

BASICS IN INTERNATIONAL TAXATION
DOMESTIC TAX PROVISIONS
vis-à-vis
INTERNATIONAL TAXATION

International Taxation primarily involves the following provisions of the Income Tax Act, 1961

| SECTION | PROVISION |
|----------------------------|--|
| 2(31) | Definition of a Person |
| 4 | Charging Section |
| 5 | Scope of Total Income |
| 6 | Residence in India |
| 9 | Income deemed to accrue or arise in India |
| 44B to 44BBB & 44C to 44DA | Presumptive Tax |
| 172 | Shipping Business of NR |
| 90, 90A, 91 | Double Taxation Avoidance Agreement |
| 115A to 115BBA, 115BBD | Special provisions relating to non-residents |
| 115C to 115I | Special provisions relating to NRI Taxation |
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Section 2(31) – Definition of Person

"person" includes—

- (i) an individual,
- (ii) a Hindu undivided family,
- (iii) a company,
- (iv) a firm,
- (v) an association of persons or a body of individuals, whether incorporated or not,
- (vi) a local authority, and
- (vii) every artificial juridical person, not falling within any of the preceding sub-clauses.

Explanation.—For the purposes of this clause, an association of persons or a body of individuals or a local authority or an artificial juridical person shall be deemed to be a person, whether or not such person or body or authority or juridical person was formed or established or incorporated with the object of deriving income, profits or gains;

**Definition of the term ‘Person’ varies under
Income Tax Act/DTAAs & under FEMA**

Section 4 – Basis of Charge

Charge of income-tax.

(1) Where any Central Act enacts that income-tax shall be charged for any assessment year at any rate or rates, income-tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions (including provisions for the levy of additional income-tax) of, this Act in respect of the total income of the previous year of every person :

***Provided** that where by virtue of any provision of this Act income-tax is to be charged in respect of the income of a period other than the previous year, income-tax shall be charged accordingly.*

(2) In respect of income chargeable under sub-section (1), income-tax shall be deducted at the source or paid in advance, where it is so deductible or payable under any provision of this Act.

The charging section is the backbone of the act, it lays down the provisions as to **what are taxable** and **at what rates**; income of **which period** is taxable and in **whose hands**.



Section 5 – Scope of Total Income

Income is classified as

- Income accrued or arise or deemed to accrue or arise in India
- Income received or is deemed to be received in India
- Income accrued or arise outside India

| Income Which | | Resident & Ordinarily Resident (ROR) | Resident, Not Ordinarily Resident (RNOR) | Non Resident (NR) |
|---------------------------------------|---|--------------------------------------|--|-------------------|
| Accrues & Arises In India | | ✓ | ✓ | ✓ |
| Is Deemed to Accrue or Arise in India | | ✓ | ✓ | ✓ |
| Does not Accrue or Arise In India | Is Received/ Deemed to be Received in India | ✓ | ✓ | ✓ |
| | Is Not Received/ Deemed to be Received in India | ✓ | ✗ | ✗ |

Section 5 – Scope of Total Income

- ❑ Explanation 1 to Section 5 states that income accruing or arising outside India shall not be deemed to be received in India within the meaning of this section by reason of the fact that it is taken into account in a balance sheet prepared in India.
- ❑ Explanation 2 to Section 5 provides that if an income is taxed on accrual or deemed accrual basis, it cannot be taxed again either in the same year or different year on receipt basis. This is to avoid double taxation of the same income.



Income – Accruing or Arising in India

- ❑ Income is said to accrue when an enforceable right to receive it comes to vest with the assessee.

- ❑ The right to receive income depends on commercial reality, NOT method of accounting used or view taken of rights/ liabilities by the assessee.
[E.D. Sassoon & Co. Ltd v. CIT (1954) 26 ITR 27(SC)]
[CIT v. Ashokbhai Chimanbhai (1965) 056 ITR 0042 (SC)]

- ❑ **Income accruing vs Income arising**

- The words “accrue or arise” differ only as to the point of time of recognition of income in the books of accounts.
- The distinction arises in income tax because u/s 145 income from “Business Profession” and “other sources” are to be computed in accordance with the method of accounting regularly employed by the assessee.
- Income accrues when “right to receive” vests with the assessee, but it may arise only when the method of accounting recognizes it as income.

Place of Accrual of Income

- ❑ Place of accrual of income can either be within India or outside India.
- ❑ The place of income is very significant for an NR and R&NOR from point of view of its taxability under the Act.
- ❑ Since a resident is taxed on total world income, place of accrual of income is immaterial.
- ❑ Determining the place of accrual should be decided on the facts of each case. It is nearly impossible to lay down any general test to determine place of accrual of income.
- ❑ In some cases it may be the place of formation of contract, but other matters, eg. Place where contract is carried out, or acts are done under the contract may be decisive in certain circumstances.

Illustrations

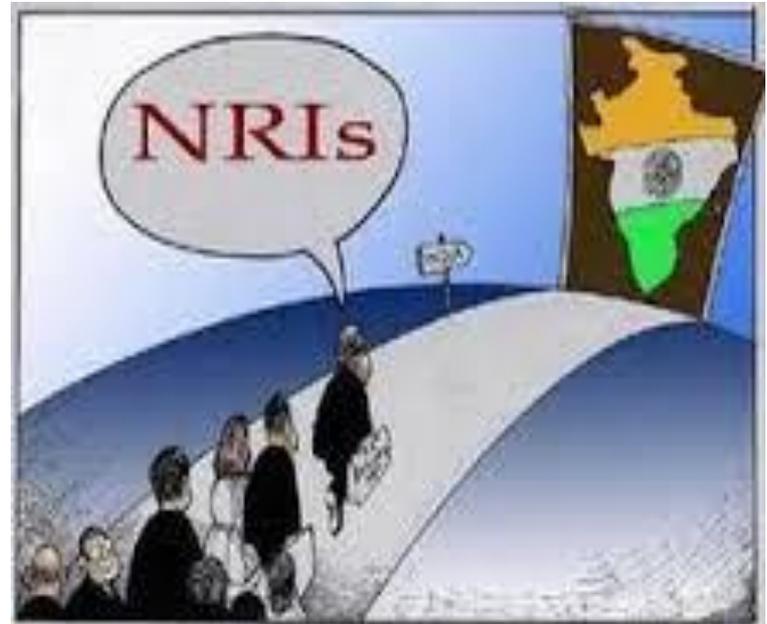
| In case of | Place of accrual of income |
|--------------------------------|--|
| Sale of goods | Place where the contract of sale is made (i.e. place where the offer is accepted) or where sales are effected |
| Foreign trade | When documents of entitlement are unconditionally given to the buyer or his agent by the seller, property in goods passes at seller's place so the income arises at seller's place |
| Settlement of Letter of Credit | Where buyer opens an LC in favour of seller with an exchange bank in the seller's country and authorises that bank to pay the invoice price on receiving the documents of deed, the profit accrues or arises at place of the seller. |
| Salary | Where services are rendered |
| Profits | Where actual business of the company is done. Place of control and management irrelevant in this case. |
| Manufacturing Profits | Where place of manufacturing and sale is different, profits arise at the place of manufacture. Therefore, profits must be apportioned between place of manufacture and place of sale. |

Income Deemed to Accrue or Arise in India

| Section | Description |
|-----------|---|
| 9(1)(i) | Income from a business connection in India or through or from any property or capital asset or source of income or transfer of capital asset situated in India. |
| 9(1)(ii) | Salaries for services rendered in India. |
| 9(1)(iii) | Salaries by Govt. for services outside India. |
| 9(1)(iv) | Dividend paid by an Indian company outside India (Exempt, if Dividend Distribution tax has been paid) |
| 9(1)(v) | Interest by Govt. or by a resident (unless for a business or source outside India) or by a NR |
| 9(1)(vi) | 'Royalty' by Govt. or a resident (unless for a business or a source outside India). |
| 9(1)(vii) | 'Fees for Technical Services (FTS)' by Govt. or a resident (unless for a business or a source outside India). |

Rule 10 of Income Tax Rules

Rule 10 of Income Tax Rules provides that, in the case where the income accruing or arising to a non resident cannot be definitely ascertained, the Assessing Officer can determine the income either at such percentage of the turnover/ profits and gains of the business or such other manner as he may deem suitable.



Sec. 9(1)(i) – Income through or from business connection in India

Income is deemed to accrue or arise in India if it accrues, **directly or indirectly**

- through or from any business connection in India or
- through or from any property in India or
- through or from any asset or source of income in India or
- through the transfer of a capital asset situate in India

Explanation 1 to section 9(1)(i) provides for following exemptions:-

- Business where all operations aren't carried out in India, only that income reasonably attributable to Indian operations would deem to accrue or arise in India.
- No income shall be taxable in India if,
 - operations of NR is confined to purchase of goods in India for the purpose of export.
 - NR runs a news agency/ publishes newspapers/magazines/journals, activities confined to collection of news & views in India for transmission out of India.
 - operations are limited to shooting of film in India provided that NR is either,
 - An individual who is not a citizen of India
 - A firm which doesn't have any partner who is Indian citizen or resident in India, or
 - A company which doesn't have any shareholder who is a citizen or resident of India

Explanation 2 to section 9(1)(i) - Business Connection

Determining what constitutes business connection is crucial as it has a direct bearing on income deemed to accrue or arise in India. It shall include the following:

❑ Business activities through a person:

- a) having authority to conclude contracts on behalf of NR provided he habitually exercises such authority or *habitually plays the principal role leading to conclusion of contracts by that non-residents and the contracts are:*
 - a) *in the name of the non-resident; or*
 - b) *for the transfer of the ownership of, or for the granting of the right to use, property owned by that non-resident or that non-resident has the right to use; or*
 - c) *for the provision of services by the non-resident; or*
- b) who habitually maintains stock of goods on behalf of NR from which he regularly delivers goods & merchandise on behalf of NR without having authority.
- c) who habitually secures orders mainly or wholly for NR or/and other NR entities controlling, controlled by or under the same control as NR



Explanation 2 to section 9(1)(i) - Business Connection (contd..)

- ❑ Business connection will exclude any business activity through brokers or commission agents of independent status acting in ordinary course of their business.
- ❑ However, where such broker or commission agent works mainly on behalf of NR or/and other NR entities controlling, controlled by or under the same control as NR, such brokers will not be considered as having independent status.



Explanation 2A to section 9(1)(i) – Significant Economic Presence (w.e.f 01-04-2019)

For the removal of doubts, it is hereby clarified that the significant economic presence of a non-resident in India shall constitute "business connection" in India and "significant economic presence" for this purpose, shall mean—

- a) transaction in respect of any goods, services or property carried out by a non-resident in India including provision of download of data or software in India, if the aggregate of payments arising from such transaction or transactions during the previous year exceeds such amount as may be prescribed; or
- b) systematic and continuous soliciting of business activities or engaging in interaction with such number of users as may be prescribed, in India through digital means:

Provided that the transactions or activities shall constitute significant economic presence in India, whether or not,—

- a) the agreement for such transactions or activities is entered in India; or
- b) the non-resident has a residence or place of business in India; or
- c) the non-resident renders services in India:

Rules for Business Connection



❑ What is Business Connection

- There is no definition in the Indian tax law
- Meaning largely based on Indian case laws

❑ “Force of attraction” rule OR “effectively connected” rule?

❑ Significance of Business Connection

- Relevant for transactions with “NOR”/“NR” on income that accrues or arises outside & not received/ deemed to be received in India
- It is overruled by tax treaties e.g. if no PE exists

Guidelines to determine Business Connection

❑ A business connection in section 9 involves a relation between a business carried on by a non-resident which yields profits or gains and some activity in the taxable territories which contributes directly or indirectly to the earning of those profits or gains. It predicates an element of continuity between the business of the non resident and the activity in the taxable territories. An isolated transaction is normally not to be regarded as a business connection.
[CIT v. R.D. Aggarwal & co. (1965) 56 ITR 20(SC)]

❑ The expression 'Business' is a much wider than trade or manufacture and includes professions and vocations and callings for a fairly long time. It means an activity carried on continuously and systematically by a person applying his labour and skill with a view to earn income.
[Barendra Prasad Ray v. Income tax Officer (1981) 129 ITR 0295 (SC)]

Guideline to determine Business Connection

- ❑ Mere purchase of plant and machinery from a non resident wherein certain technical personnel are deputed to supervise and impart training in India is not sufficient to establish business connection in India. [**CIT v. Hindustan Shipyard Ltd. (1977) 109 ITR 158 (AP)**]
- ❑ However, in each case the question whether there is a business connection from or through which income arises or accrues must be determined upon the facts and circumstances of that case. [**Blue Star Engg. Co. (Bom.) P. Ltd. v CIT 73 ITR 283 (Bom.)**]

- ❑ **Explanation 3:** In case of a business connection, only that income which is attributable to activities in India shall be deemed to accrue or arise in India. If no operations are carried out in India, no income can be deemed to accrue or arise in India even though there may be a "business connection" in India [**CIT v Toshoku Ltd. 125 ITR 525 (SC)**]

- ❑ **Explanation 4:** It is clarified that the expression "through" shall mean and include and shall be deemed to have always meant and included "by means of", "in consequence of" or "by reason of".

- ❑ **Explanation 5:** It is clarified that an asset or a capital asset being any share or interest in a company or entity registered or incorporated outside India shall be deemed to be and shall always be deemed to have been situated in India, if the share or interest derives, directly or indirectly, its value substantially from the assets located in India;

- ❑ **Property in India:** does not refer merely to buildings or lands. It includes any tangible property movable or immovable

❑ **Asset or source in India**

- “Asset” will include all intangible rights (unlike property which covers only tangible)
- “Source” is not a legal concept but something which a practical man would regard as a real source of income. For e.g. where broadcasting fee paid in England by All India Radio to the performing Right Society of England for broadcasting musical works belonging to the society, such income will accrue or arise to the society in India as the source of income lies in India. [**Performing Right Society Ltd v. CIT**]

❑ Bombay HC in case of **Kusumben Mahadevia v CIT** observed that expressions “source” [Sec 9(1)(i)] & "head of income" [Sec 14] are used in one & the same sense & they mean property belonging to or activity of assessee that yields/ brings income to him within the meaning of the Act.

❑ This clause is wide enough to cover the income accruing to NR from undisclosed sources. [**Hazoora Singh v CIT**]

Capital Asset in India

Income accruing or arising, directly or indirectly through the transfer of capital asset is deemed to accrue or arise in India provided such capital asset is situated in India.

The capital asset may be movable or immovable, tangible or intangible. Such income should be chargeable under the head "Capital Gain" under section 45 of the Act.

The fact that the documents of transfer are registered outside India or consideration for transfer is paid outside India is irrelevant for income to be chargeable under this clause.

Sec. 9(1)(ii) – Income from Salary

- ❑ Salaries will be deemed to accrue or arise in India only if "**earned in India**".
- ❑ Further, it has been clarified by way of Explanation that salary payable for "**service rendered in India**" & rest period/leave period preceding & succeeding such service in India & forms part of the service contract of employment shall be regarded as income earned in India.
- ❑ Salaries payable for services rendered in India shall be regarded as income earned in India, though it may be paid in India or outside. i.e. the payment or receipt of salary is immaterial. *What is important is the place of rendering of services.*
- ❑ Section 9(2) makes an exception to the aforesaid rule in the case of certain retired civil servants and judges permanently residing outside India.

Sec. 9(1)(iii) – Salary payable by GoI

- ❑ Salary payable by GoI to Indian citizen is taxable if :
 - Income is chargeable under the head "Salaries"
 - Recipient should be an Indian Citizen, irrespective of their residential status
 - The services should be rendered outside India
- ❑ It is important to note that all allowances or perquisites paid outside India by the GoI to the Indian Citizens for rendering services outside India are exempt under section 10(7).

Sec. 9(1)(iv) – Dividend Income

- ❑ Dividend paid by an Indian Company outside India is deemed to accrue or arise in India
- ❑ Any dividend paid by Indian Co. shall be taxed in India irrespective residential status
- ❑ Similarly, dividend from Foreign Co. paid in India shall be taxable on receipt basis as income is received in India.
- ❑ The place of accrual of dividend should be decided on the basis of the place of registered office of the company.
- ❑ The place of declaration or payment of such dividend is immaterial.



Sec. 9(1)(v) – Interest Income

| Interest payable by | When deemed to accrue or arise in India |
|---------------------|---|
| Government | Always. Immaterial whether interest is payable on debt incurred or moneys borrowed in India |
| Resident | Always, except where interest is payable in respect of debt incurred or moneys borrowed and used for business or profession outside India or for earning any income from any source outside India |
| Non Resident | Only when interest is payable in respect of debt incurred or moneys borrowed and used for business or profession carried on by such person in India |



❑ The words "or for the purpose of making or earning income from any source in India" as mentioned in clause (b) Sec 9(1)(v) are absent in clause (c).

❑ By virtue of that interest payable by NR in respect of any debt incurred/ money borrowed & used for purpose other than business or profession in India, the interest income is not deemed to accrue or arise in India under this clause.

❑ CBDT vide circular dt. 5/7/1976 clarified that if a lead bank obtains loans outside India from a consortium of foreign banks and lends the same to an Indian concern, interest paid by the lead bank to the members of the consortium will not attract liability towards tax in India.



Sec. 9(1)(vi) –Royalty

| Payable by | When deemed to accrue or arise in India |
|------------|--|
| Govt. | Always |
| Resident | Always, except where payable w.r.t right/property/information used/ service utilised for business/profession outside India or earning income from any source outside India |
| NR | Only when w.r.t. any right/property/information used/ service utilised for business/profession in India or to earn income from any source outside India |

First proviso excludes lumpsum payments received under approved agreements made before 1/4/1976 if conditions in Explanation 1 to Sec 9(1)(vi) are satisfied.

Royalty is not deemed to accrue/ arise in India if it consists of lumpsum consideration for transfer or imparting information outside India in respect of any data/documentation/drawing/ specification relating to patent/invention/ model/ design/ secret formula/ process/trademark or similar property

Second proviso excludes Royalty which consists of lumpsum payment by Resident for transfer of all or any rights (including granting of license) in respect of computer software supplied by NR manufacturer along with computer or computer based equipment under approved scheme.

| Paid By | When deemed to accrue or arise in India |
|---|--|
| For this purpose, an agreement made of or after 1 April, 1976 will be deemed to have been made before that date | |
| Foreign Co. | i) Agreement in accordance with proposal approved by CG before 1 April, 1976 ii) Foreign Co. makes declaration that agreement maybe regarded as made before 1 April, 1976 |
| any other assessee | Agreement in accordance with proposal approved by CG before 1 April, 1976 |

□ Explanation 2: Consideration (incl. lumpsum consideration excl. CG) for:

- Transfer of all or any rights (including license) in:
 - patent/invention/model/design/secret formula/process/trademark
 - Copyright, literary/artistic/scientific work etc.
- Imparting of any information concerning:
 - working of or use of patent, model, design, secret formula or process
 - technical, commercial or scientific knowledge, experience or skill.
- Use of:
 - patents, model, design, secret formula or process etc;
 - industrial, commercial or scientific equipment
- Rendering of services in respect of the above

- ❑ Explanation 3: “Computer software” means any computer programme recorded on disc, tape, perforated media/ other information storage device and includes any such programme or any customized electronic data.

- ❑ Explanation 4 clarifies that transfer of all/ any rights w.r.t. any right, property or information includes and has always included right to use computer software (including granting license) irrespective of the medium of transfer.

- ❑ Explanation 5: Royalty includes & has always included consideration in respect of any right, property or information, whether or not—
 - (a) possession/ control is with the payer;
 - (b) such right, property or information is used directly by the payer;
 - (c) the location of such right, property or information is in India.

- ❑ Explanation 6 clarifies that the expression "process" includes and deems to always have included transmission by satellite (including up-linking, amplification, conversion for down-linking of any signal), cable, optic fibre or by any other similar technology, whether or not such process is secret.

- ❑ This amendment has tax implications of wide amplitude for telecom industry, cable operators, broad band service providers, etc.

- ❑ Royalty doesn't include payment to satellite companies for broadcasting by use of transponder capacity – Asia Satellite Co. Ltd. Vs DIT [2011] (Delhi)

Sec. 9(1)(vii) – Fees for Technical Services (FTS)

| Payable by | When deemed to accrue or arise in India |
|------------|--|
| Government | Always |
| Resident | Always, except where FTS payable in respect of services utilised in business or profession/ earning any income outside India |
| NR | Only when FTS payable in respect of services utilised in a business or profession/ for earning any income in India |
| Exception | Any income by way of FTS payable in pursuance to an agreement made before 1 April 1976 and approved by CG |

For this purpose, an agreement made on/after 1 April, 1976 will be deemed to have been made before that date: If the agreement is in accordance with proposal approved by CG before 1 April, 1976

- ❑ Explanation 2 defines FTS to mean any consideration (including lumpsum consideration) for rendering of managerial/technical/consultancy services, including provision of services of technical or other personnel.
- ❑ Doesn't include consideration for construction/assembly/mining project or consideration which would be income of the recipient chargeable under the head "Salaries".
- ❑ FTS arising out of even a business connection will be covered by Sec 9(1)(vii) and not Sec 9(1)(i), since it is a special provision for that type of income. [**CIT v Copes Vulcan Inc. 167 ITR 884 (Mad)**]
- ❑ On the interpretation of the provisions of Sec 9(1)(vi) and 9(1)(vii) it may be noted that the section provides for services utilised and not the place of rendering of services.

Sec. 9(2) - Pension



- ❑ Pension payable outside India to person residing permanently out of India shall be considered to accrue or arise in India, if payable to a person referred to in article 314 of the Constitution or to person was appointed before 15th August, 1947 as a Judge of Federal Court/ High Court & continues to serve on or after the commencement of the Constitution as a Judge in India.
- ❑ The Explanation states that for the purposes of this section, income of an NR shall be deemed to accrue or arise in India under clause (v) or (vi) or (vii) of sub-section (1) and shall be included in the total income of the NR, whether or not the NR has
 - (i) residence or place of business or business connection in India; or
 - (ii) rendered services in India.

Section 9 – Other Comments

Supreme Court in CIT v Ahmedbhai Umarbhai & Co. held that Sec 9 applies to all assessee irrespective of their residential status, nationality, domicile and place of business.

In CIT v Visakhapatnam Port Trust, Andhra Pradesh HC took a view that though u/s 9(1) income shall be deemed to accrue or arise in India, Sec 4 as well as definition of "total income" in Sec 5 are expressly made subject to provisions of the Act & therefore to the provisions u/s 90. By necessary implication it is subject to terms of DTAA's entered into by GoI with foreign countries.

Section 112A – Tax on LTCG in certain cases

Up to 01.04.2018, long term capital gains on equity shares of a company or an unit of equity oriented fund or an unit of business trusts, was exempt from income-tax under clause (38) of section 10 of the Act.

In order to minimize economic distortions and curb erosion of tax base, the Finance Act 2018 proposed to withdraw the exemption under clause (38) of section 10 and to introduce a new section 112A in the Act to provide that long term capital gains arising from transfer of a long term capital asset being an equity share in a company or a unit of an equity oriented fund or a unit of a business trust *shall be taxed at 10 per cent. of such capital gains exceeding one lakh rupees.*

Section 112A – Tax on LTCG in certain cases

This concessional rate of 10 per cent will be applicable to such long term capital gains, if—

- in a case where long term capital asset is in the nature of an equity share in a company, securities transaction tax has been paid on both acquisition and transfer of such capital asset; and

- in a case where long term capital asset is in the nature of a unit of an equity oriented fund or a unit of a business trust, securities transaction tax has been paid on transfer of such capital asset.

Further, sub-section (4) of the new section 112A empowers the Central Government to specify by notification the nature of acquisitions in respect of which the requirement of payment of securities transaction tax shall not apply

Section 112A – Tax on LTCG in certain cases

Further, the new provision of section 112A also proposes to provide the following:

- ❑ The long term capital gains will be computed without giving effect to the first and second provisos to section 48, i.e. inflation indexation in respect of cost of acquisitions and cost of improvement,
- ❑ The cost of acquisitions in respect of the long term capital asset acquired by the assessee before the 1st day of February, 2018 shall be as per section 55(2)(ac), which shall be deemed to be the higher of:
 - a) the actual cost of acquisition of such asset; and
 - b) the lower of –
 - (I) the fair market value of such asset; and
 - (II) the full value of consideration received or accruing as a result of the transfer of the capital asset.

Sec 195(1) – Scope & Conditions of Applicability

Any person responsible for paying to a non-resident, not being a company, or to a foreign company, any interest or any other sum chargeable under the provisions of this Act (not being income chargeable under the head “Salaries” shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rates in force .

- Applies to payments made of any interest or ‘any other sum’ to NR
- Obligation to withhold tax if payment is chargeable
- Does not apply to “Salaries”
- Deduction at earlier of payment or credit
- Deduction at the rates in force – Sec 2 (37A)‘



Payer: both Residents and Non-Residents

- ❑ Sec 195(2): Option to payer for application to A.O. for obtaining certificate to deduct tax at a lower rate
- ❑ Sec 195(3): Option to recipient NR to make application to AO for lower deduction of tax
- ❑ Sec 197(1): Application by assessee to AO for lower deduction of tax
- ❑ Sec 245N: Application to AAR by a NR applicant or Resident payer for a transaction or proposed transaction

Explanation 2: obligation to comply with Sec 195(1) and to make deduction applies & extends & shall be deemed to have always applied & extended to all persons, Resident or NR, whether or not NR has—

- (i) a residence/ place of business/ business connection in India; or
- (ii) any other presence in any manner whatsoever in India.

Obligation to withhold taxes also applies to Non-Residents

- ❑ “Any sum chargeable to tax” means “sum” chargeable to tax and also applies to the gross sum, whole of which may not be income or profits. – CIT v. Superintending Engineer
- ❑ Application to AO for determination of proportion of income
- ❑ If application not made, tax to be deducted on gross amount
- ❑ Withholding tax not conclusive but subject to regular assessment
- ❑ Applicable on payments in kind [*Kanchanganga Sea Foods Ltd. v. CIT*].
- ❑ Applicable even where only net payment is received after deducting commission/ management fees etc. [*Raymond Ltd. v. DCIT*]
- ❑ NR also liable to deduct tax at source – [Electronic Corporation of India vs. CIT & *STAR Ltd. v. DCIT*]

Sec 195 (6) – Furnishing of Information

Payer shall furnish information relating to payments made to NR which are chargeable to tax in India in the following prescribed manner—

- Form 15CA: Furnishing information electronically to IT Dept. & signed print out of the same to be filed with the payer's banker.
- Form 15 CB: (obtained from CA) to be filed with the payer's banker.

Form 15CB is not required to be obtained for:

- a) remittances covered in the specified list covering 33 items (Rule 37BB) or
- b) the remittances not exceeding Rs. 50,000 per transaction and aggregate of such payments during the financial year doesn't exceed Rs. 5,00,000.
- c) remittances not chargeable to tax

International Practices – Federal Court of Australia

Federal Court of Australia rules that Satyam's (taxpayer, now amalgamated with Tech Mahindra) offshore software service receipts, which are held taxable as royalties under Article 12 of India-Australia DTAA by co-ordinate bench, shall be deemed to be Australian sourced income by virtue of Article 23 of DTAA and therefore assessable as income for Australian tax purposes;

Rejects taxpayer's stand that Article 23 of DTAA does not have the effect of deeming income earned by it from services provided by its employees located in India to be Australian sourced income;

International Practices – Federal Court of Australia

Observes that the payments are deemed to have an Australian source by virtue of combined reading of Article 23 of DTAA and Sec. 4(2) of the International Tax Agreements Act 1953 ('Agreements Act'), therefore upholds taxability u/s. 6-5(3)(a) of the Australian Income-tax Act;

Taxpayer had relied on Indian jurisprudence in *Azadi Bachao Andolan, Verizon Communications Singapore Pte Ltd* where the courts have recognized that a DTAA provision cannot fasten a tax liability where the liability is not otherwise imposed by a local Act;

However, Court notes that Australian Revenue did not argue that the DTAA operated to impose a liability separate and independent from the operation of Australia's domestic law, but rather the liability was the effect of Australia's domestic law i.e. Sec 4 and 5 of the Agreements Act.

Special Provisions Related To NRs

| Section | Special Provision which cover |
|-----------|---|
| 44B & 172 | Shipping business in the case NRs |
| 44BB | Business of exploration, etc., of mineral oils. |
| 44BBA | Business of operation of aircraft in the case of NRs |
| 44BBB | Companies engaged in civil construction, etc., in certain turnkey power projects. |
| 44C | Deduction of head office expenditure in the case of NRs |
| 44D | Income by way of royalties, etc., in the case of foreign companies. |
| 44DA | Income by way of royalties, etc., in case of NRs |

Shipping Business of NRs

Sec. 44B – In case of an NR operating ships, 7.5% of the following amounts shall be deemed to be the profits & gains from the business chargeable to tax:

- (i) amount paid/ payable in or out of India to or on behalf of NR on account of carriage of passengers, livestock, mail or goods shipped at any port in India; and
- (ii) amount received/ deemed to be received in India by or on behalf of NR on account of carriage of passengers, livestock, mail or goods shipped at any port outside India.

Sec. 172 – The rate of tax & amount on which it applies is identical to Sec. 44B.

However, it applies to each individual carriage & hence is more beneficial to when there are only 1 (or few) calls on Indian Ports and assessee do not want to file Returns on a yearly basis but fulfil their Tax obligation at the time of departure itself.

U/s 172, the Master of the vessel must before departure from India, prepare & furnish Return of the full amount paid/payable on account of carriage & on Assessment by AO pay tax determined as specified above (i.e. 7.5% of amount from carriage from or to India Ports).



Exploration, etc. of Mineral Oils

Sec. 44BB – In case of NR in the business of exploration, etc. of mineral oils, 10% of the following amounts shall be deemed to be the profits & gains from the business chargeable to tax:

- amount paid/payable in/out of India
- amount received/deemed to be received in India

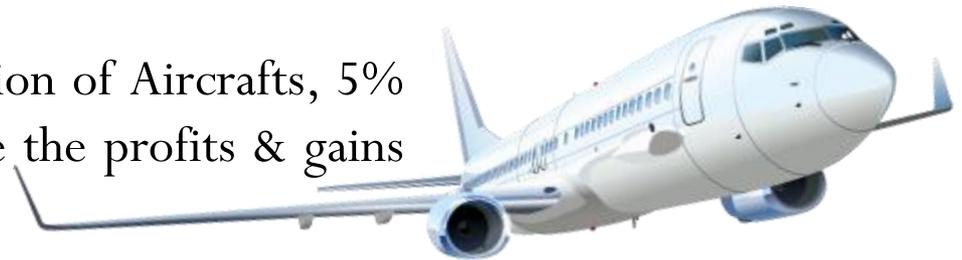
for provision of services/facilities in connection with or supply of plant & machinery in prospecting/extraction/production of mineral oils in India.



Operation of Aircrafts by NRs

Sec. 44BBA – NR's business of operation of Aircrafts, 5% of the following shall be deemed to be the profits & gains from the business chargeable to tax:

- amount paid/payable in/out of India for carriage of passengers/livestock/mail/goods from any place in India
- amount received/deemed to be received in India for carriage of passengers/livestock/mail/goods from any place outside India



Foreign Companies in Civil Construction, etc. in certain Turnkey Projects

Sec. 44BBB: NR's business income from civil construction/ erection of plant/machinery or testing or commissioning of CG approved Turnkey Power Project, 10% of amount paid/ payable (in/out of India) shall deemed to be "profits and gains" chargeable to tax.



Deduction of Head Office Expenses

In computing "Profits & Gains" no amount in excess of the least of the following shall be allowed as a deduction in the nature of Head Office Expenses:—

- (a) an amount equal to 5% of the adjusted total income; or
- (c) the amount of Head Office expenditure incurred by the assessee attributable to the business or profession of the assessee in India.

The method of calculating Adjusted Total Income is given by way of Explanation.

Royalty/ FTS Income – NRs & Foreign Companies

In computing income (Royalty/ FTS) recd. from GOI (agreement before 1st April 1976), deduction shall not exceed 20% of Gross Amount of Royalty/ FTS.

For agreements after 31st March 1976 but before 1st April 2013, no deduction shall be allowed in computing income (Royalty/ FTS).

For agreements after 1st April 2003, if the NR/ Foreign Company carries on business in India through a PE, or performs professional services from a fixed place of profession, and the intangible from which income is earned is effectively connected with such PE/fixed place of profession, no deduction shall be



allowed if not wholly & exclusively incurred for the business & of any amount paid (except reimbursement of actual expenses) by the PE to the Head Office/ any other office.

Special Provisions Related To NRs

| Section | Special Provision which cover |
|--------------------------|--|
| 115A | Dividends, Royalty & FTS in the case of Foreign Companies |
| 115AB | Income (incl. Cap. Gains) from units purchased in Foreign Currency (Forex) |
| 115AC | Income (incl. Cap. Gains) from bonds/ GDRs purchased in Forex |
| 115ACA | Income (incl. Cap. Gains) from GDRs purchased in Forex (ESOP) |
| 115AD | Income (incl. Cap. Gains) of FIIs from Securities |
| 115BBA | NR Sportsmen or Sports Associations |
| 115BBD | Certain dividends received from Foreign Companies |
| Ch. XII-A 115C – 115I | Special Provisions Relating Certain Incomes of NRs |

Section 115A – Foreign Company

| | |
|---|-----|
| Dividends (other than u/s 115-O) | 20% |
| Interest on loan/ debt held by GoI/ Indian Concern in Forex | 20% |
| Interest from Infrastructure Debt Fund referred to in Sec 10(47) | 5% |
| Interest as referred to in Sec 194LC & 194LD | 5% |
| Distributed income being interest referred to in Sec 194LBA(2) | 5% |
| Income from units purchased in Forex of MF [u/s 10(23)] or UTI | 20% |
| Royalty/ FTS | 10% |
| <ul style="list-style-type: none">■ No deduction u/s 28 to 44C, 57, Chapter VI-A are available against such income■ If income consists only of above Income & TDS has been appropriately deducted, then no Returns u/s 139 are required to be filed. | |

Section 115AB – Overseas Financial Organisation

Income from Units purchased in Forex

10%

LTCG on Transfer of such Units

10%

- No deductions u/s 28 to 44C, 57, Chapter VI-A available
- Second proviso to Sec 48 not applicable

Section 115AC – NR

Interest from Bonds of Indian/ Public Sector Co. purchased in Forex

10%

Dividend (except 115-O) from GDR of Indian/ Public Sector Co. purchased in For. Cur. through approved intermediary

10%

LTCG on Transfer of such GDRs

10%

- No deductions u/s 28 to 44C, 57, Chapter VI-A are available
- Second proviso to Sec 48 not applicable
- If above is the only Income & Tax is Deducted appropriately at source no Returns are required to be filed.

Section 115ACA – Resident Individual employee of Indian Co engaged in specified knowledge based industry/ service

| | |
|--|-----|
| Income from GDR issued as part of ESOP, purchased in Forex | 10% |
|--|-----|

| | |
|-------------------------------|-----|
| LTCG on Transfer of such GDRs | 10% |
|-------------------------------|-----|

- No deduction under the Act are available against such income
- First & Second proviso to Sec 48 not applicable

Section 115AD – Foreign Institutional Investors

| | |
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| Dividend (except 115-O) from Securities (except 115AB) | 20% |
|--|-----|

| | |
|--|----|
| Interest as mentioned in Sec 194LD from Securities | 5% |
|--|----|

| | |
|-------------------------------------|-----|
| STCG on Transfer of such Securities | 30% |
|-------------------------------------|-----|

| | |
|--|-----|
| STCG as mentioned in Sec 111A on Transfer of such Securities | 15% |
|--|-----|

| | |
|-------------------------------------|-----|
| LTCG on Transfer of such Securities | 10% |
|-------------------------------------|-----|

- No deductions u/s 28 to 44C, 57 or Chapter VI-A available
- First & Second proviso to Sec 48 not applicable

Section 115BBA

NR Sportsman, Non Citizen, Income from participation in Game/
Advertisement/ Contribution to article in paper/journal etc.

NR Sports Association/ Institution – amount guaranteed to be
paid/ payable in relation to any Game

NR Entertainer, not Citizen – income from performance in India

20%

- No deduction under the Act are available against such income
- No Return of Income if no other income & appropriate TDS deducted
- Game does not include that covered u/s 115BB

Section 115BBD – Indian Company

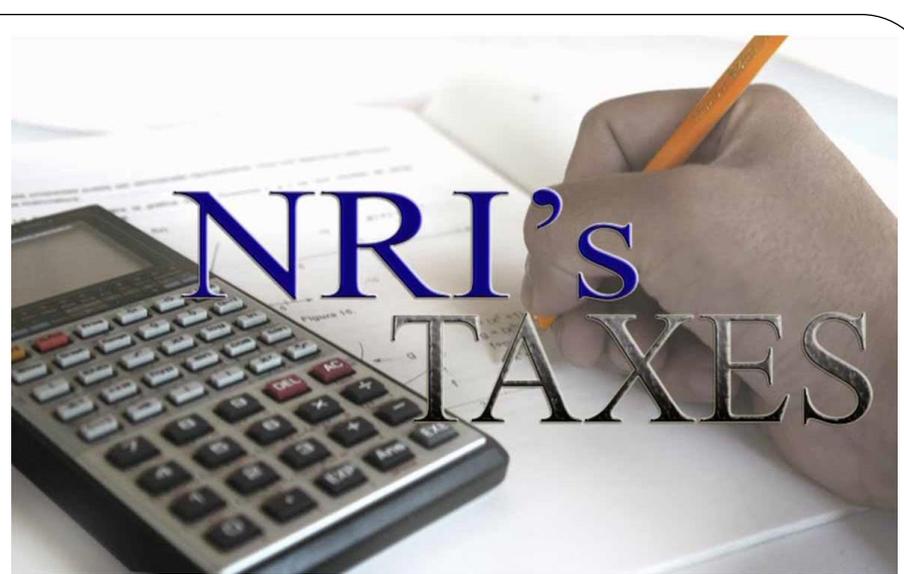
Dividend declared/ distributed or paid by Foreign Co. in which
Indian Co. holds 26% or more value of Equity Share Capital

15%

No deduction under the Act shall be allowed against this Income

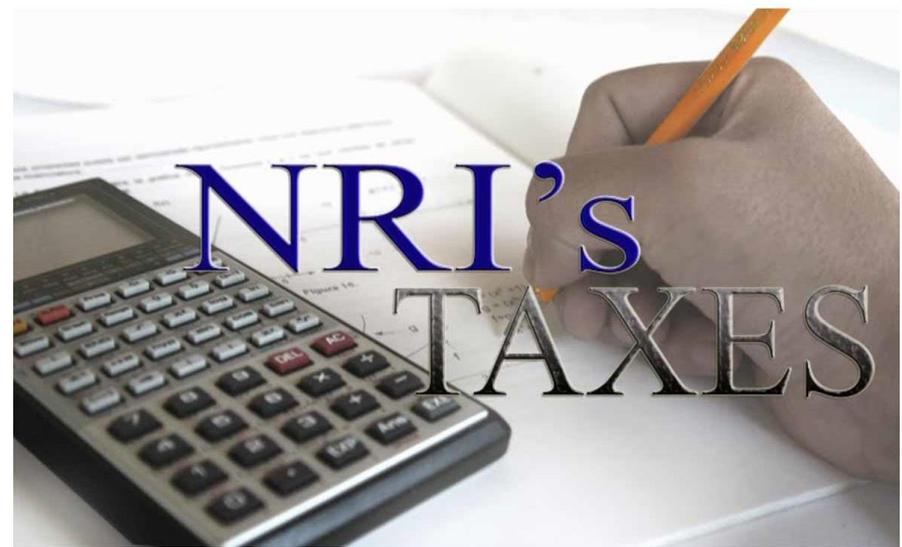
Chapter XII-A

- ❑ NR Indian can elect to be governed Chapter XII-A by declaration in Return of Income.
- ❑ Sec 115D Against NRI's Investment Income or LTCG, Chapter VI-A & Second proviso to Section 48 shall not apply.
- ❑ Sec 115E – For an NRI, from asset other than specified asset, Investment Income taxed @ 20% & LTCG shall be taxed at 10%.
- ❑ If an NRI derives LTCG on the transfer of a foreign exchange asset and invests within 6 months, whole of the net consideration into specified assets or savings certificate mentioned u/s 10(4B), the same shall not be taxed under section 45.



Chapter XII-A

- ❑ Further, if the NRI invests part of the net consideration in the new asset, then proportionate Capital Gains will be exempt from tax.
- ❑ The assessee will not have to file Return of Income if he only has investment income and/or LTCG and appropriate TDS has been deducted.
- ❑ In case NRI becomes Resident he can opt in his Returns to be governed by Chapter XII-A for that & subsequent AYs in respect of foreign exchange assets until they are converted to money.



THANK YOU!

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