

# India

## Contacts

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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 an individual are taxable in his or her hands at the rate applicable to him or her (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

Prior to the enactment of Finance Act 2017, receipt of shares of closely held companies without consideration or inadequate consideration by a closely held company or partnership, firm or limited liability partnership was also subject to taxation in the hands of the recipient. However, the Finance Act 2017 has widened the scope of the taxation of gifts to include specified gifts (as mentioned above) received by any person to be taxable in the hands of the recipient.

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.

As mentioned above, 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

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 is a specific exemption from long-term capital gains tax on transfers of listed company shares (which are a long-term capital asset) on a stock exchange if the securities transaction tax (STT) has been paid. The Finance Act 2017 restricts this exemption to transfers of only those listed company shares that were acquired prior to 1 October 2004 or for which the STT has been paid or which are notified by the Central Government.

The Finance Act 2017 also provides for notional taxation if non-quoted shares are transferred for less than the prescribed FMV.



### 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 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.

Prior to its abolishment, wealth tax in India was payable at 1% if the taxable value of an individual's net worldwide wealth exceeded INR3 million. Such tax was levied on net wealth as calculated on 31 March of every year. However, if the individual was a foreign citizen, nonresident or resident but not ordinarily resident (see Section 2.1 for rules of residency), exemption from wealth tax was available on assets located outside India.



## 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 four 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 seven years or who was nonresident in 9 out of 10 preceding years is treated as not ordinarily resident. Residents are taxable on worldwide income. 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 accruing abroad if it is from a business controlled in or a profession set up in India.

### 2.2 Domicile

Taxation in India is not governed by rules of domicile.

## 3. Rates

Individuals are taxed on income arising in a financial year (1 April to 31 March) at the specified slab rates, with the highest slab being 30%. When the total income of such individual exceeds INR10 million, a 15% surcharge on the total tax liability of the individual is applicable. Under the Finance Act 2017, a surcharge of 10% is levied on the total income of an individual that is more than INR5 million but less than INR10 million. An additional levy of 3% on the total tax liability is applicable on income tax toward education cess.

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 individuals, a Hindu Undivided Family, firms or limited liability partnerships. The Finance Act 2017 has widened the applicability of the additional tax on dividends exceeding INR1 million to all resident persons (except domestic companies and specified institutions), including discretionary trusts.



## 4. Exemptions and reliefs

India does not have any inheritance tax.

## 5. Filing procedures

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 chargeable to tax in India.

Resident and ordinarily resident individuals who have an asset (including a financial interest in an entity) located outside India or signing authority in an account outside India must file a return even if they do not have any taxable income. They are also required to provide details of foreign bank accounts and assets located outside India in their return of income.

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.

## 6. Assessments and valuations

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.

The income from the estate of a deceased person is also chargeable to tax in the hands of the executor(s) as a representative assessee, prior to its distribution to the legal heirs. Such tax paid can be recovered by the executor from the estate of the deceased.

## 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:

- ▶ Discretionary trust: where the trustee has discretion with respect to income or corpus on how to distribute (whether, when and how much) and to decide on the extent of distribution to each beneficiary
- Or
- ▶ Determinate trust: where the settlor fixes the entitlement of the beneficiaries, and the trustees have little or no discretion

### Taxation of trust

The rules governing taxation of a trust are quite complex. The taxability of a trust is dependent on the residential status of a trust, which is a fact-specific exercise.

The income of a trust is taxable for the trustee as a representative assessee of the beneficiary. However, in certain cases, tax authorities may tax either the trustees or the individual beneficiary directly.



### Taxability on settlement of property in a trust

Settlement of property in a trust is not taxable for the settlor. Since Indian tax law envisages taxability in the hands of the recipient on receipt of a gift, there may be tax implications for the trust or beneficiary on settlement of property in a trust, depending on the facts of the case.

### Taxability of income earned or generated by a trust

The Indian tax law governing taxability of income earned by a trust depends on the nature of trust.

Nature of trust	Tax rate
Discretionary trust	<p>Income is taxable at the maximum marginal rate.</p> <p><i>If the beneficiaries are individuals:</i></p> <ul style="list-style-type: none"> <li>▶ 30.9% (if the individuals earn less than INR5 million) or 33.99% (if the individuals earn more than INR5 million but less than INR10 million) or 35.53% (if the individuals earn more than INR10 million).</li> </ul> <p><i>If the beneficiaries are domestic companies:</i></p> <ul style="list-style-type: none"> <li>▶ 33.06% (if the domestic companies earn more than INR10 million but less than INR100 million) or 34.61% (if the domestic companies earn more than INR100 million)</li> </ul>
Determinate trust	Income is generally taxable at the tax rates applicable to each beneficiary, except when it includes income from business (in which case it is taxable at maximum marginal rate).

### Taxability on distribution by a trust to the beneficiaries

Typically, at the time of distribution by the trust to the beneficiaries, no tax should arise. However, that depends on the facts of the case. There could, for example, be taxation in the hands of beneficiaries on receipt of a trust fund/corpus.

### Exchange control regulations governing trust

While India allows current account convertibility, full capital account convertibility is not allowed. Various restrictions are imposed on cross-border transactions. Due to possible complexity, attention should be given to settlement of trusts involving a nonresident.

## 8. Grants

There are no death grants in India.

## 9. Life insurance

Premiums paid for securing a life insurance policy for oneself, his or her spouse or his or her child of an amount not exceeding INR150,000 are allowed as deductions while computing the taxable income of an individual. Any sum received under a life insurance policy on death of a person is tax-exempt.





## 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.