



## EUROPE INDIA CHAMBER OF COMMERCE

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Chairman: **Geoffrey Van Orden MEP**

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Mr. Pranab Mukherjee  
Minister of Finance  
Government of India  
North Block  
New Delhi

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Dear Hon'ble Finance Minister,

Your bold economic policies and steps as Finance Minister have helped India achieve a high growth rate and your wise economic initiatives have aided India through the global economic downturn. As one of the most dynamic and experienced ministers in India, you have an enormous opportunity to tap the resources and talent of the Indian Diaspora. It is in connection to this that we draw your attention to the recent policy developments on certain issues that are of deep concern to the Indian Diaspora and particularly to those who are interested in trade, investment and economic activities in India. We would like to present before you the core issues of concern to them.

After the 1990s, along with the economic liberalisation policies, an impetus was provided to Non Resident Indians ("NRIs")/Person of Indian Origin ("PIO") to become more active in the Indian economic scene. In order to expand the entrepreneurial ties and engage them as partners in India's progress, the government of India has undertaken several policy initiatives such as the Overseas Indian Facilitation Centre and in January 2006, the Indian government introduced the "Overseas Citizenship of India ("OCI")" scheme to allow a limited form of dual citizenship to Indians, NRIs and PIOs for the first time since independence. Furthermore, the Indian Government is going a step further to grant voting rights for Indian citizens living abroad. Indeed, the Indian government has started recognising the value and potentials that this segment can bring to the country for its development, prosperity and growth and has therefore introduced a number of initiatives to engage with this community. Considering the new found relationship with the overseas Indian community, it is puzzling that there are certain measures that are being considered to be passed into law that could pose significant challenges to the NRI/PIO community across the world. In our opinion these policies are detrimental to the economic and cultural contribution that the government is seeking from the Diaspora and may go against the recent initiatives of reaching out and welcoming this segment

### **Residence in India**

In this regard, we would like to mention that the current tax law i.e. the Income-tax Act, 1961 ("The Act") provides a tailor-made position towards the expatriate Indian community by facilitating entry and movement to India (ie 182 days rule rather than 60 days rule). The Direct Taxes Code Bill, 2010 ("DTC 2010"), which would replace the existing tax laws, would cease to extend this much needed treatment and subsequently will treat people of Indian origin, living abroad, at par with other foreign nationals when determining the residential status. This poses a significant obstacle to Indians living abroad, thus defeating the very basic principles and objectives of engaging the Indian Diaspora in the economic and social development of India.

**Related Issues of Concern**

Sir, NRIs/PIOs, by definition, are legal residents of a country other than India. Due to the proposed stringent residency rules (one size fits all policy), this segment faces a greater risk of being deemed an Indian resident (for tax purposes). This change in residency status means that more than one jurisdiction would assert the right to claim tax on an individual. Even though said individual may seek refuge in the provision of Article 16 in International Double Tax Treaties ("DTT"), he/she would first be required to make the necessary tax payments before commencing with the litigation process. Besides the disproportionate administrative burden for those not living in India, the strict application of the 60 days rule is not in line with the internationally accepted 182 days rule (OECD worldwide standards).

The change in residency status thus could have a far reaching adverse impact over number of other equally important issues that need further detailed assessments such as Controlled Foreign Company ("CFC") regulations, Residential status of companies and General Anti Avoidance Rules ("GAAR").

It should also be noted that if the primary intention of the Indian tax authorities is to widen the tax base, they would not be very successful in doing so, as these individuals and the companies they represent will take the necessary legal course of action to ensure that the authorities do not unjustifiably claim tax. These onerous procedures would severely restrict the involvement and activities of the Diaspora in their country of origin which is indeed to the detriment of India.

We believe that the Indian government realizes the NRI community has played an important role and has provided valuable contributions to India's economic development. In turn, the NRI community has matured, having built a base of wealth and setting deep roots of business and commerce in their countries of residence and origin. The task now at hand is for the Indian government and NRI communities to find a mutually beneficial strategy for combining the opportunities and challenges faced by the former with the expertise and resources of the latter. The expertise in management, financial, corporate, trade and banking sectors of the NRIs should be tapped in for economic rejuvenation of India.

Nevertheless, you would note that these new policies, proposing stringent residency rules, appear to be hostile rather than a welcoming feature to the non resident community. A large number of NRIs/OCIs/PIOs visit India every year for longer durations, especially during holidays or for medical reasons. The DTC 2010 proposal could affect their visits to India to meet their relatives or for business or any other reason and would severely limit their mobility and operations.

It is not known whether the position the government is considering to take vis-à-vis non-residents is accidental or otherwise. However, noting that the exemption clause was maintained in the Direct Taxes Code, 2009 ("DTC 2009") and now has been omitted in the Direct Taxes Code, 2010 ("DTC 2010"), leaves some doubts as to the policy of the Indian government towards the expatriate community.

In light of the above mentioned limitations being imposed, on behalf of the expatriate Indian community (NRI/PIO), the Europe India Chamber of Commerce (EICC) would like to advocate for the continuation of the exemption clause as per the current law, to the government of India. Furthermore, an amicable resolution of the grievances of this segment will ensure further strengthening of the cultural and commercial relationships.

**Direct Tax Codes ('DTC')**

In view of the above we would like to especially mention that the DTC, 2010, proposed to come into force from 1 April, 2012, is intended to simplify the existing Act and the government expects to usher in a new tax regime of transparency and greater compliance. The government presented the first draft of Direct Taxes Code, 2009 ("DTC 2009") in August 2009 for public review and deliberations. The residency test applicable to an Indian citizen or a PIO was the same as under the current law and the position towards NRI/PIO had been maintained and clarified by Clause 2, Section 4 of DTC 2009.

**Proposed Law as per DTC, 2010**

However, as per DTC 2010 presented in the Parliament, this condition has been dropped i.e if a non-resident person of Indian citizenship or a PIO visits India during the year and his stay during said year exceeds 60 days and meets the 365 days condition in the four prior years, he would be deemed a resident Indian for the purpose of taxation. The proposed new law, as you would appreciate, would cause considerable hardship to NRIs/PIOs as it brings down the permissible number of days to 1/3 of what it currently is (182 days).

With this change, a non-resident would be at a greater risk of becoming a resident of India and hence subject to tax in India, resulting in a situation wherein the overseas/global income of NRIs/PIOs could also be taxable in India. The DTC 2010 has specifically omitted sub-clause (a) of clause 2 in section 4 that was included in DTC 2009.

We have placed before you the issues that are very basic to the NRIs/PIOs and we trust that you will take into account our concerns mentioned above and consider the issues raised by us rationally with all the seriousness that it deserves.

With kind regards,

Yours sincerely,



Secretary General

cc: His Excellency Dr. Jaimini Bhagwati, Ambassador of India to Belgium, Luxembourg and to the European Union

Dr. A. Didar Singh, Secretary, Ministry of Overseas Indian Affairs, New Delhi