

Definition of Non-Resident Citizens: International Practice.

AN APPRAISAL



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Preface

The contribution of the migrant workers to the national economy and their role in the international arena for the mother country can no longer be ignored. With global migration on the rise and with the world turning into a global village; the migrants have truly become a vital stakeholder in many economies. Some governments in the region have taken extra steps in institutionalizing their engagement with their migrants by creating special offices or directorates within the government agencies to address specific migrant issues.

Nations that can tap on this niche, by addressing migrant concerns, can generate the flow of migrant knowledge, skill and resources to supplement their national efforts for development. It was with this concept that the formation of **Non Resident Nepali Association (NRNA)** was envisioned. The network of Nepali Migrants; spread over 65 countries/territories and represented by NRNA has developed itself into a formidable force; capable of representing Nepali interest at home and abroad; strengthening it is in the national interest.

In order to be able to fully leverage this globality, it is essential that Nepal design and implement comprehensive migrant strategies to engage with its global citizens and friends at par with other developing and developed countries. We should learn from and adopt international best practices rather than go through the trial and error methods. Changing the definition of NRNs; once promulgated through an Ordinance by the Nepal Government as per the international standards, is a herculean task as the affiliations of NRNA have been established in their respective countries as per this definition.

The international definition, followed by many countries, of non-resident citizens i.e. the migrant workers is that they should be away from the home country for more than 183 days in a given year and not liable for their income taxes in their home country. NRNA too, has been requesting the Nepal Government to define its non-resident citizens within this parameter. Government has recognized NRNA through its decisions to involve NRNA in activities of National importance and NRNA has responded with great enthusiasm and commitment. All stakeholders seem very positive and have realized the importance of registering NRNA in Nepal and I believe; the time to act is now!



Jiba Lamichhane,
President.

Summary

Migrants have been recognized as the catalyst for change and contribute significantly at the micro and macro levels of the economy of their countries of origin. There are many success stories of migrants helping shape a course in building their nation and expanding the economy for the benefit of all. Residing in distant lands, many migrants have succeeded spectacularly in their chosen professions by dint of their single-minded dedication and hard work. What is more, they have retained their emotional, cultural and spiritual links with the country of origin.

The Nepali migrants are globally represented by the NRNA and it has its affiliations in 65 countries/territories. One of the dilemma of NRNA movement has been its' inability to register in Nepal even after 10 years of its establishment despite many attempts and requests. NRNA has repeatedly approached the government for registration and made many amendments in its constitution as per the requirements of NRN Act, 2064. The only hindrance remaining now is the definition of NRNs.

The Nepal government formally issued the NRN Ordinance on 2nd September 2005 and promulgated the NRN Act on 2007. The difference in the definition of NRN in the Ordinance and the Act has bewildered many and stands as an obstacle in further strengthening of the institution. For practical purposes, the term NRN is defined as the Nepali citizen living outside South Asian Association for Regional Cooperation (SAARC) member countries or People of Nepali Origin (PNO) holding foreign nationality other than SAARC nations.

With the world turning into a global village and with global migration on the rise; the migrant community, especially of the developing countries; are definitely going to expand in numbers and territories. To address this issue migrants have been segregated into two groups as per their stay in the migrated country and their tax liability.

- Tax non-resident: a migrant staying less than 183 days in the migrated country in a given year and not liable to taxes in the migrated country.
- Tax resident: a migrant staying more than 183 in the migrated country in a given year and liable to taxes in the migrated country.

Similarly, many developing and developed countries have also segregated between citizens that live in the country for more than and/or less than 183 in the country.

- Resident citizen: citizens staying more than 183 days in the country in a given year and paying tax to the country on his earnings.

- Non-resident citizen: citizen staying less than 183 days in the country in a given year and not paying taxes to the country on his earnings.

The Government of Nepal and NRNA have cooperated and partnered in many activities and the Government has recognized NRNA through its various decisions to involve NRNA in activities of National importance and NRNA has responded with great enthusiasm and support. NRNA is celebrating its 10th anniversary this October and requests and hopes that this appraisal will encourage the Nepal Government to register NRNA as per the universal definition of the non-resident citizens and if not as per Clause No. 35 of NRNA Constitution which states that if there is any contradiction between NRNA Constitution and the Law of Nepal than the Law of Nepal shall prevail.

It is high time that Nepal too, whose population is an important participator in global migration and a vital contributor to the national economy, design and implement policies and regulations at par with other developing and developed countries that facilitate and unite more and more migrant workers and help them to compete in this highly competitive global market. Since, all the National Coordination Councils in the respective countries have been registered as per the NRN Ordinance or as per NRNA Constitution; amendment in them is not possible or realistic. Apart from that; the definition of NRNs is in accordance with the international standard and norms and seeking amendment in this will only highlight our ignorance and arrogance to the international norms and practices.

Introduction

Non-Resident Nepali Association (NRNA), was established in BS 2060 BS through the joint efforts of the Nepal Government, Federation of Nepalese Chambers of Commerce and Industries (FNCCI) and the Non-Resident Nepalis (NRNs), with a motive to unify the Nepalis residing all over the world and mobilize their knowledge, skill, and expertise for the overall development of Nepal and Nepalis people as well as promote and safe guard the interest of NRNs globally. Within a decade; NRNA has successfully spread its networks in 65 countries by establishing its National Coordination Council (NCC) and through these NCCs it participates in promoting and preserving Nepali culture, arts, traditions, literature and tourism in the global platform.

The association encourages active participation of NRNs in the economic sectors of Nepal and plays an important role in creating a better environment to attract foreign and NRN's investment. It is the only global organization that networks with the people of Nepali origin who reside in different countries excluding South Asia. The motto of the organization is "for Nepali by Nepali" and is driven by the belief that "once a Nepali you always remain a Nepali".

To keep the migrants politically interested as well as to sustain financial flows, politicians in countries of emigration often invoke solidarity among their expatriate nationals. Homeland nation-states themselves may reach out to engage the political interests of migrant populations. Making provisions for continuation of citizenship and/or nationality and provision for absentee voting are some concepts for countries to reach its migrants. There is now an upward global trend in the prevalence of dual citizenship/nationality, both in terms of people possessing it and states allowing it.

NRNA, being very proactive in its efforts for registration has made all changes possible in accordance with the NRN Act, 2064. NRNA, from the very beginning, has been requesting the foreign ministry to take this international norms in defining the status of its non-resident citizens as was incorporated in the NRN Ordinance 2062 (see appendix I). Due to this misunderstanding; which may be very difficult for the NRNA to resolve, as all its National Coordination Councils have been registered in their respective countries under this definition; registration of NRNA is incomplete.

Since, change in NRNA Constitution cannot be supported by changes in the constitution of its National Coordination Councils (NCC) there remains only two possible for registration of NRNA in Nepal. The first option is to amend the definition of NRNs as per the international practice or NRN Ordinance, 2062 or the second option is to register NRNA as per the Clause No. 35 of its constitution.

SCOPE OF WORK

NRNA and its affiliations (National Coordination Councils) have been established in 65 countries as per the Ordinance issued by the Nepal Government in 2062 B.S. (see appendix I). This Ordinance had incorporated the universal definition of non-resident citizens and interprets them as citizens staying abroad for more than 183 days in a given year. But unfortunately, the NRN Act 2064 (see appendix II), when promulgated, did not abide by the definition of NRNs as per the Ordinance and/or the universal practice or as incorporate in the NRNA Constitution. The Constitution of NRNA, National Coordination Councils (NCCs) in all the 65 countries/territories are built and functioning as per this definition; initially accepted by the Nepal Government and follows the international norms and practices.

After repeated application by NRNA to the foreign ministry, who is authorized by NRN Act 2064, for the registration of NRNA in Nepal - the differences in the definition of NRNs in the Act and the NRNA Constitution stand's as an obstacle. After repeated NRNA applications; the Foreign Ministry had requested NRNA through its letter (see appendix III) to change in the definition of NRNs in the NRNA Constitution as per NRN Act, 2064.

This report points out the difficulty in changing the definition of NRNs in the NRNA constitution as per NRN Act, 2064 as informed by NRNA through its letter (see appendix IV). This report seeks to present another possibility of registration NRNA as per its prevailing NRNA Constitution and the difficulty and the impracticality of changing the definition of NRNs.

METHODOLOGY AND LIMITATIONS

Both primary and secondary data and information have been used in preparing this report. The primary data and information were obtained from NRNA's National Coordination Councils (NCC) and the Nepali migrants. The secondary information were compiled from various publication of NRNA, related literatures and other related documents and information provided in the internet whose links are provided in page 14 titled reference and source.

The definition of non-resident and resident citizens referred here has been made in connection with their duration of their stay in the particular country and is related to their tax obligations and this is also the international practice. Apart from this; the Nepal Government, through its Ordinance 2062 (see appendix I) had defined NRNs as per the international standards; on whose basis the 65 National Coordination Councils (NCCs) of NRNA have been formed in their respective countries, but changed this definition through NRN Act, 2064 promulgated two years later. Hence, the arguments made in this appraisal are based on and revolves around these issues.

REVIEW OF RELATED LITERATURES

Migrant (non-resident citizens) engagement does not stop at the national level. The foremost means of migrant nation-building comes through individual remittances and investment, followed by hometown associations and charitable initiatives that directly affect economic development, poverty reduction, and capacity building at the micro level. Remittance is estimated to constitute between one-fourth and one-third Nepal's GDP. Migrants often bring in new concepts and technology along with higher level of confidence, competence and energy. Migrants are inclined to engage at the local level, usually in their place of origin, where they are familiar with the context and, in many cases, still have family ties and childhood connections.

With the world turning into a global village and with global migration on the rise; the migrant community, especially of the developing countries; are definitely going to expand in numbers and territories. To address this issue migrants have been segregated into two groups as per their stay in the migrated country. The word resident, non-resident, tax resident and non tax resident has been coined as per the number of days a person spends in a given state/country in one year. The standard is 183 days and is also known as 183-day rule. Though, this was initially used to distinguish a person's tax obligation; it slowly developed universally in distinguishing between a resident and non-resident citizens in many countries as global migration became an important part of the world socio-economy and the need to address migrant issues became more prominent and demanded immediate attention of the government.

What is the 183-day rule?

If you work less than 183 days in many countries you may be considered tax non-resident if certain other criteria are also met. However, even as a non-resident you should normally still be paying tax on the revenue you generate in that country.

If you work more than 183 days in most countries, then you will become tax-resident and liable for tax on your worldwide income, i.e. revenue from your work, interest on investments, etc.

The '183 day rule' does NOT automatically mean that you can work for 183 days in a new country without paying tax or become tax-resident. However in most situations, particularly if a double taxation avoidance treaty exists between your country of work and your home country, you will not have to pay tax on the same income twice. This is how the universal term of tax non-resident and tax-resident was coined.

If you reside for more than 183 days in other countries, many countries consider you to be its tax -resident and a non-resident of the country of origin, your home country. The 183-day rule distinguishes between a resident and a non-resident on the basis of their tax obligation to the state they work or live in. In many countries a resident and a non resident citizen is distinguished by where they pay their taxes.

To address this issue migrants have been segregated into two groups as per their stay in the migrated country.

- Tax non-resident: a migrant staying less than 183 days in the migrated country in a given year and not liable to taxes in the migrated country.
- Tax resident: a migrant staying more than 183 in the migrated country in a given year and liable to taxes in the migrated country.

Similarly, many developing and developed countries have also segregated between citizens that live in the country for more than or less than 183 in the country.

- Resident citizen: citizen staying more than 183 days in the country in a given year and liable to pay taxes in the home country.
- Non-resident citizen: citizen staying less than 183 days in the country in a given year and not liable to pay taxes in the home country.

If a person lives/works/studies in foreign countries for more than 183 days in a given year; he is a tax-resident of that country and a non-resident of the home country. *Assess residents and non-residents citizens the number of days they spend in the migrant country is the universal practice and many countries (some examples are given bellow) follow this practice.*

List of Countries following the international Standard

1. India

A **non-resident Indian (NRI)** is a [citizen of India](#) who holds an Indian [passport](#) and has temporarily [emigrated](#) to another country *for six months or more for work, residence or any other purpose*.

2. Bangladesh

An individual is treated as a resident of Bangladesh if that person stays in ***Bangladesh for 182 days*** or more in any income year; or 90 days or more in an income year if that person has previously resided in Bangladesh for a period of more than 365 days during the 4 preceding years. Residence is determined in Bangladesh purely on the period of presence in Bangladesh, irrespective of residency in other countries. Short term visitors and dependents of foreign nationals not earning any income in Bangladesh are not taxed and are not required to file a tax return in Bangladesh.

3. Sri Lanka

A person's liability for Sri Lankan tax is determined by residency status. An individual who is physically present in ***Sri Lanka for 183 days or more during*** any year of assessment is deemed to be resident in Sri Lanka throughout that year of assessment

4. Pakistan

Notwithstanding anything contained explained above, a citizen shall not be deemed to be a non-resident citizen under the following conditions if:

- a. his stay abroad does not exceed, or he intends to stay abroad for ***not more than six consecutive months inclusive*** of time spent on temporary visits, if any, to Pakistan.

5. Singapore

Under our tax residency rules, you will be regarded as a tax resident if you stay or work in Singapore ***for at least 183 days in a calendar year***. The number of days in Singapore includes weekends and public holidays.

6. Malaysia

An individual is in Malaysia in that basis *year for a period of 182 days or more*. Part of a day counts as a full day. The 182 days can be made up of one period or multiple periods during the year.

7. Taiwan

Both residents and non-residents are assessed through individual income tax on Taiwan-sourced income unless an exception is provided in the Income Tax Act and related laws. Individuals are considered residents of Taiwan for tax purposes if they are either domiciled there, *or spend more than 183 days or longer in a taxable year*.

8. Australia

- you have been in Australia continuously for *six months or more*, and for most of the time you have been
- you have been in Australia *for more than half of the financial year*, unless
 - your usual home is overseas, and
 - you do not intend to live in Australia
- you go overseas temporarily and you do not set up a permanent home in another country, or
- you are an overseas student who has come to Australia to study and are enrolled in a course that is *more than six months long*.

9. Canada

Deemed residents of Canada for income tax purposes

You may be a deemed resident of Canada if:

- you lived outside Canada during the tax year and you are a government employee, a member of the Canadian Forces or its overseas school staff, or working under a Canadian International Development Agency program. See Government employees outside Canada for the rules that apply to you. These rules can also apply to your dependent children and other family members.
- You stayed in Canada for *183 days or more (the 183-day rule)* in the tax year, do not have significant residential ties to Canada and are not considered a resident of another country under the terms of a tax treaty between Canada and that country.

Non-residents of Canada

You are a non-resident for tax purposes if you:

- normally, customarily, or routinely live in another country and are not considered a resident of Canada, or
- do not have significant residential ties to Canada, and
 - *you stay in Canada for less than 183 days in the tax year.*

10. United Kingdom

As soon as you are aware of the fact that you are leaving the United Kingdom you should make contact with Her Majesty's Revenue and Customs and request that they send you a copy of form P85 (Leaving the United Kingdom). This form should be completed in the week you leave the UK, or after, and will inform revenue and customs of the fact that you are no longer resident in the UK.

To be classified as non-resident, you will need to prove the following:

- You visit the UK *less than 183 days in a tax year*, or average less than 91 days over a four year period.

These same considerations will be applied to your spouse or civil partner.

11. Sweden

Individuals will be regarded as tax residents:

- *if they are present in Sweden for a period of more than 6 months.*

12. Germany

Individuals will be regarded as tax residents:

- if their habitual abode is in Germany, i.e. if they stay for an *uninterrupted period of 6 months*, which may fall across two years.

13. Spain

The "Residencia" If you are visiting Spain and you have a permanent address in Spain and you are an EU national, you can spend up to 90 days in succession and *a total of 183 days in any one year without* the need for any visa or permit.

14. Russia

Individuals are deemed to be tax residents if they are physically present in [Russian Federation](#) *for more than 183 days* during consecutive period of 12 months. The period of presence in [Russian Federation](#) is not interrupted in case individual is out of the country for less than six months for educational purposes or for medical treatment.

15. Denmark:

A nonresident of Denmark normally has no residency in Denmark or spends *less than six consecutive months in Denmark*. A resident is liable for tax on worldwide income unless the taxation of the income in question is attributed to another country under a double tax treaty. Nonresidents are liable for tax on income derived from certain sources in Denmark. Extended business travelers will, as a general rule, be considered nonresidents for tax purposes provided that they are not residents of Denmark or stay for less than six consecutive months in Denmark.

SUGGESTIONS

Policymakers in the Asia-Pacific region are increasingly recognizing the value that migrant populations bring to development efforts at home. Some governments in the region have taken extra steps in institutionalizing their engagement with their migrants by creating special offices or directorates within the government agencies. There are many reasons why, over the past few decades, migrants have become more prominent on the domestic as well as the world stage. Migrants can play significant role in the nation-building in developing countries and in ones which have undergone major transformation. This is due to a number of factors, including access to economic resources, greater ease in communication and travel, a large number of expatriate professionals, entrepreneurs who have skills and experiences to compete in the international market and multiculturalism policies in host countries have revitalized ethnic pride and assertiveness.

Though we many not like it and find hard to accept it; migrant workers are going to be a backbone of the Nepali economic for many years. Their contribution to the national socio-economic development will be even greater in the days ahead. Nepal should facilitate and encourage migrant workers to be united and proactive in their migrated countries; so that they are more capable of safe guarding their interest and rights. Migrant workers; especially in the gulf countries, are facing great hardship and difficulties. Leadership and unity is of utmost importance in such situations. As we all are aware that the government of Nepal has recognized NRNA as the global network of migrants; what

harm would it do to strengthen it further by amending the definition of NRNs from 2 years to 183 days? This would help officially increase the base of the NRNA network and make NRNA a more formidable force capable of tackling issues related to migration more collectively and effectively. The government; remaining firm on not changing the definition that was once issued by the government its self would only lead to disintegration of a Nepali International Organization that has so painstakingly developed.

CONCLUSION

Although there can be many facets to a migrant strategy, it can be said that, by and large, migrants tend to pursue similar initiative, with much in common in terms of philosophy and approach. But there is no 'one size fits all' migrant strategy. Obviously, countries differ greatly in terms of their macroeconomic circumstances, the history of their migrant community, their size, geography and available resources to successfully pursue a migrant strategy. However, the fundamental difference between those countries who will ultimately succeed and those who will fall short of expectations lie in one thing only – excellence in execution. There should be continuous dialogue, cooperation and coordination between migrant communities and the mother country.

The size of a country's populace can no longer be calculated within the contours of its borders, rather it must be viewed through the global lens of migration and encompass those who have migrated in seek of better opportunities. Considering them as a national asset is certainly not a new phenomenon. It is the responsibility and duty of every nation to support and facilitate its migrated citizens. Strategies targeted towards them extend across a range of social, cultural, political, educational and financial dimensions are now being implemented by both the developing and the developed countries.

It is for the benefit of the home country as well as the migrant community that the potential and the promise of this huge reservoir of resources, human and economic, be harnessed to improve the lives of the Nepali people both at home and abroad. The difference in the definition of NRN in the Ordinance and the Act has bewildered many and stands as an obstacle in further strengthening of the institution. ***The need to register NRNA as per universal definition of NRNs in Nepal is the need of the hour and in the welfare of all the stakeholders involved.***

RECOMMENDATIONS

It is high time that Nepal too, whose population is an important participator in global migration and a vital contributor to the national economy, design and implement policies and regulations at par with other developing and develop countries that facilitate and unite more and more migrant workers together increase their say and competitiveness in global market.

Apart from this; the Nepal Government, through its Ordinance 2062 (see appendix I) had defined NRNs as per the international standards; on whose basis the 65 National Coordination Councils (NCCs) of NRNA have been formed in their respective countries, but the government changed this definition through NRN Act, 2064 promulgated two years later. Hence amending the definition in all 65 countries is not practice and will only highlight our ignorance and arrogance to the international norms and values.

The following two are the recommendations as per their priority:

1. Define NRNs as per the international norms and practice i.e. Nepali citizens that live abroad excluding the SAARC countries for 183 days in a given year. If not then:
2. Register NRNA in Nepal referring to Clause No. 35 of the NRNA Constitution where it is stated that if any clauses of NRNA Constitution conflicts with the Law of Nepal than the Law prevail.

REFERENCE AND SOURCES:

NRNA souvenirs published in the Global and Regional Conferences.

Websites:

www.capitaltaxconsulting.com/.../what-is-the-183-day-rule

India: www.vakilno1.com/nri/taxation/definitions.htm

Bangladesh: www.incometaxsolution.blogspot.com

Sri Lanka: www.taxrates.cc/html/sri-lanka-tax-rates.html

Pakistan: www.imranshehzad.com/DATA/.../Taxation/Residential%20Status.htm

Singapore: www.iras.gov.sg/irasHome/page.aspx?id=9860

Malaysia: www.ctrustco.com/.../whitepapers/MalaysianTaxResidence.htm

Taiwan: www.taxrates.cc/html/taiwan-tax-rates.htm

Australia: www.exfin.com/australian-tax-residency

Canada: www.cra-arc.gc.ca/tx/nrsdnts/ndvdl/nrs-eng.html

UK: www.en.wikipedia.org/wiki/Tax_residence

Sweden: www.capitaltaxconsulting.com/international-tax/sweden/

Germany: www.capitaltaxconsulting.com/international-tax/germany/

Russia: www.worldwide-tax.com/russia/russia_tax.asp

Denmark: www.gti.org/Services/Tax-services/Expatriate-tax/

गैरआवासीय नेपालीका सम्बन्धमा व्यवस्था गर्न बनेको अध्यादेश

प्रस्तावना : नेपाली मूलका विदेशी नागरिक तथा नेपाल अधिराज्य बाहिर बसोबास गरेका नेपाली नागरिकको नेपालप्रतिको सामिप्यता प्रबर्द्धन गरी त्यस्ता व्यक्तिलाई नेपालको सर्वाङ्गीण विकासमा सहभागी गराउन तथा निजहरूलाई नेपालमा लगानी गर्न उत्प्रेरित गर्ने सम्बन्धमा तत्काल कानुनी व्यवस्था गर्न बान्द्रनीय भएको र हाल संसद्को अधिवेशन नभएसकाले, श्री ५ महाराजाधिराज ज्ञानेन्द्र वीर विक्रम शाहदेवबाट नेपाल अधिराज्यको संविधान, २०४७ को धारा ७२ अनुसार यो अध्यादेश जारी गरिबन्सेको छ ।

१. **संक्षिप्त नाम र प्रारम्भ :**

- (१) यस अध्यादेशको नाम गैरआवासीय नेपाली सम्बन्धी अध्यादेश, २०६२ रहेको छ ।
- (२) यो अध्यादेश तुरुन्त प्रारम्भ हुनेछ ।

२. **परिचाया :** विषय वा प्रसङ्गले अर्को अर्थ नलागेमा यस अध्यादेशमा,—

- (क) 'गैरआवासीय नेपाली' भन्नाले नेपाली मूलको विदेशी नागरिक सम्भन्धुपर्छ र सो शब्दले विदेशमा बस्ने नेपाली नागरिक समेतलाई जनाउँछ ।
- (ख) 'विदेशमा बस्ने नेपाली नागरिक' भन्नाले दक्षिण एसियाली क्षेत्रीय सहयोग संगठन (सार्क) को सदस्य मुलुकबाहेक अन्य कुनै मुलुकमा कुनै पैसा, व्यवसाय वा रोजगारी गरी एक आर्थिक वर्षमा एक सय वियासी दिन वा सोभन्दा बढी अवधि नेपाल अधिराज्यमा बसोबास नगरेको

नेपाली नागरिक सम्भन्धुपर्छ र सो शब्दले श्री ५ को सरकारले अन्य मुलुकमा काममा खटाएको नेपाली नागरिक वा कुनै सरकारी सेवामा रहेको बहालबाला कर्मचारीबाहेक नेपाल सदस्य भएको कुनै अन्तर्राष्ट्रिय संघ-संस्थामा कार्यरत रही अन्य कुनै मुलुकमा काममा खटिएको नेपाली नागरिक समेतलाई जनाउँछ ।

- (ग) 'नेपाली मूलको विदेशी नागरिक' भन्नाले साविकमा आफू स्वयं वा निजको बाबु वा आमा वा बाजे वा बज्यै नेपालको नागरिक रही पछि सार्क मुलुकबाहेक अन्य मुलुकको नागरिकता लिएको व्यक्ति सम्भन्धु पर्छ ।
- (घ) 'परिवार' भन्नाले पति, पत्नी, आफूले पालन-पोषण गर्नुपर्ने बाबु-आमा, माबालक वा आश्रित छोरा-छोरी सम्भन्धु पर्छ ।
- (ङ) 'नजिकका नातेदार' भन्नाले आयकर ऐन, २०५८ को दफा २ को खण्ड (ब) मा उल्लिखित नातेदार सम्भन्धुपर्छ ।
- (च) 'परिवर्त्य विदेशी मुद्रा' भन्नाले नेपाल राष्ट्र बैंक ऐन, २०५८ को दफा २ को खण्ड (ठ) बमोजिमको परिवर्त्य विदेशी मुद्रा सम्भन्धु पर्छ ।
- (छ) 'तोकिए वा तोकिएबमोजिम' भन्नाले यस अध्यादेशअन्तर्गत बनेको नियमावलीमा तोकिए वा तोकिएबमोजिम सम्भन्धु पर्छ ।

३. **गैरआवासीय नेपालीको अभिलेख राख्ने-**

- (१) गैरआवासीय नेपालीले सो हैसियतले आफ्नो नाम दर्ता गराउन चाहेमा तोकिएको अधिकारीसमक्ष तोकिएबमोजिमको ढाँचामा

तोकिएबमोजिमको दस्तुरसहित निवेदन दिन सक्नेछ ।

- (२) उपदफा (१) बमोजिमको निवेदनउपर आवश्यक छानबिन गरी तोकिएको अधिकारीले तोकिएबमोजिम गैरआवासीय नेपालीको अभिलेख खडा गर्नेछ ।

४. **परिचयपत्र जारी गर्ने :**

- (१) दफा ३ को उपदफा (२) बमोजिमको अभिलेखमा नाम समावेश भएको व्यक्तिले गैरआवासीय नेपालीको हैसियतमा परिचयपत्र लिनु चाहेमा तोकिएको अधिकारीसमक्ष तोकिएबमोजिमको ढाँचामा तोकिएबमोजिमको दस्तुरसहित निवेदन दिन सक्नेछ ।
- (२) उपदफा (१) बमोजिमको निवेदनउपर आवश्यक छानबिन गरी तोकिएको अधिकारीले तोकिएबमोजिमको ढाँचामा गैरआवासीय नेपालीको हैसियत खुल्ने गरी परिचयपत्र जारी गर्न सक्नेछ ।
- (३) उपदफा (२) बमोजिमको परिचयपत्र नेपालीमूलको विदेशी नागरिक भए निजले दफा ९ बमोजिम प्राप्त गरेको भिसा अवधिको अधीनमा रही बढीमा दस वर्षसम्म र अन्य गैरआवासीय नेपाली भए बढीमा दुई वर्षसम्म बहाल रहनेछ ।
- (४) उपदफा (३) बमोजिमको अवधि समाप्त हुनुअगावै सम्बन्धित परिचयपत्रबालाले तोकिएको अधिकारीसमक्ष आफ्नो परिचयपत्र नवीकरणका लागि निवेदन दिन सक्नेछ ।

- (५) उपदफा (४) बमोजिम नवीकरणका लागि निवेदन प्राप्त भएमा तोकिएको अधिकारीले उपदफा (३) को अधीनमा रही तोकिएबमोजिमको दस्तुर लिई निजको परिचयपत्र नवीकरण गरी दिन सक्नेछ ।
- (६) उपदफा (२) बमोजिम परिचयपत्र प्राप्त नेपालीमूलको विदेशी नागरिकले नेपाल अधिराज्यभित्र नेपाली नागरिकसरह आवातजावत गर्न सक्नेछ ।

४. परिवर्त्य विदेशी मुद्रामा खाता खोल्न पाउने :
गैरआवासीय नेपालीले दफा ४ बमोजिम प्राप्त गरेको परिचयपत्रको आधारमा विदेशमा विदेशी मुद्रामा आर्जन गरेको रकम नेपाल राष्ट्र बैंकबाट वित्तीय कारोबार गर्ने इजाजतपत्र प्राप्त कुनै बाणिज्य बैंक वा वित्तीय संस्थामा परिवर्त्य विदेशी मुद्रामा खाता खोली सञ्चालन गर्न सक्नेछ ।

६. गैरआवासीय नेपालीले परिवर्त्य विदेशी मुद्रामा लगानी गर्न सक्ने :

- (१) प्रचलित कानूनबमोजिम विदेशी लगानीका लागि खुला गरिएको क्षेत्र र श्री ५ को सरकारले समय-समयमा नेपाल राजपत्रमा सूचना प्रकाशन गरी गैरआवासीय नेपालीका लागि लगानी गर्न खुला गरिएको अन्य कुनै क्षेत्रमा त्यस्तो नेपालीले विदेशमा विदेशी मुद्रामा आर्जन गरेको रकम वा गैरआवासीय नेपालीको पचास प्रतिशत वा सोभन्दा बढी सेयर लगानी भएको कुनै विदेशी कम्पनीले नेपालमा परिवर्त्य विदेशी मुद्रामा लगानी गर्न सक्नेछ ।
- (२) उपदफा (१) बमोजिमको रकम प्रचलित कानूनबमोजिम नेपाल राष्ट्र बैंकबाट वित्तीय कारोबार गर्न इजाजतपत्र प्राप्त कुनै बाणिज्य बैंक वा वित्तीय संस्थामार्फत नेपाल अधिराज्यमा प्राप्त भएको हुनु पर्नेछ ।
- (३) उपदफा (२) बमोजिम प्राप्त गरेको रकमको कानूनबमोजिम श्रोत खुलाउनु पर्ने अवस्थामा बाहेक श्रोत खोल्न बाध्य पारिने छैन ।

७. रकम फिर्ता लैजान सक्ने

- (१) प्रचलित कानूनमा जुनसुकै कुरा लेखिएको भए तापनि यस अध्यादेशबमोजिम गैरआवासीय नेपालीले आफूले गरेको लगानी र त्यसबाट प्राप्त भएको लाभ

बराबरको रकम परिवर्त्य विदेशी मुद्रामा तोकिएबमोजिम फिर्ता लैजान सक्नेछ ।

- (२) उपदफा (१) मा जुनसुकै कुरा लेखिएको भए तापनि नेपालमा लगानी गर्ने गैरआवासीय नेपाली नेपालमा स्थायी रूपमा बसोबास गर्न सुरु गरेमा वा निजले गैरआवासीय नेपालीको हैसियत गुमाएमा निज नेपालमा स्थायी बसोबास गर्न सुरु गर्नुअघि वा गैरआवासीय नेपालीको हैसियत कायम रहँदाका बखतसम्म गरेको लगानी र सोबाट प्राप्त लाभ बराबरको रकममा मात्र उपदफा (१) बमोजिमको सुविधा पाउनेछ ।

८. नेपालीमूलका विदेशी नागरिकलाई सुविधा तथा सहूलियत :

- (१) प्रचलित कानूनमा जुनसुकै कुरा लेखिएको भए तापनि तोकिएबमोजिमको सर्त पूरा गर्ने नेपालीमूलका विदेशी नागरिकलाई निजको जीवनकालसम्म निजकै स्वामित्वमा रहने र निजको मृत्यपछि प्रचलित कानूनबमोजिम हुने गरी नेपाल अधिराज्यभित्र तोकिएबमोजिमको क्षेत्रफलसम्मको जग्गा खरिद गरी आवास गृह निर्माण गर्न वा सोही बराबरको क्षेत्रफल भएको जग्गामा निर्माण भएको आवास गृह खरिद गरी आफू र आफ्नो परिवार बसोबास गर्न सक्नेछ ।
- (२) उपदफा (१) बमोजिमको आवास सुविधा गैरआवासीय नेपाली स्वयंले प्रयोग गर्नेदेखि बाहेक अन्य कुनै व्यक्तिलाई भाडामा दिन वा अन्य कुनै व्यापारिक प्रयोजनका लागि प्रयोग गर्न पाउने छैन ।

९. भिसासम्बन्धी सुविधा

- (१) नेपालमा लगानी गर्ने नेपालीमूलका विदेशी नागरिक र निजको परिवारलाई नेपाल अधिराज्यमा बसोबास गर्न वा उद्योग व्यवसाय सञ्चालन गर्न प्रचलित कानूनबमोजिमको दस्तुर लिई निजको राहदानीको बहाल अवधिको अधीनमा रही एकपटकमा दस वर्षसम्मको अवधिको लागि गैरआवासीय भिसा जारी गर्न सकिनेछ ।
- (२) उपदफा (१) बमोजिम जारी भएको भिसाको अवधि आवश्यकता अनुसार थप गर्न सकिनेछ ।

१०. कर नलाग्ने : प्रचलित कानूनमा जुनसुकै कुरा लेखिएको भए तापनि :

- (क) गैरआवासीय नेपालीले नेपालमा लगानी गर्दाका बखतको सुरु पुँजी रकममा कुनै कर लाग्ने छैन ।
- (ख) गैरआवासीय नेपालीले निजका नजिकको नातेदार नेपाली नागरिकलाई निजी प्रयोगका लागि एकैपटक वा पटक-पटक गरी एक आर्थिक वर्षमा दस लाख रुपैयाँमा नबढ्ने गरी नेपाल राष्ट्र बैंकबाट वित्तीय कारोबार गर्न इजाजतपत्र प्राप्त हुने बाणिज्य बैंक वा वित्तीय संस्थामार्फत नेपाल अधिराज्यमा भुक्तानी हुने गरी पठाएको रकममा त्यस्तो रकम प्राप्त गर्दाको बखत कुनै कर लाग्ने छैन ।
- (ग) गैरआवासीय नेपालीले नाफा आर्जन नगर्ने गरी खडा भएको कुनै सामाजिक, धार्मिक, शैक्षिक, सांस्कृतिक, परोपकारी, खेलकुद वा दैवीप्रकोपको उद्धारसम्बन्धी कार्यसंग सम्बन्धित कुनै संस्थाले प्राप्त गर्ने गरी नेपाल राष्ट्र बैंकबाट इजाजतपत्र प्राप्त कुनै बाणिज्य बैंक वा वित्तीय संस्थामार्फत पठाएको रकममा त्यस्तो रकम प्राप्त गर्दाका बखत कुनै कर लाग्ने छैन ।

११. नेपाली नागरिकसरह व्यवसाय सञ्चालन गर्न पाउने :

यस अध्यादेशबमोजिम परिवर्त्य विदेशी मुद्रामा लगानी गर्ने नेपालीमूलको विदेशी नागरिकले सो लगानीको अर्वाधर नेपाली नागरिकसरह व्यवसाय सञ्चालन गर्न पाउनेछ ।

१२. प्रचलित कानूनबमोजिमको सुविधा पाउने :
प्रचलित कानूनबमोजिम कुनै विदेशी नागरिकले परिवर्त्य विदेशी मुद्रामा नेपालमा लगानी गरेबापत पाउने सुविधा यस अध्यादेशबमोजिम लगानी गर्ने नेपालीमूलका विदेशी नागरिकले पनि पाउनेछ ।

१३. नियम बनाउने अधिकार : यस अध्यादेशको उद्देश्य कार्यान्वयन गर्न श्री ५ को सरकारले आवश्यक नियमहरू बनाउन सक्नेछ ।

लालमोहर सदर मिति: २०६२।५।१७।६

श्रोत: खण्ड ५४, अतिरिक्तक ३४, नेपाल राजपत्र भाग २, मिति ०६२।५।१७

गैर आवासीय नेपालीका सम्बन्धमा व्यवस्था गर्न बनेको विधेयक

प्रस्तावना : गैर आवासीय नेपालीहरूमा नेपालप्रतिको सामिप्यता अभिवृद्धि गरी त्यस्ता व्यक्तिलाई नेपालको सर्वाङ्गिक विकासमा सहभागी गराउन उत्प्रेरित गर्ने सम्बन्धमा कानूनी व्यवस्था गर्न बाञ्छनीय भएकोले,

व्यवस्थापिका-संसदले यो ऐन बनाएको छ ।

१. **संक्षिप्त नाम र प्रारम्भ :** (१) यस ऐनको नाम "गैर आवासीय नेपाली सम्बन्धी ऐन, २०६४" रहेको छ ।

(२) यो ऐन तुरुन्त प्रारम्भ हुनेछ ।

२. **परिभाषा :** विषय वा प्रसङ्गले अर्को अर्थ नलागेमा यस ऐनमा,-

(क) "गैर आवासीय नेपाली" भन्नाले नेपाली मूलको विदेशी नागरिक सम्झनु पर्छ र सो शब्दले विदेशमा बस्ने नेपाली नागरिक समेतलाई जनाउँछ ।

(ख) "नेपाली मूलको विदेशी नागरिक" भन्नाले कुनै व्यक्ति साविकमा स्वयम् वा निजको बाबु, आमा, बाजे वा बज्यै नेपालको नागरिक रही पछि दक्षिण एशियाली क्षेत्रीय सहयोग संगठन (सार्क) को सदस्य मुलुक बाहेक अन्य मुलुकको नागरिकता लिएको व्यक्ति सम्झनु पर्छ ।

(ग) "विदेशमा बस्ने नेपाली नागरिक" भन्नाले सार्कको सदस्य मुलुकमा बसोवास गरेको, नेपाल सरकारबाट खटीई विदेशस्थित कुटनैतिक नियोग वा महावाणिज्य दूतावासमा बहाल रहेको र विदेशस्थित शिक्षण संस्थामा अध्ययन गरिरहेको नेपाली नागरिक बाहेक कुनै पेशा, व्यवसाय र रोजगारी गरी विदेशी मुलुकमा कम्तीमा दुई वर्ष बसोवास गरेको नेपाली नागरिक सम्झनु पर्छ ।

(घ) "परिचयपत्र" भन्नाले दफा ४ बमोजिम दिइएको गैर आवासीय नेपालीको परिचयपत्र सम्झनु पर्छ ।

(ङ) "लगानी" भन्नाले मुनाफा आर्जन गर्ने उद्देश्यले नेपालको कुनै उद्योग वा व्यवसायमा गरेको लगानी सम्झनु पर्छ र सो शब्दले उद्योग वा व्यवसाय र गैर आवासीय नेपालीका बीच सम्झौता गरी कुनै विदेशी उत्पत्तिको प्रविधि सम्बन्धी अधिकार, विशिष्टता, फर्मुला, प्रक्रिया, पेटेण्ट, ट्रेडमार्क वा प्राविधिक सीप वा ज्ञानको हस्तान्तरण गर्ने वा प्राविधिक सल्लाहकार वा व्यवस्थापन सेवा उपलब्ध गराउने कार्य समेतलाई जनाउँछ ।

(च) "परिवार" भन्नाले पति, पत्नी, बाबु, आमा, छोराछोरी, बाजे बज्यै र सासू वा ससुरा सम्झनु पर्छ ।

(छ) "नजिकका नातेदार" भन्नाले आयकर ऐन, २०५८ को दफा २ को खण्ड (ब) मा उल्लिखित नातेदार सम्झनु पर्छ ।



नेपाल सरकार

परराष्ट्र मन्त्रालय

काठमाण्डौ, नेपाल

(बहुपक्षीय आर्थिक कूटनीति महाशाखा)



मिति:-२०६९/१०/०८

संकेत नः MEAD/03/42/84

श्री गैर आवासीय नेपाली संघ
FNCCI Building
टेकू, काठमाण्डौ ।

तहाँको मिति २०६९/०४/२३ को प.सं. N-110/012 को पत्रको संदर्भमा लेखिन्छ ।

सो सम्बन्धमा गैर आवासीय नेपाली सम्बन्धी ऐन, २०६४ र गैर आवासीय नेपाली सम्बन्धी नियमावली, २०६६ अनुसार गैर आवासीय नेपाली संघ नेपालमा दर्ता गर्ने सम्बन्धमा त्यस संघका तर्फबाट पेश भएको मिति १८ संसिर २०६८ को मिति उल्लेख गरी गैर आवासीय नेपाली संघको विधान २००३ (२०१२ को संशोधन सहित) यस मन्त्रालयमा पेश भएकोमा सो विधानमा भएको विदेशमा बस्ने नेपालीको परिभाषा गैर आवासीय नेपाली सम्बन्धी ऐन, २०६४ को दफा २(ग) अनुसार भएको नदेखिएकोले उक्त ऐनको प्रावधान अनुरूपको परिभाषा विधानमा राखी ऐनसंग नवाभिने विधान यस मन्त्रालयमा पेश गर्न जानकारी गराउने निर्णय(मा.उप-प्रधान तथा परराष्ट्र मन्त्रीस्तरीय) मिति २०६९/१०/०७ मा भएको बेहोरा जानकारीका लागि निर्णयानुसार अनुरोध गरिन्छ ।

(सृजना अधिकारी)
शाखा अधिकृत



Non-Resident Nepali Association (NRNA)

गैरआवासीय नेपाली संघ

Ref: N-76/013



मिति: २०७०।०४।०६

श्री माननीय मन्त्रीज्यू,
परराष्ट्र मन्त्रालय सिंहदरवार,
काठमाण्डौं, नेपाल

गैरआवासीय नेपाली संघ दर्ता सन्दर्भमा २०६९।१०।०७ को मन्त्री स्तरिय निर्णयको ब्यहोरा सहित २०६९।१०।०८ को यस मन्त्रालयको पत्र प्राप्त भयो।

पत्रमा "गैरआवासीय नेपाली संघको विधान-२००३ (२०१२ को संशोधन सहित)मा उल्लेख भएको विदेशमा बस्ने नेपालीको परिभाषा, गैरआवासीय नेपाली सम्बन्धी ऐन, २०६४ को दफा २(ग) अनुसार भएको नदेखिएकोले उक्त ऐनको प्रावधान अनुरूपको परिभाषा विधानमा राखी ऐनसँग नवाफिने विधान यस मन्त्रालयमा पेश गर्न" भन्ने उल्लेख भएको विषयका सन्दर्भमा गैरआवासीय नेपाली संघले गम्भिर छलफल गर्यो।

गैरआवासीय नेपाली संघको विधानमा भएको परिभाषा विश्वव्यापी मान्यता अनुसार तयार गरिएको र यस परिभाषालाई नेपाल राष्ट्रले पनि एक पटक स्वीकार गरिसकेको (गैरआवासीय नेपाली सम्बन्धी अध्यादेश २०६२ मार्फत) र यसै परिभाषा अनुसार संघका राष्ट्रिय समन्वय परिषदहरू विभिन्न देशमा दर्ता भई कार्य सम्पादन गरिराखेकाले अहिलेको अवस्थामा नेपाल सरकारको ऐनमा गैरआवासीय नेपालीको परिभाषा सच्याउनु पर्ने संघको शुरु देखिको अवधारणामा कायम रहन पर्ने छलफलको निष्कर्ष रह्यो।

गैरआवासीय नेपालीहरूले सगठित भई विगत दशवर्ष देखि कतिपय गतिविधि नेपाल सरकारसंगै सहकार्यमा अगाडि बढाई रहेको अवस्था समेतलाई ध्यानदिदै संघ दर्ता जतिसक्दा छिटो गर्नु पर्ने छ। त्यसैले सम्पूर्ण गैरआवासीय नेपालीहरूको भावना समेटिएको संघको विद्यमान विधानकै आधारमा गैरआवासीय नेपाली संघ दर्ताको लागि आवश्यक प्रक्या अगाडि बढाई दिनुहुन अनुरोध गर्दछौं।

गैरआवासीय नेपालीको विषयमा यस मन्त्रालयले लिइरहेको चासो, सरोकार र सहयोग प्रति आभार प्रकट गर्दै संघको दर्ता प्रक्यामा पनि त्यहि स्तरको सहयोग हुने विश्वास गैरआवासीय नेपाली संघले लिएको छ।

धन्ववाद।

जीवा लामिछाने
अध्यक्ष।