** or qualifying under the U.S.-India Tax Treaty (Article 21(2)).
2. **Qualifying child requirements**:
   - Under 17 years old at year-end.
   - Has a valid SSN issued before the tax return due date.
   - Lived with the taxpayer for at least half the year.
   - Does not provide more than half of their financial support.

03. REQUIRED DOCUMENTATION FOR NRIS

- **Child's Social Security Number (SSN) –** Required for CTC.
- **Parent's SSN or ITIN –** NRIs must have either to claim the credit.
- **Form W-7 (ITIN Application) –** Needed if the parent does not have an SSN.
- Attach **Schedule 8812** to Form 1040-NR when filing.

04. MAXIMIZING YOUR CHILD TAX CREDIT IN 2024

- Earn at least $2,500 to qualify for the refundable ACTC.
- Keep income below phase-out thresholds ($200,000 single / $400,000 joint).
- Choose the Foreign Tax Credit (FTC) over Foreign Earned Income Exclusion (FEIE), as **FEIE makes you ineligible.**
- **Retroactive claims:** CTC can be claimed for up to 3 years back by filing an amended return.

05. COMMON QUESTIONS ABOUT CHILD TAX CREDIT FOR NRIS

- **Can NRIs claim the credit while living abroad? → Yes**, if they meet residency & income requirements.
- **Can NRIs claim the credit if married to a non-U.S. citizen? → Yes**, but filing as "Head of Household" may be more beneficial than "Married Filing Separately."
- **What if my child has an ITIN instead of an SSN? →** CTC is not available without an SSN.

HOW PARENTS CAN CLAIM TCS CREDIT FOR CHILDREN STUDYING ABROAD USING NEW FORM 12BAA

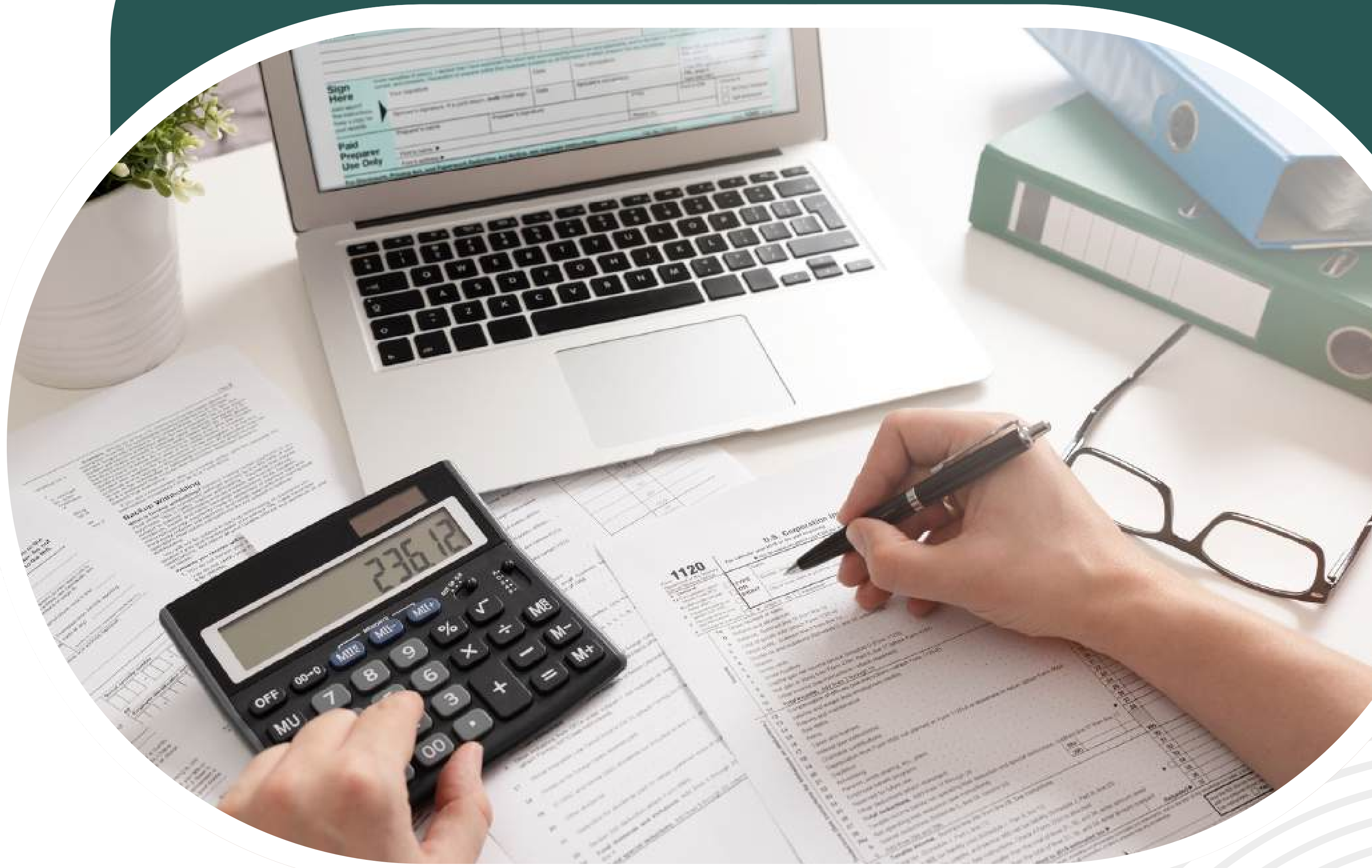
INDIAN TAX COMPLIANCES:

WHAT IS FORM 12BAA?

- A new tax form (effective Oct 2024) allowing **parents to claim TCS credit on foreign remittances for education.**
- Previously, only the student could claim the TCS credit.

WHO BENEFITS?

- Parents/guardians remitting funds abroad for children's education.
- For F.Y. 2024-25, if remittances exceed **₹7 lakh/year, 5% TCS applies. Parents can now claim this tax credit.**



HOW TO CLAIM TCS CREDIT USING FORM 12BAA

STEP 1

Declaration

Obtain a declaration from the bank/institution confirming TCS deduction details.

STEP 2

Submission

Submit the declaration with PAN details & remittance purpose to the tax collector.

STEP 3

Verification

Once verified, the TCS credit is transferred to the parent's PAN for tax filing.

Example:

TCS Claim for Foreign Education

- **Remittance**: ₹20 lakh for tuition fees.
- **TCS Charged:** ₹ 65K (5% of ₹13 lakh, exceeding ₹7 lakh threshold).
- **Claim Benefit**: Parent can use ₹65K TCS credit to offset their tax liability.

KEY BENEFITS OF FORM 12BAA

- **Parents can claim TCS credit directly**, reducing tax burden.
- **Simplifies tax planning** – No need for students to file for credit.
- **TCS credit can be offset** against tax on other incomes (interest, dividends, etc.).

FAQS ON FORM 12BAA & TCS CREDIT

Q1: Can TCS credit be claimed for remittances other than education?

Yes, if **proper documentation** is submitted (e.g., for travel or property purchases).

Q2: Is a separate Form 12BAA needed for each remittance?

Yes, **each remittance** requires an **individual form submission**.

Amendments in Finance Act 2025 w.e.f. 1.04.2025:

- **Increase in Exemption Limit for TCS on LRS (Liberalized Remittance Scheme) to ₹ 10 Lakhs**
- **No TCS will be collected on remittances for education purposes funded through loans.**

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OPT TAX GUIDE FOR INTERNATIONAL STUDENTS: FILING, RESIDENCY & REFUNDS

USA TAX COMPLIANCE:

1) UNDERSTANDING OPT & TAXATION

WHAT IS OPT?

Optional Practical Training (OPT) allows **F-1 visa holders** to work in the U.S. for up to **12 months post-graduation. Students in STEM** fields get an additional 24-month extension (total 36 months).

TYPES OF OPT & TAXATION RULES

OPT Type	Tax Treatment
Pre-Completion OPT (Before Graduation)	Income is subject to federal & state taxes, but **FICA (Social Security & Medicare) is exempt.**
Post-Completion OPT (12 months after graduation)	Income is taxable under **federal & state laws**, but **FICA tax is exempt for up to 5 years** in the U.S.
STEM OPT Extension (Additional 24 months)	Income is taxable under federal & state laws, but FICA tax exemption continues unless in the U.S. for **more than 5 years.**

2) RESIDENCY STATUS FOR TAX PURPOSES

ARE OPT STUDENTS NONRESIDENT OR RESIDENT ALIENS?

✔ **F-1 Visa Holders (Less than 5 Years in the U.S.)**

- Nonresident Alien (NRA) for tax purposes.
- Must file Form **1040NR** instead of Form 1040.
- **Exempt from FICA** (Social Security & Medicare taxes).

✔ **F-1 Visa Holders (More than 5 Years in the U.S.)**

- Resident Alien under Substantial Presence Test (SPT).
- Must file **Form 1040** like U.S. citizens.
- Subject to FICA taxes (Social Security & Medicare).

SUBSTANTIAL PRESENCE TEST (SPT) CALCULATION

To be considered a Resident Alien, you must meet **both** conditions:

1. 31 days in the U.S. in the current year.
2. 183 days over the past 3 years

3) TAX RATES & WITHHOLDING FOR OPT STUDENTS

Income Type	Tax Rate
Federal Income Tax	10% – 37% (Based on income level)
State Income Tax	Varies by state
FICA Tax (Social Security & Medicare)	0% for NRAs on F-1 visas (First 5 years)
Scholarships & Grants	14% (If taxable)

STATES WITH NO INCOME TAX

If you live in **one of these 9 states**, **you don't have to pay state income tax:**

1. **Alaska, Florida, Nevada, South Dakota, Texas, Washington, Wyoming**
2. **Tennessee & New Hampshire (Tax investment income only)**

4) TAX FORMS OPT STUDENTS NEED TO FILE

✓ **Form 1040NR** – For nonresident aliens to report income.

✓ **Form 8843** – To claim exemption from the Substantial Presence Test.

✓ **Form W-4** – Provided to your employer to ensure proper tax withholding.

✓ **Form 1099-INT** – If you earn interest from U.S. bank accounts.

✓ **Form 1098-T** – If you paid tuition, you may qualify for education tax benefits.

✓ **Form 1040** – For resident aliens (F-1 holders in the U.S. for 5+ years).

5) TAX DEDUCTIONS & EXEMPTIONS FOR OPT STUDENTS

As a Nonresident Alien (NRA), you *CANNOT* claim:

- Standard deduction **(except for Indian students under tax treaty).**
- Earned Income Tax Credit (EITC).
- Head of Household filing status.

Eligible Tax Benefits for NRAs:

✓ **FICA Tax Exemption –** No Social Security & Medicare taxes.

✓ **Foreign Tax Credit –** Claim taxes paid in another country.

✓ **Tax Treaties –** Some countries (like India, China, Canada) allow exemptions or reduced tax rates on U.S. income.

Note: Indian students on OPT can claim the Standard Deduction under the U.S.-India tax treaty ($14,600 for 2024).
Mail your tax return to the IRS if filing paper forms. E-filing is not allowed for NRAs (must mail paper return).

6) TAX REFUNDS FOR OPT STUDENTS

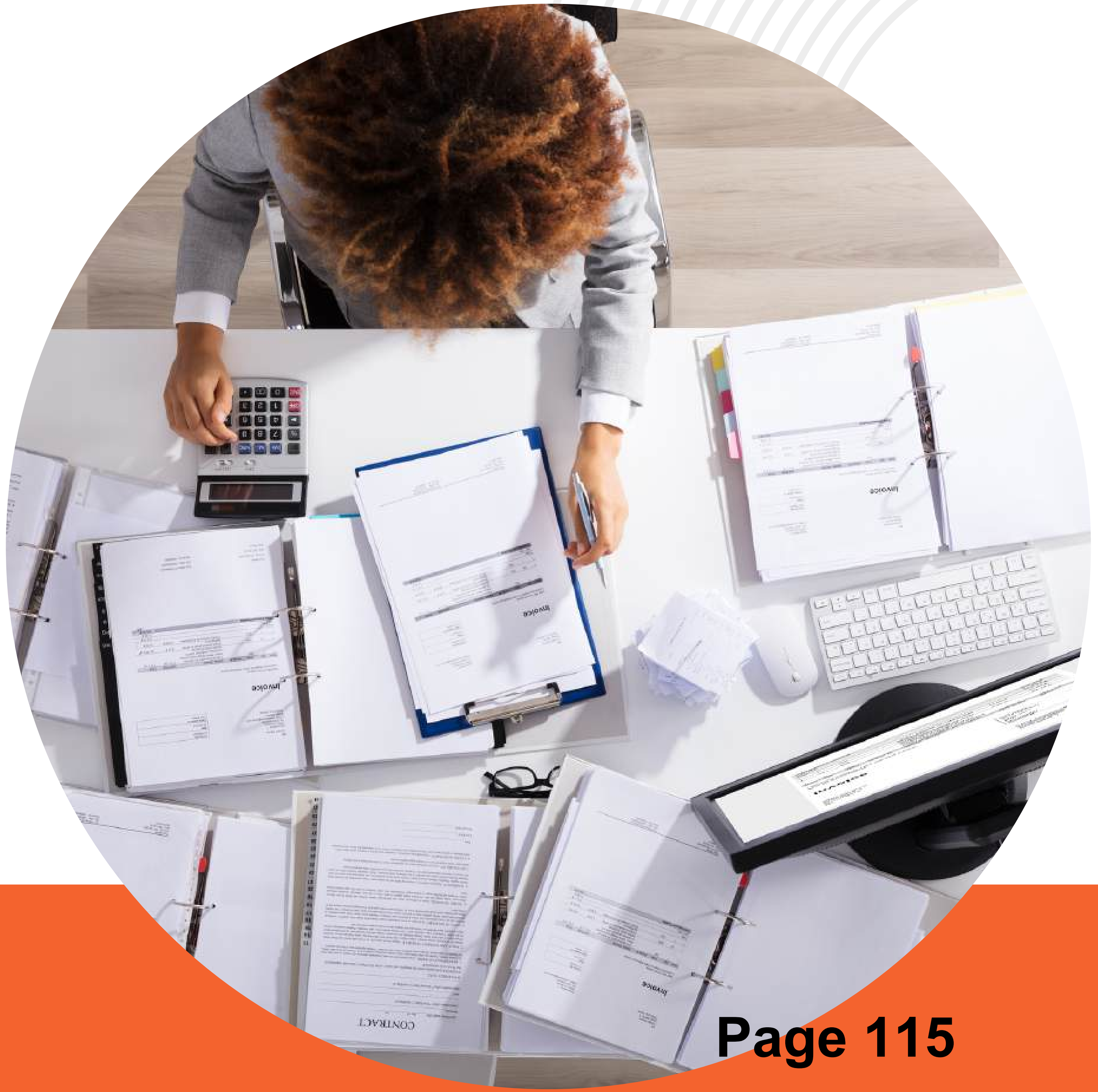
Many OPT students overpay taxes due to incorrect W-4 withholding. You can **get a refund if you:**

- Paid too much federal/state tax.
- Overpaid FICA taxes (by mistake).
- Qualify for tax treaty benefits.

7) COMMON MISTAKES TO AVOID

- **Not Filing a Tax Return** – Even if no income, Form 8843 must be submitted.
- **Filing as a Resident (1040)** when you're a Non-resident (1040NR).
- **Paying FICA Taxes by Mistake** – Ask employer for a refund if deducted incorrectly.
- **Not Claiming Tax Treaty Benefits** – Check if your country has an agreement with the U.S.

FORM W-2: A GUIDE FOR NRIS FILING U.S. TAXES



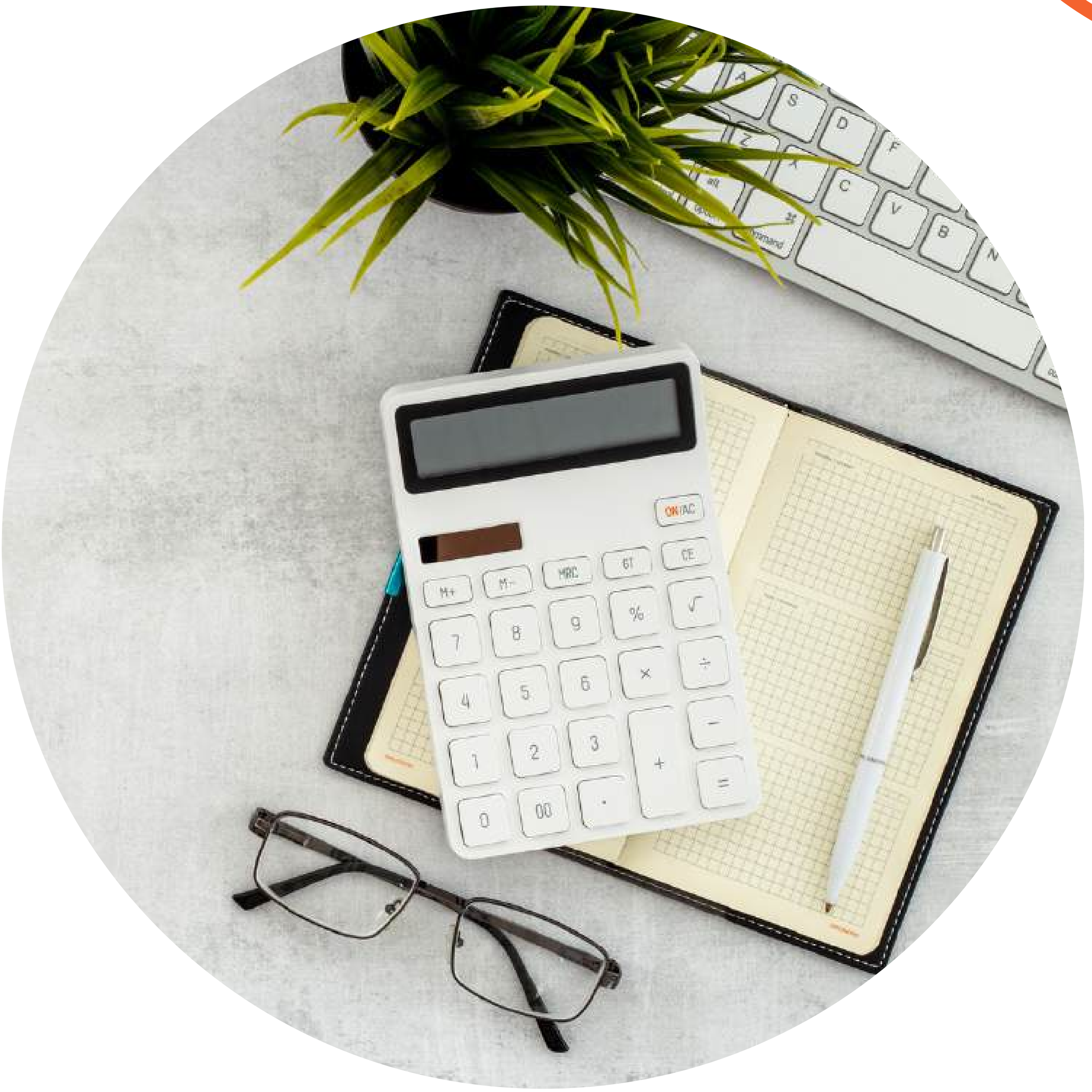
USA TAX COMPLIANCES:

1 WHAT IS FORM W-2?

- **Form W-2** (**Wage and Tax Statement**) reports an employee's wages & tax withholdings for the year.
- Employers must issue W-2 forms **by January 31** to employees & file them with the IRS & Social Security Administration (SSA).
- Required for employees **earning $600+ annually.**

2 KEY INFORMATION ON FORM W-2

- **Personal & Employer Details** – Name, address, SSN, EIN.
- **Wages & Tax Withheld** – Federal, state, & local income tax.
- **Social Security & Medicare Contributions** – Used for benefit calculations.
- **Retirement & Benefits Information** – 401(k), dependent care benefits.



3 WHAT TO DO IF YOU HAVEN'T RECEIVED YOUR W-2?

Step 1: Contact your employer's payroll/HR department.

Step 2: If still missing by Feb 15, call the IRS (1-800-829-1040).

Step 3: File your tax return using Form 4852 (W-2 Substitute).

Step 4: If the correct W-2 arrives later, amend your return with Form 1040X.

4 FIXING ERRORS ON YOUR W-2

- **Common Mistakes**: Wrong SSN, name, wages, tax withholding.
- **Solution**: Request Form W-2c (Corrected W-2) from your employer.
- **Employer Penalties**: Up to $660 per incorrect form if not corrected.

5 HOW TO USE YOUR W-2 FOR TAX FILING

- **Check for Accuracy –** Ensure wages & withholdings match your records.
- **File Tax Return (Form 1040/1040NR) –** Attach W-2 details.
- **Keep Copies for 4 Years –** Important for IRS audits & corrections.

6 W-2 VS. 1099: KEY DIFFERENCES

Aspect	Form W-2 (Employees)	Form 1099 (Contractors)
Tax Withholding	Employer deducts taxes	No tax withholding; self-reported
Employment Benefits	Eligible for benefits	No benefits
Social Security & Medicare	Employer pays half, employee pays half	Contractor pays **full 15.3% self-employment tax**
Who Issues?	Employer	Client/Payer

TDS ON RENT PAID TO NRI LANDLORD – RESPONSIBILITIES OF TENANTS

INDIAN TAX COMPLIANCES:

1 KEY TDS RULES ON RENT PAID TO NRI LANDLORD

1. TDS Deduction is **mandatory** - Applies to **all rent amounts** (no exemption).
2. **TDS Rate**:
   - **Standard Rate:** 31.2% (including surcharge & cess).
   - **Lower/Nil Rate:** If the landlord has a lower TDS certificate under Section 197.
3. **TAN** (Tax Deduction Account Number) Required - Tenants must obtain a TAN
4. **Form 15CA & 15CB Compliance**:
   - **Form 15CA:** Tenant must submit this form before remitting rent to an NRI landlord.
   - **Form 15CB:** If rent **exceeds ₹5 lakh** per year, **a chartered accountant's certificate** is required to validate tax deduction.

Note: If the NRI landlord does not provide a PAN, TDS must still be deducted at 31.2% and reported using PANNOTAVBL in the TDS return.

2 COMPLIANCE TIMELINES & DUE DATES

Compliance	Due Date
Monthly TDS Deduction	7th of the next month
Quarterly TDS Return (Form 26Q)	End of each quarter
Annual TDS Certificate (Form 16A)	Year-end
Form 15CA/15CB Submission	Before remittance

3 PENALTIES FOR NON-COMPLIANCE

- Not Depositing TDS (Section 276B):

Penalty: **Imprisonment** (3 months – 7 years) + Fine.

- Not Deducting TDS (Section 271C):

Penalty: **Equal to TDS** amount not deducted.

- Late Payment of TDS:

Interest @ 1.5% per month from the deduction date.

4 EXEMPTIONS & BENEFITS AVAILABLE

✔ **DTAA (Double Taxation Avoidance Agreement) Benefits:**
NRIs can reduce their TDS rate under DTAA if their resident country has a tax treaty with India.

✔ **Lower/NIL TDS Certificate (Section 197)**
NRIs can apply for a lower/NIL TDS certificate by submitting Form 13 if their total Indian income is below the exemption limit.

NAVIGATING US SOCIAL SECURITY TAXATION FOR NRIS RETURNING TO INDIA

INDIAN TAX COMPLIANCES:

TAXATION OF US SOCIAL SECURITY BENEFITS BASED ON INDIAN RESIDENTIAL STATUS

Your tax liability depends on your residency status under the Indian Income Tax Act, 1961.

Residency Status	Taxation in India	Reporting Requirements
Non-Resident (NR) / Resident but Not Ordinarily Resident (RNOR)	Not taxable if benefits are retained in the US	No reporting required for US income held abroad
Resident & Ordinarily Resident (ROR)	Taxable in India under "Income from Other Sources"	Must report US Social Security benefits in Indian ITR

Which ITR Form to Use?
✔ ITR-2 or ITR-3 (ITR-1 does not support foreign income reporting).
Note:
Form 67 is NOT required when claiming DTAA exemption, as no foreign tax credit is being claimed.

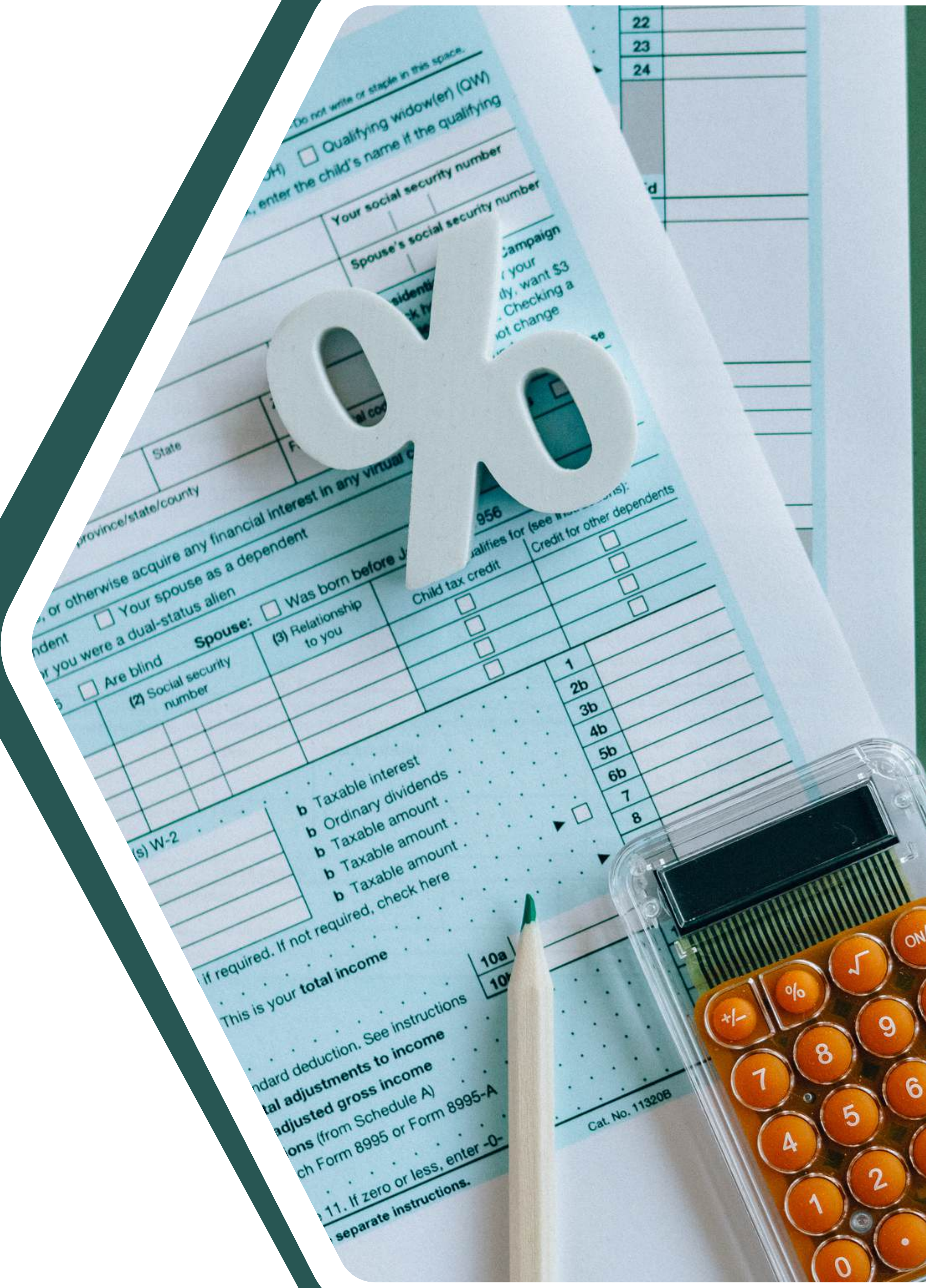
LEVERAGING THE INDIA-US DTAA TO AVOID DOUBLE TAXATION

DTAA Article 20(2) – Exclusive US Taxation

✓ The India-US DTAA states that US Social Security benefits **are taxable only in the US and not in India.**

✓ If reported correctly, NRIs returning to India can avoid taxation on these benefits under Indian tax laws.

✓ If you hold a US Green Card but qualify as ROR in India, you can still claim DTAA benefits to avoid Indian taxation.



STRATEGIES FOR NRIS TO MINIMIZE TAX ON US SOCIAL SECURITY INCOME

- **Keep Benefits in a US Account**: **Retaining Social Security payments in the US** prevents Indian taxation.
- **Remit Money as Needed**: Transferring funds from a US account to India is not taxable in India.
- **Avoid Direct Deposits in India:** Receiving benefits in an Indian account (NRO/NRE/resident) makes them taxable.
- **Claim DTAA Relief:** Use DTAA provisions to exempt Social Security benefits from Indian taxation.

HAVE ADDITIONAL QUESTIONS ABOUT USA-INDIA TAXES?

While this is not a comprehensive list of everything you need to know, it gives you an overall idea of the tax planning in specific situations, usual FAQs, forms, deadlines, and other tax considerations you need to think about when filing USA-India taxes.

RTulsian is happy to help! We are happy to **review your specific situation** and guide you through **which deductions and credits can save you the most money.**

Contact us at **ishan@rtulsian.com** with **any questions** that you have or **get started** on your USA-India taxes today!

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