

A SHORT NOTE ON TAXATION OF MONEY GIFTS BY RESIDENT INDIANS TO NON-RESIDENT INDIANS IN USA

- Manikanda Prabhu J, Trainee, SAPR Advocates

India has the largest Diaspora base with whopping 18 million persons living abroad,¹ thereby; the taxation of remittances and gifts becomes significant. This note answers a common question *vis-a-vis* the taxation of gifts in a situation where an Indian resident gifts money *i.e.* dollars to a close relative in USA. **For example, Indian parents sending gifts to their children working or studying abroad.**

Currently as per the prevailing tax laws of each country:

In India, the donee (recipient) is taxed on gifts u/S 56(2)(x) of the Act with exemptions for close relatives.

In USA, the donor is taxed on gifts (beyond a threshold).

Thus, a gift to a non-resident close relative (subject to restrictions) can escape gift tax both in India and the USA.

One interesting point to note is that a gift to a *non-relative* is held to tax in India whether recipient is resident or non-resident u/S. 56(2)(x) of the Act (or such other sub-section in S.56(2) which has been amended from time to time). *However*, there was controversy over this in the case of a gift to a non-resident not being a close relative as it was held to the amount is not taxable in India as it was not deemed to accrue/arise in India when given to a non-resident and thus fall out of the Scope of Income chargeable to Income Tax u/S.5 of the Act. To address this the Government introduced S.9 (1) (viii) w.e.f. 1st July 2019 where gifts to non-residents were held deemed to accrue or arise in India and hence taxable u/s 56(2)(x) of the Act with exemption being given to close relatives.²

Note that the non-resident recipient has to file a Form 3520 in the USA to inform IRS of gifts more than 100,000\$ in the fiscal year.³ And, from India, the donor can send only up to a limit of \$250,000 per Indian fiscal year under the Liberalized Remittance Scheme.⁴

¹ International Migrant Stock 2019, Population Division, Department of Economic and Social Affairs, United Nations (published on 17th September 2019, New York)
<https://www.un.org/development/desa/en/news/population/international-migrant-stock-2019.html>.

² S.9(1)(viii) inserted vide Finance Act (No.2), 2019 r.w 2(24)(xviii) r.w. Proviso to S.56(2)(x)(c),

³ *Instructions for Form 3520 2018, Annual Return to Report Transactions with Foreign Trusts and Receipt of Certain Foreign Gifts*, Internal Revenue Service, Department of the Treasury, Federal government of the United States.

⁴ Master Direction - Liberalised Remittance Scheme (LRS), RBI/FED/2017-18/3 FED Master Direction No. 7/2015-16, Reserve Bank of India (Updated as on June 20, 2018).