

India

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1. Types of tax

1.1 Inheritance tax

There is no estate duty (inheritance tax) payable in India. Estate duty on property that is passed on to the legal heirs on death of a person was removed in 1985. Prior to removal, estate duty was payable on a slab basis ranging from 7.5% to 40% of the principal value of the estate. In 2012, this topic had gained prominence as there were news reports that the Indian Government was thinking of reintroducing this levy, but no formal proposal has been tabled before the Parliament.

1.2 Gift tax

Until 1998, gift tax was levied on donors in India on transfer of any existing movable or immovable property without consideration, at the rate of 30%. In 2004, taxation on transfer without consideration or inadequate consideration (together referred to as gift) was reintroduced in the form of income tax in the donee's hands on receipt of gift, albeit with certain exceptions. However, the tax exemption on transfer of property by way of gift to the transferor continues.

The following specified gifts, when received by any individual, company, trust, partnership firm or limited liability partnership are taxable at the applicable rates (see Section 3):

- Any sum of money received without consideration
- Any other property as mentioned below, received without consideration or for consideration less than its fair value:
 - Immovable property
 - Shares and securities
 - Jewelry
 - Archaeological collections
 - Drawings
 - Paintings



- Sculptures
- Any work of art
- Bullion

In cases involving gifts of property, the difference between the fair value and the consideration paid by the donee, if any, is taxable for the donee. The methodology for determining the fair value of the property has also been specified under income tax law.

Certain categories of gifts are exempt for the donee from such income tax, which are listed below:

- Gift received of value not exceeding INR50,000
- Gift received from relatives (such as spouse, brother or sister of individual, parents of individual or spouse, etc.)
- Gift received on occasion of marriage
- Gift received from will or inheritance
- Gift received in contemplation of death of the donor
- Gift received from an individual by a trust created solely for the benefit of the relatives of such individual
- Gift received from or by any registered charity trust or institution

On the subsequent transfer of the asset received by the donee as a gift, the difference between the sale consideration and the cost of such asset is taxable in the hands of the donee as capital gains. The cost of acquisition would differ in the following two scenarios:

- *Where the donee had paid income tax on receipt of gift* – the cost of acquisition would be the fair market value (FMV) of such asset on which the donee had paid income tax.
- *Where the donee had not paid income tax on account of such gift being exempt* – the cost of acquisition would be the same as the cost of acquisition of such asset in the hands of the previous owner (i.e., the donor).

There was a specific exemption from long-term capital gains tax on transfer of listed company shares (which are a long-term capital asset) on a stock exchange provided securities transaction tax (STT) was paid both at the time of purchase and sale of those shares. This exemption stands withdrawn and long-term capital gains on sale of listed company shares on stock exchange after 1 April 2018 are subject to tax @10%.

Transfer of non-quoted shares for less-than-prescribed FMV attracts notional taxation.

1.3 Real estate transfer tax

From the estate and succession perspective, no real estate transfer tax is levied in India. However, transfer of real estate in India may be subject to income tax and stamp duty (discussed below in greater detail).

1.4 Endowment tax

India does not levy endowment tax.



1.5 Transfer duty

Transfer of movable and immovable property is subject to the following duty and tax:

Stamp duty

Stamp duty is paid in respect of a transaction executed through a document or instrument under the provisions of the Indian Stamp Act of 1899 (central law governing the country) or the State Stamp Acts. Stamp duty is applicable on transfer of movable and immovable property and also on various other transactions, e.g., lease, conveyance, mortgage, partitions, transfers and order passed by the National Company Law Tribunal (NCLT) to sanction a scheme of arrangement.

Payment of accurate stamp duty on instruments gives them legality. Such instruments have evidentiary value and can be admitted as evidence in a court of law.

The rate of duty is generally calculated on an *ad valorem* basis depending on the nature of the instrument and the state where it is executed. Typically for immovable property, this duty is payable in the state where the property is located. The rates of stamp duty on instruments related to the transfer of immovable property vary from 3% to 10% on the FMV of the property.

Stamp duty on transfer of shares of an Indian company is levied at 0.25% of the value of the transaction. However, if the shares are transferred under the depository mechanism, no stamp duty is payable on such transfer of shares.

No stamp duty is required to be paid for executing a will or a codicil. Also, no stamp duty is levied on inheritance of property by the legal heirs. Generally, stamp duty is payable on settlement of property into a trust and distribution of the assets of the trust to the beneficiaries.

1.6 Net wealth tax

The Finance Act 2015 abolished the levy of wealth tax in India with effect from 1 April 2016. This means that the return of wealth need not be filed for the financial year 2015-16 and thereafter.

2. Who is liable?

As mentioned above, there is no inheritance tax in India. Regarding income tax, the extent and scope of Indian income tax liability depends on the residential status of the individual. For income tax purposes, an individual may be resident, nonresident or not ordinarily resident.

2.1 Residency

An individual is treated as resident in a year if present in India:

- For 182 days during the year (1 April to 31 March)
- Or
- For 60 days during the year and 365 days during the preceding 4 years

Individuals fulfilling neither are nonresidents. (The rules are slightly more liberal for Indian citizens residing abroad or leaving India for employment abroad.) A resident who was not present in India for 730 days during the preceding 7 years or who was nonresident in 9 out of 10 preceding years is treated as not ordinarily resident. Residents' worldwide income is taxable. Nonresidents are taxed only on income that is received in India or that arises or is deemed to arise in India. A person not ordinarily resident is taxed like a nonresident but is also liable for tax on income accrued abroad if it is from a business controlled in or a profession set up in India.



2.2 Domicile

3. Rates

There is an additional levy of 10% on receipt of a dividend exceeding INR1 million declared by a company in the hands of shareholders who are residents (except if shareholder is a domestic company or specified institution).

India does not have any inheritance tax.

As mentioned above, there is no inheritance tax in India. With respect to income tax, all income is taxed using a fiscal tax year from 1 April to 31 March. All taxpayers, including nonresidents, must file a return of income in India if they have income that is subject to tax in India.

Nonresidents are subject to the same filing requirements as residents. However, nonresident citizens (including persons of Indian origin) who have only certain types of investment income need not file returns if the required tax is withheld at source. Nonresidents are subject to assessment procedures in the same manner as residents.

Upon the death of an individual, his or her income is taxable for his or her legal representative as it would have been taxable for the deceased had he or she not died. The liability of a legal representative is limited to the extent to which the estate is capable of meeting the liability.

7. Trusts, foundations and private purpose funds

The Indian Trusts Act of 1882 governs the constitution of trusts, which can be set up as either:





10.2 Succession

The rules of succession differ for different religions:

- ▶ Succession to the property of Hindus is governed by the provisions of the Hindu Succession Act 1956.
- ▶ Succession to property of Muslims is governed by Muslim law, which is not yet codified but is based on religious texts (Sunni and Shia laws).
- ▶ Succession of persons other than Hindus, Muslims, Buddhists, Sikhs or Jains is governed by the Indian Succession Act 1925.

10.3 Forced heirship

There is no concept of forced heirship in Indian succession laws in respect of self-acquired properties. However, certain laws, such as Muslim law, are exceptions to this rule.

10.4 Matrimonial regimes and civil partnerships

The Indian law does not recognize civil partnership. Matrimonial rules vary depending on religion. Generally, prenuptial agreements are not recognized under the Indian legal system.

10.5 Intestacy

Under the Indian Succession Act, the order of succession that is prescribed for distribution of property upon death of the deceased who dies intestate is as follows:

- ▶ If there is no spouse or lineal descendant, the estate passes to the state according to the doctrine of escheat.
- ▶ If the deceased leaves behind a spouse and lineal descendants, the spouse will be entitled to one-third of the estate, while the remaining two-thirds will be divided between the lineal descendants.
- ▶ If the deceased leaves a spouse and persons who are kindred to him or her, but no lineal descendant, the spouse inherits half of the estate and those who are kindred shall inherit the other half.
- ▶ If the deceased leaves behind a spouse, but no lineal descendants or persons who are related to him or her, then the whole estate passes to the spouse.

Similarly, the Hindu Succession Act 1956 and Muslim law also contain rules for distribution of property where a person dies intestate.

10.6 Probate

A will for which no probate has been obtained cannot be used to prove that any person named therein is entitled to the estate of the testator. However, the absence of probate does not debar the executor from dealing with the property of the deceased, e.g., collecting assets or selling property to pay debts.

11. Estate tax treaties

India has entered into an inheritance tax treaty only with the United Kingdom. Under the treaty, inheritance tax would not be imposed in the United Kingdom on the death of an individual who is not domiciled in the United Kingdom at the time of his death but is domiciled in India, in respect of his assets situated outside the United Kingdom.