India–US cross-border tax: treaty, withholding, PFIC and GILTI.

How payments and holdings between India and the US are taxed — treaty positions, withholding and 15CA/15CB, US-person exposure, and transfer pricing, in one place.

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Start with the treaty

Most India–US payments turn on the India-US Double Taxation Avoidance Agreement: which country you are resident in (with the tie-breaker for dual residents), whether a permanent establishment exists, and which article governs the payment — royalties and fees for included services (Article 12), business profits (Article 7), capital gains (Article 13), dependent and independent personal services for individuals. The taxpayer applies the lower of the treaty rate or the domestic rate. Claiming the treaty is procedural, not automatic: the recipient needs a **Tax Residency Certificate** from the IRS (Form 6166, obtained via Form 8802) and an electronically filed **Form 10F** on the Indian portal, and payers increasingly ask for a no-PE declaration alongside.

Withholding & 15CA/15CB

Payments from India to a US recipient attract TDS under the Income-tax Act, 2025 (erstwhile Section 195 of the 1961 Act) — on royalties, technical-service fees, interest, dividends, and any other sum chargeable to Indian tax. Before the Authorised Dealer bank releases the remittance, the payer files **Form 15CA** (and for most taxable remittances above ₹5 lakh, a **Form 15CB** chartered-accountant certificate covering taxability, treaty article and rate). Getting the article wrong is the classic dispute: software payments, cloud fees and marketing services each sit differently between "royalty/FIS" and "business profits — no PE, no tax," and the withholding position should be documented before the contract is signed, not after the invoice arrives.

US-person exposure on Indian holdings

For US citizens and green-card holders (including founders who moved to the US, and NRIs returning from it), the US taxes worldwide income — and three regimes catch Indian assets in particular:

- **PFIC** — Indian mutual funds and most pooled investments are Passive Foreign Investment Companies; default US treatment is punitive, and the annual Form 8621 analysis decides between mark-to-market, QEF (rarely available) and excess-distribution outcomes.

- **GILTI / Subpart F** — a US person owning 10%+ of a controlled Indian company (very common post-flip, or for founders with a US spouse on the cap table) picks up the Indian company's income currently under the CFC rules, with Form 5471 reporting.
- **FBAR & Form 8938** — Indian bank, demat and insurance accounts above the thresholds must be disclosed annually; penalties for silence dwarf the tax involved.

The mirror obligations exist on the Indian side (Schedule FA for residents; residential status drives everything — check yours with our NR / RNOR / ROR status checker). We hold the India-side position and coordinate with your US CPA so both returns tell the same story; how the credit flows under Article 25 (Foreign Tax Credit — Form 67 in India, Form 1116 in the US) depends on which country has primary taxing rights over each income stream.

Transfer pricing for India-US groups

Any Indian arm of a US group — a GCC captive, a post-flip subsidiary, a services entity billing the parent — has related-party transactions that must be priced at arm's length under the Indian TP code (erstwhile Sections 92–92F), documented contemporaneously and reported on **Form 3CEB**. The practical choices: the **Safe Harbour** rules (declared margins for eligible IT/ITeS and similar services — certainty at a slightly conservative price), an **Advance Pricing Agreement** (negotiated certainty for up to five years, with rollback), or an annual **benchmarking study** defending the tested margin. Master File and CbCR obligations attach above group-revenue thresholds. What changed for FY26 — thresholds, safe-harbour scope and APA turnaround — is covered in our note on India-US transfer pricing for FY26.

Individuals moving between the two countries

For people, the corridor runs on residency. Moving to the US mid-year usually creates a split position: Indian residential status under the day-count rules (including the 120-day rule for high-income visiting citizens and the deemed-residency test), US residency under the substantial-presence test, and the treaty tie-breaker where both claim you. Moving back to India opens the **RNOR window** — typically two to three financial years in which foreign-source income generally stays outside Indian tax, which is the natural window to exercise US options, realise US gains, or restructure US holdings before full Indian residency resumes. ESOPs are the classic trap: options granted while working in one country and exercised while resident in the other are sourced by where the work was performed, so the perquisite often splits between the two returns, with the treaty and foreign tax credits reconciling the overlap. Timing an exercise against the residency calendar routinely moves more money than any deduction.

Structures: flips, reverse flips and valuations

Cross-border tax rarely stays static. Indian startups flip under Delaware parents (needing coordinated Rule 11UA and 409A valuations), and increasingly flip back ahead of Indian listings (the reverse flip) — each move re-opens every position above: treaty residency, withholding on intercompany flows, CFC status for US shareholders, and the TP framework. The discipline that survives scrutiny is one integrated India-US position, refreshed at each structural event, rather than two countries' filings drifting apart. For ongoing US-side bookkeeping, tax preparation and CFO support alongside the Indian entity, our Global Outsourcing desk runs both sides on one calendar.

Common questions

What tax applies to payments from India to a US company?

Withholding under the Income-tax Act, 2025 (erstwhile Section 195), at the lower of the India-US treaty rate or the domestic rate, supported by a TRC, Form 10F and Form 15CA/15CB.

Do US founders of an Indian company have extra filings?

Yes — US persons may face PFIC, GILTI/Subpart F, FBAR and Form 8938/5471 obligations on Indian holdings, coordinated with a US CPA.

How is transfer pricing handled for a US group's Indian arm?

Through an arm's-length policy and Form 3CEB — using Safe Harbour, an Advance Pricing Agreement, or a benchmarking study, depending on size and risk.

This guide is general information, not legal or tax advice; positions turn on the facts of each case and the notified Rules. Get in touch for advice on your situation.

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