DETERMINING YOUR LIABILITY TO TAX

INVESTMENT LINKED LIFE INSURANCE BONDS

INVESTING IN AN UTMOST INTERNATIONAL INVESTMENT LINKED LIFE INSURANCE BOND AS AN INDIAN RESIDENT

The Utmost International investment linked life insurance bond is considered to be a life insurance policy in India and you can continue with your bond on becoming an Indian resident. You might make further investments from your overseas account or from within India.

Should you decide to pay a further premium by way of a remittance from India, the Liberalised Remittance Scheme will allow you, as a resident of India, to make investments overseas up to a maximum of US$250,000 in each tax year. You will need to obtain approval from the Reserve Bank of India before investments overseas above US$250,000 (in each tax year) can be made.

If you invest any premiums into your Utmost International investment linked life insurance bond by making a remittance from India, a withholding tax of 5% may apply to amounts above $9,529. In addition, the policy proceeds from any claim due on the policy must be repatriated to India through normal banking channels within seven days of them being received into your account outside India.

This applies regardless of whether the proceeds arose as a result of a claim for full surrender, partial surrender or death of the relevant life assured.

DETERMINING YOUR RESIDENCY STATUS IN INDIA

Your liability to tax in India in a given tax year depends on your residency status. This is defined in the Income Tax Act 1961 (ITA) and is based on the number of days you spend in India.

If you are resident in India you will be liable to Indian tax on your worldwide income. If you are non-resident in India, you are liable to Indian tax only on income and gains that arise or accrue in India. The (assessment year ('tax year')) is from 1 April to 31 March.

DETERMINING YOUR RESIDENCY STATUS

If you do not meet the requirements to be resident or ordinarily resident, you will be a non-resident for the tax year being reviewed.

RESIDENT IN INDIA FOR A TAX YEAR

If you are resident you will be subject to tax on your worldwide income.

Section 6 (1) of the ITA defines 'resident' as:

- you are present in India for 182 days or more during the financial year, or
- you are present in India for 60 days (120 days if citizen of India, or person of Indian origin, with Indian source income exceeding INR 1.5 million during a financial year) or more in the tax year and you have stayed in India for a total of 365 days or more in the previous four financial years, or
- you are 'deemed resident' if you are a citizen of India and you are not liable to tax in any other tax jurisdiction (due to your domicile/ residence) and your income (other than foreign sourced income) exceeds R 1.5 million in the tax year.

NOT ORDINARILY RESIDENT IN INDIA FOR A TAX YEAR

If you are resident but not ordinarily resident you will be taxed only on:

- Indian-source income
- income deemed to accrue or arise in India
- income received in India or income received outside India arising from either a business controlled or a profession established in India.

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Section 6 (6) of the ITA defines 'not ordinarily resident' as:

- you have been non-resident in India in nine out of the ten tax years preceding the year under review, or
- during the seven tax years prior to the year under review, you were present in India for 729 days or less, or
- you are a citizen of India, or person of Indian origin, with Indian source income exceeding R 1.5 million during a tax year, and you are present in India for 120 days or more but less than 182 days in the tax year; or
- you are 'deemed' to be resident i.e. you are a citizen of India and you are not liable to tax in any other tax jurisdiction (due to your domicile/ residence) and your income (other than foreign sourced income) exceeds R 1.5 million in that financial year.

NON-RESIDENT IN INDIA FOR A TAX YEAR

If you are non-resident you will be taxed only on Indian-source income and or gains, i.e. on income received, accruing (or deemed to be received, accruing or arising) or arising in India.

Non-residents may also be taxed:

- on income deemed to accrue or arise in India through a business connection
- through or from any asset or source of income in India, or
- through the transfer of a capital asset situated in India (including a share in a company incorporated in India) or a share/interest in a company or entity incorporated outside India which derives (directly or indirectly) its value substantially from assets located in India.

APPLYING THE RESIDENCE RULES WHEN YOU RETURN TO INDIA

In this example, it is assumed that you have been non-resident in India for the 10 tax years prior to your return to India during the tax year 1 April 2020 to 31 March 2021. It is also assumed that you do not meet the 'deemed resident' criteria described above.

TAX YEAR	1 APRIL 2020 - 31 MARCH 2021	1 APRIL 2022 - 31 MARCH 2023	1 APRIL 2022 - 31 MARCH 2023	1 APRIL 2023 - 31 MARCH 2024
DAYS PRESENT IN INDIA DURING TAX YEAR	304 days	365 days	365 days	365 days
RESIDENCE STATUS	Resident but will pass both the tests that mean you will be treated as resident but not ordinarily resident		Resident but will pass one of the tests that mean you will be treated as resident but not ordinarily resident	Resident and will no longer pass at least one of the tests required to be treated as resident but not ordinarily resident
WILL GAINS FROM YOUR INVESTMENT LINKED LIFE INSURANCE BOND BE TAXABLE IN INDIA?	No, provided you do not have the proceeds sent to India		No, provided you do not have the proceeds sent to India	Yes, even if they're not sent to India

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TAXATION IN INDIA

TAX ON INCOME

Income tax, the income tax surcharge and the health and education cess are payable on taxable income.

THE INCOME TAX RATES FOR THE 2020/21 TAX YEAR ARE:

TAXABLE INCOME INR	NATIONAL INCOME TAX RATES
₹1-250,000	0%
₹250,001 - ₹500,000	5%
₹500,001 - ₹1,000,000	20%
₹1,000,001 + ₹30%	30%

- **Individuals resident and aged 60-80:** no tax is payable until your taxable income is over ₹300,000.
- **Individuals resident and aged 80 years or over:** no tax is payable until your taxable income is over ₹500,000.

Furthermore, if your income is below ₹500,000, a tax rebate of up to ₹12,500 is available.

THE HEALTH AND EDUCATION CESS

The health and education cess is levied in addition to the income tax at the rate of 4%.

TAX ON CAPITAL GAINS

Tax is due when you dispose of a capital asset and make a gain.

- **Short-term gains:** Your normal progressive income tax rate will apply (plus the surcharge as applicable and health and education cess).

Short-term capital gains arise when the asset has been held for 36 months or less. This excludes shares listed on the Indian Stock exchange, Unit Trust of India, zero coupon bonds and units in specified equity-oriented mutual funds, for which the term is 12 months or less. Shares (not listed on the Indian stock exchange) of a company and immoveable property arise when the asset has been held for 24 months or less.

- **Long-term gains:** Generally long term capital gains are taxed at 20% plus any surcharge and the health and education cess. To counter the effect of inflation, the cost of acquisition is indexed for long-term capital gains.

Where the asset has been held longer than the respective period for consideration as a short terms gain is considered a long-term capital gain.

An income tax surcharge is payable on the income tax rates, shown here:

TAXABLE INCOME INR	SURCHARGE TAX RATES
₹1-500,000	0%
₹500,001 - ₹10,000,000	10%
₹10,000,001 - ₹20,000,000	15%
₹20,000,001 - ₹ 50,000,000	25%
₹50,000,001 +	37%

In addition, the health and education cess is payable.

TAX ON GIFTS

Gift tax is not payable by donors in India but certain recipients will pay incometax on gifts they receive:

- with a fair market value in excess of ₹50,000;

or

- if the consideration paid for the asset is less than the fair market value by more than ₹50,000.

Certain exemptions exist which are explained on page 5 of this guide.

INHERITANCE TAX

Estate duty was abolished in 1985 which means the estate of the deceased does not pay Inheritance Tax.

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TAXATION OF INVESTMENT LINKED LIFE INSURANCE BONDS IN INDIA

For taxation purposes in India, Utmost International's investment linked life insurance bonds are classed as securities and taxable as capital assets

This means that gains arising on withdrawals and surrender will be subject to income tax. The sum payable on the death of the relevant life insured is exempt from income tax.

INVESTMENT GROWTH INSIDE THE INVESTMENT LINKED LIFE INSURANCE BOND

Utmost International is based in the Isle of Man and no tax is payable by us on income and gains accumulating within the bond. Your bond will benefit from gross returns on your investment, except for any nonrecoverable withholding taxes, for example the tax retained at source on US share dividends.

There is no Indian tax liability on any growth inside the policy, prior to making withdrawals or on surrender.

WITHDRAWING MONEY FROM THE INVESTMENT LINKED LIFE INSURANCE BOND

You can make withdrawals from the policy in a number of ways:

› regular periodic withdrawals
› partial lump-sum withdrawals
› full surrender (which brings the policy to an end).

Gains arising from your investment linked life assurance bond , provided the funds held within the bond are for a personal investment and are not business assets, are taxable under the heading 'Capital Gains'. Gains arising after 36 months or more will be long-term capital gains, taxable at 20%, plus any surcharge and the health and education cess. Gains arising within 36 months will be taxable at your marginal rate of income tax plus any surcharge and the health and education cess. If a one off withdrawal is requested, then the capital gain would be the difference between the distributed amount and the adjusted cost of acquisition. It is unclear how this would apply to regular withdrawals.

Certain investment linked life insurance bonds might be exempt from taxation but only if they can meet the statutory requirements of section 10 (10D) (d) of the ITA. The premium paid in any year must not exceed 10% of the capital sum payable on death.

TAXATION ON DEATH

Your investment linked life insurance bond will pay a death benefit when the relevant life insured dies. This death benefit is not taxable in India even when it is paid to your nominated beneficiaries who are also resident in India.

Utmost International is based in the Isle of Man and no tax is payable by us on income and gains accumulating within the bond.

MAKING A GIFT OF YOUR INVESTMENT LINKED LIFE INSURANCE BOND

You can make a gift of your investment linked life insurance bond by assigning it to another individual. The approval of the Reserve Bank of India is required before the assignment can be made to a person resident in India. As the donor of the gift you are not liable to tax on the value being transferred and if you give your bond to a family member who qualifies as a specified relative, they're not taxable on receipt of the bond. Specified relatives include your spouse and children as well as your parents, and any of your brothers and sisters.

When a gift is not exempt from tax the recipient will pay income tax on the value received if this is in excess of ₹50,000.

The beneficiary of a gift is also exempt from tax on receipt if it was:

› made on the occasion of marriage
› made under a will
› received by way of inheritance
› made in contemplation of the death
› of the donor.

If the nature of the gift of the investment linked life insurance bond is an exempt one, the recipient is not taxable when they decide to surrender it, or receive withdrawals from it.

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BENEFITS OF AN OFFSHORE INVESTMENT LINKED LIFE INSURANCE BOND

Investment linked life insurance bonds (also known as 'offshore bonds') offer a number of benefits, particularly when compared to holding a range of different assets in an unwrapped investment portfolio:

› Amalgamating a variety of assets into one product consolidates reporting and avoids multiple tax returns.	› Payments in and out of your offshore bond can be made in multiple currencies.
› Offshore bond investments can save accountancy costs by reducing the amount of time and effort required.	› Investing in an offshore bond can be a valuable part of your succession planning.
› Online access with one login makes managing the bond investments an easy and straightforward process.	› A beneficiary nomination enables you to retain the policy benefits during your lifetime but probate is avoided on death.
› All dealing requests are co-ordinated by Utmost International (or an agreed third party) with one consistent dealing process.	› Utmost International offers a range of trusts designed to cover a number of common situations.
› Because Utmost International can negotiate enhanced terms as an institutional investor, dealing costs are reduced.	› Trusts can be used to distribute assets for complex family structures, without probate delays on death. Professional trustee services from Utmost International Trustee Solutions Limited are available at a very competitive rate.

Specialist advice should be sought before settlement of an offshore trust for the benefit of Indian resident beneficiaries from an Indian tax and regulatory perspective.

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