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## **Taxation of Non-resident Sportsperson in India**

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### **INTRODUCTION**

Sports have become a multi-billion-dollar industry in the past couple of decades. An industry with a global presence must raise its own controversies. This led to the growth and development of sports law as an independent regulation.<sup>1</sup>

In the last few years, several International sports events have been witnessed, including Formula 1 races, Indian Premier League (IPL), the Indian Super League (ISL). It should be noted that India has the most fans of cricket in the world that see several cricket matches. The IPL, India's leading professional sports league and the most successful professional sports league, generates several crores in revenue each year. The league's success can be seen in the fact that in its fifth edition, the group earned an excess of Rs 237 crores.<sup>2</sup> The success of the IPL has sparked a surge in interest in the creation of sporting leagues and annual events in a variety of sports. For example, the inaugural edition of the Indian Soccer League, or ISL, attracted around 429 million viewers<sup>3</sup>, establishing it as a popular television property. The ability to adapt to such viewer intrigue is frequently necessary for the continued existence of such leagues and sporting events.

A professional sportsperson tax liability is affected by multiple factors such as his residence status in a country, the source or type of revenue, and the country in which he or she competes. In general sportsperson living in that country is taxed differently than international sportsperson visiting them.<sup>4</sup> ("Non-Resident Athletes") While most states have their very own rules and regulations for taxing resident sports people, non-resident athlete taxation is particularly complicated and is based on the principles laid out in the Organization for Economic Co-operation and Development's ("OECD") Model Tax Convention on Income and Capital ("Model Tax Treaty"), which was adopted by the OECD Council in 1963. In this paper the tax liability of a non resident sportsperson is discussed.

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<sup>1</sup> <https://www.nishithdesai.com/information/areas-of-service/industry/sports.html>

<sup>2</sup> Gaurav Laghate, "IPL's TV ratings on sticky wicket but advertisers unfazed", [https://www.business-standard.com/article/specials/ipl-s-tv-ratings-on-sticky-wicket-but-advertisers-unfazed-113032700175\\_1.html](https://www.business-standard.com/article/specials/ipl-s-tv-ratings-on-sticky-wicket-but-advertisers-unfazed-113032700175_1.html) Accessed 12<sup>th</sup> may 2021

<sup>3</sup> Economic Times <[http://articles.economictimes.indiatimes.com/2014-12-31/news/57558204\\_1\\_atletico-de-kolkata-indian-super-league-hero-isl](http://articles.economictimes.indiatimes.com/2014-12-31/news/57558204_1_atletico-de-kolkata-indian-super-league-hero-isl)> Accessed 19<sup>th</sup> may 2021

<sup>4</sup> Seshank Shekar and Prabhjyot Chhabra, "Taxing Times: Professional Athletes And Tax", SLPC, 24th August 2012

## **WHO IS A SPORTSPERSON?**

“Sportsmen” has no clear definition. Like the word ‘entertainer’, sportsperson is also not defined in any statute or tax treaty. According to oxford dictionary a sportsperson is a person who participates in a lot of sports, particularly as a professional<sup>5</sup>

The Merriam-Webster Dictionary defines a sportsman as: “a person who engages in sports (as hunting or fishing)”

"Those who undertake fish and games of chance with profound passion, conviction and respect for their quarry while respecting their heritage, following their guiding principles, and yet encouraging a sense of equality and empathy with others with whom they share the fields and waters."<sup>6</sup>

While the term "sportsmen" is not defined precisely, it isn't restricted to traditional athletic event participants (e.g. runners, jumpers and swimmers). It also encompasses for instance golfing, jockeys, football, cricketing, tennis and competition drivers.<sup>7</sup>

The term "sportsman" was suggested to be substituted for gender-neutral "sportsperson." In Article 17 and its comment, the Committee agreed to make this change.<sup>8</sup>

Almost all treaties have replaced the term "sportsmen" with "sportsperson" to make it gender-neutral.

## **DETERMINING THE RESIDENTIAL STATUS**

An individual's taxability in India is determined by his residency status in India during any given fiscal year. The term "residential status" was coined by India's income tax laws and should not be confused with an individual's Indian citizenship. Even if a person is an Indian citizen, he or she may become a non-resident for a year. Similarly, for income tax purposes, a foreign citizen may become a resident of India for a given year. It's also worth noting that the residential status of different types of people, such as individuals, businesses, and corporations, is determined in different ways.<sup>9</sup> In this article, we looked at how a taxpayer's residential status can be determined for any given fiscal year.

How can I tell if I'm a resident or not?

As per the income tax act<sup>10</sup>, 1961 taxable persons are classified as:  
a resident

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<sup>5</sup> *Oxford Advanced Learner's Dictionary* (6th ed., 2003)

<sup>6</sup> Jim Braaten, “What Does It Mean To Be A Sportsman?” October 9, 2008  
<https://sportsmansblog.com/2008/10/09/what-does-it-mean-to-be-a-sportsman/>

<sup>7</sup> OECD (2017), Model Tax Convention on Income and on Capital: Condensed Version 2017, OECD Publishing.  
[http://dx.doi.org/10.1787/mtc\\_cond-2017-en](http://dx.doi.org/10.1787/mtc_cond-2017-en)

<sup>8</sup> ISSUES RELATED TO ARTICLE 17 OF THE MODEL TAX CONVENTION Adopted by the OECD Committee on Fiscal Affairs on 26 June 2014

<sup>9</sup> Surabhi chaudhary, “Residential Status and its impact on an Individual's Income”, 25th September 2020

<sup>10</sup> Section 6 of the income tax act, 1961 Residence in India

A non-regularly residing resident (RNOR)  
Non resident (NR)

Each of the above categories of taxpayers has a different taxability. Let's look at how a taxpayer becomes a resident, an RNOR, or an NR before we get into taxability.

According to section 6(1) of the income tax act, 1961<sup>11</sup> a person is said to be a resident of India if he meets one of the following two criteria:

He has been in India for a period or periods bringing the total 182 days or more in the previous year

OR

He spent 60 days or more in India during the relevant previous year and 365 days or more in India during the four years immediately preceding the relevant previous year.

If a citizen or person of Indian origin leaves India for employment during a fiscal year, he will only be considered a resident of India if he stays in India for 182 days or more.

However, the period for a person whose total revenue (other than foreign sources) exceeds Rs 15 lakh is reduced from fiscal year 2020-21 to 120 days or more.<sup>12</sup> An individual who is a citizen of India and is not liable to tax in any other country will be deemed to be a resident of India beginning in FY 2020-21. Only if his total income (other than from foreign sources) exceeds Rs 15 lakh and he has no tax liability in other countries or territories due to his domicile or residence, or any other similar criteria, is he considered to be a resident.<sup>13</sup>

A person who does not meet any of the requirements set out in (a) or (b) would be a non resident for that year.

## **TAXABILITY UNDER DOMESTIC LAW**

India's domestic income tax law contains special non-resident tax provisions. The Income Tax Act of 1961 ("Act") is sufficiently wide in that it taxes non-resident sportspeople whose income is accrued, deemed to be accrued or received in India. It shall apply the provisions of the Treaty or of the Law which are beneficial to that person. It is therefore in the country's best interest to have a

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<sup>11</sup> Section 6(1) of the income tax act, 1961 Residence in India

For the purposes of this Act,—

(1) An individual is said to be resident in India in any previous year, if he—

(a) is in India in that year for a period or periods amounting in all to one hundred and eighty-two days or more ; or

(c) having within the four years preceding that year been in India for a period or periods amounting in all to three hundred and sixty-five days or more, is in India for a period or periods amounting in all to sixty days or more in that year.

<sup>12</sup> Suyash Tripathi, "Number of days stay in India-Must know for NRIs, 21st may 2020

<sup>13</sup> inserted after clause (1) of section 6 by the Finance Act, 2020, w.e.f. 1-4-2021 :

domestic income tax act that covers all people and generates all types of income from various activities<sup>14</sup>. This is because the domestic law needs to be sufficient to cover the same, if the treaty between the countries is amended with mutual consent.

In accordance with the Income Tax Act 1961 [the Act], the relevant provisions and circulars are:

- Section 115BBA – Tax on sportsmen or non-resident associations
- Circular No. 787 of 10.02.2000
- Withholding tax provisions u/s. 194E

### **SECTION 115BBA<sup>15</sup> – TAX ON SPORTSMEN OR NON-RESIDENT ASSOCIATIONS**

(1) Where the total income of an assessee,—

(a) being a sportsman (including an athlete), who is not a citizen of India and is a non-resident, includes any income received or receivable by way of—

(i) participation in India in any game (other than a game the winnings wherefrom are taxable under section 115BB) or sport; or

(ii) advertisement; or

(iii) contribution of articles relating to any game or sport in India in newspapers, magazines or journals; or

(b) being a non-resident sports association or institution, includes any amount guaranteed to be paid or payable to such association or institution in relation to any game (other than a game the winnings wherefrom are taxable under section 115BB) or sport played in India; or

(c) being an entertainer, who is not a citizen of India and is a non-resident, includes any income received or receivable from his performance in India,

the income-tax payable by the assessee shall be the aggregate of—

(i) the amount of income-tax calculated on income referred to in clause (a) or clause (b) or clause (c) at the rate of twenty per cent; and

(ii) the amount of income-tax with which the assessee would have been chargeable had the total income of the assessee been reduced by the amount of income referred to in clause (a) or clause (b) or clause (c) :

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<sup>14</sup> <https://www.nishithdesai.com/information/areas-of-service/industry/sports.html>

<sup>15</sup> Section 115 BBA of the income tax act 1961

Provided that no deduction in respect of any expenditure or allowance shall be allowed under any provision of this Act in computing the income referred to in clause (a) or clause (b) or clause (c).

(2) It shall not be necessary for the assessee to furnish under sub-section (1) of section 139 a return of his income if—

- (a) his total income in respect of which he is assessable under this Act during the previous year consisted only of income referred to in clause (a) or clause (b) or clause (c) of sub-section (1); and
- (b) the tax deductible at source under the provisions of Chapter XVII-B has been deducted from such income.

The tax rate of the non-resident sportsperson who is not Indians is set out in Section 115BBA of the Income Tax Act, 1961 ('Act'). It states that where a non-resident sportsman's 'total income'<sup>16</sup> includes any income that he or she gets or receives through participation in any sport, game or advertisement, then the amount of income derived from those sources would be subject to a tax rate of 20%. The proviso to s.115BBA prohibits any deduction from that income of expenses or allowances. In India, therefore, income is grossly taxable.

Non-resident sportspersons who earn income from Indian sources should have a permanent account number (PAN) taking into account the deductions from their income which have been made in relation to their names.<sup>17</sup> Although no requirement is in place for the filing of income tax returns, only the appropriate tax has been deducted from income subject to section 115BBA. On the other hand, before departing from India, sport people are encouraged to obtain tax certification, similar to section 230 of the Income Tax Act, from the relevant tax authorities.<sup>18</sup>

“All deductees, including non-residents who have transactions in India that are subject to TDS, are recommended to obtain a PAN by March 31, 2010 and communicate it to their deductors before tax is deducted on transactions after that date,<sup>19</sup>” according to the CBDT notification.<sup>20</sup>

## **THE TAX TREATY PERSPECTIVE**

A treaty signed by two countries is the Double Tax Avoidance Agreement. The agreement has been signed so that one country is an attractive destination and NRIs can be relieved of taxes payable several times. DTAA does not mean that taxes can be entirely avoided in the NRI but it means that

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<sup>16</sup> Section 9 (1) (i) specifies that income deemed to accrue or arise in India includes all income arising or accruing, directly or indirectly, through or from any business connection in India, or through or from any property in India, or through or from any asset or source of income in India, or through the transfer of a capital asset situate in India.

<sup>17</sup> PRESS RELEASE NO. 402/92/2006-MC (04 OF 2010), DATED 20-1-2010

<sup>18</sup> Income Tax Act 1961, Section 230

<sup>19</sup> <https://www.thehindu.com/business/Without-PAN-foreign-IPL-cricketers-may-lose-one-fifth-of-earnings-as-tax/article16299444.ece>

<sup>20</sup> PRESS RELEASE NO. 402/92/2006-MC (04 OF 2010), DATED 20-1-2010

in both countries the NRI cannot withhold higher taxes.<sup>21</sup> DTAA allows an NRI to reduce its fiscal effect on India's income. Also, DTAA reduces tax evasion instances.

### **DTAA provisions of India-UK:**

In the country in which the activities are exercised, Article 18<sup>22</sup> of the said Treaty shall apply taxation on income derived by entertainers or athletes from their personal actions as such. Thus, the revenue derived from activities carried out in India by sportsmen residents of the UK is taxable in India and vice versa. The non-residents in the United Kingdom are taxed at the same rate as their dolly rate residents.<sup>23</sup>

The revenues derived by UK residents on activities performed in India shall be excluded from the taxation of India, provided the visits of the entertainers or athletes by the government of the UK, or by a political subdivision or local authorities, are supported wholly or substantially in connection with public funding.

### **India-US provisions DTAA:**

In accordance with Article 18<sup>24</sup> of the said Treaty, revenue derived from his personal activities in India, as entertainers or athletes, by a residing in the USA may be charged to India where the net income derived from such activities by such an entertainer is deducted from all expenses incurred by him in relation to his visits and performances by such entertainers or athletes; DTAA Article 18 states that If the revenue is more than \$ 1,500, then in the country of performance the full amount is taxable.<sup>25</sup>

If a sportsman receives income less than the above amount, he may nonetheless be taxed in accordance with the other article of this Convention if that article meets the condition.

Without any amount or time limit the general OECD model permits the taxation of such income in the country of performance. But the U.S. introduces the \$1,500 threshold.

As it is not possible to ascertain if the total revenue will be over \$ 1,500, the country of performance cannot retain a tax on such income at any rate under this convention. Thus, if a US athlete carries out a retaining tax in India, it is to be withheld as provided for in Section 194E, for example.

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<sup>21</sup> "How NRI can claim benefits under DTAA" <https://cleartax.in/s/how-nris-can-claim-benefits-under-dtaa> Last Accessed 21st May 2021

<sup>22</sup> No. GSR 91(E), dated 11-2-1994

Article 18-Agreement for avoidance of double taxation and prevention of fiscal evasion with United Kingdom of Great Britain and Northern Ireland

<sup>23</sup> Daniel Sandler, *supra* note 10, at p. 227; Daniel Sandler, *The Taxation of International Entertainers and Athletes: All the World's a Stage* 181 (Kluwer Law International, 1995), at p. 181.

<sup>24</sup>No. GSR 990(E), dated 20-12-1990 Article 18 of INDIA US DOUBLE TAXATION AVOIDANCE TREATY No.

<sup>25</sup> Commentaries on the Articles of the United Nations Model Double Taxation Convention between Developed and Developing Countries, *Commentary on Article 14*, Paragraph 1, at p. 215.

In addition, the article does not apply to performances such as producers, managers, technicians, physiographers, coaches etc.

Earnings derived by US residents on activities in India will not be imposed in India when their visits are wholly or substantially supported by public funds or the political subdivision or local authority of the Government of the United States, or by an entertainer or athlete.

### **APPLICABILITY OF DTAA ON TAXATION OF NON RESIDENT SPORTSMEN**

The Dual Tax Avoidance Agreement can prevent non-resident sportsmen paying double tax. Non-resident athletes usually live outside India but gain revenues in India. In such cases, Indian income may attract taxes both in India and their country of residence. This means that taxes on the same income are to be paid twice. The Double Tax Aviation Agreement (DTAA) has been implemented to avoid this.<sup>26</sup>

To reimburse non-resident sportspeople in the Treaty, a tax residence certificate (TRC), along with all other documents and information as prescribed, must be supplied to the non-resident sportspeople.<sup>27</sup> For non-residents the application of the Double Taxation Avoidance Agreement (DTAA) must be considered in addition to the provisions of the Income-tax Act 1961.<sup>28</sup> The provisions of treaty or the Act whichever is beneficial for such person shall apply.<sup>29</sup>

Recently supreme court in the case of *Pilcom v. CIT* ruled that In accordance with Article 194E of the Act, the obligation to deduct a tax at the Source shall not be affected by the DTAA and the amount in question shall always be offered to refund by interest when the tax obligation is contested by the assessee whose deduction is made, the benefit of DTAA may be argued and if the case is drawn up. But it alone cannot relieve Section 194E of the Act of its responsibility."<sup>30</sup>

### **CONCLUSION**

Understanding the context behind the rise of sports as a pastime in India is critical. In contrast to developed countries, the level of investment in sports in developing countries is remarkably lower. In the case of sports people who are non-citizens and non-residents pursuant to Section 115BBA, the Income Tax Act 1961 provides for a concessional taxation regime. This provision shall cover revenues received by means of participation in any game or sport, advertising or article contribution in any newspaper, etc. If any income referred to in Section 115 BBA is payable to a sportsman who is a non-resident (including an athlete) who is not an Indian citizen or an organization for sport who is not a resident), the payer shall, when such income is credited to or paid in cash or by cheques or

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<sup>26</sup> Neeraj Bhagat & Co, "GST & Income Tax Implication on Non-Resident Sportsmen Coming to India", 27 Apr 2020

<sup>27</sup> Section 90/90A OF The Income Tax Act, 1961 Double Taxation Relief

<sup>28</sup> CIRCULAR NO. 787 OF 10.02.2000

<sup>29</sup> CA Arun Valera, "Taxation of Artistes, Entertainers and Sportspersons" 3<sup>RD</sup> MAY 2019

<sup>30</sup> *PILCOM v. CIT [2011] 198 Taxman 555 (Cal.) [2011] 198 Taxman 555 (Cal.)*

pay it in cash. So, it's like that. Nobody, not even the sports people we all love to watch while they are playing, is saved by the income tax law.<sup>31</sup>

In sum, a central legislation to regulate the behaviour of sportspeople, sportsmen and officials in India is strongly needed. In view of the sheer economics involved in sport today and the move towards professionalization, it is also necessary to further strengthen the legal specialization in the field of sports. In the coming years, contractual and legal disputes in the field of sport will increase, and given the singular nature of sport as a profession and the life of sportsmen, disputes will likely lead to emerging situations. In addition, effective government monitoring and control is very important to ensure a systematic and healthy development of the sports sector.<sup>32</sup>

Almost all the countries of the athlete have the same taxation system, meaning income is taxed in the performance country, except the United States treaty, in which an income threshold of \$1,500 is imposed.

If strictly applied, Article 17 will constitute a barrier in the exchange of culture between countries. Contracting States shall therefore be free to amend the agreement as appropriate and the States shall amend the treaties in a manner to establish healthy relations.

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<sup>31</sup> Ishan Rana, "The Burden of Tax Over Sporting Income – An Analysis" Lex Forti Legal Journal, volume I Issue III, 2019

<sup>32</sup> Ishan Rana, "The Burden of Tax Over Sporting Income – An Analysis" Lex Forti Legal Journal, volume I Issue III, 2019