



Relocation & Mobility and Estate Planning Panel

Knowledge Partner

NANUBHAI DESAI & CO.

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Relocation & Mobility for HNW Indian Families

Panel Discussion @ PCD Dinner
On 19th February 2020
Venue: The St. Regis, Mumbai



PANELISTS



Kuntal Dave

Kuntal is experienced Chartered Accountant with over 24 years of experience in the matters of Corporate Finance, advising clients on tax, attestation, foreign exchange and valuation matters. He is actively involved in assisting and advising clients on various aspects of cross border transactions affecting international tax, commercial laws and regulatory compliances.



George Campanellis

George Campanellas is the Director General of Invest Cyprus and the Vice President of the Cyprus Investment Funds Association (CIFA). He has nearly twenty years of professional experience in Cyprus and abroad, working with the DG Competition in Brussels and directly with the Cypriot Ministers of Health and Energy, Commerce, Industry & Tourism. Mr Campanellas has been actively involved with the development of the oil & gas sector in the Cyprus EEZ, dealing with licensing, exploration and exploitation activities, as well as promoting bilateral and multilateral cooperation at a regional level. Throughout his career, he also had an active role in drafting the regulatory framework and running the relevant licensing procedures for attracting FDI in sectors of strategic importance and large-scale infrastructure projects, such as the LNG terminal at Vasilikos Energy Center, Cyprus Techno Park, Euro Asia Interconnector and the City of Dreams Mediterranean, Europe's largest integrated casino resort and Cyprus' largest FDI project.



Mohammed Asaria

Mohammed Asaria is Managing Director and Board Member of Range Developments, an international luxury hospitality development company that develops luxury resorts in the Eastern Caribbean under Citizenship-by-Investment programs. Born and raised in England, Mr. Asaria has a dual background in law and investment banking. A graduate of Trinity College, Cambridge, he began his career at Lovells, the international law firm. An interest in structured finance and investment banking led him to move to HSBC prior to founding Range Developments, the company that has grown to become the leading Citizenship-by-Investment developer in the Eastern Caribbean.

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Data and Statistics



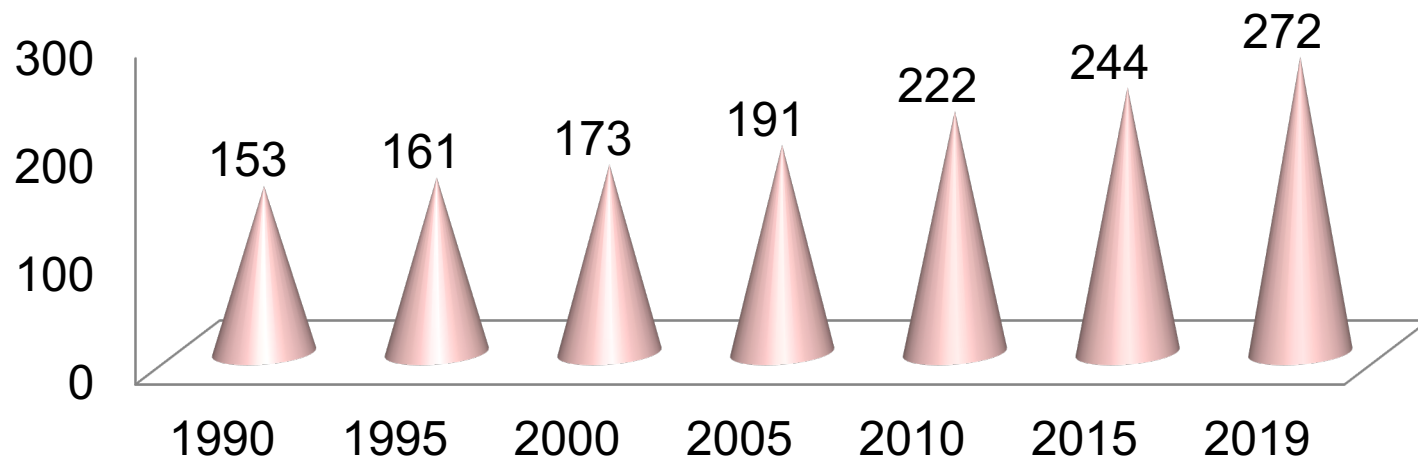
Recent Changes to Residency Rule at India



Immigration & Challenges for Indian HNIs

Data and Statistics

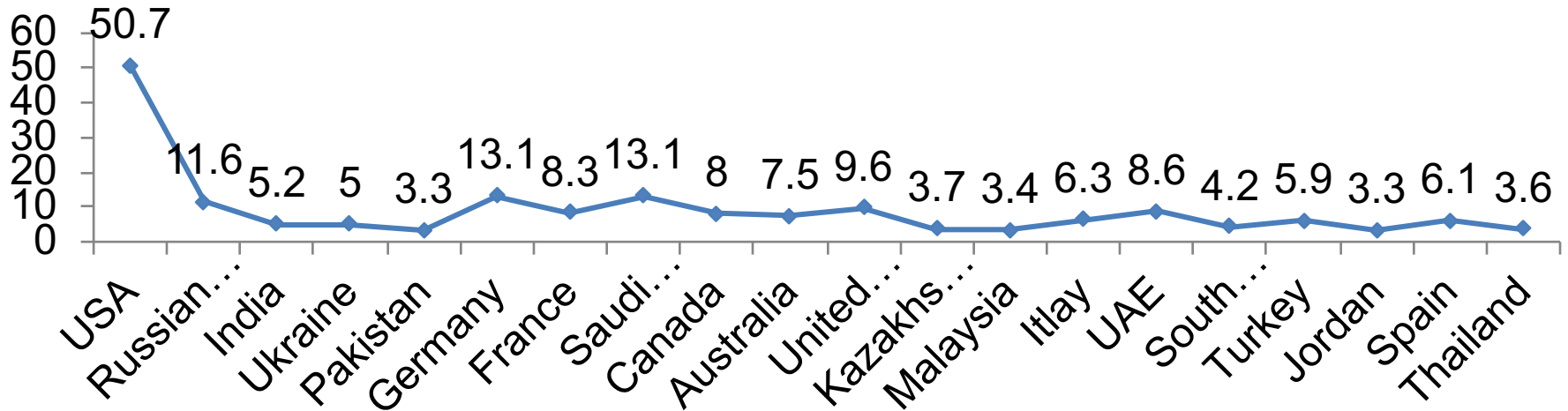
272 million international migrants in 2019 out of a global population of 7.7 billion.



■ Source: United Nations

Data and Statistics Cont'd

Twenty countries or areas hosting the largest numbers of international migrants (millions) in 2019



Source: UN DESA, 2019

Data and Statistics Cont'd

INDIA

- According to a UN report India has topped the list of people living abroad at 17.5 million.
- The number of Indians migrating to the UK increased by 11 per cent in 2019.
- In 2018 alone, India has lost the highest percentage of high net worth individuals (HNIs) (5000 people) those with net assets of more than \$1 million to migration.
- For Dec 2019, Outward Remittance under the LRS is USD 1,563.72 million out of these most of the money was sent abroad for Education &

UK

- In the year ending June 2019, net migration to the UK was 212,000, over the year, 609,000 people moved to the **UK (immigration)** and 397,000 people left the **UK (emigration)**.
- London has the largest number of migrants among all regions of the UK.
- India is the country of birth for 8.9% of all foreign-born persons living in UK.

GENERAL

- The global number of international migrants has grown faster than the world's population.
- The share of International migrants in the total population has increased from 2.8% in the year 2000 to 3.5% in 2019.
- Europe hosted the largest number of international migrants (82 mn), followed by Northern America (59 mn) and Northern Africa and Western Asia (49 mn).

UAE

- United Arab Emirates hosted the largest numbers of migrants worldwide (around 9 mn).
- The number of Indians migrating to the UAE 2019 is 3.3 mn.
- Indians are also the largest expat representation in the UAE, accounting for over 27 per cent of the population.

Recent Changes to Residency Rule in India

PRESENT RULES	PROPOSED RULES (Finance Bill, 2020)
<u>Resident</u> <ul style="list-style-type: none"> Physical presence ≥ 182 days in current PY; or Physical presence ≥ 365 days in last 4 PYs & 60 Days in current PY <ul style="list-style-type: none"> For Citizen of India/PIO: <ul style="list-style-type: none"> Being outside India; Comes on a visit to India in the current PY 	<u>Resident</u> <ul style="list-style-type: none"> Physical presence ≥ 182 days in current PY; or Physical presence ≥ 365 days in last 4 PYs & 60 Days in current PY <ul style="list-style-type: none"> For Citizen of India/PIO: <ul style="list-style-type: none"> Being outside India; Comes on a visit to India in the current PY, 60 days to be read as 120 days.
<u>Resident but Not ordinarily resident</u> <ul style="list-style-type: none"> Non resident in 9/10 preceding PYs, or; < 729 days /7 preceding PYs 	<u>Deemed to be resident</u> <ul style="list-style-type: none"> An individual, being a citizen of India, shall be deemed to be resident in India in any previous year, if he is not liable to tax in any other country or territory by reason of his domicile or residence or any other criteria of similar nature.
	<u>Resident but Not ordinarily resident</u> <ul style="list-style-type: none"> Non resident in 7/10 preceding Pys

Issues

- 'Resident' – under Act v/s Treaty Provisions
- 'Bonafide workers' to be protected
- Tax on income sourced at India?
- Maintain data/information of time spent
- 'Stateless person'? Comprehensive tax liability
- Divergent method for TRC

Immigration & Challenges for Indian HNIs

Countries	Qualification	Minimum Investment	Timeline
United Kingdom	<ul style="list-style-type: none"> The immigrant investor should be able to maintain and accommodate him/her and any dependents without taking any employment (outside of self employment or business). Make the UK his/her main home. Investors will need to spend 50% of their time in UK to maintain their visa status. 	<p>The higher the investment, the faster they will receive their stay for settlement.</p> <ul style="list-style-type: none"> £2 Million for Indefinite Leave to Remain (ILR) 5 years. £5 Million for ILR 3 years. £10 Million for ILR 2 years. 	<ul style="list-style-type: none"> Temporary residence Within 5-6 Months. Citizenship can be obtained after staying for 5 years or more.
Cyprus	<ul style="list-style-type: none"> Possess a valid passport. Holds no criminal record. Not to be included in the list of persons whose property is ordered to be frozen within the boundaries of the EU. Hold a permanent, privately owned residence in the Republic of Cyprus, the purchase price of which must be at least € 500,000 	<p>Investment of at least €2 Million in any of the following:-</p> <ul style="list-style-type: none"> The purchase or construction of buildings, land development projects. The purchase, creation or participation in businesses or companies that is based and operating in Cyprus. By investing in regulated funds of Republic of Cyprus for 3 years. 	<ul style="list-style-type: none"> Citizenship will be given within 3 months.
Portugal	<ul style="list-style-type: none"> Execute the required investment in one of the available investment options. Funds must originate from abroad; The applicant's name must not be included on the list of persons whose property is ordered to be frozen within the boundaries of the EU; Enter Portugal for the first time on a valid Schengen visa; Meet or exceed the minimum stay requirements (7 days for the first year, 14 days for subsequent 2-year periods). 	<ul style="list-style-type: none"> Acquisition of property by investing above €350,000 whether in new projects or for refurbished purpose; €280,000 or above in a low density populated area. Capital transfer of minimum €350,000 for purchasing shares in investment funds, venture capital or set-up of a commercial society or capitalization of existing companies with a minimum 5-job creation. Capital transfer for a minimum of €250,000 for investing in arts or reconstruction or refurbishment of national heritage. 	<ul style="list-style-type: none"> Temporary residence within 5-6 months. Citizenship will be granted after 6 years from the time of submission of application.

Immigration & Challenges for Indian HNIs

Countries	Qualification	Minimum Investment	Timeline
Grenada	<ul style="list-style-type: none"> • Be of outstanding character; • Hold no criminal record; • Have excellent health; • Have a high personal net worth. 	<ul style="list-style-type: none"> • Donate a minimum of USD 150,000 to Grenada's National Transformation Fund. • Investment in real estate development for a minimum of USD 220,000 for a family upto 4 (applicant, spouse and 2 dependent children). An extra US\$25,000 will be required for each additional dependent. 	<ul style="list-style-type: none"> • Issuance passport within 3-4 months
United States	<ul style="list-style-type: none"> • Be at least 22 years of age. • Show legal sources of assets and funds. • Choose from any of the investment options and must create employment for at least 10 qualified workers. 	<ul style="list-style-type: none"> • USD 1 Million, • USD 500,000 for Targeted Employment Area or Rural Area. 	<ul style="list-style-type: none"> • Green card Within 18-20 months. • Citizenship can be obtained after staying for 5 years or more.

Challenges for Indian HNIs

- Regulatory
 - FEMA : Ability to remit funds out of India (Pre-relocation, Post-relocation).
 - I. Tax Act : Residency Rule vis a vis Tax exposure at India.
 - : TCS @5% on LRS (Finance Bill, 2020)
 - : Tax Exposure & obligations at overseas jurisdiction (Post-relocation).
- Eligibility to (continue to) hold immovable property at India.
- Inheritance Tax for overseas Assets.
- Protection from foreign regulatory/enforcement authorities
- Access to Health Services

Standard Caveats

- *This presentation is solely based on independent study at Nanubhai Desai & Co., professional guidance is highly recommended from the concerned jurisdictional lawyers & Tax Consultants before investing outside India.*
- *The conclusions reached and views expressed in the note are matters of opinion. Our comments are based on our perception of the prevailing law and regulations. However, there can be no assurance that the authorities or regulators may not take a position contrary to our views.*
- *Legislation, its judicial interpretation and the policies of the regulatory authorities are also subject to change from time-to-time, and these may have a bearing on the comments that we have given. Accordingly, any change or amendment in the law or relevant regulation would necessitate a review of our comments and recommendations in this note. Unless specifically requested, we have no responsibility to carry out any review of our comments for changes in laws or regulations occurring after the date of issue of this note.*
- *In preparing this note, we have relied upon the relevant provisions of the Income Tax Act, 1961 (the Act), Foreign Exchange Management Act (FEMA) - as amended.*
- *Finally, neither this note nor any portions thereof shall be disseminated to third parties by any means, except as required by law, without prior written consent and approval of Nanubhai Desai & Co.*



***Thank
you***



INTERNATIONAL ESTATE PLANNING FOR INDIAN INVESTORS

PANEL DISCUSSION @ PCD Dinner

ON 19th February 2020

VENUE: The ST. REGIS, MUMBAI



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Hetal Sanghvi - Hetal has worked extensively with Indian families and advisors, managing pre arrival planning and cross-border succession. She is a qualified Chartered Tax Advisor and achieved distinctions in her ATT qualification. She was also voted Top 35 Under 35 for 2015, 2016 and 2017 by eprivateclient.




Michael Powell - Michael is a well-respected, skilled personal adviser and trustee with over 30 years' experience of working with families, young entrepreneurs and the inherited wealthy. He has built lasting relationships with clients, their advisers and intermediaries during his 30 year career.



Bijal Ajinkya - Bijal Ajinkya is a Partner in the Direct Tax, Private Client and Investment Funds Practice Groups in the Mumbai office. With over 19 years of experience, on the tax side, Bijal primarily focuses on international tax, structuring of inbound and outbound investments, M&A tax negotiations, providing opinions on complex tax issues on international tax, GAAR, POEM, PE, MFN, etc.

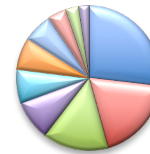


Hemang Parekh - Hemang is a transaction lawyer and advises clients on their investment and strategic decisions in the areas of corporate laws, commercial laws and other related laws. He has significant transactional experience in transactions of diversified M&A and private equity sectors. He has extensive experience in advising various multinational and domestic companies and private equity funds in the areas of corporate laws and other related laws

- 
- Relevant data and statistics
 - Typical structure of family office in India
 - Tax incidence in India and select foreign jurisdiction
 - Emerging Structures for Investments from India
 - Case study (Challenges and issues)

Overseas Direct investment by India during the period April 2019 to December 2019

Country	(In US\$ Million)
Singapore	1512.17
USA	1065.43
UK	823.22
Switzerland	513.17
Russia	419.71
Japan	407.43
Netherlands	365.73
Mauritius	236.33
UAE	163.63
British Virgin Islands	123.57
Total	5630.39



- Singapore
- USA
- UK
- Switzerland
- Russia

Source : Department of Economic
affairs, India

Outward Remittances under the Liberalised Remittance Scheme (LRS) for Resident Individuals

(US\$ Million)					
Item	2018-19 (April to March)	2018 Dec.	2019		
	1	2	Oct.	Nov.	Dec.
			3	4	5
1 Outward Remittances under the LRS	13787.58	1093.10	1523.77	1482.00	1563.72
1.1 Deposit	455.94	31.62	39.57	39.42	42.38
1.2 Purchase of immovable property	84.53	5.38	8.65	7.14	4.85
1.3 Investment in equity/debt	422.90	34.29	38.80	73.99	27.57
1.4 Gift	1370.24	110.36	148.39	153.02	150.90
1.5 Donations	8.67	1.32	0.71	0.48	0.89
1.6 Travel	4803.81	386.18	578.97	522.28	620.32
1.7 Maintenance of close relatives	2800.88	223.27	256.77	262.96	276.74
1.8 Medical Treatment	28.59	1.86	3.18	3.04	2.68
1.9 Studies Abroad	3569.87	277.88	432.66	400.98	420.45
1.10 Others	242.15	20.97	16.08	18.69	16.93
Note : 1.10: Include items such as subscription to journals, maintenance of investment abroad, student loan repayments and credit card payments.					

Key Findings	Europe	North America	Asia-Pacific	Emerging Market
Key Characteristics				
Average family wealth, SFOs	USD 1.4 billion	USD 1.3 billion	USD 908 million	USD 885 million
Average AUM, SFOs	USD 861 million	USD 852 million	USD 600 million	USD 676 million
Proportion of family offices established since 2010	33%	29%	39%	56%
Investments				
Investment Strategy				
Growth	25%	31%	19%	15%
Balanced	52%	56%	57%	67%
Preservation	23%	13%	23%	19%
Investment allocations				
Equities	32%	38%	28%	19%
Private equity	20%	19%	16%	17%
Real estate	19%	14%	17%	19%
Fixed Income	15%	14%	20%	23%
Hedge funds	3.70%	6.00%	2.90%	4.80%
Other	11%	10%	15%	18%
Total annual performance	4.30%	5.90%	6.20%	6.20%

Regional Outlook of Family Offices around the world

Emerging Market: Angola, Bahrain, Brazil, Cayman Islands, Chile, Colombia, Israel, Lebanon, Saudi Arabia, South Africa, United Arab Emirates, Venezuela

Source: The UBS/ Campden Wealth Global Family Office Survey 2019

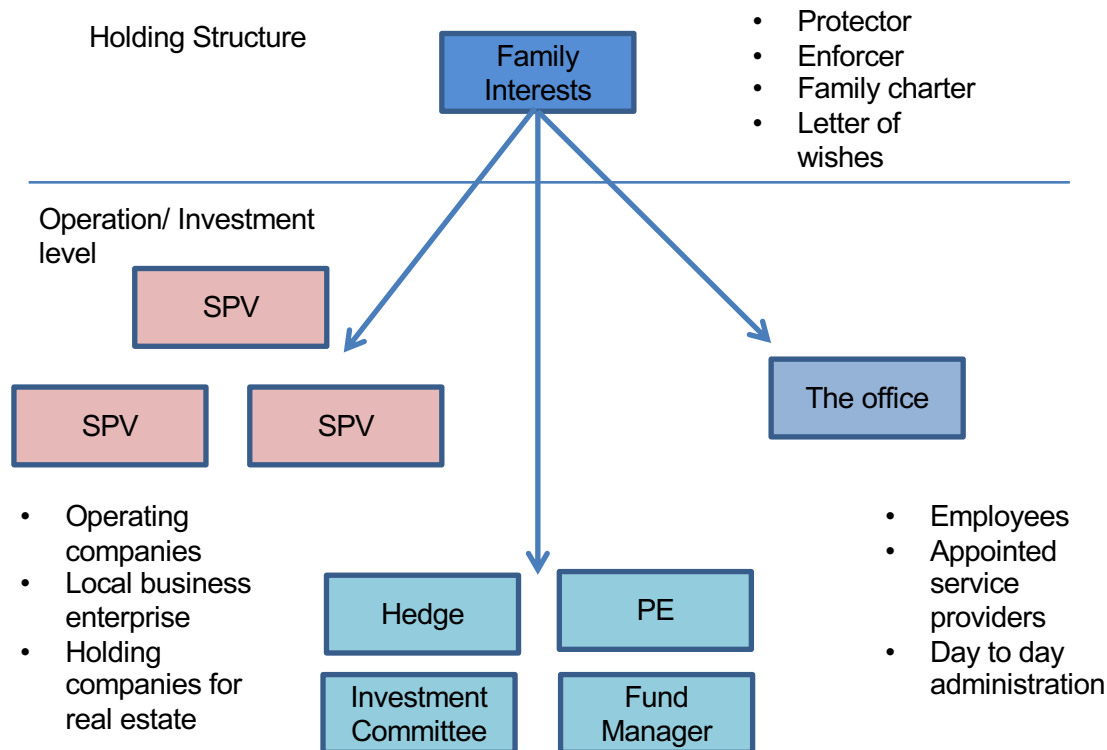
Key Findings	Europe	North America	Asia-Pacific	Emerging Market
Performance by asset Class				
Equities (Developed Market)	0.40%	2.90%	3.30%	3%
Equities (Developing Market)	-4%	-1.90%	3.40%	3.20%
Private equity direct investments	15%	16%	19%	12%
Private equity funds	12%	12%	9.00%	10%
Real estate	7.20%	11%	8.90%	11%
Hedge funds	1.20%	2.80%	3.30%	1.60%
Fixed Income (Developed Market)	1.20%	3.80%	3.40%	3.60%
Fixed Income (Developing Market)	-0.40%	1.70%	4.90%	4.40%
Proportion of Family Offices that invests in sustainable and impact investing				
Sustainable	39%	25%	40%	32%
Impact	29%	21%	25%	24%
Succession Planning & Philanthropy				
Proportion with succession plans in place	54%	48%	49%	44%
Average age the next generation will be when they assume control of the family wealth	45 Years	47 Years	41 Years	43 Years
Average annual philanthropic donation	USD 6.0 million	USD 7.5 million	USD 2.7 million	USD 3.6 million

Regional Outlook of Family Offices around the world

Emerging Market: Angola, Bahrain, Brazil, Cayman Islands, Chile, Colombia, Israel, Lebanon, Saudi Arabia, South Africa, United Arab Emirates, Venezuela

Source: The UBS/Campden Wealth Global Family Office Survey 2019

Typical structure of Family Office in India



Factors influencing legal status

Tax

- Multiplicity of tax incidents
- Flexibility of remunerating family members

Regulatory

- Co vs LLP vs Trust
- Restriction on layers
- Foreign Exchange Norms for Remittance

Commercial

- Transparency and publication of data on ownership
- ESOP's to managers

Succession Planning



Advantages

Trust

- Flexibility during lifetime of promoter
- Tax efficiency
- Pooling Funds
- Professional Trustees

Will

- Tax Neutrality
- Flexibility
- Involvement of Promoter in Business

Meritorious Management

- Business giver prominence
- Efficient & pro activeness managed
- Segregation of ownership and management
- Neutral to Family events (death, divorce etc.)



Challenges

- Court Proceedings
- Segregation of Control vs Management vs Ownership

- Triggering Event
- Exposure for legal disputes
- Tax inefficiency
- Influence of close relative on promoter

- Family relations
- Risk of family feud

OUTBOUND

- ❖ **Domestic Law**
 - POEM Rules
 - GAAR & LoB
- ❖ **Treaty Rules**
 - LoB
 - BEPS – MLI
- ❖ **Change to the laws of jurisdiction**
 - US Tax reforms
 - Effects of BREXIT?

Foreign Exchange Norms | BIT |
GST

**At Foreign
Jurisdiction**

**At
Intermediate
Jurisdiction**

At India

Under Liberalised Remittance Scheme (LRS)

United Kingdom Rent

- Net Profit Taxable up to 45%.
- Deductions for Finance cost & Revenue Expenses from gross rental receipts.
- Deduction for finance cost being phased out between 2017 & 2020, 20% of any non-deductible finance cost available to reduce UK Tax Liability

Non Resident Capital Gain Tax (NRCGT)

- Taxable at the maximum rate of 28%.
- Gains realized, by reference to market value of April 2015 or purchase price.

ATED (Annual Tax on Enveloped Dwellings)

- Not Applicable

Not Applicable

Rent

- Net Profit Taxable at the maximum rate of 30%.
- Deduction for interest & eligible taxes with specified limits & conditions
- Standard deduction (1/3rd) can be applied.
- Additional consideration for property held jointly.

Capital Gain

- LTCG-20% with Indexation.
- Exemption u/s 54 / 54EC / 54F ?

DTAA

- Foreign tax credit as provided under DTAA.

Under Overseas Direct Investment (ODI)

United Kingdom Rent

- Net Profits Taxable at the rate of 20%. (from April 2020 will move into Corporation Tax rate viz. @17%)
- Deduction for Finance cost & Revenue Expenses from gross rental receipts.
- Financing should be at arm's length to secure full tax deduction.
- Non resident UK Co. to adopt UK GAAP (more relevant for lease incentives & derivatives).

Non resident Capital Gain Tax (NRCGT) / Capital Gain Tax (CGT)

- Taxable at the maximum rate of 20%.
- Co. subject to ATED, gains taxed @28% , may also qualify for specified relief.

ATED (Annual Tax on Enveloped Dwellings)

- Applicable to residential property, not let out (but exemption must be claimed)
- Not Applicable to commercial property.
- Residential property occupied by connected individual ATED shall apply.
- ATED applies to companies owning UK residential property worth more than £500,000.

Rent & Capital Gains Taxable as per the rules of the concerned jurisdiction.

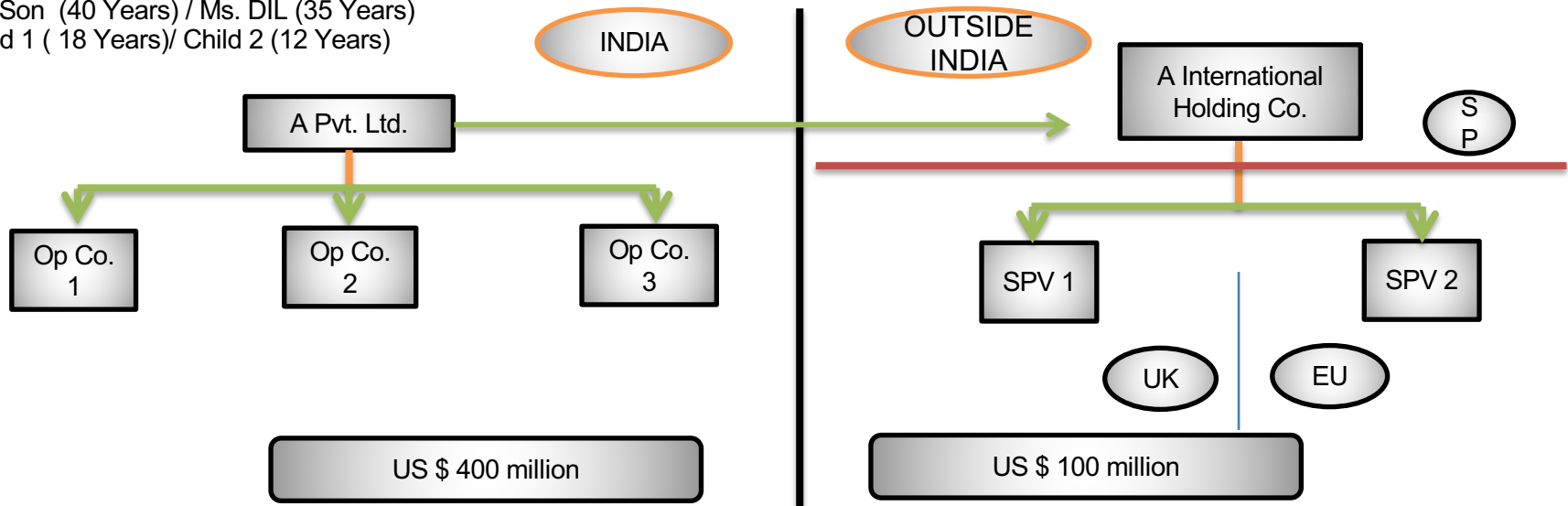
Rent

- Not Applicable
- Dividend from Foreign Co.
- Taxable at the rate of 15%.
- Set-off against DDT

Sale of Shares of Foreign Co.

- LTCG taxable in India @ 20% with indexation.
- Exemption u/s 54 EC?

Mr. A (73 Years)/ Mrs. A (65 Years)
 Mr. Son (40 Years) / Ms. DIL (35 Years)
 Child 1 (18 Years)/ Child 2 (12 Years)



->Mr. Son with his family to migrate to UK.

Issues:

- India – Residency test (Beneficiary, Settlor, Trustees), Need for overseas structure, Wealth protection, Legacy, Repatriation, Tax, Rights of Married Women, Dividend Income.
- UK – Tax effects, Wealth Protection, Inheritance Tax for Assets of UK & Outside of UK.
- Role of Offshore Trusts

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