

Critical Issues in the Taxation of Individuals' Global Mobility and the Interplay of Double Taxation Avoidance Agreements (DTAAs)

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Global mobility involves the cross-border movement of employees, professionals, executives, and business personnel for work assignments, projects, secondments, transfers, or remote work. Previously, it often meant sending employees abroad for fixed periods. Today, it encompasses extended expatriate postings, short business trips, cross-border secondments, international transfers, commuter roles, remote work from abroad, virtual assignments, and global talent hiring.

With multinational expansion and the rise of remote work, global mobility has become central to international tax and workforce strategy. Managing it requires coordinating cross-border employee movement for both short-term and permanent roles. From a tax perspective, this includes employment law, immigration, payroll, personal taxation, social security, transfer pricing, corporate tax, and navigating Double Taxation Avoidance Agreements (DTAAs). At its core, global mobility raises a fundamental question:

When an individual works across borders, which country has the right to tax their income, to what extent, and how is double taxation avoided?

Resolving this requires more than identifying the country issuing the paycheck. It involves assessing residential status, work location, employer, income source, treaty provisions, foreign tax credits, payroll obligations, and the relevance of permanent establishment and transfer pricing rules.

Residence and the Source of Salary

An individual may be a resident of India in one year and a non-resident in another. The question is whether a change in residential status alters taxability or leaves it unchanged. Determining an individual's residential status is, therefore, the starting point for testing the taxability of their income. If the individual is a resident, India taxes their global income under Section 5(1) of the Income-tax Act, 2025. If the individual is a non-resident of India, taxability is limited under Section 5(2) to income received or deemed to be received in India, or income that accrues or arises, or is deemed to accrue or arise, in India. Thus, the taxation of mobile employees depends on the interplay between residential status and the source of income.

Under Section 6 of the Income-tax Act, 2025, a person is a resident of India if they are in India for 182 days or more in a tax year, or for 60 days in that year and 365 days in the preceding four years. For Indian citizens or Persons of Indian Origin (PIO) visiting India, the 60-day threshold extends to 182 days (or 120 days if Indian-sourced income exceeds ₹15 lakhs).

If an individual is a resident of both contracting states under domestic tax law, the DTAA provides a residency test based on the tie-breaker. Another critical concept is 'split residency', often utilised in the year of relocation. While Indian domestic law under the Income-tax Act, 2025, determines residential status for the entire financial year as a single, indivisible unit, DTAAs allow for a more granular application. As seen in *Raman Chopra v. Dy. CIT [2016] 69 taxmann.com 452 (Delhi - Trib.)*, the treaty tie-breaker tests under Article 4(2) can be applied to specific periods within a tax year. This allows a taxpayer to be a resident of one country for part of the year and another for the remainder, effectively shielding foreign-sourced income earned during the non-resident period from Indian taxation, despite having a 'Resident and Ordinarily Resident' (ROR) status under domestic law for the full year.

In *Binny Bansal v. DCIT [2026] 182 taxmann.com 226 (Bangalore - Trib.)*, the decision emphasises that the 'centre of vital interests' test is increasingly qualitative rather than merely quantitative. If an individual has physically relocated and established a home abroad, deep-rooted economic ties, such as significant immovable property, active business involvement, or substantial loans to Indian entities, can result in the individual being deemed

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a treaty resident of India. A distinction is drawn between 'active' economic engagement (running a business) and 'passive' investments (bank accounts or mutual funds), with the former carrying significantly more weight in residency disputes.

A change in residential status also has practical consequences. For returning NRIs, it is advisable to redesignate NRE/NRO accounts as resident accounts immediately to avoid compliance defaults, noting that interest on NRE accounts becomes taxable immediately upon a change in residency status.

Once residential status is settled, the next question is where the salary is earned. Section 9(3)(a) of the Income-tax Act, 2025 (corresponding to Section 9(1)(ii) of the Income-tax Act, 1961) provides that income under the head "Salaries" is deemed to accrue or arise in India if it is earned in India. The statute clarifies that salary for services rendered in India is treated as income earned in India, irrespective of the place of receipt or the residential status at the time of receipt. Salary income, including ESOP perquisites, is therefore deemed to accrue in India if earned for services rendered in India. Since salary is taxed on a due basis, it will be deemed to accrue or arise in India if the service is rendered there.

The courts have strictly interpreted this 'place of performance' test to require physical presence. In the landmark ruling of *Clifford Chance vs. Deputy Commissioner of Income-tax vs. Circle 2(6) vs. Mumbai/[2009] 176 Taxman 458 (Bombay)/[2009] 318 ITR 237 (Bombay)/[2009] 221 CTR 1 (Bombay) [19-12-2008]*, the Hon'ble High Court held that for a non-resident to be taxed, services must be rendered in India. This 'territorial nexus' is vital. Similarly, in *Santanu Sanyal vs. ACIT [2024] 165 taxmann.com 390 (Kolkata - Trib.) [23-07-2024]*, it was held that foreign allowances received by a non-resident for services rendered outside India do not fall within the scope of total income under Section 5(2), even if paid by an Indian employer. This principle is further reinforced in *Kachana Raghunatha Reddy vs. DCIT/ACIT [2026] 189 taxmann.com 512 (Bangalore - Trib.)[12-08-2026]*, where the tribunal remanded the matter to verify services rendered in Korea, noting that salary for foreign services cannot be taxed in India merely because an Indian company has paid the salary and deducted TDS.

At the same time, commentaries on global mobility caution against automatically assuming that lump-sum living allowances or social security-related reimbursements are tax-exempt. In *Sun Outsourcing Solutions (P.) Ltd. v. CIT [2018] 92 taxmann.com 339*, it was clarified that payments intended to meet personal expenses or higher costs of living abroad constitute taxable perquisites and do not qualify for the 'official duty' exemption under Section 10(14)(ii) of the Income-tax Act, 1961 (corresponding to Schedule III (13) of the Income-tax Act, 2025).

ESOPs and Social Security: Income Spread Across Years and Countries

Two kinds of income pose special difficulty for mobile employees, because they build up over several years during which the employee may have worked, and been resident, in more than one country. These are ESOPs and social security benefits.

Under the Income-tax Act, 2025, the primary charging provision for ESOPs is Section 17(1)(d) (corresponding to Section 17(2)(vi) of the Income-tax Act, 1961). This section defines 'perquisite' to include the value of any specified security or sweat equity shares allotted or transferred, directly or indirectly, by the current or former employer, free or at a concessional rate. ESOPs are valued as perquisites at exercise, based on Fair



Market Value (FMV) under Rule 15 of the Income-tax Rules, 2026. Although vesting is not the taxable event, the option value increases even in years when the employee rendered services outside India. The challenge in ESOP taxation arises when the year of vesting and the year of exercise are different, and the individual is resident in the year of vesting and non-resident in the year of exercise, or *vice versa*.

The question, then, is which country has the right to tax when the option value increases during the years in which the employee rendered services outside India. The OECD publication "The taxation of employee stock options" states that:

> *"Where the employment services to which a stock-option relates have been provided in more than one State, an allocation rule is necessary for the application of Article 15 and Articles 23A and 23B. A logical allocation method would be to attribute the employment benefit attributable to a stock-option to services performed in a particular country in proportion to the number of days during which employment has been exercised in that country, to the total number of days during which the employment from which the stock-option is derived has been exercised."*

Indian courts have followed the same logic. The statutory valuation of ESOPs under Rule 15 of the 2026 Rules is often complicated by cross-border movement, and the judiciary resolved this by applying the 'vesting period' allocation. In *Assistant Commissioner of Income-tax vs. Circle-48(1) vs. Robert Arthur Keltz*

[2013] 35 taxmann.com 424 (Delhi - Trib.)/[2013] 59 SOT 203 (Delhi - Trib.) [24-05-2013], affirmed by the Delhi High Court, it was held that where an employee was in India for only part of the ESOP vesting period, only the proportion of the perquisite attributable to service rendered in India is taxable.

Conversely, if the services were rendered in India but the exercise occurs while the individual is a non-resident, India retains the right to tax the India-leg portion. In *Unnikrishnan V S vs. Income-tax Officer vs. International Taxation 4(3)(1) Mumbai [2021] 123 taxmann.com 238 (Mumbai - Trib.)[13-01-2021]*, the tribunal held that ESOP benefits relate to the time of grant and the period of service. Since the qualifying services were rendered in India, the income was taxable in India despite the assessee's non-resident status at the time of exercise.

The position becomes more complex when the employee changes residence during the vesting period. The OECD publication on "The taxation of employee stock options" addresses such multiple residence taxation, which says:

> *"Where an employee who is a resident of one State is taxed as a non-resident in another State, Article 23 provides relief from any double taxation. However, an employee might reside in different countries at the time an option is granted, at the time it vests, at the time it is exercised, and at the time the shares acquired with the option are sold. All of these countries may claim the right to tax as States of residence, and if each of them taxes the benefit from the stock option at the time the taxpayer is a resident of that country, there will be multiple residence taxation. While Article 23 deals with residence-source double taxation, it does not provide relief for all cases of residence-residence double taxation. The risks of multiple residence taxation may be compounded in the case of countries that have a "departure tax" on capital gains, i.e., countries that deem capital gains to be realised when a person ceases to be a resident or that maintain, through their tax conventions, a right to tax capital gains of former residents."*

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Social security contributions and benefits raise a similar problem of time and place. For tax purposes, the treatment of social security is complex due to the situs of accrual and the point of receipt. Employer and employee contributions are made in one year, but the right to receive benefits arises in different years. If the employee was resident in some years and non-resident in others during the contribution period, how will it be accrued during the contribution period and at the time of withdrawal of benefits?

The distinction between the 'accrual' of salary and its 'receipt' in India is vital for employees on deputation who may maintain NRE accounts. The situs of accrual for salary and related social security benefits is the place where services are rendered. If an employee works outside India, the right to receive salary and social security contributions arises outside India. Mere remittance of such funds into an Indian NRE account does not trigger taxability under Section 5(2)(a), as the 'first point of receipt' is the foreign location where the employee acquired the lawful right to the money. This supports the view that India should not tax mandatory foreign social security contributions solely because funds move through Indian banking channels.

Under the Income-tax Act, 2025, employer contributions to foreign social security funds are generally taxable as perquisites under Section 17(1)(h) because such funds typically do not qualify as 'approved' or 'recognised' funds under the Indian law. The specific ₹ 7.50 lakhs threshold under Section 17(1)(h) applies only to Indian statutory funds (RPF, NPS, and approved superannuation funds) and not to foreign funds. Employee contributions to foreign funds are generally ineligible for deduction under Section 123 or Section 124, as they are not 'notified' schemes. Withdrawals are taxable as 'profits in lieu of salary' under Section 18(1)(c)(ii) to the extent of the employer's contribution and interest.

However, Section 158 of the Income-tax Act, 2025 (corresponding to Section 89A of the Income-tax Act, 1961) provides critical relief for income accrued in a specified retirement account in a notified country. Under Rule 74 of the Income-tax Rules, 2026 (corresponding to Rule 21AAA of the Income-tax Rules, 1962), a resident who opened the account while being a non-resident can opt to defer Indian taxation until the year of withdrawal or redemption in the foreign country. This mechanism primarily addresses the timing mismatch in taxation.

Regarding retirement benefits, the judiciary aligns with the principle that past services rendered outside India while being a non-resident cannot be taxed in India upon receipt. In *Commissioner of Income-tax vs. Anant Jain [2012] 21 taxmann.com 19 (Delhi)/ [2012] 207 Taxman 117 (Delhi)[24-04-2012]*, the High Court held that retirement benefits received from a US employer for services rendered in the US were not taxable in India for a 'Not Ordinarily Resident'. For residents, Section 158 of the 2025 Act provides relief. In *Jignesh Naresh Jariwala vs. Deputy Director of Income-tax vs. CPC vs. Bengaluru [2025] 178 taxmann.com 233 (Mumbai - Trib.)/[2025] 214 ITD 585 (Mumbai - Trib.)[04-09-2025]*, the tribunal clarified that once an option is exercised via Form 10EE (now Form No. 40) in one year, it continues to apply to subsequent years. Relief cannot be denied on procedural grounds for not re-filing the form annually.

Relieving Double Taxation

Even after applying these rules, an employee on deputation may face double taxation due to the timing of accrual and receipt of income, the place

of rendering services, and residential status. To avoid double taxation, the employee can claim foreign tax credit (FTC) in the resident country. Under the Income-tax Act, 2025, FTC is available under Section 160. As per Rule 76 of the Income-tax Rules, 2026 (corresponding to Rule 128 of the Income-tax Rules, 1962), residents paying tax abroad can claim credit in India by filing Form No. 44 (corresponding to Form 67). The two areas where FTC matters most for resident employees on deputation outside India are ESOPs and social security benefits.

If ESOP income (perquisite value) is taxed in India (as salary) and in the foreign country (e.g., at vesting, exercise, or sale), the employee is eligible to claim foreign tax credit. DTAA articles on "Dependent Personal Services" (e.g., Article 15 of the India-UAE DTAA, Article 16 of the India-USA DTAA, Article 15 of the India-Germany DTAA), as seen in *Hewlett Packard India Software Operation (P.) Ltd., [2018] 91 taxmann.com 473 (AAR - New Delhi),* determine the taxing rights of the residence and source states for employment income, including ESOPs. DTAA provisions are crucial in determining whether ESOP income is taxable in the foreign country and, consequently, whether it is eligible for FTC in India. Since India and the foreign country may tax the same ESOP benefit in different years, the timing of the tax matters. The OECD publication on the taxation of employee stock option schemes states that:

> *"The provisions of the Convention that allow the State of source to tax particular items of income or capital do not provide any restriction as to when such tax is to be levied. Since both Articles 23 A and 23 B require that relief be granted where the State of source may tax an item of income or capital in accordance with the provisions of the Convention, it follows that such relief must be provided regardless of when the tax is levied by the State of source. The State of residence must therefore provide relief of double taxation through the credit or exemption method with respect to such item of income or capital even though the State of source taxes it in an earlier or later year. Some States, however, do not follow the wording of Article 23A or 23B in their bilateral conventions and link the relief of double taxation they provide under tax conventions to what their domestic laws provide. These countries, however, would be expected to seek other ways (the mutual agreement procedure, for example) to relieve the double taxation which might otherwise arise in cases where the State of source levies tax in a different taxation year."*

The same principles apply to social security benefits. As discussed earlier, employer contributions to foreign social security funds are generally taxable as perquisites in India, and withdrawals are taxable as 'profits in lieu of salary' under Section 18(1)(c)(ii) of the Income-tax Act, 2025. If these social security benefits (e.g., pension, lump-sum withdrawals) are received by a resident employee on deputation and are taxed in the foreign country, they would generally be eligible for foreign tax credit. The deferral relief under Section 158, discussed earlier, addresses the timing mismatch. Where social security benefits are taxed in India upon withdrawal and also taxed in the foreign country, the foreign tax paid on such benefits would be eligible for tax credit. For instance, in *Jaspal Singh Bindra vs. Deputy Commissioner of Income-tax, [2025] 170 taxmann.com 80 (Kolkata - Trib.)[19-11-2024],* the ITAT allowed FTC for pension income earned from a UK pension fund, taxed in the UK and also offered to be taxed in India. This case highlights that pension/social security benefits, when doubly taxed, are eligible for FTC.

Finally, the specific DTAA with the country of deputation would also play a significant role. Many DTAAs contain articles on "Pensions and Social Security Payments" that may allocate taxing rights or provide for credit. The more beneficial provisions of either the DTAA or the Income-tax Act would apply.

Conclusion

Taxing global mobility is now a complex mix of residential status, place of performance, source rules, DTAAs, ESOPs, social security, and foreign tax credits. To determine what is taxable, one must look not only at the employer's country and the country of residence but also at the place of performance, which plays a significant role in determining each country's taxing right. Ongoing issues include changes in residence during the year, ESOP taxes after working in different countries, and social security that covers several countries and years. These factors can cause timing differences, double taxation, and extra compliance work. The OECD notes that new types of cross-border and remote work bring more uncertainty. The challenges are not limited to the taxation of ESOPs or the taxation of social security benefits. Work-from-anywhere and digital automation have fundamentally altered the global work landscape. Multinationals implementing work-from-anywhere policies face complex mobility compliance challenges, such as tracking employees' location (i.e., their physical presence). Because of digital automation, it is sometimes very difficult to track where the employee is rendering services. Further, the concept of an employer has been the subject of significant judicial interpretation in India. Tax authorities and courts have adopted an economic employer test, i.e. looking beyond the formal legal arrangement to identify who bears the economic risk, exercises control, and derives the benefit of employees' services. Another challenge is the risk of creating a permanent establishment (PE) in the other contracting state. Deploying employees outside India may create a PE in that country if the conditions in Article 5 of the OECD Model Convention are met. To make global mobility taxation effective, the Government should implement robust foreign tax credit systems and effective dispute-resolution mechanisms. In the end, global mobility is not just about the movement of people, but also income, tax rights, duties, and risks, making it a key topic in international tax.

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