

ETMarkets Smart Talk | Selling property in India? Here's how NRIs can avoid excess TDS: Trilegal's Himanshu Sinha

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Kshitij Anand



Agencies

Three exemptions can reduce or wipe out the LTCG liability.

Selling [property](#) in India can be a rewarding financial decision for Non-Resident Indians ([NRIs](#)), but it also comes with a complex web of tax rules that can significantly impact the final proceeds.

One of the biggest pain points is the tax deducted at source (TDS), which is often withheld on the entire sale consideration rather than the actual [capital gains](#), resulting in excess tax deductions and lengthy refund timelines.

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In this edition of ETMarkets Smart Talk, Himanshu Sinha, Partner – Tax Practice at Trilegal, explains how NRIs can navigate the tax implications of property transactions, avoid unnecessary TDS through a Lower/Nil TDS certificate, and make the most of available exemptions under the Income-tax Act.

He also discusses the latest changes in capital gains taxation, repatriation rules, and common tax mistakes that every NRI investor should avoid. Edited Excerpts –

Q) What are the key tax considerations NRIs should keep in mind before [investing](#) in India?

A) Before an NRI puts money to work in India, the first thing to sort out is residential status. This is governed by Section 6 of the Income-tax Act, 2025 (ITA 2025), which took over from the 1961 Act on 1 April 2026 and carries forward the same residency framework rather than rewriting it.

Basic conditions for residence, Section 6(1). A person becomes a Resident of India in a given Tax Year if either of two tests is met. The first, often called the 182-day rule, is met simply by being physically present in India for 182 days or more in that year. The second, the 60-day plus 365-day test, applies where someone is in India for 60 days or more in the year and has also clocked up 365 days or more across the preceding four years. Meeting just one of these is enough to trigger residency, and both the arrival and departure dates count as days spent in India.

Relaxation for Indian citizens and PIOs, Section 6(1) proviso. For two groups, the 60-day threshold in the second test is pushed up to 182 days: Indian citizens who leave the country as ship's crew or for employment abroad, and Indian citizens or Persons of Indian Origin (PIOs) who visit India from abroad. In practice, this means that a typical NRI coming home for a family visit only becomes resident by crossing 182 days—short trips alone won't do it, since the 365-day look-back simply doesn't apply to them.

Exception for high-income NRIs and PIOs, Section 6(1) second proviso. There's a catch for those whose Indian-sourced income exceeds ₹15 lakh in the year. For this group, the relief is only partial—the 60-day threshold drops to 120 days rather than 182.

So a high earner who spends 120 days or more in India, and has also been here for 365 days or more over the preceding four years, ends up resident even without crossing 182 days. The ₹15 lakh figure looks only at Indian income, not worldwide income, and it's worth tracking closely if that number is likely to grow.

Deemed residency, Section 6(7). A separate rule targets Indian citizens based in places like the UAE that don't tax income at all. Under Section 6(7)—previously Section 6(1A)—an Indian citizen with Indian-sourced income above ₹15 lakh is deemed resident if they aren't liable to tax anywhere else by virtue of domicile or residence. "Liable to tax" here has a specific meaning: it covers any legal tax liability, even one that's later been exempted. Anyone caught by this provision is automatically treated as RNOR rather than a full resident, so only Indian income gets taxed and foreign income stays out of reach—even if the person never actually sets foot in India that year. This is squarely aimed at NRIs in zero-tax jurisdictions such as the UAE.

RNOR status, Section 6(13). Even if someone meets a basic residency test, they may still qualify as Resident but Not Ordinarily Resident rather than a full Resident, provided either: they were non-resident in nine or more of the preceding ten years, or their total time in India over the preceding seven years adds up to 729 days or less.

RNOR status limits taxation to Indian-sourced income and business income controlled from India, leaving foreign earnings untouched. It typically acts as a two-to-three-year transition window for NRIs

moving back to India, and it applies automatically to anyone caught by the deemed-residency rule above.

Resident and Ordinarily Resident (ROR). Anyone who meets a basic residency test but fails both RNOR conditions becomes a full ROR and gets taxed on worldwide income—foreign salary, rent, capital gains abroad, overseas interest, all of it. The move from RNOR to ROR is the point returning NRIs need to watch most carefully, and it's worth planning travel days around it in the years just after moving back.

Practical implications for investors. On the ground, the first decision is how to structure bank accounts. NRE and FCNR(B) deposits pay interest that's fully tax-exempt and freely repatriable, while NRO accounts get hit with 30% TDS on interest under Section 393(2). Parking investible savings in an NRO account rather than NRE or FCNR is a needless drag on returns before any actual investing happens. A PAN is required for investments, DTAA claims, and refunds.

Because TDS under Section 393(2)—deducted by banks, brokers, mutual funds, and property buyers alike—often exceeds actual tax owed, applying in advance for a Lower/Nil TDS Certificate under Section 395, or simply filing an ITR promptly to claim a refund, matters a great deal. NRIs also can't buy agricultural land, farmhouses, or plantation property except by inheritance, and every property payment has to go through proper banking channels.

Q) Has the tax treatment of NRI investments changed significantly over the past few years?

A) It has, and the changes over the last three years have added up to quite a lot. The biggest shift came with Budget 2024, effective 23 July 2024, which overhauled capital gains taxation across the board. [LTCG](#) on listed equities and equity funds went from 10% to 12.5%, STCG on the same went from 15% to 20%, and LTCG on real estate and other assets was flattened to a uniform 12.5%. Indexation disappeared entirely for transfers after that date.

Unlike resident taxpayers, NRIs got no grandfathering relief, which stings particularly hard for those holding property for a long time.

A year before that, from 1 April 2023, the Finance Act 2023 pulled the LTCG concession on debt mutual funds bought after that date. Funds with under 35% equity exposure are now taxed at slab rates regardless of how long they're held, putting them on par with NRO fixed deposits from a tax standpoint—a real change in how attractive debt funds are for NRIs in higher brackets.

More recently, Finance Act 2026 simplified TDS compliance for property buyers from 1 October 2026 by allowing PAN in place of TAN in eligible cases. Budget 2026 also tightened the rules on Sovereign Gold Bonds, restricting the tax-free maturity benefit to original subscribers only; anyone who bought SGBs in the secondary market is now fully taxed on redemption.

Another positive development in recent years has been the use of GIFT City IFSC. Some NRIs, instead of going the conventional mutual fund or PMS route, choose to invest through a specified fund set up in the GIFT City IFSC.

The appeal isn't a special low tax rate—it's that certain income earned by these funds is carved out of Indian tax altogether under an exemption regime carried over into ITA 2025. But this only works if the fund actually qualifies as a "specified fund" and meets the IFSCA conditions, and even then, the exemption only covers specific kinds of income—gains from particular securities transactions, certain non-resident securities income, and so on.

Whether an NRI actually benefits comes down to how the fund is structured and what it invests in, so it's best to think of GIFT City as a planning option worth examining case by case, not as a shortcut to low tax across the board.

Q) How can NRIs avoid common tax mistakes while investing in Indian financial assets?

The biggest mistake by far is getting residential status wrong. NRIs who make frequent short trips home should keep an actual day-count log each year. The 120-day rule for high earners means even a small overrun can trigger residency, especially if the 365-day look-back is also satisfied.

The deemed-resident rule under Section 6(7) adds another wrinkle for those in zero-tax jurisdictions like the UAE—Indian income above ₹15 lakh means RNOR status by statute, though it's worth getting proper advice to confirm exactly how that threshold is being measured.

Another frequent error is treating TDS as if it were the final tax bill rather than an advance payment. TDS under Section 393(2)—30% on NRO interest, 20% on dividends, up to roughly 14.95% on the full sale price for property LTCG—regularly comes in above what's actually owed, and the only way to get that money back is to file a return.

Better still, apply ahead of time for a Lower TDS Certificate under Section 395 so the over-deduction never happens in the first place.

Skipping DTAA paperwork is another costly slip. Without a valid Tax Residency Certificate and a properly filed Form 41 handed to each Indian payer before the year's first income event, the payer has no choice but to apply full domestic withholding.

And the foreign tax credit claim—now made through Forms 44 and 45 under ITA 2025, replacing the old Form 67—has to be filed by the ITR due date; miss that window and the credit is gone, no matter how clear-cut the entitlement was.

Q) How do Double Taxation Avoidance Agreements (DTAAs) help NRIs, and how should investors make the most of them?

A) DTAAs, now sitting under Section 159 of ITA 2025 (formerly Section 90), are treaties India has with close to a hundred countries to stop the same income being taxed twice over.

They work in three basic ways—handing exclusive taxing rights to one country for certain income types, setting lower withholding rates than India's domestic rates, and requiring the home country to give credit for tax already paid in India.

Section 159 makes clear that whichever is more favourable, the treaty rate or the domestic rate, is the one that applies, so it's always worth comparing the two before assuming a rate.

The savings can be substantial. NRO interest that would normally face 30% TDS often drops to 10–15% under a treaty. Dividends taxed at 20% domestically can fall to 10–15% as well. On capital gains, many treaties give taxing rights entirely to the country of residence, which can mean zero Indian tax if that country doesn't tax capital gains at all.

A March 2025 ruling by the Income Tax Tribunal is a good illustration: it held that a Singapore-based NRI's gains from Indian mutual funds weren't taxable in India, since mutual fund units aren't the same as company shares and Article 13(5) of the India–Singapore treaty gives residual capital gains rights to the residence country.

NRIs in the UAE, which levies no capital gains tax, stand to gain the most from this reasoning, though the ruling hasn't been tested in higher courts yet.

To actually use a DTAA, an NRI needs a Tax Residency Certificate from their home tax authority, and if that certificate is missing any required field, a Form 41 filed electronically on the Indian portal. Both, along with a self-declaration and PAN copy, need to reach every Indian payer before the year's first income event. The claim then gets backed up in the ITR filed under Section 159.

Q) How are short-term and long-term capital gains taxed for NRIs investing in Indian equities and mutual funds?

A) For listed equities and equity-oriented funds (at least 65% domestic equity), anything held over 12 months counts as long-term. LTCG here falls under Section 197 (formerly Section 112A) and is taxed at 12.5% on gains above ₹1.25 lakh a year—that exemption limit was bumped up from ₹1 lakh in the July 2024 changes. TDS is deducted at 12.5% when units are redeemed or sold.

Gains on anything held 12 months or less are short-term under Section 196 (formerly Section 111A), taxed flat at 20%, with TDS applied at the same rate—up from 15% before 23 July 2024.

NRIs can't claim the Section 87A rebate against this. Unlisted equities work differently: the long-term threshold is 24 months, not 12. LTCG there is 12.5% without indexation, while STCG is taxed at slab rates (which can run up to around 30%), with 30% TDS deducted under Section 393(2).

One useful relief brought in by the Finance Act 2025 and carried through into ITA 2025 concerns unlisted equity bought with foreign currency: NRIs can now work out their gain in the original foreign currency and convert to rupees at the applicable rate, rather than being stuck with the historical rupee cost. This stops rupee depreciation alone from artificially inflating the taxable gain.

Q) How are equity, debt, and hybrid mutual funds taxed for NRIs?

A) Mutual fund taxation for NRIs hinges on how much equity a fund holds, and there's a sharp line between funds bought before and after 1 April 2023.

Equity-oriented funds, meaning at least 65% domestic equity, follow the same LTCG-at-12.5%-above-₹1.25-lakh and STCG-at-20% pattern as direct equity. ELSS funds and aggressive hybrid funds that stay above the 65% mark fall in this bucket too.

Debt funds and anything under 35% equity—fund-of-funds, international funds, gold-ETF type products—are taxed at slab rates no matter how long they're held, as long as they were bought on or after 1 April 2023.

This came in with the Finance Act 2023 and did away with the old LTCG break and indexation, which used to make debt funds appealing to NRIs in higher brackets. Units bought before that date still follow the old rules: short-term if held under 36 months (taxed at slab rates), long-term at 12.5% without indexation if held 36 months or more.

Hybrid funds sit in between. Aggressive hybrids with 65% or more equity are treated just like equity funds. Conservative hybrids under 35% equity are treated as debt funds, so post-April-2023 units face slab rates.

Balanced or dynamic funds in the 35–65% band sit in the middle: units bought after April 2023 get LTCG at 12.5% after a 24-month hold, with STCG at slab rates otherwise. Dividends from any of these categories are taxed at slab rates in the investor's hands, with 20% TDS at source—reducible to 10–15% under a DTAA via Section 159.

Q) How are interest income and capital gains from bonds taxed for NRIs?

A) Bond interest is generally taxed at slab rates for NRIs, with a few carve-outs. The main one is NRE and FCNR(B) deposits, where interest is fully exempt with no TDS at all—these remain the most tax-efficient place to park foreign savings in India.

NRO fixed deposits and corporate bonds are taxed at slab rates with 30% TDS under Section 393(2), though a valid TRC and Form 41 can bring this down to the treaty rate, usually 10–15% depending on the country. Tax-free bonds under the Schedule II exemptions (formerly Section 10(15))—typically issued by infrastructure PSUs—still pay fully exempt interest with no TDS.

Capital gains on bonds work differently depending on whether they're listed or unlisted. Listed bonds and debentures held over 12 months qualify as LTCG, taxed at 12.5% without indexation under Section 197. Unlisted bonds need a 24-month hold for the same treatment. Anything shorter is short-term and taxed at slab rates in both cases. One thing worth remembering: even tax-free bonds attract capital gains tax if sold before maturity in the secondary market—the exemption only ever covered the coupon, not price appreciation.

Q) What are the tax implications of buying and selling property in India as an NRI?

A) NRIs can buy residential and commercial property freely, but not agricultural land, farmhouses, or plantation property except through inheritance. Payments have to go through NRE, NRO, or FCNR(B) accounts—cash or foreign currency notes aren't allowed under FEMA.

On the buying side, there's nothing unusual tax-wise beyond the standard stamp duty and registration costs. Selling is where it gets more involved. The buyer has to deduct TDS under Section 393(2) on the entire sale price, not just the gain.

For LTCG (property held over 24 months), that works out to roughly 14.95% on the full consideration where income crosses ₹50 lakh. Take a ₹3 crore sale where the real LTCG tax might be ₹30–35 lakh: TDS could still come to ₹44–45 lakh, and getting that excess back means filing an ITR and waiting anywhere from 12 to 18 months.

The better route is to apply for a Lower/Nil TDS Certificate on Form 128 under Section 395, ideally 45–60 days before the sale, so TDS is limited to the actual gain. TAN is still needed for the first half of Tax Year 2026-27 (up to 30 September 2026); from 1 October 2026, buyers can use PAN instead in eligible cases under the Finance Act 2026 simplification.

Three exemptions can reduce or wipe out the LTCG liability. Section 82 (formerly Section 54) allows the gain to be reinvested in one residential property within two years of sale, or three years if it's under construction, capped at ₹10 crore.

Section 86 (formerly Section 54F) allows the entire sale proceeds, not just the gain, to be reinvested in one residential property for full exemption—same cap, and the NRI can't own more than one other residential property at the time. Section 85 (formerly Section 54EC) allows up to ₹50 lakh to go into specified government bonds within six months of sale.

Once tax is settled, the proceeds can be repatriated abroad under FEMA, up to USD 1 million a year from the NRO account, supported by Form 145 (the new Form 15CA) and Form 146 (the new Form 15CB, a CA's certificate confirming tax compliance).

For property that was bought rather than inherited, this repatriation route covers the sale of at most two residential properties over the NRI's lifetime. Inherited property—agricultural land in particular—needs RBI approval before proceeds can be repatriated. And none of this works without filing an ITR for the relevant year reporting the gain and any exemptions claimed, since that's the only route to recovering excess TDS.

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