CHAPTER 21

NON RESIDENT TAXATION

LEARNING OUTCOMES

After studying this Chapter, you will be able to –

- **determine** the residential status of Individuals, HUF, AOPs/ BOIs, Firms & Companies etc;
- **examine** the scope of income chargeable to tax in respect of different persons, after ascertaining their residential status;
- **examine** when income arising in the hands of non-resident from a transaction is deemed to accrue or arise in India;
- **appreciate** the circumstances when the presence of eligible fund manager in India would not constitute business connection in India for an eligible investment fund;
- **identify** whether a particular income is exempt in the hands of a non-resident based on the provisions of the Income-tax Act, 1961;
- **compute** the profits and gains for non-resident assessees from shipping business, business of operation of cruise ships, business of operation of aircraft, business of civil construction etc. in certain turnkey power projects applying the presumptive tax provisions under the Income-tax Act, 1961;
- **determine** the quantum of head office expenditure allowable as deduction to non-residents;
- **determine** the tax payable by the non-residents on dividend, royalty and fees for technical service applying the special provisions of Chapter XII;
- **determine** the tax payable by non-residents applying the special provisions relating to certain incomes of non-residents prescribed under Chapter XII-A;
- **examine** the withholding tax provisions to determine the tax, if any, required to be deducted at source on certain payments made to non-residents;
- **compute** the total income of non-residents and tax payable thereon, applying the general provisions and special provisions applicable to non-residents under the Income-tax Act, 1961.

21.1 INTRODUCTION

Taxation of cross-border transactions are generally based on the two concepts:

1. Residence based taxation
2. Source based taxation

Residence based taxation: The concept of residence-based taxation asserts that natural persons or individuals are taxable in the country or tax jurisdiction in which they establish their residence or domicile, regardless of the source of income. In case of companies, the place of incorporation or the place of effective management is generally considered as its place of residence.

Source based taxation: According to this concept, a country considers certain income as taxable income, if such income arises within its jurisdiction. Such income is taxed in the country of source regardless of the residence of the taxpayer.

21.2 RESIDENTIAL STATUS AND SCOPE OF TOTAL INCOME

(1) Residential Status [Section 6]

The incidence of tax on any assessee depends upon his residential status under the Act. For all purposes of income-tax, taxpayers (individuals and HUF) are classified into three broad categories on the basis of their residential status viz.

(1) Resident and ordinarily resident

(2) Resident but not ordinarily resident

(3) Non-resident

Taxpayers (other than individuals and HUF) are classified into two broad categories on the basis of their residential status viz.

(1) Resident

(2) Non-resident

The residential status of an assessee must be ascertained with reference to each previous year. A person who is resident and ordinarily resident in one year may become non-resident or resident but not ordinarily resident in another year or *vice versa.*

The provisions for determining the residential status of assessees are:

(1) Residential status of Individuals

Residential status on the basis of number of days of stay in India

Under section 6(1), an individual is said to be resident in India in any previous year, if he satisfies **any one** of the following conditions:

(i) He has been in India during the relevant previous year for a total period of 182 days or more, or

(ii) He has been in India during the 4 years immediately preceding the relevant previous year for a total period of 365 days or more and has been in India for at least 60 days in the relevant previous year.

If both the above conditions are not satisfied, the individual is a non-resident.

Notes:

(a) The term "stay in India" includes stay in the territorial waters of India (i.e., 12 nautical miles into the sea from the Indian coastline). Even the stay in a ship or boat moored in the territorial waters of India would be sufficient to make the individual resident in India.

(b) It is not necessary that the period of stay must be continuous or active nor is it essential that the stay should be at the usual place of residence, business or employment of the individual.

(c) For the purpose of counting the number of days stayed in India, both the date of departure as well as the date of arrival are considered to be in India.

(d) The residence of an individual for income-tax purpose has nothing to do with citizenship, place of birth or domicile. An individual can, therefore, be resident in more countries than one even though he can have only one domicile.

Exceptions:

The following categories of individuals will be treated as resident in India only if the period of their stay during the relevant previous year amounts to 182 days or more. The condition of presence in India for 60 days or more in the relevant previous year is not applicable for such individuals.

(i) Indian citizen, who leaves India during the relevant previous year as a member of the crew of an Indian ship or for purposes of employment outside India, or

(ii) Indian citizen or person of Indian origin[1] who, being outside India comes on a visit to India during the relevant previous year.

However, such person having total income, other than the income from foreign sources [i.e., income which accrues or arises outside India (except income from a business controlled from or profession set up in India) and which is not deemed to accrue or arise in India], exceeding ₹ 15 lakhs during the previous year will be treated as resident in India if -

- the period of his stay during the relevant previous year amounts to 182 days or more, or
- he has been in India during the 4 years immediately preceding the previous year for a total period of 365 days or more and has been in India for at least 120 days in the previous year.

Note - Stay in India for 120 days in the relevant P.Y. is not a standalone condition. This condition requires stay in India for 120 days in the relevant P.Y. + 365 days in the 4 years immediately preceding the P.Y.

How to determine period of stay in India for an Indian citizen, being a crew member?

In case of foreign bound ships where the destination of the voyage is outside India, there is uncertainty regarding the manner and the basis of determining the period of stay in India for an Indian citizen, being a crew member.

To remove this uncertainty, *Explanation 2* to section 6(1) provides that in the case of an individual, being a citizen of India and a member of the crew of a foreign bound ship leaving India, the period or periods of stay in India shall, in respect of such voyage, be determined in the prescribed manner and subject to the prescribed conditions.

Accordingly, the CBDT has vide, *Notification No. 70/2015 dated 17.8.2015*, inserted Rule 126 in the Income-tax Rules, 1962 to compute the period of stay in such cases.

According to Rule 126, for the purposes of section 6(1), in case of an individual, being a citizen of India and a member of the crew of a ship, the period or periods of stay in India shall, in respect of an eligible voyage, not include the following period:

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[1]A person is said to be of Indian origin if he or either of his parents or either of his grandparents were born in undivided India.

Period to be excluded

Period commencing from		Period ending on
the date entered into the Continuous Discharge Certificate in respect of joining the ship by the said individual for the eligible voyage	**And**	the date entered into the Continuous Discharge Certificate in respect of signing off by that individual from the ship in respect of such voyage.

Meaning of certain terms:

Terms		Meaning
(a)	Continuous Discharge Certificate	This term has the meaning assigned to it in the Merchant Shipping (Continuous Discharge Certificate-cum Seafarer's Identity Document) Rules, 2001 made under the Merchant Shipping Act, 1958.
(b)	Eligible voyage	A voyage undertaken by a ship engaged in the carriage of passengers or freight in international traffic where – (i) for the voyage having originated from any port in India, has as its destination any port outside India; and (ii) for the voyage having originated from any port outside India, has as its destination any port in India.

ILLUSTRATION 1

Mr. Ajay is an Indian citizen and a member of the crew of a Mauritius bound Indian ship engaged in carriage of passengers in international traffic departing from Mumbai port on 16th July, 2025. From the following details for the P.Y.2025-26, determine the residential status of Mr. Ajay for A.Y.2026-27, assuming that his stay in India in the last 4 previous years (preceding P.Y.2025-26) is 415 days and last seven previous years (preceding P.Y.2025-26) is 745 days:

Particulars	*Date*
Date entered into the Continuous Discharge Certificate in respect of joining the ship by Mr. Ajay	*16th July, 2025*
Date entered into the Continuous Discharge Certificate in respect of signing off the ship by Mr. Ajay	*19th January, 2026*

SOLUTION

In this case, since Mr. Ajay is an Indian citizen and leaving India during P.Y. 2025-26 as a member of the crew of an Indian ship, he would be resident in India, only if he stayed in India for 182 days or more.

The voyage is undertaken by an Indian ship engaged in the carriage of passengers in international traffic, originating from a port in India (i.e., the Mumbai port) and having its destination at a port outside India (i.e., the Mauritius port). Hence, the voyage is an eligible voyage for the purposes of section 6(1).

Therefore, the period beginning from 16th July, 2025 and ending on 19th January, 2026, being the dates entered into the Continuous Discharge Certificate in respect of joining the ship and signing off from the ship by Mr. Ajay, an Indian citizen who is a member of the crew of the ship, has to be excluded for computing the period of his stay in India. Accordingly, 188 days [16+31+30+31+30+31+19] have to be excluded from the period of his stay in India. Consequently, Mr. Ajay's period of stay in India during the P.Y.2025-26 would be 177 days [i.e., 365 days – 188 days]. Since his period of stay in India during the P.Y.2025-26 is less than 182 days, he is a non-resident for A.Y.2026-27.

Note *- Since the residential status of Mr. Ajay is "non-resident" for A.Y.2026-27 consequent to his number of days of stay in P.Y.2025-26 being less than 182 days, his period of stay in the earlier previous years become irrelevant.*

Deemed resident [Section 6(1A)]

An individual, being an Indian citizen, having total income, other than the income from foreign sources [i.e., income which accrues or arises outside India (except income from a business controlled from or profession set up in India) and which is not deemed to accrue or arise in India], exceeding ₹ 15 lakhs during the previous year would be deemed to be resident in India in that previous year, if he is not liable to pay tax in any other country or territory by reason of his domicile or residence or any other criteria of similar nature.

However, this provision will not apply in case of an individual who is a resident of India in the previous year as per section 6(1).

Meaning of "liable to tax" – Liable to tax, in relation to a person and with reference to a country, means that there is an income-tax liability on such person under the law of that country for the time being in force. It also includes a person who has subsequently been exempted from such liability under the law of that country [Section 2(29A)].

Notes – *(1) Only Indian citizen can be deemed resident. An individual who is not an Indian citizen but a person of Indian Origin cannot be deemed resident u/s 6(1A).*

(2) Stay in India is not necessary for being a deemed resident u/s 6(1A).

Resident and ordinarily resident/ Resident but not ordinarily resident

Only individuals and HUF can be resident but not ordinarily resident in India. All other classes of assessees can be either a resident or non-resident. An individual and HUF would be not-ordinarily resident if they satisfy any one of the conditions specified under section 6(6).

(i) If such individual has been non-resident in India in any 9 out of the 10 previous years preceding the relevant previous year, or

(ii) If such individual has during the 7 previous years preceding the relevant previous year been in India for a period of 729 days or less, or

(iii) If such individual is an Indian citizen or person of Indian origin (who, being outside India, comes on a visit to India in any previous year) having total income, other than the income from foreign sources [i.e., income which accrues or arises outside India (other than income derived from a business controlled in or profession set up in India) and which is not deemed to accrue or arise in India], exceeding ₹ 15 lakhs during the previous year, who has been in India for 120 days or more but less than 182 days during that previous year, or

(iv) If such individual is an Indian citizen who is deemed to be resident in India under section 6(1A) [It may be noted that a deemed resident will always be a resident but not ordinarily resident].

ILLUSTRATION 2

Chris Gayle, a West Indies cricket player visits India for 102 days in every financial year. This has been his practice for the past 10 financial years.

(a) Find out his residential status for the A.Y. 2026-27.

(b) Would your answer change if the above facts relate to Srinath, an Indian citizen who resides in West Indies and represents the West Indies cricket team?

(c) What would be your answer if Srinath had visited India for 120 days instead of 102 days every year, including P.Y.2025-26?

SOLUTION

(a) Determination of Residential Status of Mr. Chris Gayle for the A.Y. 2026-27:

Period of stay during the P.Y. 2025-26 = 102 days

Calculation of period of stay during 4 preceding previous years (102 days x 4=408 days)

P.Y. 2024-25	102 days
P.Y. 2023-24	102 days
P.Y. 2022-23	102 days
P.Y. 2021-22	102 days
Total	**408 days**

Mr. Chris Gayle has been in India for a period of more than 60 days during P.Y. 2025-26 and for a period of more than 365 days during the 4 immediately preceding previous years. Therefore, since he satisfies one of the basic conditions under section 6(1), he is a resident for the A.Y. 2026-27.

Computation of period of stay during 7 preceding previous years = 102 days x 7=714 days

2024-25	102 days
2023-24	102 days
2022-23	102 days
2021-22	102 days
2020-21	102 days
2019-20	102 days
2018-19	102 days
Total	**714 days**

Since his period of stay in India during the past 7 previous years is less than 730 days, he is a not-ordinarily resident during the A.Y. 2026-27. **(See Note below)**

Therefore, Mr. Chris Gayle is a resident but not ordinarily resident during the previous year 2025-26 relevant to the A.Y. 2026-27.

Note: *An individual, not being an Indian citizen, would be not-ordinarily resident person if he satisfies any one of the conditions specified under section 6(6), i.e.,*

(i) If such individual has been non-resident in India in any 9 out of the 10 previous years preceding the relevant previous year, or

(ii) If such individual has during the 7 previous years preceding the relevant previous year been in India for a period of 729 days or less.

In this case, since Mr. Chris Gayle satisfies condition (ii), he is a not-ordinary resident for the A.Y. 2026-27.

(b) If the above facts relate to Mr. Srinath, an Indian citizen, who residing in West Indies, comes on a visit to India, he would be treated as non-resident in India for previous year 2025-26, irrespective of his total income (excluding income from foreign sources), since his stay in India in the current financial year is, in any case, less than 120 days.

(c) In this case, if Mr. Srinath's total income (excluding income from foreign sources) exceeds ₹ 15 lakh, he would be treated as resident but not ordinarily resident in India for P.Y.2025-26, since his stay in India is 120 days in the P.Y.2025-26 and 480 days (i.e., 120 days x 4 years) in the immediately four preceding previous years.

If his total income (excluding income from foreign sources) does not exceed ₹ 15 lakh, he would be treated as non-resident in India for the P.Y.2025-26, since his stay in India is less than 182 days in the P.Y.2025-26.

(2) Residential status of HUF

Resident: A HUF would be resident in India if the control and management of its affairs is situated wholly or partly in India.

Non-resident: If the control and management of the affairs is situated wholly outside India it would become a non-resident.

Meaning of the term "control and management"

- The expression 'control and management' referred to under section 6 refers to the central control and management and not to the carrying on of day-to-day business by servants, employees or agents.
- Control and management means de facto control and management and not merely having the right to control or manage.
- The business may be done from outside India and yet its control and management may be wholly within India. Therefore, control and management of a business is said to be situated at a place where the head and brain of the adventure is situated. Merely because the family has a house in India, where some of the members reside in the previous year, does not constitute that place as the seat of control and management of the affairs of the HUF unless important decisions concerning the affairs of the HUF are taken at that place.

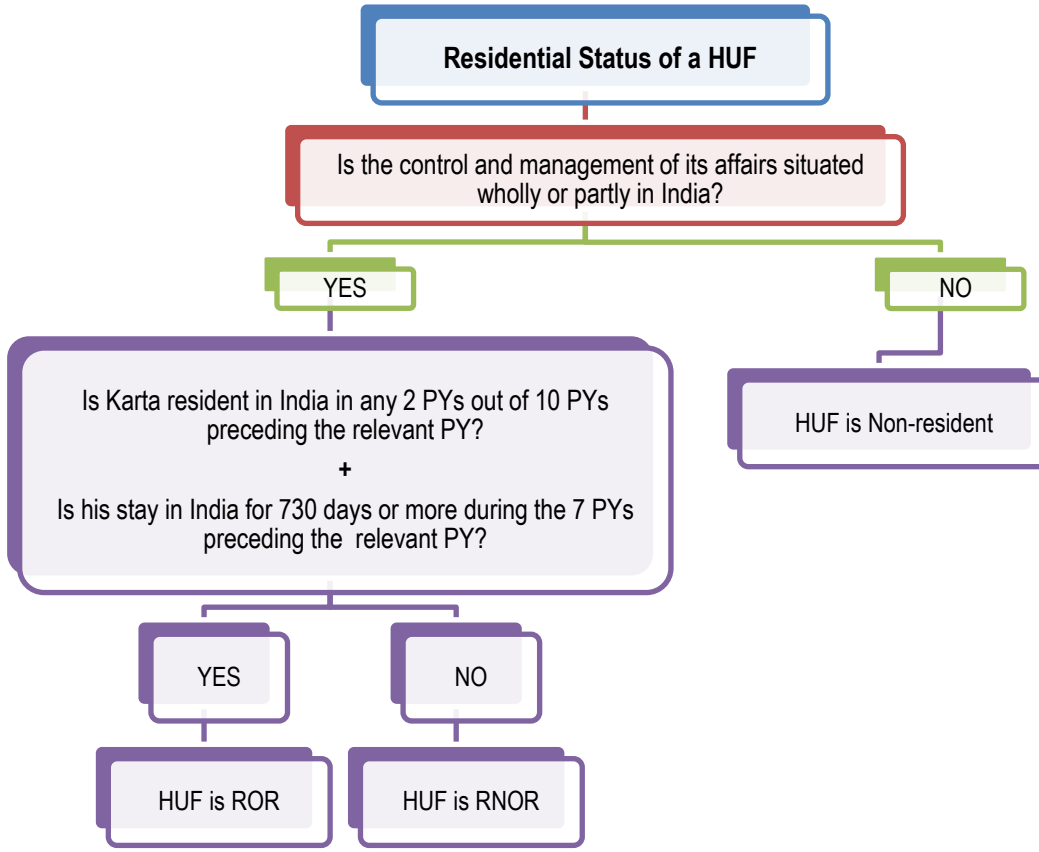
Resident and ordinarily resident/ Resident but not ordinarily resident

If Karta of resident HUF satisfies both the following additional conditions (as applicable in case of individual) then, resident HUF will be "Resident and ordinarily resident" (ROR), otherwise it will be "Resident but not ordinarily resident" (RNOR).

Additional conditions:

1. Karta of resident HUF should be resident in at least 2 previous years out of 10 previous years immediately preceding relevant previous year.

2. Stay of Karta during 7 previous years immediately preceding relevant previous year should be 730 days or more.



(3) Residential status of firms, AoPs and BoIs

Resident: A firm, AoP and BoI would be resident in India if the control and management of its affairs is situated wholly or partly in India.

Non-resident: Where the control and management of the affairs is situated wholly outside India, the firm, AoP and BoI would become a non-resident.

Note **-** *The residential status of the partners/ members is immaterial while determining the residential status of a Firm/AOP/BOI.*

The term "Non-resident" is defined under section 2(30) of the Income-tax Act, 1961 as a person who is not a "resident". However, for the purposes of sections 92B, 93 and 168, non-resident would include a person who is not ordinarily resident within the meaning of section 6(6).

(4) Residential status of local authorities and artificial juridical persons

Resident: Local authorities and artificial juridical persons would be resident in India if the control and management of its affairs is situated wholly or partly in India.

Non-resident: Where the control and management of the affairs is situated wholly outside India, they would become non-residents.

(5) Residential status of a Company

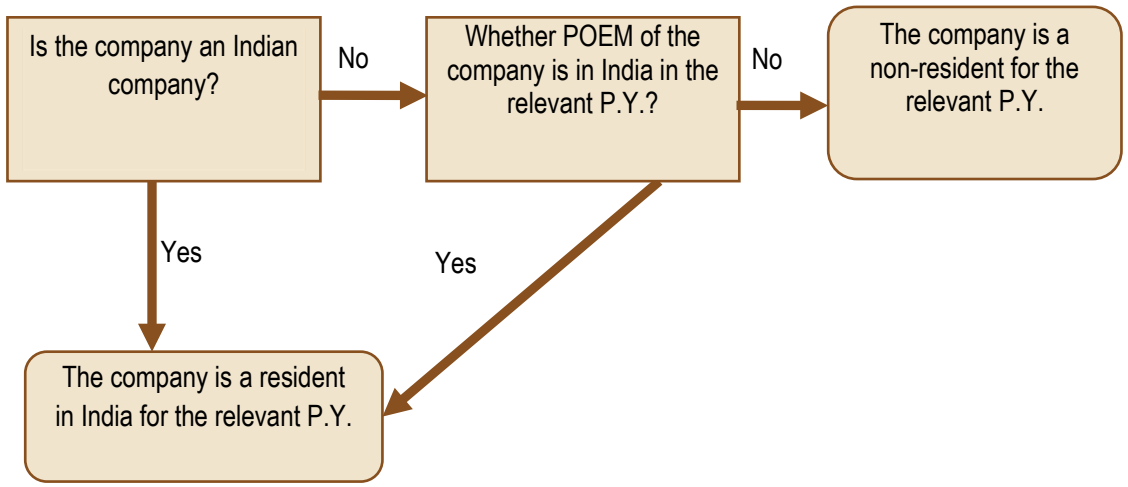
A company would be resident in India in any previous year, if-

(i) it is an Indian company; or

(ii) its place of effective management, in that year, is in India.

***"Place of effective management** "means a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole are, in substance made [Explanation to section 6(3)].*

DETERMINATION OF RESIDENTIAL STATUS OF A COMPANY



Guiding Principles for determination of Place of Effective management ('POEM') of a Company, other than an Indian company – [Circular No. 6/2017, dated 24.01.2017 & Circular No. 8/2017, dated 23-02-2017]:

Place of effective management' (POEM) is an internationally recognised test for determination of residence of a company incorporated in a foreign jurisdiction. Most of the tax treaties entered into by India recognises the concept of 'place of effective management' for determination of residence of a company as a tie-breaker rule for avoidance of double taxation.

The CBDT has laid down the following guiding principles to be followed for determination of POEM.

Concept of Substance over form

The determination of the POEM will depend upon the facts and circumstances of a given case. The POEM concept is one of substance over form. It may be noted that an entity may have more than one place of management, but it can have only one place of effective management at any point of time. Since "residence" is to be determined for each year, POEM will also be required to be determined on year to year basis.

Whether the company is engaged in active business outside India? - An important criterion for determination of POEM

The process of determination of POEM would be primarily based on the fact as to **whether or not the company is engaged in active business outside India.**

A company shall be said to be engaged in 'active business outside India'

- if passive income is not more than 50% of its total income, and
- less than 50% of its total asset are situated in India; and
- less than 50% of total number of employees are situated in India or are resident in India; and
- the payroll expenses incurred on such employees is less than 50% of its total payroll expenditure.

Meaning of certain terms:

Term	Meaning
Income	(a) As computed for tax purpose in accordance with the laws of the country of incorporation; or (b) As per books of account, where the laws of the country of incorporation does not require such a computation.

Value of assets	**(a) In case of an individually depreciable asset**	The average of its value for tax purposes in the country of incorporation of the company at the beginning and at end of the previous year; and
	(b) In case of pool of fixed asset, being treated as a block for depreciation	The average of its value for tax purposes in the country of incorporation of the company at the beginning and at end of the year;
	(c) In case of any other asset	Value as per books of account
Number of employees	The average of the number of employees as at the beginning and at the end of the year and shall include persons, who though not employed directly by the company, perform tasks similar to those performed by the employees.	
Payroll	This term includes the cost of salaries, wages, bonus, and all other employee compensation including related pension and social costs borne by the employer.	
Passive income	It is the aggregate of, - (i) income from the transactions where both the purchase and sale of goods is from/to its associated enterprises; and (ii) income by way of royalty, dividend, capital gains, interest, or rental income; However, any income by way of interest shall not be considered to be passive income in case of a company which is engaged in the business of banking or is a public financial institution, and its activities are regulated as such under the applicable laws of the country of incorporation	

Place of Effective Management:

(i) In case of Companies engaged in Active Business outside India

POEM of a company engaged in active business shall be presumed to be outside India if the majority of the board meeting are held outside India.

However, in case the Board is not exercising its powers of management and such powers are being exercised by either the holding company or any other person, resident in India, then POEM shall be considered to be in India.

For this purpose, merely because the Board of Directors (BOD) follows general and objective principles of global policy of the group laid down by the parent entity which may be in the field of Payroll functions, Accounting, Human resource (HR) functions, IT infrastructure and network platforms, Supply chain functions, Routine banking operational procedures, and not being specific

to any entity or group of entities per se; would not constitute a case of BoD of companies standing aside.

CBDT Circular No. 25/2017, dated 23.10.2017 clarifies that so long as the Regional Headquarter operates for subsidiaries/ group companies in a region within the general and objective principles of global policy of the group laid down by the parent entity in the field of Payroll functions, Accounting, HR functions, IT infrastructure and network platforms, Supply chain functions, Routine banking operational procedures, and not being specific to any entity or group of entities per se; it would, in itself, not constitute a case of BoD of companies standing aside and such activities of Regional Headquarter in India alone will not be a basis for establishment of POEM for such subsidiaries/ group companies.

It is further mentioned in the said Circular that the provisions of General Anti-Avoidance Rule contained in Chapter X-A of the Income-tax Act, 1961 may get triggered in such cases where the above clarification is found to be used for abusive/ aggressive tax planning.

For the purpose of determining whether the company is engaged in active business outside India, the average of the data of the previous year and two years prior to that shall be considered. In case the company has been in existence for a shorter period, then data of such period shall be considered. Where the accounting year for tax purposes, in accordance with laws of country of incorporation of the company, is different from the previous year, then, data of the accounting year that ends during the relevant previous year and two accounting years preceding it shall be considered.

It has been clarified that mere following of global policies laid down by the Indian holding company would not constitute that Board is standing aside.

(ii) In case of Companies not engaged in active business outside India

The guidelines provide a two-stage process for determination of POEM in case of companies not engaged in active business.

(a) **First stage**: Identifying the person(s) who actually make the key management and commercial decisions for the conduct of the company as a whole.

(b) **Second stage**: Determine the place where these decisions are, in fact, being made.

The place where these management decisions are taken would be more important than the place where such decisions are implemented. For the purpose of determination of POEM, it is the substance which would be conclusive rather than the form.

The conditions specified in the circular are depicted in the flow charts below:

The determination of POEM is based on the following categorization of foreign companies:

Active Business Outside India (Business Test)

Companies fulfilling the test of ABOI

- *POEM outside India, if majority BOD meetings are held outside India*
- *If de facto decision making authority is not BOD but Indian parent or resident, POEM shall be in India*

Companies other than those fulfilling the test of ABOI

Stage 1: *Identification of persons who actually make the key management and commercial decision for conduct of the company's business as a whole*

Stage 2: *Determination of place where these decisions are, in fact, made*

What is ABOI test?

A company is said to be engaged in ABOI, if it fulfills the cumulative conditions of:

- Its passive income* (wherever earned) is 50% or less of its total income
- Less than 50% of its total assets situated in India
- Less than 50% of the total number of employees are situated in India or are residents in India
- Payroll expenses incurred on such employees are less than 50% of its total payroll expenditure

** Passive income of a company shall be aggregate of:*

(i) Income from the transactions where both the purchase and sale of goods is from/ to its associated enterprises; and

(ii) income by way of royalty, dividend, capital gains, interest (except for banking companies and public financial institutions) or rental income whether or not involving associated enterprises.

Some of the guiding principles which may be taken into account for determining the POEM are as follows:

(a) Location where the Board of Directors meet and makes decisions: This location may be the place of effective management of a company provided, the Board –

(i) retains and exercises its authority to govern the company; and

(ii) does, in substance, make the key management and commercial decisions necessary for the conduct of the company's 'business as a whole'.

It may be mentioned that mere formal holding of board meetings at a place would by itself not be conclusive for determination of POEM being located at that place. If the key decisions by the directors are in fact being taken in a place other than the place where the formal meetings are held then such other place would be relevant for POEM.

As an example this may be the case where the board meetings are held in a location distinct from the place where head office of the company is located or such location is unconnected with the place where the predominant activity of the company is being carried out.

If a Board has *de facto* delegated the authority to make the key management and commercial decisions for the company to the senior management or any other person including a shareholder, promoter, strategic or legal or financial advisor etc. and does nothing more than routinely ratifying the decisions that have been made, the company's place of effective management will ordinarily be the place where these senior managers or the other person make those decisions.

"Senior Management" in respect of a company means the person or persons who are generally responsible for developing and formulating key strategies and policies for the company and for ensuring or overseeing the execution and implementation of those

strategies on a regular and on-going basis. While designation may vary, these persons may include:

(i) Managing Director or Chief Executive Officer;

(ii) Financial Director or Chief Financial Officer;

(iii) Chief Operating Officer; and

(iv) The heads of various divisions or departments (for example, Chief Information or Technology Officer, Director for Sales or Marketing).

(b) Location of Executive Committee in case powers are delegated by the Board: A company's board may delegate some or all of its authority to one or more committees such as an executive committee consisting of key members of senior management. In these situations, the location where the members of the executive committee are based and where that committee develops and formulates the key strategies and policies for mere formal approval by the full board will often be considered to be the company's place of effective management.

The delegation of authority may be either *de jure* (by means of a formal resolution or Shareholder Agreement) or *de facto* (based upon the actual conduct of the board and the executive committee).

(c) Location of Head Office: The location of a company's head office will be a very important factor in the determination of the company's place of effective management because it often represents the place where key company decisions are made. The following points need to be considered for determining the location of the head office of the company: -

If the company's senior management and their support staff are based in a single location and that location is held out to the public as the company's principal place of business or headquarters then that location is the place where head office is located.

If the company is more decentralized (for example where various members of senior management may operate, from time to time, at offices located in the various countries) then the company's head office would be the location where these senior managers,-

(i) are primarily or predominantly based; or

(ii) normally return to following travel to other locations; or

(iii) meet when formulating or deciding key strategies and policies for the company as a whole.

Members of the senior management may operate from different locations on a more or less permanent basis and the members may participate in various meetings via telephone or video conferencing rather than by being physically present at meetings in a particular location. In such situation the head office would normally be the location, if any, where the highest level of management (for example, the Managing Director and Financial Director) and their direct support staff are located.

In situations where the senior management is so decentralized that it is not possible to determine the company's head office with a reasonable degree of certainty, the location of a company's head office would not be of much relevance in determining that company's place of effective management.

"Head Office" of a company would be the place where the company's senior management and their direct support staff are located or, if they are located at more than one location, the place where they are primarily or predominantly located. A company's head office is not necessarily the same as the place where the majority of its employees work or where its board typically meets.

(d) **Use of modern technology:** The use of modern technology impacts the place of effective management in many ways. It is no longer necessary for the persons taking decision to be physically present at a particular location. Therefore, physical location of board meeting or executive committee meeting or meeting of senior management may not be where the key decisions are in substance being made. In such cases the place where the directors or the persons taking the decisions or majority of them usually reside may also be a relevant factor.

(e) **Decision *via* circular resolution or round robin voting:** In case of circular resolution or round robin voting the factors like, the frequency with which it is used, the type of decisions made in that manner and where the parties involved in those decisions are located etc. are to be considered. It cannot be said that proposer of decision alone would be relevant but based on past practices and general conduct; it would be required to determine the person who has the authority and who exercises the authority to take decisions. The place of location of such person would be more important.

(f) **Decisions made by shareholders are not relevant factor in determination of POEM:** The decisions made by shareholder on matters which are reserved for shareholder decision under the company laws are not relevant for determination of a company's place of effective management. Such decisions may include sale of all or substantially all of the company's

assets, the dissolution, liquidation or deregistration of the company, the modification of the rights attaching to various classes of shares or the issue of a new class of shares etc. These decisions typically affect the existence of the company itself or the rights of the shareholders as such, rather than the conduct of the company's business from a management or commercial perspective and are therefore, generally not relevant for the determination of a company's place of effective management.

However, the shareholder's involvement can, in certain situations, turn into that of effective management. This may happen through a formal arrangement by way of shareholder agreement etc. or may also happen by way of actual conduct. As an example if the shareholders limit the authority of board and senior managers of a company and thereby remove the company's real authority to make decision then the shareholder guidance transforms into usurpation and such undue influence may result in effective management being exercised by the shareholder.

Therefore, whether the shareholder involvement is crossing the line into that of effective management is one of fact and has to be determined on case-to-case basis only.

(g) Day to day routine operational decisions are not relevant for determination of POEM: It may be clarified that day to day routine operational decisions undertaken by junior and middle management shall not be relevant for the purpose of determination of POEM. The operational decisions relate to the oversight of the day-to-day business operations and activities of a company whereas the key management and commercial decision are concerned with broader strategic and policy decision. For example, a decision to open a major new manufacturing facility or to discontinue a major product line would be examples of key commercial decisions affecting the company's business as a whole. By contrast, decisions by the plant manager appointed by senior management to run that facility, concerning repairs and maintenance, the implementation of company-wide quality controls and human resources policies, would be examples of routine operational decisions. In certain situations, it may happen that person responsible for operational decision is the same person who is responsible for the key management and commercial decision. In such cases it will be necessary to distinguish the two type of decisions and thereafter assess the location where the key management and commercial decisions are taken.

If the above factors do not lead to clear identification of POEM, then the final guidelines provide that following secondary factors may be considered:

- Place where main and substantial activity of the company is carried out; or

- Place where the accounting records of the company are kept.

It needs to be emphasized that the determination of POEM is to be based on all relevant facts related to the management and control of the company, and is not to be determined on the basis of isolated facts that by itself do not establish effective management, as illustrated by the following examples:

(i) The fact that a foreign company is completely owned by an Indian company will not be conclusive evidence that the conditions for establishing POEM in India have been satisfied.

(ii) The fact that there exists a Permanent Establishment of a foreign entity in India would itself not be conclusive evidence that the conditions for establishing POEM in India have been satisfied.

(iii) The fact that one or some of the Directors of a foreign company reside in India will not be conclusive evidence that the conditions for establishing POEM in India have been satisfied.

(iv) The fact of, local management being situated in India in respect of activities carried out by a foreign company in India will not, by itself, be conclusive evidence that the conditions for establishing POEM have been satisfied.

(v) The existence in India of support functions that are preparatory and auxiliary in character will not be conclusive evidence that the conditions for establishing POEM in India have been satisfied.

It is reiterated that the above principles for determining the POEM are for guidance only. No single principle will be decisive in itself. The above principles are not to be seen with reference to any particular moment in time rather activities performed over a period of time, during the previous year, need to be considered.

In other words, a "snapshot" approach is not to be adopted. Further, based on the facts and circumstances if it is determined that during the previous year the POEM is in India and also outside India then POEM shall be presumed to be in India if it has been mainly /predominantly in India.

The CBDT also clarified that the Assessing Officer (AO) shall, before initiating any proceedings for holding a company incorporated outside India, on the basis of its POEM, as being resident in India, seek prior approval of the Principal Commissioner or the Commissioner, as the case may be.

Further, in case the AO proposes to hold a company incorporated outside India, on the basis of its POEM, as being resident in India then any such finding shall be given by the AO after seeking prior approval of the collegium of three members consisting of the Principal Commissioners or the Commissioners, as the case may be, to be constituted by the Principal Chief Commissioner of the region concerned, in this regard. The collegium so constituted shall provide an opportunity of being heard to the company before issuing any directions in the matter.

Example 1: *Company A Co. is a sourcing entity, for an Indian multinational group, incorporated in country X and is 100% subsidiary of Indian company (B Co.). The warehouses and stock in them are the only assets of the company and are located in country X. All the employees of the company are also in country X. The average income wise breakup of the company's total income for three years is, -*

(i) 30% of income is from transaction where purchases are made from parties which are non-associated enterprises and sold to associated enterprises.

(ii) 30% of income is from transaction where purchases are made from associated enterprises and sold to associated enterprises.

(iii) 30% of income is from transaction where purchases are made from associated enterprises and sold to non-associated enterprises. and

(iv) 10% of the income is by way of interest.

Interpretation: In this case, passive income is 40% of the total income of the company. The passive income consists of, -

(i) 30% income from the transaction where both purchase and sale is from/to associated enterprises; and

(ii) 10% income from interest.

The A Co. satisfies the first requirement of the test of active business outside India. Since no assets or employees of A Co. are in India the other requirements of the test is also satisfied. Therefore, company is engaged in active business outside India.

Example 2: *The other facts remain same as that in Example 1 with the variation that A Co. has a total of 50 employees. 47 employees, managing the warehouse, storekeeping, and accounts of the company, are located in country X. The Managing Director (MD), Chief Executive Officer (CEO) and sales head are resident in India. The total annual payroll expenditure on these 50 employees*

is of ₹ 5 crore. The annual payroll expenditure in respect of MD, CEO and sales head is of ₹ 3 crore.

Interpretation: Although the first limb of active business test is satisfied by A Co. as only 40% of its total income is passive in nature. Further, more than 50% of the employees are also situated outside India. All the assets are situated outside India. However, the payroll expenditure in respect of the MD, the CEO and the sales head being employee's resident in India exceeds 50% of the total payroll expenditure. Therefore, A Co. is not engaged in active business outside India.

Example 3: *The basic facts are same as in Example 1. Further facts are that all the directors of the A Co. are Indian residents. During the relevant previous year 5 meetings of the Board of Directors is held of which two were held in India and 3 outside India with two in country X and one in country Y.*

Interpretation: The A Co. is engaged in active business outside India as the facts indicated in Example 1 establish. The majority of board meetings have been held outside India. Therefore, the POEM of A Co. shall be presumed to be outside India.

Example 4:*The facts are same as in Example 3 but it is established by the Assessing Officer that although A Co.'s senior management team signs all the contracts, for all the contracts above ₹ 10 lakh the A Co. must submit its recommendation to B Co. and B Co. makes the decision whether or not the contract may be accepted. It is also seen that during the previous year more than 99% of the contracts are above ₹ 10 lakh and over past years also the same trend in respect of value contribution of contracts above ₹ 10 lakh is seen.*

Interpretation: These facts suggest that the effective management of the A Co. may have been usurped by the parent company B Co. Therefore, POEM of A Co. may in such cases be not presumed to be outside India even though A Co. is engaged in active business outside India and majority of board meeting are held outside India.

Example 5: *An Indian multinational group has a local holding company A Co. in country X. The A Co. also has 100% downstream subsidiaries B Co. and C Co. in country X and D Co. in country Y. The A Co. has income only by way of dividend and interest from investments made in its subsidiaries. The Place of Effective Management of A Co. is in India and is exercised by ultimate parent company of the group. The subsidiaries B, C and D are engaged in active business outside India. The meetings of Board of Director of B Co., C Co. and D Co. are held in country X and Y respectively.*

Interpretation: Merely because the POEM of an intermediate holding company is in India, the POEM of its subsidiaries shall not be taken to be in India. Each subsidiary has to be examined

separately. As indicated in the facts since B Co., C Co., and D Co. are independently engaged in active business outside India and majority of Board meetings of these companies are also held outside India. The POEM of B Co., C Co., and D Co. shall be presumed to be outside India.

Further, the CBDT vide Circular no. 8/2017 dated 23.02.2017 also clarified that POEM guidelines shall not apply to a company having turnover or gross receipts of ₹ 50 crores or less in a financial year.

ILLUSTRATION 3

ABC Inc., a Swedish company headquartered at Stockholm, not having a permanent establishment in India, has set up a liaison office in Mumbai in April, 2025 in compliance with RBI guidelines to look after its day to day business operations in India, spread awareness about the company's products and explore further opportunities. The liaison office takes decisions relating to day to day routine operations and performs support functions that are preparatory and auxiliary in nature. The significant management and commercial decisions are, however, in substance made by the Board of Directors at Sweden. Determine the residential status of ABC Inc. for A.Y. 2026-27.

SOLUTION

Section 6(3) provides that a company would be resident in India in any previous year, if-

(i) it is an Indian company; or

(ii) its place of effective management, in that year, is in India.

In this case, ABC Inc. is a foreign company. Therefore, it would be resident in India for P.Y.2025-26 only if its place of effective management, in that year, is in India.

Explanation to section 6(3) defines "place of effective management" to mean a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole are, in substance made. In the case of ABC Inc., its place of effective management for P.Y.2025-26 is not in India, since the significant management and commercial decisions are, in substance, made by the Board of Directors outside India in Sweden.

ABC Inc. has only a liaison office in India through which it looks after its routine day to day business operations in India. The place where decisions relating to day to day routine operations are taken and support functions that are preparatory or auxiliary in nature are performed are not relevant in determining the place of effective management.

Hence, ABC Inc., being a foreign company is a non-resident for A.Y.2026-27, since its place of effective management is outside India in the P.Y.2025-26.

Transition Mechanism for a company incorporated outside India and has not been assessed to tax earlier [Chapter XII-BC – Section 115JH]

A transition mechanism has been provided in Chapter XII-BC comprising of section 115JH for a company which is incorporated outside India, which has not been assessed to tax in India earlier and has become resident in India for the first time due to application of POEM.

(a) Section 115JH empowers the Central Government to notify exception, modification and adaptation subject to which, the provisions of the Act relating to computation of income, treatment of unabsorbed depreciation, set-off or carry forward and set off of losses, special provision relating to avoidance of tax and the collection and recovery of taxes shall apply in a case where a foreign company is said to be resident in India due to its POEM being in India for the first time and the said company has never been resident in India before.

(b) In a case where the determination regarding foreign company to be resident in India has been made in the assessment proceedings relevant to any previous year, then, these transition provisions would also cover any subsequent previous year, if the foreign company is resident in India in that previous year and the previous year ends on or before the date on which such assessment proceeding is completed. In effect, the transition provisions would also cover any subsequent previous year upto the date of determination of POEM in an assessment proceeding. However, once the transition is complete, then, normal provisions of the Act would apply.

(c) In the notification issued by the Central Government, certain conditions including procedural conditions subject to which these adaptations shall apply can be provided for and in case of failure to comply with the conditions, the benefit of such notification would not be available to the foreign company.

Accordingly, where in a previous year, any benefit, exemption or relief has been claimed and granted to the foreign company in accordance with the notification, and subsequently, there is failure to comply with any of the conditions specified therein, then –

(i) the benefit, exemption or relief shall be deemed to have been wrongly allowed.

(ii) the Assessing Officer may re-compute the total income of the assessee for the said previous year and make the necessary amendment as if the exceptions, modifications, and adaptations as per the notification does not apply; and

(iii) the provisions of section 154 shall, so far as may be, apply thereto and the period of four years for rectification of mistake apparent from the record has to be reckoned

from the end of the previous year in which the failure to comply with the condition stipulated in the notification takes place.

(d) Every notification issued in exercise of this power by the Central Government shall be laid before each house of the Parliament.

(e) Accordingly, in exercise of the power under section 115JH(1) of the Income-tax Act, 1961,the Central Government has, vide notification No. 29/2018, dated 22nd June, 2018, specified the exceptions, modifications and adaptions subject to which, the provisions of the Act relating to computation of income, treatment of unabsorbed depreciation, set-off or carry forward and set off of losses, special provision relating to avoidance of tax and the collection and recovery of taxes shall apply in a case where a foreign company is said to be resident in India in any previous year on account of its POEM being in India and the such foreign company has not been resident in India before the said previous year.

Particulars	Provisions
Determination of opening WDV	**<u>If the foreign company is assessed to tax in the foreign jurisdiction</u>** **Where depreciation is required to be taken into account for the purpose of computation of its taxable income**, the WDV of the depreciable asset as per the tax record in the foreign country on the 1st day of the previous year shall be adopted as the opening WDV for the said previous year. **Where WDV is not available as per tax records,** the WDV shall be calculated assuming that the asset was installed, utilised and the depreciation was actually allowed as per the provisions of the laws of that foreign jurisdiction. The WDV so arrived at as on the 1st day of the previous year shall be adopted to be the opening WDV for the said previous year. **<u>If the foreign company is not assessed to tax in the foreign jurisdiction</u>** WDV of the depreciable asset as appearing in the books of account as on the 1st day of the previous year

	maintained in accordance with the laws of that foreign jurisdiction shall be adopted as the opening WDV for the said previous year.
Brought forward loss and unabsorbed depreciation	**<u>If the foreign company is assessed to tax in the foreign jurisdiction</u>** Brought forward loss and unabsorbed depreciation as per the tax record shall be determined year wise on the 1st day of the said previous year. **<u>If the foreign company is not assessed to tax in the foreign jurisdiction</u>** Brought forward loss and unabsorbed depreciation as per the books of account prepared in accordance with the laws of that country shall be determined year wise on the 1st day of the said previous year.
	<u>Other provisions</u> Such brought forward loss and unabsorbed depreciation shall be deemed as loss and unabsorbed depreciation brought forward as on the 1st day of the said previous year and shall be allowed to be set off and carried forward in accordance with the provisions of the Act for the remaining period calculated from the year in which they occurred for the first time taking that year as the first year. However, the losses and unabsorbed depreciation of the foreign company shall be allowed to be set off only against such income of the foreign company which has become chargeable to tax in India on account of it becoming resident in India due to application of POEM. In cases where the brought forward loss and unabsorbed depreciation originally adopted in India are revised or modified in the foreign jurisdiction due to any action of the tax or legal authority, the amount of the loss and

	unabsorbed depreciation shall be revised or modified for the purposes of set off and carry forward in India.
Period of profit and loss account and balance sheet in cases where accounting year of foreign company does not end on 31st March	The foreign company is required to prepare profit and loss account and balance sheet for the period starting from the date on which the accounting year immediately following said accounting year begins, upto 31st March of the year immediately preceding the period beginning with 1st April and ending on 31st March during which the foreign company has become resident. The foreign company is also required to prepare profit and loss account and balance sheet for succeeding periods of twelve months, beginning from 1st April and ending on 31st March, till the year the foreign company remains resident in India on account of its POEM. **Examples:** **Example 1:** If the accounting year of the foreign company is a calendar year and the company becomes resident in India during P.Y. 2025-26 for the first time due to its POEM being in India, then, the company is required to prepare profit and loss account and balance sheet for the period 1st January, 2025 to 31st March, 2025. It is also required to prepare profit and loss account and balance sheet for the period 1st April, 2025 to 31st March, 2026. For the purpose of carry forward of loss and unabsorbed depreciation in this case, since the period 1st January, 2025 to 31st March, 2025 is less than 6 months, it is to be included in the accounting year immediately preceding the accounting year in which the foreign company is held to be resident in India for the first time. Accordingly, the profit and loss and balance sheet of the Fifteen (15) month period from 1st January, 2025 to 31st March, 2026 is to be prepared.

	Example 2: If the accounting year of the foreign company is from 1st July to 30th June and the company becomes resident in India during P.Y. 2025-26 for the first time due to its POEM being in India, then, the company is required to prepare profit and loss account and balance sheet for the period 1st July, 2024 to 31st March, 2025. It is also required to prepare profit and loss account and balance sheet for the period 1st April 2025 to 31st March 2026. For the purpose of carry forward of loss and unabsorbed depreciation in this case, since the period is more than 6 months, it is to be treated as a separate accounting year. The loss and unabsorbed depreciation as per tax record or books of account, as the case may be, of the foreign company shall, be allocated on proportionate basis.
Applicability of provisions of Chapter XVII-B (TDS provisions)	Where more than one provision of Chapter XVII-B of the Act applies to the foreign company as resident as well as foreign company, the provision applicable to the foreign company alone shall apply. Compliance to those provisions of Chapter XVII-B of the Act as are applicable to the foreign company prior to it becoming Indian resident shall be considered sufficient compliance to the provisions of said Chapter. The provisions of section 195(2) relating to application to Assessing Officer to determine the appropriate proportion of sum chargeable to tax shall apply in such manner so as to include payment to the foreign company.
Availability of deduction under section 90 or 91 (Foreign tax credit)	The foreign company shall be entitled to relief or deduction of taxes paid in accordance with the provisions of section 90 or section 91 of the Act.

	Where income on which foreign tax has been paid or deducted, is offered to tax in more than one year, credit of foreign tax shall be allowed across those years in the same proportion in which the income is offered to tax or assessed to tax in India in respect of the income to which it relates and shall be in accordance with the provisions of rule 128 of the Income-tax Rules, 1962.
Non applicability of the notification	The above exceptions, modifications and adaptations shall not apply in respect of such income of the foreign company which otherwise would have been chargeable to tax in India, even if the foreign company had not become Indian resident.
Applicability of the notification where foreign company becomes resident in the subsequent previous year also	In a case where the foreign company is said to be resident in India during a previous year, immediately succeeding a previous year during which it is said to be resident in India; the exceptions, modifications and adaptations shall apply to the said previous year subject to the condition that the WDV, the brought forward loss and the unabsorbed depreciation to be adopted on the 1st day of the previous year shall be those which have been arrived at on the last day of the preceding previous year in accordance with the provisions of this notification.
No effect on other transactions	Any transaction of the foreign company with any other person or entity under the Act shall not be altered only on the ground that the foreign company has become Indian resident.
Applicability of other provisions relating to foreign company	Subject to the above exceptions, modifications and adaptions specifically provided vide this notification, the foreign company shall continue to be treated as a foreign company even if it is said to be resident in India and all the provisions of the Act shall apply accordingly. Consequently, the provisions specifically applicable to—

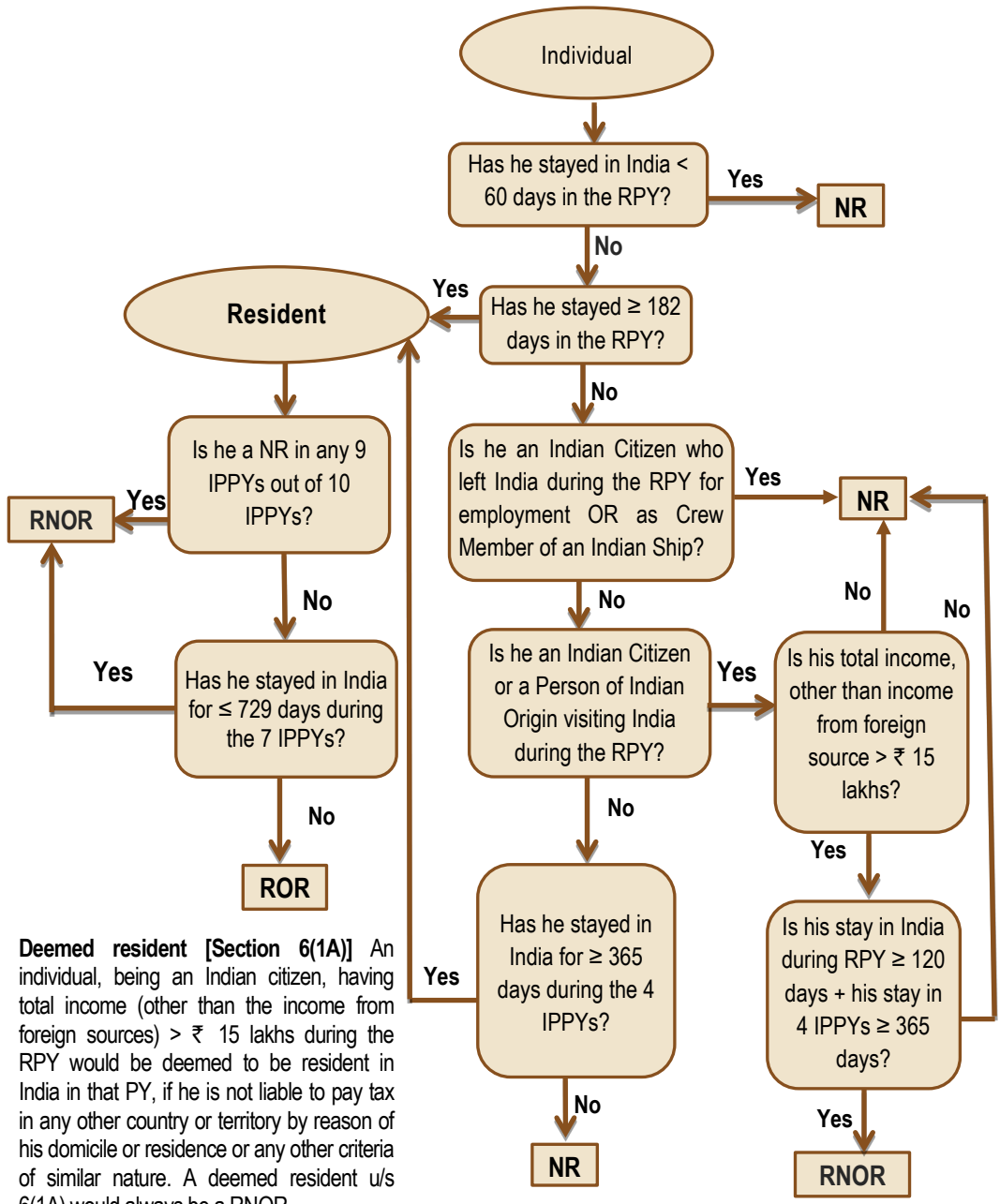
	(i) a foreign company, shall continue to apply to it; (ii) non-resident persons, shall not apply to it; and (iii) the provisions specifically applicable to resident, shall apply to it.
Applicability of tax rate on foreign company	In case of conflict between the provision applicable to the foreign company as resident and the provision applicable to it as foreign company, the later shall generally prevail. Therefore, the rate of tax in case of foreign company i.e., 35% shall remain the same, i.e., rate of income-tax applicable to the foreign company even though residency status of the foreign company changes from non-resident to resident on the basis of POEM.
Applicability of notification	This notification shall be deemed to have come into force from 1st April 2017.
Meaning of foreign jurisdiction	The place of incorporation of the foreign company.
Applicability of rule 115 of the Income-tax Rules, 1962.	The rate of exchange for conversion into rupees of value expressed in foreign currency, wherever applicable, shall be in accordance with provision of Rule 115 of the Income-tax Rules, 1962. [Rule 115 is given as Annexure 1 at the end of this module]

Determination of Residential Status: A summary

Abbreviations used in the Flow Charts in pages 21.31 & 21.32

IC	=	**Indian Citizen**	**RPY**	=	**Relevant Previous Year**
R	=	**Resident**	**NR**	=	**Non-resident**
IPPYs	=	**Immediately Preceding Previous Years**	**AOP**	=	**Association of Persons**
N & OR	=	**Resident but Not Ordinarily Resident**	**HUF**	=	**Hindu Undivided Family**
ROR	=	**Resident and Ordinarily Resident**			

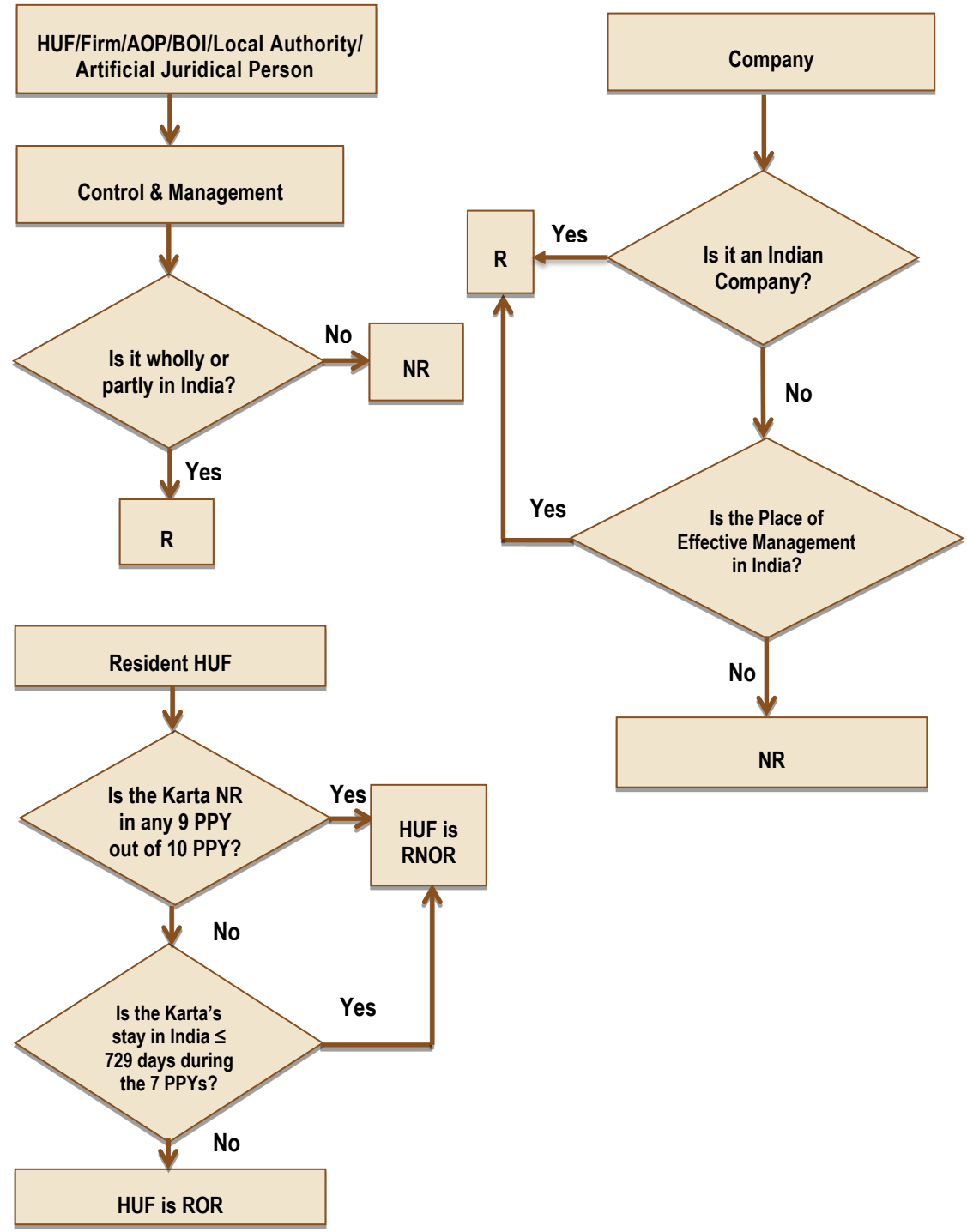
Determination of Residential Status of Individual



Deemed resident [Section 6(1A)] An individual, being an Indian citizen, having total income (other than the income from foreign sources) > ₹ 15 lakhs during the RPY would be deemed to be resident in India in that PY, if he is not liable to pay tax in any other country or territory by reason of his domicile or residence or any other criteria of similar nature. A deemed resident u/s 6(1A) would always be a RNOR.

Note *– If an individual is a resident in India in the PY as per section 6(1), then, the provision of deemed resident u/s 6(1A) would not apply to him.*

Determination of Residential Status of HUF/ Firm/ AOP/ BOI/Local Authority/ Artificial Juridical Person/Company



(2) Scope of Total Income [Section 5]

Section 5 provides the scope of total income which depends on the residential status of the assessee. The scope of total income of an assessee depends upon the following three important considerations:

(i) the residential status of the assessee;

(ii) the place of accrual or receipt of income, whether actual or deemed; and

(iii) the point of time at which the income had accrued to or was received by or on behalf of the assessee.

The ambit of total income of the three classes of assessees would be as follows:

(1) Resident and ordinarily resident (ROR)

The total income of an ROR would, under section 5(1), consist of:

(i) income received or deemed to be received in India during the previous year;

(ii) income which accrues or arises or is deemed to accrue or arise in India during the previous year; and

(iii) income which accrues or arises outside India even if it is not received or brought into India during the previous year.

In simpler words, the global income of a ROR is chargeable to tax in India.

(2) Resident but not ordinarily resident (RNOR)

Under section 5(1), the total income of an RNOR would consist of –

(i) income received or deemed to be received in India during the previous year;

(ii) income which accrues or arises or is deemed to accrue or arise in India during the previous year; and

(iii) income derived from a business controlled in or profession set up in India, even though it accrues or arises outside India.

Note – All other income accruing or arising outside India which is not received or deemed to be received or deemed to accrue or arise in India would not be included in his total income.

(3) Non-resident

A non-resident's total income under section 5(2) includes:

(i) income received or deemed to be received in India in the previous year; and

(ii) income which accrues or arises or is deemed to accrue or arise in India during the previous year.

Note: All assessees, whether resident or not, are chargeable to tax in respect of their income accrued, arisen, received or deemed to accrue, arise or to be received in India whereas a resident alone (resident and ordinarily resident in the case of individuals and HUF) is chargeable to tax in respect of income which accrues or arises outside India.

Clarification regarding liability to income-tax in India of a non-resident seafarer receiving remuneration in NRE (Non-Resident External) account maintained with an Indian Bank [Circular No.13/2017, dated 11.04.2017 and Circular No.17/2017, dated 26.04.2017]

Income by way of salary, received by non-resident seafarers, for services rendered outside India on foreign ships, is being subjected to tax in India for the reason that the salary has been received by the seafarer into the NRE bank account maintained in India by the seafarer. On receiving representations in this regard, the CBDT examined the matter and noted that section 5(2)(a) of the Income-tax Act, 1961 provides that only such income of a non-resident shall be subjected to tax in India that is either received or is deemed to be received in India.

Accordingly, the CBDT has, vide this circular, clarified that salary accrued to a non-resident seafarer for services rendered outside India on a foreign going ship (with Indian flag or foreign flag) shall not be included in the total income merely because the said salary has been credited in the NRE account maintained with an Indian bank by the seafarer.

.Summary of scope of Total Income

Particulars	Resident and Ordinarily Resident	Not ordinarily Resident	Non-Resident
Income received or deemed to be received in India whether earned in India or elsewhere	Yes	Yes	Yes
Income which accrues or arises or is deemed to accrue or arise in India during the previous year whether received in India or elsewhere	Yes	Yes	Yes

Income which accrues or arises outside India and received outside India from a business controlled from India	Yes	Yes	No
Income which accrues or arises outside India and received outside India in the previous year from any other source	Yes	No	No
Income which accrues or arises outside India and received outside India during the year(s) preceding the relevant previous year and remitted to India during the relevant previous year	No	No	No

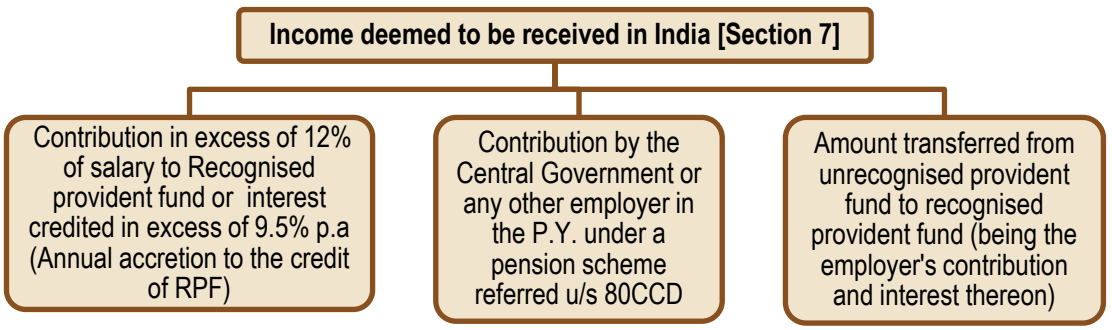
Meaning of "Income received or deemed to be received"

All assessees are liable to tax in respect of the income received or deemed to be received by them in India during the previous year irrespective of -

(i) their residential status, and

(ii) the place of its accrual.

Income is to be included in the total income of the assessee immediately on its actual or deemed receipt. The receipt of income refers to only the first occasion when the recipient gets the money under his control. Therefore, when once an amount is received as income, remittance or transmission of that amount from one place or person to another does not constitute receipt of income in the hands of the subsequent recipient or at the place of subsequent receipt.



Meaning of income 'accruing' and 'due'

Accrue refers to the right to receive income, whereas due refers to the right to enforce payment of the same. For e.g. salary for work done in December will accrue throughout the month, day to day, but will become due on the salary bill being passed on 31st December or 1st January.

Similarly, on Government securities, interest payable on specified dates arise during the period of holding, day to day, but will become due for payment on the specified dates.

Example:

Interest on Government securities is usually payable on specified dates, say on 1st January and 1st July. In all such cases, the interest would be said to accrue from 1st July to 31st December and on 1st January, it will fall due for payment.

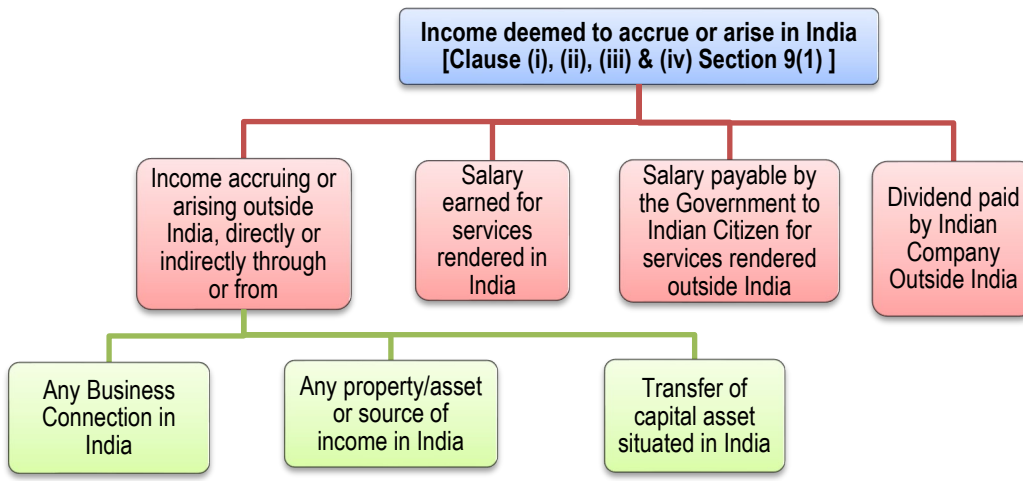
It must be noted that income which has been taxed on accrual basis cannot be assessed again on receipt basis, as it will amount to double taxation.

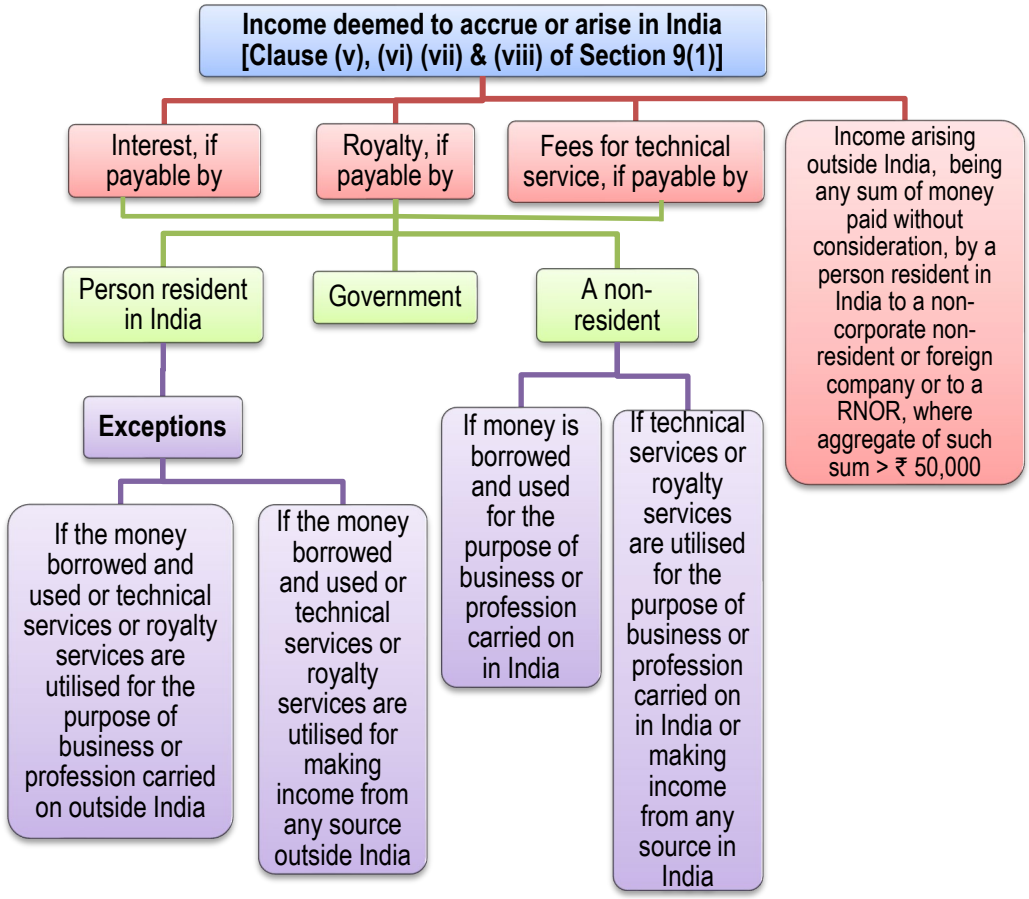
Explanation 1 to section 5 specifically provides that an item of income accruing or arising outside India shall not be deemed to be received in India merely because it is taken into account in a balance sheet prepared in India.

Further, *Explanation 2* to section 5 makes it clear that once an item of income is included in the assessee's total income and subjected to tax on the ground of its accrual/ deemed accrual, it cannot again be included in the person's total income and subjected to tax either in the same or in a subsequent year on the ground of its receipt - whether actual or deemed.

Income deemed to accrue or arise in India [Section 9]

Under section 9, certain types of income are deemed to accrue or arise in India even though they may actually accrue or arise outside India.





The categories of income which are deemed to accrue or arise in India are:

(1) Any income accruing or arising to an assessee in any place outside India whether directly or indirectly

(i) through or from any business connection in India,

(ii) through or from any property in India,

(iii) through or from any asset or source of income in India or

(iv) through the transfer of a capital asset situated in India

would be deemed to accrue or arise in India **[Section 9(1)(i)].**

(i) What is Business Connection?

'Business connection' shall include any business activity carried out through a person acting on behalf of the non-resident [*Explanation 2* to section 9(1)(i)]

For a business connection to be established, the person acting on behalf of the non-resident –

(a) must have an authority, which is habitually exercised in India, to conclude contracts on behalf of the non-resident or

habitually concludes contracts or habitually plays the principal role leading to conclusion of contracts by that non-resident and such contracts are

- in the name of the non-resident; or
- 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
- for the provision of services by that non-resident, or

(b) in a case, where he has no such authority, but habitually maintains in India a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the non-resident, or

(c) habitually secures orders in India, mainly or wholly for the non-resident.

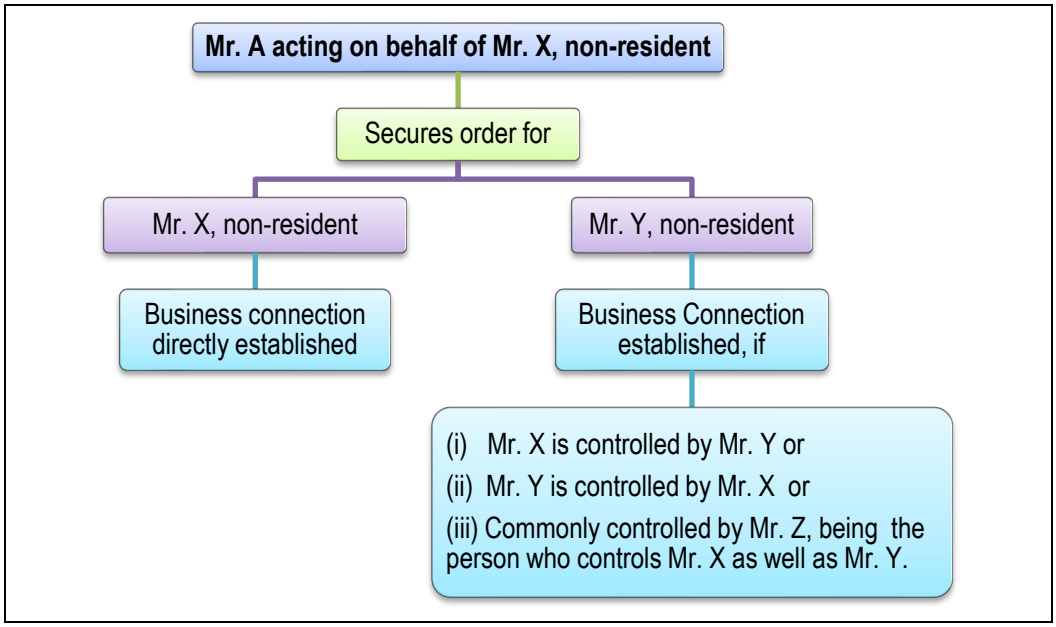
Further, there may be situations when the person acting on behalf of the non-resident secure order for other non-residents. In such situation, business connection for other non-residents is established if,

i. such other non-resident controls the non-resident or

ii. such other non-resident is controlled by the non-resident or

iii. such other non-resident is subject to same control as that of non-resident.

In all the three situations, business connection is established, where a person habitually secures orders in India, mainly or wholly for such non-residents.



Agents having independent status are not included in Business Connection: Business connection, however, shall not be established, where the non-resident carries on business through a broker, general commission agent or any other agent having an independent status, if such a person is acting in the ordinary course of his business.

A broker, general commission agent or any other agent shall be deemed to have an independent status where he does not work mainly or wholly for the non-resident.

Where a business is carried on in India through a person referred to in (a), (b) or (c) of (i) above, only so much of income as is attributable to the operations carried out in India shall be deemed to accrue or arise in India *[Explanation 3 to Section 9(1)(i)]*.

Significant economic presence [Explanation 2A to section 9(1)(i)]

Significant economic presence of a non-resident in India shall also constitute business connection in India.

Significant economic presence means-

	Nature of transaction	Condition
(a)	in respect of any goods, services or property carried out by a non-resident with any person in India including provision of download of data or software in India	Aggregate of payments arising from such transaction or transactions during the previous year should exceed **₹ 2 crores.**

(b)	systematic and continuous soliciting of business activities or engaging in interaction with users in India	The number of users should be atleast **3 lakhs**.

The above transactions or activities shall constitute significant economic presence in India, whether or not,—

(i) the agreement for such transactions or activities is entered in India;

(ii) the non-resident has a residence or place of business in India; or

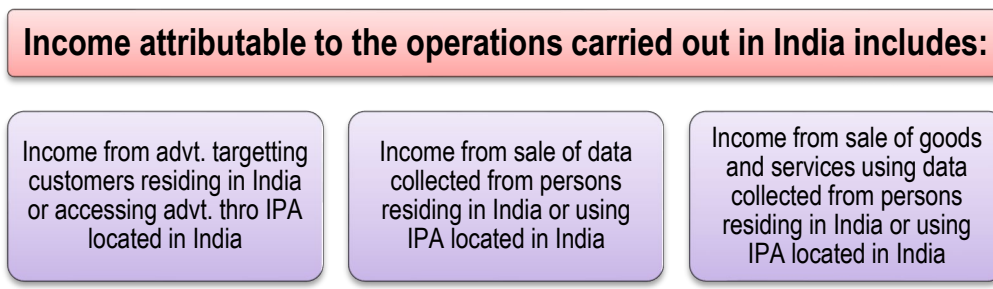
(iii) the non-resident renders services in India:

However, transactions or activities of a non-resident in India which are confined to the purchase of goods in India for the purpose of export shall not constitute significant economic presence of such non-resident in India.

Further, where a business connection is established by reason of significant economic presence in India, only so much of income as is attributable to the transactions or activities referred to in (a) or (b) above shall be deemed to accrue or arise in India.

In the case of a non-resident the following shall not, however, be treated as business connection in India *[Explanation 1* to section 9(1)(i)*]:*

(a) **In the case of a business, in respect of which all the operations are not carried out in India [*Explanation 1(a)* to section 9(1)(i)]**: In the case of a business, other than the business having business connection in India on account of significant economic presence, of which all the operations are not carried out in India, the income of the business deemed to accrue or arise in India shall be only such part of income as is reasonably attributable to the operations carried out in India. Therefore, it follows that such part of income which cannot be reasonably attributed to the operations in India, is not deemed to accrue or arise in India.



IPA – Internet Protocol Address

The above provisions would also apply to the income attributable to the transactions or activities referred to in *Explanation 2A* to section 9(1)(i).

(b) Purchase of goods in India for export [Explanation *1(b)* to section 9(1)(i)]: In the case of a non-resident, no income shall be deemed to accrue or arise in India to him through or from operations which are confined to the purchase of goods in India for the purpose of export.

(c) Collection of news and views in India for transmission out of India [*Explanation 1(c)* to section 9(1)(i)]: In the case of a non-resident, being a person engaged in the business of running a news agency or of publishing newspapers, magazines or journals, no income shall be deemed to accrue or arise in India to him through or from activities which are confined to the collection of news and views in India for transmission out of India.

(d) Shooting of cinematograph films in India [*Explanation 1(d)* to section 9(1)(i)]: In the case of a non-resident, no income shall be deemed to accrue or arise in India through or from operations which are confined to the shooting of any cinematograph film in India, if such non-resident is :

- an individual, who is not a citizen of India or
- a firm which does not have any partner who is a citizen of India or who is resident in India; or
- a company which does not have any shareholder who is a citizen of India or who is resident in India.

(e) Activities confined to display of rough diamonds in SNZs [*Explanation 1(e)* to section 9(1)(i)]: In case of a foreign company engaged in the business of mining of diamonds, no income shall be deemed to accrue or arise in India to it through or from the activities which are confined to display of uncut and unassorted diamonds in any special zone notified by the Central Government in the Official Gazette in this behalf.

(ii) & (iii) Income from property, asset or source of income in India

Any income which arises from any property in India (movable, immovable, tangible and intangible property) would be deemed to accrue or arise in India.

Examples:

- *Hire charges or rent paid outside India for the use of the machinery or buildings situated in India*
- *deposits with an Indian company for which interest is received outside India etc.*

(iv) Income through transfer of a capital asset situated in India

Capital gains arising through or from the transfer of a capital asset situated in India would be deemed to accrue or arise in India in all cases irrespective of the fact whether

- The capital asset is movable or immovable, tangible or intangible;
- The place of registration of the document of transfer etc., is in India or outside; and
- The place of payment of the consideration for the transfer is within India or outside.

Accordingly, 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 4* to section 9(1)(i)*].***

Further, 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 ***[Explanation 5* to section 9(1)(i)*].***

Cases where an asset or capital asset held by a non-resident is not deemed to be situated in India

(1) An asset or capital asset, which is held by a non-resident by way of investment, directly or indirectly, in Category-I or Category-II foreign portfolio investor under the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014 prior to their repeal, made under the Securities and Exchange Board of India Act, 1992, shall not deemed to be or deemed to have been situated in India [Second proviso to *Explanation 5* to section 9(1)(i)]

(2) An asset or a capital asset, which is held by a non-resident by way of investment, directly or indirectly, in Category-I foreign portfolio investor under the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019, made under the Securities and Exchange Board of India Act, 1992 shall also not deemed to be or deemed to have been situated in India [Third proviso to *Explanation 5* to section 9(1)(i)]

The CBDT has, vide Circular No. 28/2017, dated 07.11.2017, clarified that the provisions of section 9(1)(i) read with *Explanation 5*, shall not apply in respect of income accruing or arising to a non-resident on account of redemption or buyback of its share or interest held indirectly (i.e. through upstream entities registered or incorporated outside India) in the specified funds (namely, investment funds, venture capital company and venture capital funds) if such income accrues or

arises from or in consequence of transfer of shares or securities held in India by the specified funds and such income is chargeable to tax in India.

However, the above benefit shall be applicable only in those cases where the proceeds of redemption or buyback arising to the non-resident do not exceed the pro-rata share of the non-resident in the total consideration realized by the specified funds from the said transfer of shares or securities in India. It is further clarified that a non-resident investing directly in the specified funds shall continue to be taxed as per the extant provisions of the Act.

Declaration of dividend by a foreign company outside India does not have the effect of transfer of any underlying assets located in India. *Circular No. 4/2015, dated 26-03-2015*, therefore, clarifies that, the dividends declared and paid by a foreign company outside India in respect of shares which derive their value substantially from assets situated in India would **NOT** be deemed to be income accruing or arising in India by virtue of the provisions of section 9(1)(i).

***Explanation 6* to section 9(1)(i)** provides that the share or interest in a company or entity registered or incorporated outside India, shall be deemed to derive its value substantially from the assets (whether tangible or intangible) located in India, if on the specified date, the value of Indian assets, -

- exceeds the amount of ₹ 10 crore; and
- represents at least 50% of the value of all the assets owned by the company or entity, as the case may be;

Meaning of certain terms:

Term	Meaning
Value of an asset	The **fair market value as on the specified date**, of such asset **without reduction of liabilities**, if any, in respect of the asset, determined in prescribed manner**.**
Specified date	The date on which the **accounting period** of the company or, as the case may be, the entity **ends** preceding the date of transfer of a share or an interest. However, the date of transfer shall be the specified date of valuation, in a case where the book value of the assets of the company or entity on the date of transfer exceeds by at least 15%, the book value of the assets as on the last balance sheet date preceding the date of transfer.
Accounting period	Each period of 12 months ending with 31st March. However, where a company or an entity, referred to in *Explanation 5*, regularly adopts a period of 12 months ending on a day other than 31st March for the purpose of—

	(a) complying with the provisions of the tax laws of the territory, of which it is a resident, for tax purposes; or (b) reporting to persons holding the share or interest, then, the period of twelve months ending with the other day shall be the accounting period of the company or, as the case may be, the entity:
First Accounting Period	First accounting period of the company or, as the case may be, the entity shall **begin from the date of its registration or incorporation** and **end with the 31st March** or such other day, as the case may be, following the date of such registration or incorporation.
Later accounting period	Later accounting period shall be the **successive periods of twelve months**
Accounting period of an entity which ceases to exist	If the company or the entity ceases to exist before the end of accounting period, as aforesaid, then, the accounting period shall end immediately before the company or, as the case may be, the entity, ceases to exist.

Note - The manner of determination of fair market value of the assets of the foreign company is given in Rule 11UB. Determination of income attributable to assets in India is given in Rule 11UC[2].

***Explanation 7* to section 9(1)(i)** provides that **no income shall be deemed** to accrue or arise to a non-resident from transfer, outside India, of any share of, or interest in, a company or an entity, registered or incorporated outside India, in the following cases;

(1)	Foreign company or entity **directly** owns the assets situated in India	**AND**	**the transferor** (whether individually or along with its associated enterprises), at any time in the twelve months preceding the date of transfer, **does not hold** • the right of management or control in relation to foreign company or entity; or • the voting power or share capital or interest exceeding 5% of the total voting power or total share capital or total interest, as the case may be, of the foreign company or entity; or
(2)	Foreign company or entity **indirectly** owns the assets situated in India	**AND**	**the transferor** (whether individually or along with its associated enterprises), at any time in the twelve months preceding the date of transfer, **does not hold** • the right of management or control in relation to foreign company or entity; or

[2] For detailed reading of Rule 11UB and 11UC of the Income-tax Rules, 1962, students may visit https://incometaxindia.gov.in/Pages/rules/income-tax-rules-1962.aspx

			• any right in, or in relation to, such foreign company or entity which would entitle him to the right of management or control in the company or entity that directly owns the assets situated in India; or • such percentage of voting power or share capital or interest in foreign company or entity which results in holding of (either individually or along with associated enterprises) a voting power or share capital or interest exceeding 5% of the total voting power or total share capital or total interest, as the case may be, of the company or entity that directly owns the assets situated in India;

In effect, the exemption shall be available to the transferor of a share of, or interest in, a foreign entity if he along with its associated enterprises, -

- neither holds the right of control or management,
- nor holds voting power or share capital or interest exceeding 5% of the total voting power or total share capital or total interest,

in the foreign company or entity directly holding the Indian assets (direct holding company).

In case the transfer is of shares or interest in a foreign entity which does not hold the Indian assets directly then the exemption shall be available to the transferor if he along with its associated enterprises,-

- neither holds the right of management or control in relation to such company or the entity,
- nor holds any rights in such company which would entitle it to either exercise control or management of the direct holding company or entity or entitle it to voting power or share capital or total interest exceeding 5% in the direct holding company or entity.

Further, where all the assets owned, directly or indirectly, by a company or, as the case may be, an entity registered or incorporated outside India, are not located in India, the income of the non-resident transferor, from transfer outside India of a share of, or interest in the foreign company or entity, deemed to accrue or arise in India under this clause, shall be only such part of the income as is reasonably attributable to assets located in India and determined in the prescribed manner.

"Associated enterprise", in relation to another enterprise, means an enterprise—

- which participates, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise; or
- in respect of which one or more persons who participate, directly or indirectly, or through one or more intermediaries, in its management or control or capital, are the same persons who participate, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise.

(2) Income from salaries earned in India [Section 9(1)(ii)]

Income, which falls under the head "Salaries", deemed to accrue or arise in India, if it is earned in India. Salary payable for service rendered in India would be treated as earned in India.

Further, any income under the head "Salaries" payable for rest period or leave period which is preceded and succeeded by services rendered in India, and forms part of the service contract of employment, shall be regarded as income earned in India.

(3) Income from salaries payable by the Government for services rendered outside India [Section 9(1)(iii)]

Income from 'Salaries' which is payable by the Government to a citizen of India for services rendered outside India would be deemed to accrue or arise in India.

However, allowances and perquisites paid or allowed outside India by the Government to an Indian citizen for services rendered outside India is exempt, by virtue of section 10(7).

Note - *Exemption under section 10(7) would be available to an assessee irrespective of the regime under which he pays tax.*

ILLUSTRATION 4

J, a citizen of India, employed in the Indian Embassy at Tokyo, Japan. He received salary and allowances at Tokyo from the Government of India for the year ended 31.3.2026 for services rendered by him in Tokyo. Besides, he was allowed perquisites by the Government. He is a non-resident for the assessment year 2026-27. Examine the taxability of salary, allowances and perquisites in the hands of J for the assessment year 2026-27.

SOLUTION

As per section 9(1)(iii), salaries payable by the Government to a citizen of India for services rendered outside India shall be deemed to accrue or arise in India. As such, salary received by J is chargeable to tax, even though he was a non-resident for A.Y. 2026-27.

As per section 10(7), all allowances or perquisites paid or allowed as such outside India by the Government to a citizen of India for rendering services outside India is exempt from tax. Therefore, the allowances and perquisites received by J are exempt as per section 10(7).

(4) Dividend paid by an Indian company outside India [Section 9(1)(iv)]

Dividend paid by an Indian company outside India is deemed to be accrue or arise in India and would be taxable in India in the hands of non-resident shareholders.

(5) Interest [Section 9(1)(v)]

Under section 9(1)(v), an interest is deemed to accrue or arise in India if it is payable by -

(i) the Government;

(ii) a person who is a resident;

Exception: Where it is payable in respect of any debt incurred or money borrowed and used, for the purposes of a business or profession carried on by him outside India or for the purposes of making or earning any income from any source outside India, it will not be deemed to accrue or arise in India.

(iii) a person who is a non-resident only when it is payable in respect of any debt incurred or moneys borrowed and used, for the purpose of a business or profession carried on by such person in India.

Example: *If a non-resident 'A' borrows money from a non-resident 'B' and invests the same in shares of an Indian company, interest payable by 'A' to 'B' will not be deemed to accrue or arise in India.*

Meaning of interest: Interest means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) and includes any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilized.

Taxability of interest payable by the Permanent Establishment of a non-resident engaged in banking business to the head office

In order to provide clarity and certainty, on the issue of taxability of interest payable by the PE of a non-resident engaged in banking business to the head office, an Explanation has been inserted in section 9(1)(v). Accordingly, in the case of a **non-resident, being a person engaged in the business of banking,** any interest payable by the **PE in India of**

such non-resident to the head office or any PE or any other part of such non-resident outside India, shall be deemed to accrue or arise in India.

Such interest shall be chargeable to tax in addition to any income attributable to the PE in India.

Further, the PE in India shall be deemed to be a person separate and independent of the non-resident person of which it is a PE and the provisions of the Act relating to computation of total income, determination of tax and collection and recovery would apply accordingly.

Also, the PE in India has to deduct tax at source on any interest payable to either the head office or any other branch or PE, etc. of the non-resident outside India. Non-deduction would result in disallowance of interest claimed as expenditure by the PE and may also attract levy of interest and penalty in accordance with relevant provisions of the Act.

Permanent establishment includes a fixed place of business through which the business of the enterprise is wholly or partly carried on.

(6) Royalty [Section 9(1)(vi)]

Royalty will be deemed to accrue or arise in India when it is payable by -

(i) the Government;

(ii) a person who is a resident in India

Exception: Where it is payable for the transfer of any right or the use of any property or information or for the utilization of services for the purposes of a business or profession carried on by such person outside India or for the purposes of making or earning any income from any source outside India, or

(iii) a non-resident only when the royalty is payable in respect of any right, property or information used or services utilised for purposes of a business or profession carried on by such person in India or for the purposes of making or earning any income from any source in India.

Important points:

(A) Lumpsum royalty not deemed to accrue arise in India: Lumpsum royalty payments made by a resident for the transfer of all or any rights (including the granting of a license) in respect of **computer software** supplied by a non-resident manufacturer along with computer hardware under any scheme approved by the government under the policy on computer software export, software development and training, 1986 shall not be deemed to accrue or arise in India.

(B) Meaning of Computer software: "Computer software" means any computer programme recorded on any disc, tape, perforated media or other information storage device and includes any such programme or any customised electronic data.

(C) Meaning of Royalty: The term 'royalty' means consideration (including any lumpsum consideration but excluding any consideration which would be the income of the recipient chargeable under the head 'capital gains') for:

(i) the transfer of all or any rights (including the granting of license) in respect of a patent, invention, model, design, secret formula or process or trade mark or similar property;

(ii) the imparting of any information concerning the working of, or the use of, a patent, invention, model, design, secret formula or process or trade mark or similar property;

(iii) the use of any patent, invention, model, design, secret formula or process or trade mark or similar property;

(iv) the imparting of any information concerning technical, industrial, commercial or scientific knowledge, experience or skill;

(v) the use or right to use any industrial, commercial or scientific equipment but not including the amounts referred to in section 44BB;

(vi) the transfer of all or any rights (including the granting of license) in respect of any copyright, literary, artistic or scientific work including films or video tapes for use in connection with television or tapes for use in connection with radio broadcasting.

Note - Consideration for sale, distribution or exhibition of cinematographic films is covered within the scope of royalty.

(vii) the rendering of any service in connection with the activities listed above.

The definition of 'royalty' for this purpose is wide enough to cover both industrial royalties as well as copyright royalties. The definition specially excludes income which should be chargeable to tax under the head 'capital gains'.

(D) Consideration for use or right to use of computer software is royalty within the meaning of section 9(1)(vi)

The consideration for use or right to use of computer software is royalty by clarifying that, transfer of all or any rights in respect of any right, property or information includes and has always included transfer of all or any right for use or right to use a computer software

(including granting of a license) irrespective of the medium through which such right is transferred *[Explanation 4].*

Consequently, the provisions of tax deduction at source under section 194J and section 195 would be attracted in respect of consideration for use or right to use computer software since the same falls within the definition of royalty as per the provisions of the Income-tax Act, 1961.

The Central Government has, vide *Notification No. 21/2012 dated 13.6.2012* to be effective from 1st July, 2012, exempted certain software payments from the applicability of tax deduction under section 194J. Accordingly, where payment is made by the transferee for acquisition of software from a resident-transferor, the provisions of section 194J would not be attracted if –

(1) the software is acquired in a subsequent transfer without any modification by the transferor;

(2) tax has been deducted either under section 194J or under section 195 on payment for any previous transfer of such software; and

(3) the transferee obtains a declaration from the transferor that tax has been so deducted along with the PAN of the transferor.

The issue of whether the amounts paid by resident Indian end-users/ distributors to non-resident computer software manufacturers/ suppliers, as consideration for the use/resale of the computer software through End-User Licence Agreement (EULAs) /distribution agreements, be considered as payment of royalty for the use of copyright in the computer software came up before the Supreme Court in Engineering Analysis Centre of Excellence P. Ltd v. CIT and Another (2021) ITR 471.

The Apex Court observed that as per the definition given in Explanation 2(v) to section 9(1)(vi) of the Income-tax Act, 1961, "royalty" means consideration for, inter alia, the transfer of all or any rights (including the granting of a licence), in respect of any copyright, literary, artistic or scientific work. As per Explanation 4 thereto, such transfer of all or any rights includes transfer of all or any right for use or right to use a computer software (including the granting of a licence). As per the meaning of royalties as assigned in the DTAA with Singapore, "royalty" means payment of any kind received as consideration for "the use of, or the right to use, any copyright" of a literary, artistic or scientific work. The meaning of royalty in India's DTAA with other countries like Australia, Canada, France, Italy, USA, Netherlands, Sweden, Taiwan, Japan, China etc. is also similar if not identical.

The definition of the royalties under the DTAA does not include transfer of right for use or right to use a computer software.

The scope of definition of royalties under the Act is wider as compared to the definition of royalties under India's DTAA with these countries.

The Apex Court observed the following four categories of cases, in which the distribution agreements and end-user licence agreements did not create any interest or right to such distributors or end-users, which could amount to the use of or right to use any copyright:

(i) where computer software is purchased directly by an end-user, resident in India, from a foreign, non-resident supplier or manufacturer.

(ii) where resident Indian companies acting as distributors or resellers, purchase computer software from foreign, non-resident suppliers or manufacturers and then, resell the same to resident Indian end-users.

(iii) where the distributor happens to be a foreign, non-resident vendor, who, after purchasing software from a foreign, non-resident seller, resells the same to resident Indian distributors or end-users.

(iv) where computer software is affixed onto hardware and is sold as an integrated unit/equipment by foreign, non-resident suppliers to resident Indian distributors or end-users.

Therefore, in the specified cases mentioned above, the Apex Court held that the amount paid by resident Indian end-users or distributors to non-resident computer software manufacturers or suppliers, as consideration for the resale or use of the computer software through end-user licence agreements or distribution agreements, is not royalty. Consequently, the consideration paid to the non-resident computer software manufacturers or suppliers would not be chargeable to tax India. Hence, no tax is required to be deducted at source u/s 195.

(E) Consideration in respect of any right, property or information – Is it royalty?

Royalty includes and has always included consideration in respect of any right, property or information, whether or not,

(a) the possession or control of such right, property or information 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 5].*

(F) Meaning of Process

The term "process" includes and shall be deemed to have always 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 *[Explanation 6].*

(7) Fees for technical services [Section 9(1)(vii)]

Any fees for technical services will be deemed to accrue or arise in India if they are payable by -

(i) the Government.

(ii) a person who is resident in India

Exception: Where the fees is payable in respect of technical services utilised in a business or profession carried on by such person outside India or for the purpose of making or earning any income from any source outside India.

(iii) a person who is a non-resident, only where the fees are payable in respect of services utilised in a business or profession carried on by the non-resident in India or where such services are utilised for the purpose of making or earning any income from any source in India.

Fees for technical services mean any consideration (including any lumpsum consideration) for the rendering of any managerial, technical or consultancy services (including providing the services of technical or other personnel). However, it does not include consideration for any construction, assembly, mining or like project undertaken by the recipient or consideration which would be income of the recipient chargeable under the head 'Salaries'.

Income deemed to accrue or arise in India to a non-resident by way of interest, royalty and fee for technical services to be taxed irrespective of territorial nexus [*Explanation* to section 9]

Income by way of interest, royalty or fee for technical services which is deemed to accrue or arise in India by virtue of clauses (v), (vi) and (vii) of section 9(1), shall be included in the total income of the non-resident, whether or not –

(i) the non-resident has a residence or place of business or business connection in India; or

(ii) the non-resident has rendered services in India.

In effect, the income by way of fee for technical services, interest or royalty, from services utilized in India would be deemed to accrue or arise in India in case of a non-resident and be included in his total income, whether or not such services were rendered in India.

ILLUSTRATION 5

Miss Vivitha, Resident, paid a sum of 5000 USD to Mr. Kulasekhara, a management consultant practising in Colombo, specializing in project financing. The payment was made in Colombo. Mr. Kulasekhara is a non-resident. The consultancy is related to a project in India with possible Ceylonese collaboration. Is this payment chargeable to tax in India in the hands of Mr. Kulasekhara?

SOLUTION

A non-resident is chargeable to tax in respect of income received outside India only if such income accrues or arises or is deemed to accrue or arise to him in India.

The income deemed to accrue or arise in India under section 9 comprises, *inter alia*, income by way of fees for technical services, which includes any consideration for rendering of any managerial, technical or consultancy services. Therefore, payment to a management consultant relating to project financing is covered within the scope of "fees for technical services".

The *Explanation* to section 9(2) clarifies that income by way of, *inter alia*, fees for technical services, would be deemed to accrue or arise in India in case of a non-resident and be included in his total income, whether or not such services were rendered in India or whether or not the non-resident has a residence or place of business or business connection in India.

In the instant case, since the services were utilized in India, the payment received by Mr. Kulasekhara, a non-resident, in Colombo is chargeable to tax in his hands in India, as it is deemed to accrue or arise in India.

(8) Any sum of money paid by a resident Indian to a non-corporate non-resident or foreign company or to a resident but not ordinarily resident in India [Section 9(1)(viii)]

Income arising outside India, being any sum of money paid without consideration, by a Indian resident person to a non-corporate non-resident or foreign company *or to a RNOR* would be deemed to accrue or arise in India if the same is chargeable to tax under section 56(2)(x) i.e., if the aggregate of such sum received by a non-corporate non-resident or foreign company exceeds ₹ 50,000.

It may be noted that this deeming provision applies to only sum of money paid outside India to a non-corporate non-resident or foreign company or to a RNOR, and not in respect of property, movable or immovable, transferred outside India without consideration or for inadequate consideration to a non-corporate non-resident or foreign company or to a RNOR.

ILLUSTRATION 6

Compute the total income in the hands of an individual, aged 55 years, being a resident and ordinarily resident, resident but not ordinarily resident, and non-resident for the A.Y. 2026-27 if he has shifted out of the default tax regime and pays tax under normal provisions of the Act:

Particulars	Amount (₹)
Interest on UK Development Bonds, 50% of interest received in India	10,000
Income from a business in Chennai (50% is received in India)	20,000
Short term capital gains on sale of shares of an Indian company received in London	20,000
Dividend from British company received in London	5,000
Long term capital gains on sale of plant at Germany, 50% of profits are received in India	40,000
Income earned from business in Germany which is controlled from Delhi (₹ 40,000 is received in India)	70,000
Profits from a business in Delhi but managed entirely from London	15,000
Income from house property in London deposited in an Indian Bank at London, brought to India (Computed)	50,000
Interest on debentures in an Indian company received in London	12,000
Fees for technical services rendered in India but received in London	8,000
Profits from a business in Bombay managed from London	26,000
Pension for services rendered in India but received in London (Computed)	4,000
Income from property situated in Pakistan, received there (Computed)	16,000
Past foreign untaxed income brought to India during the previous year	5,000
Income from agricultural land in Nepal received there and then brought to India	18,000
Income from profession in Kenya which was set up in India, received there but spent in India	5,000
Gift received on the occasion of his wedding	20,000
Interest on savings bank deposit in State Bank of India	12,000
Income from a business in Russia, controlled from Russia	20,000
Dividend from Reliance Petroleum Limited, an Indian Company	5,000
Agricultural income from a land in Rajasthan	15,000

SOLUTION

Computation of total income for the A.Y. 2026-27

Particulars	Resident and ordinarily resident ₹	Resident but not ordinarily resident ₹	Non-resident ₹
Interest on UK Development Bonds, 50% of interest received in India	10,000	5,000	5,000
Income from a business in Chennai (50% is received in India)	20,000	20,000	20,000
Short term capital gains on sale of shares of an Indian company received in London	20,000	20,000	20,000
Dividend from British company received in London	5,000	-	-
Long term capital gain on sale of plant at Germany, 50% of profits are received in India	40,000	20,000	20,000
Income earned from business in Germany which is controlled from Delhi, out of which ₹ 40,000 is received in India	70,000	70,000	40,000
Profits from a business in Delhi but managed entirely from London	15,000	15,000	15,000
Income from property in London deposited in a Bank at London, later on remitted to India	50,000	-	-
Interest on debentures in an Indian company received in London	12,000	12,000	12,000
Fees for technical services rendered in India but received in London	8,000	8,000	8,000
Profits from a business in Bombay managed from London	26,000	26,000	26,000
Pension for services rendered in India but received in London	4,000	4,000	4,000
Income from property situated in Pakistan, received there	16,000	-	-
Past foreign untaxed income brought to India during the previous year	-	-	-

Income from agricultural land in Nepal received there and then brought to India	18,000	-	-
Income from profession in Kenya which was set up in India, received there but spent in India	5,000	5,000	-
Gift received on the occasion of his wedding **[not taxable]**	-	-	-
Interest on savings bank deposit in SBI	12,000	12,000	12,000
Income from a business in Russia, controlled from Russia	20,000	-	-
Dividend from Reliance Petroleum Limited, an Indian Company	5,000	5,000	5,000
Agricultural income from a land in Rajasthan **[Exempt under section 10(1)]**	-	-	-
Gross Total Income	**3,56,000**	**2,22,000**	**1,87,000**
Less: Deduction u/s 80TTA			
[Interest on savings bank account subject to a maximum of ₹ 10,000]	10,000	10,000	10,000
Total Income	**3,46,000**	**2,12,000**	**1,77,000**

(3) Presence of Eligible Fund Manager in India not to constitute Business Connection in India of such Eligible Investment Fund on behalf of which he undertakes Fund Management Activity [Section 9A]

(i) **Fund Management Activity through an eligible fund manager not to constitute business connection [Section 9A(1)]:** In the case of an eligible investment fund, the fund management activity carried out through an eligible fund manager acting on behalf of such fund shall not constitute business connection in India of the said fund, subject to fulfillment of certain conditions.

(ii) **Location of Fund Manager in India not to affect residential status of an eligible investment fund [Section 9A(2)]:** An eligible investment fund shall not be said to be resident in India merely because the eligible fund manager undertaking fund management activities on its behalf, is located in India.

(iii) **Conditions to be fulfilled by an Eligible Investment Fund [Section 9A(3)]:** The eligible investment fund means a fund established or incorporated or registered outside India,

which collects funds from its members for investing it for their benefit. Further, it should fulfill the following conditions:

(a) the fund should not be a person resident in India;

(b) the fund should be a resident of a country or a specified territory with which an agreement referred to in section 90(1) or section 90A(1) has been entered into or should be established or incorporated or registered, outside India in a country or a specified territory notified by the Central Government in this behalf;

(c) the aggregate participation or investment in the fund, directly by persons being resident in India should not exceed 5% of the corpus of the fund ***as on 1st April and 1st October of the previous year***;

However, for the purposes of calculation of aggregate participation or investment in the fund, any contribution made by the eligible fund manager during the first 3 years of operation of the fund, not exceeding ₹ 25 crore, would not be taken into account.

Further, if the aggregate participation or investment in the fund exceeds 5% as on 1st April and 1st October of the previous year, the condition mentioned above will be deemed to be satisfied if the fund reduces its aggregate participation or investment to 5% or less within 4 months from 1st April or 1st October of such previous year, as the case may be.

(d) the fund and its activities should be subject to applicable investor protection regulations in the country or specified territory where it is established or incorporated or is a resident;

(e) the fund should have a minimum of 25 members who are, directly or indirectly, not connected persons;

(f) any member of the fund along with connected persons shall not have any participation interest, directly or indirectly, in the fund exceeding 10%;

(g) the aggregate participation interest, directly or indirectly, of ten or less members along with their connected persons in the fund, shall be less than 50%;

(h) the investment by the fund in any entity shall not exceed 20% of the corpus of the fund;

(i) no investment shall be made by the fund in its associate entity;

(j) the monthly average of the corpus of the fund shall not be less than ₹ 100 crore. If the fund has been established or incorporated in the previous year, the corpus of fund should not be less than ₹ 100 crore at the end of a period of twelve months from the last day of the month of its establishment or incorporation;

However, this condition shall not be applicable to a fund which has been wound up in the previous year.

(k) the fund shall not carry on or control and manage, directly or indirectly, any business in India;

(l) the fund should neither be engaged in any activity which constitutes a business connection in India nor should have any person acting on its behalf whose activities constitute a business connection in India other than the activities undertaken by the eligible fund manager on its behalf.

(m) the remuneration paid by the fund to an eligible fund manager in respect of fund management activity undertaken on its behalf should not be less than the amount calculated in the prescribed manner.

(iv) **Certain conditions not to apply to investment fund set up by the Government or the Central Bank of a foreign State or a Sovereign Fund or other notified fund [Proviso to Section 9A(3)]:** The following conditions would, however, not be applicable in case of an investment fund set up by the Government or the Central Bank of a foreign State or a sovereign fund or such other fund notified by the Central Government [i.e., an investment fund set up by a Category-I or Category-II Foreign Portfolio Investor registered under the SEBI (Foreign Portfolio Investors) Regulations, 2014, made under the SEBI Act, 1992 and an investment fund set up by a Category-I foreign portfolio investor registered under the SEBI (Foreign Portfolio Investors) Regulations, 2019, made under the SEBI Act, 1992]:

(e) the fund should have a minimum of 25 members who are, directly or indirectly, not connected persons;

(f) any member of the fund along with connected persons shall not have any participation interest, directly or indirectly, in the fund exceeding 10%;

(g) the aggregate participation interest, directly or indirectly, of ten or less members along with their connected persons in the fund, shall be less than 50%.

(v) **Eligible Fund Manager [Section 9A(4)]:** The eligible fund manager, in respect of an eligible investment fund, means any person who is engaged in the activity of fund management and fulfills the following conditions:

(a) the person should not be an employee of the eligible investment fund or a connected person of the fund;

(b) the person should be registered as a fund manager or investment advisor in accordance with the specified regulations;

> The CBDT has, vide **Circular No.8/2019 dated 10.5.2019**, clarified that a fund manager includes an Asset Management Company (AMC) approved by SEBI under the SEBI (Mutual Funds) Regulations, 1996. This is because AMCs are engaged in the activity of fund management of Mutual Funds and hence are, in substance, Fund Managers.

(c) the person should be acting in the ordinary course of his business as a fund manager;

(d) the person along with his connected persons shall not be entitled, directly or indirectly, to more than 20% of the profits accruing or arising to the eligible investment fund from the transactions carried out by the fund through such fund manager.

(vi) **Furnishing of Statement in prescribed form [Section 9A(5)]:** Every eligible investment fund shall, in respect of its activities in a financial year, furnish within 90 days from the end of the financial year, a statement in the prescribed form to the prescribed income-tax authority. The statement should contain information relating to –

(a) the fulfillment of the above conditions; and

(b) such other relevant information or document which may be prescribed.

If any eligible investment fund fails to furnish such statement or information or document within 90 days from the end of the financial year, the income-tax authority prescribed under the said sub-section may direct that such fund shall pay, by way of penalty, a sum of ₹ 5,00,000 [Section 271FAB].

(vii) **Non-applicability of special taxation regime under section 9A [Section 9A(6)/(7)]:** This special taxation regime would not have any impact on taxability of any income of the eligible investment fund which would have been chargeable to tax irrespective of whether

the activity of the eligible fund manager constituted business connection in India of such fund or not.

Further, the said regime shall not have any effect on the scope of total income or determination of total income in the case of the eligible fund manager.

(viii) CBDT to prescribe guidelines for the manner of application of the provisions of this section.

(ix) **Certain conditions not to apply or apply with modification to investment fund and its fund manager, if such fund manager is located in an IFSC and has commenced its operation on or before *31.3.2030* [Section 9A(8A)]:** The Central Government may, by notification, specify that any one or more of the conditions specified in point (iii) and (v) above would not be applicable or applicable with such modifications, as may be specified in such notification in case of an eligible investment fund and its eligible fund manager, if such fund manager is located in an IFSC as defined in section 80LA and has commenced its operation on or before ***31.3.2030***:

Accordingly, the Central Government has, vide Notification No. 59/2022 dated 6.6.2022, specified that in case of –

I. An eligible investment fund -

(i) the following conditions mentioned under section 9A(3) would not be applicable

(e) the fund should have a minimum of 25 members who are, directly or indirectly, not connected persons;

(f) any member of the fund along with connected persons shall not have any participation interest, directly or indirectly, in the fund exceeding 10%;

(g) the aggregate participation interest, directly or indirectly, of ten or less members along with their connected persons in the fund, shall be less than 50%.

(ii) the condition mentioned above in clause (k) of section 9A(3) would apply after the following modification -

"the fund shall not carry on, or participate in, the day to day operations of any person in India and for this purpose the monitoring mechanism to

protect the investment in such person including the right to appoint directors or executive director shall not be considered as participation in day to day operations of such person in India"

II. Eligible fund manager –

The condition specified in section 9A(4)(b) would apply after the following modification:

"the person is registered as a portfolio manager or an investment advisor in accordance with the IFSC Authority (Capital Market Intermediaries) Regulation 2021 as notified under the IFSC Authority Act, 2019 or such other regulations made under the IFSC Authority Act, 2019".

(x) **Meaning of certain terms:**

Term	Meaning
Associate	An entity in which a director or a trustee or a partner or a member or a fund manager of the investment fund or a director or a trustee or a partner or a member of the fund manager of such fund, holds, either individually or collectively, share or interest, being more than 15% of its share capital or interest, as the case may be.
Corpus	The total amount of funds raised for the purpose of investment by the eligible investment fund as on a particular date.
Connected person	Any person who is connected directly or indirectly to another person and includes,— (a) any relative of the person, if such person is an individual; (b) any director of the company or any relative of such director, if the person is a company; (c) any partner or member of a firm or association of persons or body of individuals or any relative of such partner or member, if the person is a firm or association of persons or body of individuals; (d) any member of the Hindu undivided family or any relative of such member, if the person is a Hindu undivided family; (e) any individual who has a substantial interest in the business of the person or any relative of such individual; (f) a company, firm or an association of persons or a body of individuals, whether incorporated or not, or a Hindu undivided family having a

	substantial interest in the business of the person or any director, partner, or member of the company, firm or association of persons or body of individuals or family, or any relative of such director, partner or member; (g) a company, firm or association of persons or body of individuals, whether incorporated or not, or a Hindu undivided family, whose director, partner, or member has a substantial interest in the business of the person, or family or any relative of such director, partner or member; (h) any other person who carries on a business, if - (i) the person being an individual, or any relative of such person, has a substantial interest in the business of that other person; or (ii) the person being a company, firm, association of persons, body of individuals, whether incorporated or not, or a Hindu undivided family, or any director, partner or member of such company, firm or association of persons or body of individuals or family, or any relative of such director, partner or member, has a substantial interest in the business of that other person;

21.3 EXEMPTED INCOME OF NON RESIDENTS

Section 10 of the Income-tax Act, 1961 exempts from tax various incomes including the following in the hands of a non-resident:

(1) Interest on moneys standing to the credit of individual in his NRE A/c [Section 10(4)(ii)]

As per section 10(4)(ii), in the case of an individual, any income by way of interest on moneys standing to his credit in a Non-resident (External) Account (NRE A/c) in any bank in India in accordance with the Foreign Exchange Management Act, 1999 (FEMA, 1999), and the rules made thereunder, would be exempt, provided such individual;

- is a person resident outside India, as defined in FEMA, 1999, or
- is a person who has been permitted by the Reserve Bank of India to maintain such account.

The benefit of exemption under section 10(4)(ii) will be available to joint account holders, subject to fulfilment of other conditions contained in that section by each of the individual joint account holders.

Example: Mrs. Neena Kansal, is resident of Singapore since year 2000. She holds an NRE account with Bank of Baroda, New Delhi Branch. Interest of ₹ 10,000 was credited to such account during financial year 2025-26. Such interest income earned by her shall be exempt from income-tax while she files her tax return for A.Y 2026-27.

(2) Interest income of a non-corporate non-resident or foreign company on specified off-shore Rupee Denominated Bonds issued by an Indian company or business trust [Section 10(4C)]

Interest payable by an Indian company or business trust to a non-corporate non-resident or a foreign company in respect of money borrowed from a source outside India by way of issue of rupee denominated bond during the period from 17.9.2018 to 31.3.2019 would be exempt.

(3) Income of a specified fund on transfer of certain asset [Section 10(4D)]

Following income accrued or arising to or received by specified fund would be exempt -

- any income from transfer of a capital asset, being a bond of an Indian Company or a public sector company (sold by the Government and purchased by the specified fund in foreign currency), GDR or rupee denominated bond of an Indian company or derivative or any other notified security, on a recognized stock exchange located in any IFSC and where the consideration is paid or payable in convertible foreign exchange or
- any income from transfer of securities (other than shares in a company resident in India) or
- any income from securities issued by a non-resident (not being a permanent establishment of a non-resident in India) and where such income otherwise does not accrue or arise in India or
- any income from a securitisation trust which is chargeable under the head "Profits and gains of business or profession",

to the extent such income accrued or arisen to, or is received is attributable to units held by non-resident (not being the permanent establishment of a non-resident in India) or is attributable to the investment division of offshore banking unit, as the case may be, computed in the prescribed manner.

Condition for exemption - The income attributable to units held by non-resident (not being the permanent establishment of a non-resident in India) in a specified fund would not be exempt under section 10(4D) unless the specified fund furnish the annual statement of exempt income on or before the due date u/s 139(1).

The income of a specified fund attributable to an eligible investment division would not be exempt under section 10(4D) unless it furnishes the annual statement of exempt income and the report of audit on or before the said due date. *[Notification no. 64/2022 dated 16.6.2022].*

Meaning of certain terms:

S.No.	Term	Meaning
1	**Securities**	Securities includes (i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or a pooled investment vehicle or other body corporate; (ii) derivative; (iii) units or any other instrument issued by any collective investment scheme to the investors in such schemes; (iv) security receipt; (v) units or any other such instrument issued to the investors under any mutual fund scheme; It does not include any unit linked insurance policy or scrips or any such instrument or unit which provides a combined benefit risk on the life of the persons and investment by such persons and issued by an insurer (vi) units or any other instrument issued by any pooled investment vehicle; (vii) any certificate or instrument, issued to an investor by any issuer being a special purpose distinct entity which possesses any debt or receivable, including mortgage debt, assigned to such entity, and acknowledging beneficial interest of such investor in such debt or receivable, including mortgage debt, as the case may be; (viii) Government securities; (ix) such other instruments as may be declared by the Central Government to be securities; and (x) rights or interest in securities It shall also include such other securities or instruments as may be notified by the Central Government.

2	**Investment division of offshore banking unit**	An investment division of a banking unit of a non-resident located in an IFSC, as referred to in section 80LA(1A) and which has commenced its operations on or before ***31.3.2030***.
3	**Specified fund**	(i) A fund established or incorporated in India in the form of a trust or a company or a LLP or a body corporate, – (I) (a) which has been granted a certificate of registration as a Category III Alternative Investment Fund and is regulated under the SEBI (Alternative Investment Fund) Regulation, 2012, made under the SEBI Act, 1992 or regulated under the IFSC Authority (Fund Management) Regulations, 2022 made under the IFSC Authority Act, 2019; *(b) which has been granted a certificate as a retail scheme or an Exchange Traded Fund and satisfies the conditions laid down for such schemes or funds under the IFSC Authority (Fund Management) Regulations, 2022, made under the IFSC Authority Act, 2019;* (II) which is located in any IFSC; and (III) of which all the units are held by non-residents other than units held by a sponsor or manager However, this condition would not apply where any unit holder or holders, being non-resident during the previous year when such unit or units were issued, becomes resident under section 6(1) or (1A) in any previous year subsequent to that year, if the aggregate value and number of the units held by such resident unit holder or holders do not exceed 5% of the total units issued and fulfill such other conditions as may be prescribed. (ii) investment division of an offshore banking unit, which has been (I) granted a certificate of registration as a Category-I foreign portfolio investor under the SEBI (Foreign Portfolio Investors) Regulations, 2019 made under the SEBI Act, 1992 and which has commenced its operations on or before ***31.3.2030***; and (II) fulfils such conditions including maintenance of separate accounts for its investment division, as may be prescribed.

4	**Trust**	A trust established under the Indian Trust Act, 1882 or under any other law for the time being in force.
5	**Unit**	Unit means beneficial interest of an investor in the fund and shall include shares or partnership interests.
6	**Manager**	Any person or entity who is appointed by the Alternative Investment Fund to manage its investment by whatever name called. Manager may also be same as the sponsor of the Fund.
7	**Sponsor**	Any person or persons who set up the Alternative Investment Fund and includes promoter in case of a company and designated partner in case of LLP.

(4) Income of a non-resident as a result of transfer of non-deliverable forward contracts/ offshore derivative instruments/ over the counter derivatives entered into with an offshore banking unit of an IFSC [Section 10(4E)]

Any income accrued or arisen to, or received by a non-resident as a result of

- transfer of non-deliverable forward contracts or offshore derivative instruments or over-the-counter derivatives, or
- distribution of income on offshore derivative instruments ***or over-the-counter derivatives***,

entered into with an offshore banking unit of an IFSC as referred to in section 80LA(1A) ***or any Foreign Portfolio Investor being a unit of an IFSC***, which fulfils prescribed conditions would be exempt.

Accordingly, Rule 21AK specifies the following conditions to be fulfilled for claiming such exemption -

- the non-deliverable forward contract or offshore derivative instruments or over-the-counter derivatives is entered into by the non-resident with an offshore banking unit of an IFSC which holds a valid certificate of registration granted under IFSC Authority (Banking) Regulations, 2020 by the IFSC Authority ***or any Foreign Portfolio Investor being a unit of an IFSC***; and
- such contract or instrument or derivative is not entered into by the non-resident through or on behalf of its permanent establishment in India [The offshore banking unit (i.e., a banking branch unit located in an IFSC) ***or the Foreign Portfolio Investor*** has to ensure that this condition is complied with].

Meaning of Certain terms:

Term	Meaning
Non-deliverable forward contract	A contract for the difference between an exchange rate agreed before and the actual spot rate at maturity, with the spot rate being taken as the domestic rate or a market determined rate and such contract being settled with a single payment in a foreign currency.
Offshore banking unit	A banking branch Unit located in an IFSC, as referred to in section 80LA(1A).
Offshore derivative instrument	Any instrument, by whatever name called, which is issued overseas by a foreign portfolio investor against securities held by it in India, as its underlying [Regulation 2(1)(o) of the SEBI Foreign Portfolio Investor Regulations, 2019];
Over-the-counter derivatives	A derivative contract that is not traded on an exchange but instead is privately negotiated between a purchaser and a seller.
Foreign Portfolio Investor	***A person registered under the SEBI (Foreign Portfolio Investors) Regulations, 2019 made under the SEBI Act, 1992***

(5) Income of a non-resident by way of royalty or interest, on account of lease of an aircraft or a ship in a previous year, paid by a unit of an IFSC [Section 10(4F)]

Income of a non-resident by way of royalty or interest, on account of lease of an aircraft or a ship in a previous year, paid by a unit of an IFSC referred to in section 80LA(1A), if the unit has commenced its operations on or before ***31.3.2030*** would be exempt.

"Aircraft", here, means an aircraft or a helicopter, or an engine of an aircraft or a helicopter, or any part thereof.

“Ship” means a ship or an ocean vessel, engine of a ship or ocean vessel, or any part thereof.

(6) Income received by a non-resident in an account maintained with an offshore banking unit in any IFSC [Section 10(4G)]

Any income received by a non-resident from

- portfolio of securities or financial products or funds, managed or administered by any portfolio manager on behalf of such non-resident, or
- such activity carried out by such person as may be notified by the Central Government,

in an account maintained with an Offshore Banking Unit in any IFSC, as referred to in section 80LA(1A) would be exempt, to the extent such income accrues or arises outside India and is not deemed to accrue or arise in India.

(7) Income received by a non-resident or a Unit of an IFSC [Section 10(4H)]

Any income of a non-resident or a Unit of IFSC, as referred to in section 80LA(1A) engaged primarily in the business of leasing of an aircraft ***or a ship***, by way of capital gains on transfer of equity shares of domestic company, being a Unit of an IFSC, as referred to in section 80LA(1A), engaged primarily in the business of lease of an aircraft ***or a ship*** which has commenced operations on or before ***31.3.2030*** would be exempt.

The exemption from capital gains on transfer of equity shares of such domestic company is available for a period of ten assessment years -

(i) from A.Y. relevant to the P.Y. in which the domestic company has commenced its operations or

(ii) from A.Y. 2024-25, where the period of 10 A.Ys. under (i) above ends before 1.4.2034.

"Aircraft" means an aircraft or a helicopter, or an engine of an aircraft or a helicopter, or any part thereof.

"Ship" means a ship or an ocean vessel, engine of a ship or ocean vessel, or any part thereof.

(8) Remuneration received by individuals, who are not citizens of India [Section 10(6)]

(i) **Remuneration received by officials of Embassies etc. of Foreign States [Section 10(6)(ii)]:** The remuneration received by an individual, who is **not** a citizen of India, for services as an official by whatever name called of an embassy, high commission, legation, commission, consulate or trade representation of foreign state, or a member of staff of any of these official, for service in such capacity is exempt.

Conditions

(a) The remuneration received by our corresponding Government officials resident in such foreign countries should be exempt.

(b) The above-mentioned member of the staff of such officials should be the subjects of the respective countries and should not be engaged in any other business or profession or employment in India.

Examples:

- *Mr. A, a citizen of India but resident of USA since year 2012, was appointed as a senior official of the US embassy in India. He earned a remuneration of ₹ 10 lakhs during F.Y. 2025-26.* ***Being an Individual who is a citizen of India, though***

fulfilling other conditions of the section, such remuneration shall not be exempt in his hands for A.Y. 2026-27.

- *Mr. Vikram Kohli, an Indian born person but currently a resident and Citizen of USA, was appointed as a senior official of the US embassy in India. He earned a remuneration of ₹ 10 lakhs during F.Y. 2025-26.* ***Being an Individual who is not a citizen of India and also fulfilling other conditions of the section, such remuneration shall be exempt in his hands for A.Y. 2026-27, subject to fulfilment of conditions.***
- *Mr. Frank D'Souza, an Irish Citizen but currently the resident of USA, was appointed as a senior official of the US embassy in India. He earned a remuneration of ₹ 10 lakhs during F.Y. 2025-26.* ***Being an Individual who is not a citizen of India, such remuneration shall be exempt in his hands for A.Y. 2026-27, subject to fulfilment of the conditions.***

(ii) **Remuneration received for services rendered in India by a Foreign National employed by foreign enterprise [Section 10(6)(vi)]:** The remuneration received by a foreign national as an employee of a foreign enterprises, for services rendered by him during his stay in India is exempt from tax.

Conditions

(a) The foreign enterprise is not engaged in any business or trade in India:

(b) The employee's stay in India does not exceed in the aggregate a period of 90 days in such previous year, and

(c) The remuneration is not liable to be deducted from the income of the employer chargeable under the Income-tax Act, 1961.

Examples:

- *Mr. A, citizen of India but resident of USA since year 2012, was appointed in India in October, 2024 as an employee of a US enterprise. Such US enterprise is not engaged in any business in India. A's job requires him to visit his US office every twenty five (25) days for reporting purposes.*
  During F.Y. 2025-26, Mr. A earned a remuneration of ₹ 10 lakhs for his India related assignment and his stay in India in aggregate was 85 days. Further, such US enterprise has not claimed any deduction of such remuneration under the Income-tax Act, 1961.

  Being an Individual who is a citizen of India, such remuneration shall not be exempt in his hands for A.Y. 2026-27 under this section i.e., section 10(6)(vi), though he may get exemption under any other provision of the Income-tax Act, 1961, subject to fulfilment of conditions stipulated thereunder.

- *In the above case, let's consider that Mr. A is a citizen of USA. All other facts remaining same, his* ***remuneration shall be exempt from tax in his hands for A.Y. 2026-27 under this section.***
- *Let's take another variation, Mr. A is a citizen of USA but the remuneration paid to him is borne by the permanent establishment of such US enterprise in India. ₹ 10 lakhs paid to A is cross charged by the US enterprise to its Indian permanent establishment (PE).*

  In this case, the remuneration shall not be exempt from taxation in the hands of Mr. A as the same is getting deducted from the income of the Indian PE of such foreign enterprise.

(iii) **Salary received by a non-citizen for services rendered in connection with employment on foreign ship [Section 10(6)(viii)]:** Any income chargeable under the head "Salaries" received by or due to, non-citizen of India who is also a non-resident as remuneration for services rendered in connection with his employment on a foreign ship is exempt provided his total stay in India does not exceed 90 days during the previous year.

(iv) **Remuneration received by Foreign Government employees during their stay in India for specified training [Section 10(6)(xi)]:** Any remuneration received by employee of the Government of a foreign state from their respective Government during his stay in India, is exempt from tax, if remuneration is received in connection with training in any establishment or office of or in any undertaking owned by,-

(a) the Government; or

(b) any company owned by the Central Government or any State Government or partly by the Central Government and partly by one or more State Government; or

(c) any company which is subsidiary of a company referred to in (b) above, or

(d) any statutory corporation; or

(e) any society registered under Societies Registration Act, 1860 or under any law and wholly financed by the Central Government or any State Government(s) or partly by the Central Government and partly by one or more State Governments.

It may be carefully noted that exemption is available under section 10(6) only to an individual who is not a citizen of India.

(9) Income of a foreign company from lease rentals of cruise ships received from a specified company [Section 10(15B)]

Any income of a foreign company from lease rentals, by whatever name called, of cruise ships received from specified company which operates such ship or ships in India, would be exempt.

The income would be exempt, where such foreign company and the specified company are subsidiaries of the same holding company, and such income is received or accrues or arises in India for any assessment year on or before 1.4.2030.

Meaning of Certain terms:

Term	Meaning
Specified company	Any company, other than a domestic company which operates cruise ships in India and opts to pay tax in accordance with the provisions of section 44BBC
Holding company, in relation to a foreign company or a specified company	A company of which such companies are subsidiary companies
Subsidiary company or subsidiary, in relation to a holding company	A company in which the holding company exercises or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies

(10) Income accruing or arising to or received by a unit holder from a specified fund or on transfer of units in a specified fund [Section 10(23FBC)]

(i) **Nature of income exempted:** Any income accruing or arising to or received by a unit holder from a specified fund or on transfer of units in a specified fund would be exempt.

(ii) **Meaning of specified Fund:**

(a) A fund established or incorporated in India in the form of a trust or a company or a LLP or a body corporate, –

- (a) which has been granted a certificate of registration as a Category III Alternative Investment Fund and is regulated under the SEBI (Alternative Investment Fund) Regulation, 2012, made under the SEBI Act, 1992 or regulated under the IFSC Authority (Fund Management) Regulations, 2022 made under the IFSC Authority Act, 2019;

  (b) which has been granted a certificate as a retail scheme or an Exchange Traded Fund and satisfies the conditions laid down for such schemes or funds under the IFSC Authority (Fund Management) Regulations, 2022, made under the IFSC Authority Act, 2019;

- which is located in any IFSC and

- of which all the units are held by non-residents other than units held by a sponsor or manager

However, this condition would not apply where any unit holder or holders, being non-resident during the previous year when such unit or units were issued, becomes resident under section 6(1) or (1A) in any previous year subsequent to that year, if the aggregate value and number of the units held by such resident unit holder or holders do not exceed 5% of the total units issued and fulfill such other conditions as may be prescribed

(b) Investment division of an offshore banking unit, which has been

- granted a certificate of registration as a Category-I foreign portfolio investor under the SEBI (Foreign Portfolio Investors) Regulations, 2019 made under the SEBI Act, 1992 and which has commenced its operations on or before ***31.3.2030***; and
- fulfils such conditions including maintenance of separate accounts for its investment division, as may be prescribed;

(iii) **Meaning of Unit:** It means beneficial interest of an investor in the fund and shall include shares or partnership interests.

(11) Certain incomes of wholly owned subsidiary of Abu Dhabi Investment Authority, Sovereign Wealth Fund and specified pension fund [Section 10(23FE)]

(i) **Nature of income exempted:** Any income of a specified person in the nature of

- dividend,
- interest
- any sum referred to in section 56(2)(xii) i.e. any specified sum received by a unit holder from a business trust during the previous year, with respect to a unit held by him at any time during the previous year or
- long-term capital gains ***(whether or not such capital gains are deemed as short-term capital gains under section 50AA)***

arising from an investment made by it in India, whether in the form of debt or share capital or unit would be exempt, if such investment –

(a) is made on or after 1st April, 2020 but on or before ***31st March, 2030***; and

(b) is held for at least three years.

(ii) **Eligible investment:** Such investment should be in

(a) a business trust; or

(b) a company or enterprise or an entity carrying on the business of developing, or operating and maintaining, or developing, operating and maintaining any infrastructure facility as defined in *Explanation* to section 80-IA(4)(i) or such other business as notified by the Central Government in this behalf; or

(c) a Category-I or Category-II AIF regulated under the SEBI (Alternative Investment Fund) Regulations, 2012, made under the SEBI Act, 1992, having not less than 50% investment in one or more of the company or enterprise or entity referred to in (b) or (d) or (e) or in an Infrastructure Investment Trust; or

(d) a domestic company, set up and registered on or after 1.4.2021, having minimum 75% investments in one or more of the companies or enterprises or entities referred to in (b); or

(e) a non-banking financial company registered as an Infrastructure Finance Company as referred to in notification number RBI/2009-10/316 issued by the RBI or in an Infrastructure Debt Fund, a non-banking finance company, as referred to in the Infrastructure Debt Fund - NBFC (Reserve Bank) Directions, 2011, issued by the RBI, having minimum 90% lending to one or more of the companies or enterprises or entities referred to in (b).

The Central Government may prescribe the method of calculation of "50%" referred to in (c) or "75%" referred to in (d) or "90%" referred to in (e).

(iii) **Power of CBDT to issue guidelines:** In case any difficulty arises regarding interpretation or implementation of the provisions of this clause, the CBDT may issue guidelines for the purpose of removing the difficulty with the approval of the Central Government.

Every guideline issued by the CBDT has to be laid before each House of Parliament, and shall be binding on the income-tax authorities and specified person.

(iv) **Taxability on failure to satisfy the conditions:** Where any income has not been included in the total income of the specified person due to the aforesaid provisions, and subsequently during any previous year the specified person fails to satisfy any of the conditions mentioned so that the said income would not have been eligible for such non-inclusion, such income shall be chargeable to income-tax as the income of the specified person of that previous year.

(v) **Proportionate exemption of income attributable to investment in Category-I or Category-II AIF, domestic companies or NBFC referred to in (c), (d) or (e) of (ii) above if they are not having 100% investment in specified companies or entities:**

(a) In case a Category-I or Category-II AIF referred to in (c) of (ii) above has investment of less than 100% in one or more of the companies or enterprises or entities referred to in (b) or (d) or (e) of (ii) above or in an Infrastructure Investment Trust referred to in (c) of (ii) above, income accrued or arisen or received or attributable to such investment, directly or indirectly, which is exempt under this section shall be calculated proportionately to that investment made in one or more of the companies or enterprises or entities referred to in (b) or (d) or (e) of (ii) above or in the Infrastructure Investment Trust referred to in (c) of (ii) above, in such manner as may be prescribed.

(b) In case a domestic company referred to in (d) of (ii) above has investment of less than 100% in one or more of the companies or enterprises or entities referred to in (b) of (ii) above, income accrued or arisen or received or attributable to such investment, directly or indirectly, which is exempt under this section shall be calculated proportionately to that investment made in one or more of the companies or enterprises or entities referred to in (b) of (ii) above, in such manner as may be prescribed.

(c) In case a non-banking finance company registered as an Infrastructure Finance Company or Infrastructure Debt Fund referred to in (e) of (ii) above has lending of less than 100% in one or more of the companies or enterprises or entities referred to in (b) of (ii) above, income accrued or arisen or received or attributable to such lending, directly or indirectly, which is exempt under this section shall be calculated proportionately to the lending made in one or more of the companies or enterprises or entities referred to in (b) of (ii) above, in such manner as may be prescribed.

(vi) **Non applicability of exemption under section:** In case a sovereign wealth fund or pension fund has loans or borrowings, directly or indirectly, for the purposes of making investment in India, such fund shall be deemed to be not eligible for exemption under this section.

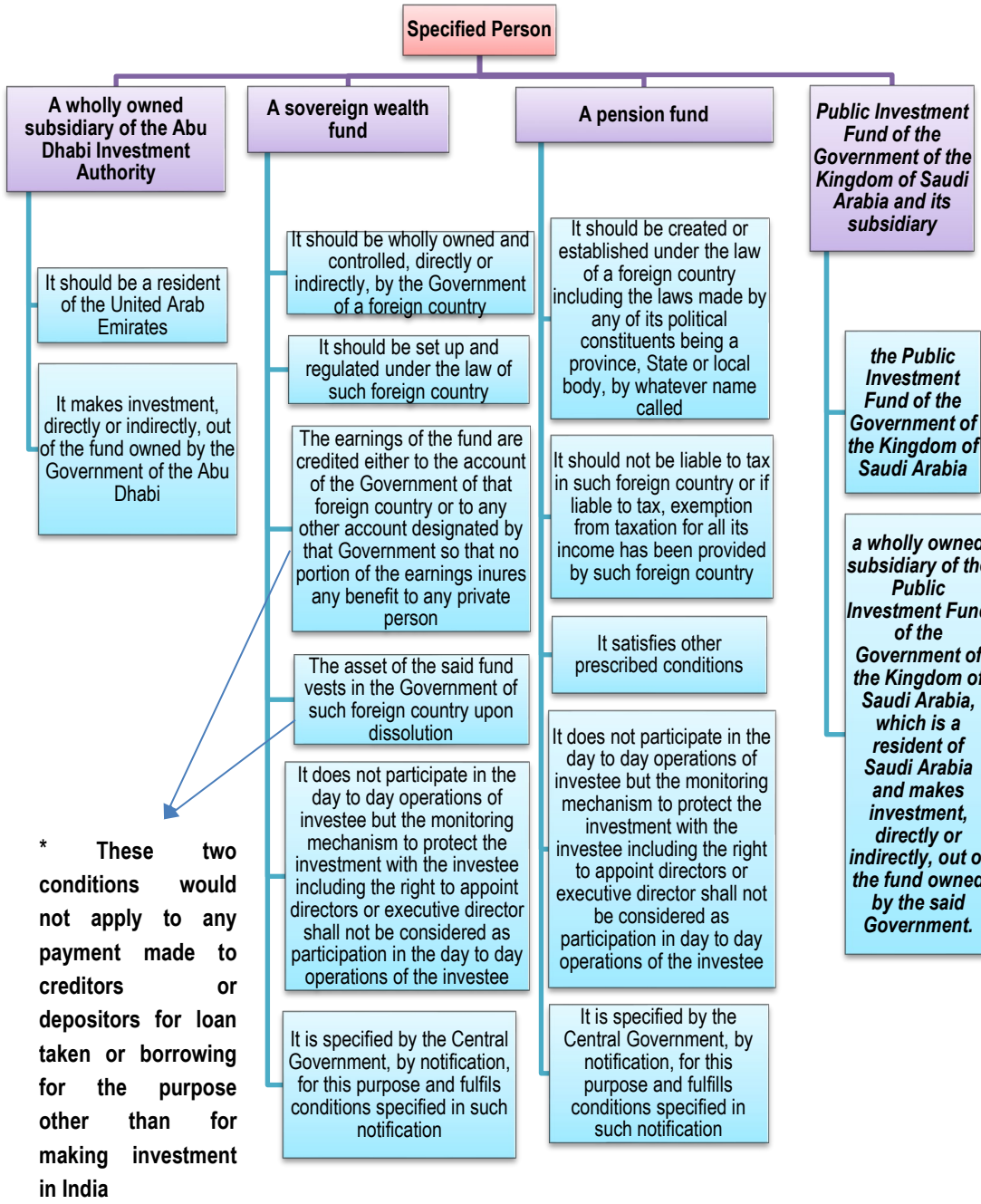
In order to address the concern with regard to the term "indirect borrowings" which have not been defined in the section and the consequent eligibility or otherwise of the exemption to the specified fund, where the loan and borrowings have been taken by the specified fund or its holding or any other entity in the chain of holding or any associate thereof, the CBDT has, vide Circular No. 19/2021 dated 26.10.2021, issued the guidelines and clarified the following:

- if the loans and borrowings have been taken by the specified fund or any of its group concern, specifically for the purposes of making investment by the specified fund in India, such fund shall not be eligible for exemption under section 10(23FE); and
- if the loans and borrowings have been taken by the specified fund or any of its group concern, not specifically for the purposes of making investment in India, it shall not be presumed that the investment in India has been made out of such loans and borrowings and such specified fund shall be eligible for exemption under section 10(23FE), subject to the fulfilment of all other stipulated conditions, provided that the source of the investment in India is not from such loans and borrowings.

(vii) Meaning of certain terms:

S. No.	Term	Meaning
(i)	Investee	A business trust, or a company, or an enterprise, or an entity, or a Category I or Category II AIF, or an Infrastructure Investment Trust or a domestic company, or an Infrastructure Finance Company or an Infrastructure Debt Fund referred to in (e) of (ii) above, in which the sovereign wealth fund or the pension fund, as the case may be, has made the investment, directly or indirectly, under the provisions of this section.
(ii)	Loan and borrowing	(a) Any loan taken or borrowing by a sovereign wealth fund from, or any deposit or investment made in a sovereign wealth fund by, any person other than the Government of the country in which the sovereign wealth fund is set up; (b) Any loan taken or borrowing by a pension fund from or any deposit or investment made in a pension fund by, any person. However, it shall not include the deposit or investment which represents statutory obligations and defined contributions of one or more funds or plans established for providing retirement, social security, employment, disability, death benefits or any similar compensation to the participants or beneficiaries of such funds or plans, as the case may be.

(viii) ***Meaning of specified person:***



*** These two conditions would not apply to any payment made to creditors or depositors for loan taken or borrowing for the purpose other than for making investment in India**

Exempted Income of Non-Residents

Section	Income	Available to
10(4)(ii)	Interest on money standing to the credit in a Non-resident (External) account of an Individual in any bank in India as per the FEMA Act, 1999.	Individual resident outside India (under FEMA Act) or an individual who has been permitted to maintain said account by RBI
10(4C)	Interest payable by an Indian company or business trust in respect of moneys borrowed from a source outside India by way of issue of rupee denominated bond during the period from 17.9.2018 to 31.3.2019	A non-corporate non-resident or foreign company
10(4D)	Income accrued or arising to or received by specified fund - (i) on transfer of a capital asset, being a bond of an Indian Company or a public sector company (sold by the Government and purchased by the specified fund in foreign currency), GDR or rupee denominated bond of an Indian company or derivative or any other notified security, on a recognized stock exchange located in any IFSC and where the consideration for such transfer is paid or payable in convertible foreign exchange; or (ii) on transfer of securities (other than shares in a company resident in India); or (iii) from securities issued by a non-resident (not being a permanent establishment of a non-resident in India) and where such income otherwise does not accrue or arise in India; or (iv) from a securitisation trust which is chargeable under the head "Profits and gains of business or profession", to the extent such income accrued or arisen to, or is received, is attributable to units held by non-resident (not being the permanent establishment of a non-resident in India) or is attributable to the investment division of	A specified fund

	offshore banking unit, as the case may be, computed in the prescribed manner.	
10(4E)	Any income accrued or arisen to, or received by a non-resident as a result of - transfer of non-deliverable forward contracts or offshore derivative instruments or over-the-counter derivatives, or - distribution of income on offshore derivative instruments ***or over-the-counter derivatives***, entered into with an offshore banking unit of an IFSC as referred to in section 80LA(1A) or ***any Foreign Portfolio Investor being a unit of an IFSC***, which fulfils prescribed conditions.	Non-resident
10(4F)	Any income of a non-resident by way of royalty or interest, on account of lease of an aircraft or a ship in a previous year, paid by a unit of an IFSC referred to in section 80LA(1A), if the unit has commenced its operation on or before ***31.3.2030***. "Aircraft", here, means an aircraft or a helicopter, or an engine of an aircraft or a helicopter, or any part thereof. "Ship" means a ship or an ocean vessel, engine of a ship or ocean vessel, or any part thereof.	Non-resident
10(4G)	Any income received by a non-resident from - portfolio of securities or financial products or funds, managed or administered by any portfolio manager on behalf of such non-resident, or - such activity carried out by such person as may be notified by the Central Government, in an account maintained with an Offshore Banking Unit in any IFSC, as referred to in section 80LA(1A), to the extent such income accrues or arises outside India and is not deemed to accrue or arise in India.	Non-resident

10(4H)	Any income by way of capital gains on transfer of equity shares of domestic company, being a Unit of an IFSC, as referred to in section 80LA(1A), engaged primarily in the business of lease of an aircraft ***or a ship*** which has commenced operations on or before ***31.3.2030***. The exemption from capital gains on transfer of equity shares of such domestic company is available for a period of ten assessment years - (i) from A.Y. relevant to the P.Y. in which the domestic company has commenced its operations or (ii) from A.Y. 2024-25, where the period of 10 A.Ys. under (i) above ends before 1.4.2034.	- Non-resident or - a Unit of IFSC, as referred to in section 80LA(1A) engaged primarily in the business of leasing of an aircraft ***or a ship***
10(6)(ii)	Remuneration received by Foreign Diplomats/Consulate and their staff (Subject to conditions)	Individual (not being a citizen of India)
10(6)(vi)	Remuneration received as an employee of a foreign enterprise for services rendered by him during his stay in India, if: a) Foreign enterprise is not engaged in any trade or business in India; b) His stay in India does not exceed in the aggregate a period of 90 days in such previous year; and c) Such remuneration is not liable to deducted from the income of employer chargeable under this Act	Individual Salaried Employee (not being a citizen of India) of a foreign enterprise
10(6)(viii)	Salary received by or due for services rendered in connection with his employment on a foreign ship if his total stay in India does not exceed 90 days in the previous year.	Individual Salaried Employee (Non-resident who is not a citizen of India) of a foreign ship
10(6)(xi)	Remuneration received as an employee of the Government of a foreign state during his stay in India in connection with his training in any Government Office/ Statutory Undertaking/ corporation/ registered society etc.	Individual Salaried Employee (not being a citizen of India) of Government of foreign state

10(6BB)	Tax paid by Indian company, engaged in the business of operation of aircraft, which has acquired an aircraft or an aircraft engine on lease, under an approved (by Central Government) agreement entered into between 1-4-1997 and 31-3-1999, or after 31-3-2007, on lease rental/income derived (other than payment for providing spares or services in connection with the operation of leased aircraft) by the Government of a Foreign State or foreign enterprise.	Government of foreign State or foreign enterprise (i.e., a person who is a non-resident)
10(6C)	Royalty income or fees for technical services under an agreement with the Central Government for providing services in or outside India in projects connected with security of India	Foreign company (notified by the Central Government)
10(6D)	Royalty income from or fees from technical services rendered in or outside India to, the National Technical Research Organisation (NTRO)	Non-corporate non-resident or foreign company
10(15)(iiia)	Interest on deposits made by a foreign bank with a scheduled bank with approval of RBI.	Bank incorporated outside India and authorised to perform Central Banking functions in that country.
10(15)(iv)(fa)	Interest payable by scheduled bank on deposits in foreign currency where acceptance of such deposits is duly approved by RBI. [Scheduled bank does not include co-operative bank]	a) Non-resident b) Individual or HUF being a resident but not ordinary resident
10(15)(viii)	Interest on deposit on or after 01.04.2005 in an Offshore Banking Unit	
10(15)(ix)	Interest payable by a unit located in an IFSC in respect of monies borrowed by it on or after 1.9.2019	Non-resident
10(15A)	Lease rental paid by Indian company, engaged in the business of operation of aircraft, to acquire an aircraft or an aircraft engine on lease (other than payment for providing spares or services in connection with the operation of leased aircraft) under	Government of foreign State or foreign enterprise (i.e., a person who is a non-resident)

	an approved (by Central Government) agreement not entered into between 1-4-1997 and 31-3-1999, or after 31-3-2007.	
10(15B)	Any income of a foreign company from lease rentals of cruise ships, received from a specified company which operates such ship/ ships in India provided such foreign company and the specified company are subsidiaries of the same holding company. Such exemption is available upto A.Y. 2030-31.	Foreign Company
10(23BBB)	Income of European Economic Community derived in India from interest, dividends or capital gains from investment out of its funds under notified scheme of Central Government.	European Economic Community
10(23BBC)	Income of SAARC Fund for Regional Projects set up by Colombo Declaration.	SAARC Fund for Regional Projects.
10(23FBC)	Any income accruing or arising to or received by a unit holder from a specified fund or on transfer of units in a specified fund	Unit holder of specified fund
10(23FE)	Dividend, interest, any sum referred to in section 56(2)(xii) or long-term capital gains ***(whether or not such capital gains are deemed as short-term capital gains under section 50AA)*** arising to specified person from an investment made by it in India, whether in the form of debt or share capital or unit, if such investment (i) is made between 1.4.2020 and ***31.3.2030***; (ii) is held for at least 3 years (iii) is in (a) a business trust, (b) a company/ enterprise/entity in developing/ operating/maintaining an infrastructure facility or (c) a SEBI Category I or II AIF having not less than 50%	Specified person, being (i) a wholly owned subsidiary of the Abu Dhabi Investment Authority (ii) a sovereign wealth fund (iii) Pension fund satisfying the prescribed conditions. ***(iv) Public Investment Fund of the Government of the Kingdom of Saudi Arabia and its wholly owned subsidiary***

	investment in one or more of the company or enterprise or entity referred to in (b) or in (d) or in (e) or in an Infrastructure Investment Trust or (d) a domestic company, set up and registered on or after 1.4.2021, having minimum 75% investments in one or more of the companies or enterprises or entities referred to in (b) or (e) a NBFC registered as an Infrastructure Finance Company or in an Infrastructure Debt Fund, having minimum 90% lending to one or more of the companies or enterprises or entities referred to in (b)	
10(23FF)	Income of the nature of capital gains on account of transfer of share of a company resident in India, by the resultant fund or a specified fund to the extent attributable to units held by non-resident (not being a PE of a non-resident in India) in such manner as may be prescribed, and such shares were transferred from the original fund, or from its wholly owned special purpose vehicle, to the resultant fund in relocation, and where capital gains on such shares were not chargeable to tax if that relocation had not taken place. Income would be exempt only when the specified fund furnishes an annual statement of exempt income in the prescribed form electronically under digital signature on or before the due date specified u/s 139(1). Where such form is not filed by the specified fund, the exempt income would be NIL. Further, such annual statement in prescribed form has to be certified by an accountant before the specified date [one month prior to the due date u/s 139(1)] and such	Non-resident or specified fund

	accountant has to furnish by that date, the certificate in the prescribed form electronically under digital signature.	
10(34B)	Any income by way of dividends from a company being a unit of any IFSC primarily engaged in the business of leasing of an aircraft ***or a ship***.	Unit of any IFSC engaged in the business of leasing of an aircraft ***or a ship.***
10(48)	Income received in India in Indian currency on account of sale of Crude oil or any other goods or rendering of services, as may be notified by the Central Government in this behalf, to any person in India. Foreign company and agreement should be notified by the Central Government in national interest.	Foreign company on account of sale of crude oil, any other goods or rendering of services. It should not be engaged in any other activity in India.
10(48A)	Income accruing or arsing on account of storage of crude oil in a facility in India and sale of crude oil therefrom to any person resident in India. Foreign company and agreement should be notified by the Central Government in national interest.	Foreign company on account of storage of crude oil in a facility in India and sale of crude oil therefrom.
10(48B)	Income from sale of leftover stock of crude oil from facility in India after the expiry of agreement or arrangement referred to in section 10(48A) or on termination of the said agreement or arrangement, in accordance with the terms mentioned therein, as the case may be, subject to such conditions, as may be notified by the Central Government.	Foreign company from sale of leftover stock of crude oil from the facility in India.

21.4 PRESUMPTIVE TAXATION FOR NON RESIDENTS

Section 28 details the income chargeable to tax under the head "Profits and Gains of Business or Profession". Certain provisions have been incorporated in the Income-tax Act, 1961, whereby the "Profits and gains of business or profession" of certain non-resident assessee is computed on the basis of certain percentage of the amount accrued or arisen and received in India.

(1) Special provision for computing the profits and gains of shipping business other than cruise shipping in the case of non-residents [Section 44B]

Section 44B is a non-obstante clause. Accordingly, sections 28 to 43A are not applicable in the case of a non-resident engaged in the business of operation of ships (other than cruise ships referred to in section 44BBC).

Profits and gains of a non-resident engaged in the business of operation of ships (other than cruise ships referred to in section 44BBC) would be@7.5% of the aggregate of the following amounts

- Amounts paid or payable, whether in or out of India, to the assessee or to any person on his behalf on account of carriage of passengers, livestock, mail or goods shipped at any port in India
- **+** Amounts received or deemed to be received in India by or on behalf of the assessee on account of the carriage of passengers, livestock mail or goods shipped at any port outside India

The amounts referred above would include demurrage charges or handling charges or any other amount of similar nature.

The amounts paid or payable or the amounts received or deemed to be received will also include the amount paid or payable or received or deemed to be received by way of demurrage charges or handling charges or any other amount of similar nature [*CIT v. Japan Lines Ltd. 260 ITR 656(Mad)*]**.** Thus 7.5% of the gross amounts mentioned above would be liable to tax and no deduction would be allowed for any expenditure, (i.e. the provisions of section 28 to 43A are not to be taken into account) however carried forward losses would be allowed to be set off from such income.

Analysis of section 44B and section 172:

Section 44B	Section 172
Presumptive tax provisions for non-residents engaged in shipping business (other than other than cruise ships referred to in section 44BBC). It does not, however, contain any procedure for assessment and collection of tax.	Complete code for taxation of occasional shipping business of non-residents, including assessment and collection of tax.
Manner of computation of presumptive Income:	
Notwithstanding anything to the contrary contained in sections 28 to 43A, in the case of an assessee, being a non-resident, engaged in the business of operation of ships (other than cruise ships referred to in section 44BBC), a sum equal to 7.5% of the aggregate of the -	Where a ship carries passengers, livestock, mail, or goods shipped at a port in India, a sum equal to **7.5%** of - the amount paid or payable on account of such carriage to the owner

- amount paid or payable (whether in or outside India) to the non-resident or to any other person on his behalf on account of the carriage of passengers, livestock, mail or goods shipped at any Indian port and - the amount received or deemed to be received in India on account of the carriage of passengers, livestock, mail or goods shipped at any port outside India. **shall be deemed to be the profits and gains of such business** chargeable to tax under the head "Profits and gains of business or profession".	or the charterer or to any person on his behalf, whether that amount is paid or payable in or out of India, **shall be deemed to be income accruing in India** to the owner or charterer on account of such carriage.

Other provisions of section 172

(i) Furnish a return of the amount paid to the owner: Section 172(3) imposes an obligation on the master of the ship to prepare and furnish to the Assessing Officer a return of the full amount paid or payable to the owner or charterer or any person on this behalf, on account of the carriage of all passengers, livestock, mail or goods shipped at any port in India since the last arrival of the ship thereat. Such return is, ordinarily, to be furnished by the master of the ship before the departure, from that port in India, of the ship.

A return may, however, be filed by the person authorized by the master of the ship within 30 days of the departure of the ship from the port, if:

(a) the Assessing Officer is satisfied that it is not possible for the master of the ship to furnish the return required by section 172(3) before the departure of the ship from the port; and

(b) the master of the ship has made satisfactory arrangement for the filing of the return and payment of tax by any other person on this behalf.

(ii) Assessment [Section 172(4)]: This section provides for a summary procedure of assessment. On receipt of the return filed by the master of the ship or by any person on this behalf, the Assessing Officer has to determine the tax payable on the taxable income. By virtue of the provisions of section 172(2), the taxable income is a sum equal to 7.5% of the amount paid or payable on account of carriage of passengers etc. to the owner or charterer or to any person on his behalf, whether that amount is paid or payable in or out of India. The tax payable on such taxable income is to be calculated at the **rate or rates in force applicable to the total income of a foreign company**. The master of the ship is liable for payment of such tax.

(iii) **Time limit for passing the assessment order [Section 172(4A)/(5)]:** It is incumbent on the Assessing Officer to pass the order of assessment within 9 months from the end of the financial year in which the return of income under section 172(3) is filed.

For the purpose of determining the tax payable, Assessing Officer is empowered to call for such accounts and documents as he may require.

(iv) **Grant of port of clearance to the ship [Section 172(6)]:** A port clearance shall not be granted to the ship until the Collector of customs or other authorized officer, is satisfied that the tax assessable under section 172 has been duly paid or that satisfactory arrangements have been made for the payment thereof.

(v) **Option to pay tax as per normal provisions of the Income-tax Act, 1961 on the income chargeable to tax under section 172 [Section 172(7)]:** The owner or charterer has the option to claim before the expiry of the assessment year relevant to the previous year in which the date of departure of the ship from the Indian port falls, that an assessment in respect of his total income for the previous year and the tax payable on the basis thereof be determined in accordance with the other provisions of this Act. In such a case, any payment made under section 172 is to be treated as a payment in advance of the tax leviable for that assessment year and the difference between the sum so paid and the amount of tax found payable by him on such assessment is to be paid by him or refunded to him, as the case may be.

The sum chargeable to tax under this section shall include amounts payable by way of **demurrage charge or handling charge** or any other amount of similar nature [Section 172(8)].

Section 172 *vis-à-vis* section 44B

In case the assessee is covered under section 172, 7.5% of the amount paid or payable on account of the carriage of the passengers, livestock, mail or goods to the owner or the chartered or to any person on his behalf is deemed as his income and tax is levied on such income at a rate applicable to a foreign company i.e., 35% *plus* surcharge, if any, and *plus* health and education cess @4%.

Under the provisions of section 172(7), the non-resident owner or charterer is allowed an option to be assessed on his total income of the previous year in accordance with other provisions of the Act i.e., as per section 44B.

When such option is exercised, a regular assessment is made. In such a case, the tax already paid under the provisions of section 172(4) by the non-resident owner or charterer would be treated as tax paid in advance for that assessment year before determining the amount of tax

finally due**.** The difference between the sum so paid and the amount of tax payable by him on such assessment shall be paid by the assessee or refunded to him (See Note below).

In that case, the non-resident assessee is liable to pay interest under sections 234B and 234C and also entitled to receive interest under section 244A of the Income-tax Act, 1961 as the case may be. **[Circular No. 9/2001, dated 9-7-2001]**

Note *–Refund may arise in case of non-corporate non-residents, since they are liable to pay tax at a rate lower than the rate of 35% (plus surcharge, if any, and cess@4%) applicable to a foreign company.*

The Supreme Court, in *A.S. Glittre v CIT (1997) 225 ITR 739 (SC)*, held that the assessment made under section 172(4) shall be an 'adhoc' assessment and it will be superseded if a regular assessment is opted as per the provisions of the Act.

ILLUSTRATION 7

Sea Port Shipping Line, a non-resident foreign company, is engaged in the business of carriage of goods shipped at Mumbai port. During the previous year ended on 31.3.2026, it had collected freight of ₹ 100 lakhs, demurrages of ₹ 20 lakhs and handling charges of ₹ 10 lakhs. The expenses of operating its fleet during the year for the Indian Ports were ₹ 110 lakhs. Compute its income applying the presumptive provisions under section 44B.

SOLUTION

Section 44B provides that in the case of an assessee, being a non-resident, engaged in the business of operation of ships, a sum equal to 7.5% of the aggregate of the following amounts would be deemed to be the profits and gains of such business chargeable to tax under the head "Profits and gains of business or profession".

(i) The amount paid or payable, whether within India or outside, to the assessee or to any person on his behalf on account of the carriage of passengers, livestock, mail or goods shipped at any port in India; and

(ii) The amount received or deemed to be received in India by the assessee himself or by any other person on behalf of or on account of the carriage of passengers, livestock, mail or goods shipped at any port outside India.

The above amounts will include demurrage charges and handling charges.

These provisions for computation of income from the shipping business in case of non-residents would apply notwithstanding anything to the contrary contained in the provisions of sections 28 to 43A of the Income-tax Act, 1961.

Therefore, in this case, M/s. Sea Port Shipping Line is required to pay tax in India on the basis of presumptive scheme as per the provisions of section 44B. The assessee shall not be entitled to set off any of the expenses incurred for earning of such income. Therefore, the Shipping Line is required to pay tax on deemed profit of ₹ 9.75 lakhs (7.50% on the total receipts of ₹ 130 lakhs). The tax payable would be reduced by the amount of tax paid under section 172(4).

(2) Special provision for computing profits and gains in connection with the business of exploration etc. of mineral oils [Section 44BB]

Section 44BB is a non-obstante clause. Accordingly, sections 28 to 41 and section 43 and 43A are not applicable in the case of a non-resident engaged in the business of providing services of facilities in connection with, or supplying plant and machinery on hire used, or to be used in the prospecting for, or extraction or production of, mineral oils.

(i) **Eligible assessee:** Section 44BB provides for determination of income of taxpayer being a non-resident engaged in the business of providing services and facilities in connection with, or supplying plant and machinery on hire used or to be used in the prospecting for, or extraction or production of mineral oils.

(ii) **Presumptive rate:** In such case, the profits and gains shall be deemed to be equal to **10%** of the following amounts:

- paid or payable to the taxpayer or to any person on his behalf whether in or out of India, on account of the provision of such services or facilities or supply of plant & machinery for the aforesaid purposes in India; and
- received or deemed to be received in India by or on behalf of the assesse on account of such service or facilities or supply of plant and machinery used or to be used in prospecting for, or extraction or production of mineral oils outside India.

(iii) **Non-applicability of presumptive taxation under section 44BB:** The provisions of section 44BB shall not apply to any income to which the provisions of section 42 or section 44DA, 115A or 293A apply for the purpose of computing profit or gains or any other income referred to in these sections.

Section	Provision
42	Special provision for deductions in the case of business for prospecting, etc., for mineral oil
44DA	Special provisions for computing income by way of royalties, etc., in case of non-residents.

115A	Tax on royalty and fees for technical services
293A	Power to make exemption, etc., in relation to participation in the business of prospecting for, extraction, etc., of mineral oils.

(iv) Option to claim lower profits: An assessee may claim lower income than the presumptive rate of 10%, if he keeps and maintains books of account under section 44AA(2) and get them audited and furnish a report of such audit under section 44AB. The assessment in all such cases shall be done by the Assessing Officer under section 143(3).

(v) No set-off of unabsorbed depreciation and brought forward loss: Where an assessee declares profits and gains of business @10% for any previous year in accordance with the presumptive provisions under this section, no set off of unabsorbed depreciation and brought forward loss would be allowed to the assessee for such previous year.

(vi) Meaning of certain terms: For the purposes of this section,-

(a) "Plant" includes ships, aircraft, vehicles, drilling units, scientific apparatus and equipment, used for the purposes of the said business;

(b) "Mineral oil" includes petroleum and natural gas.

Note *- If the income of a non-resident is in the nature of fees for technical services, it shall be taxable under the provisions of either section 44DA or section 115A irrespective of the business to which it relates. Section 44BB would apply only in a case where consideration is for services and other facilities relating to exploration activity which are not in the nature of technical services..*

(3) Special provision for computing profits and gains of the business of operation of aircraft in the case of non-residents [Section 44BBA]

Section 44BBA is a non-obstante clause. Accordingly, sections 28 to 43A are not applicable in the case of a non-resident engaged in the business of operation of aircraft.

(i) Eligible assessee: Section 44BBA provides presumptive rate in case of a non-resident engaged in the business of operation of aircraft.

(ii) **Presumptive rate:** Income from such business is calculated at a flat rate of **5%** of the following:

(a) amount paid or payable, in or out of India, to the tax payer or to any person on his behalf on account or carriage of passenger, livestock, mail or goods from any place in India and

(b) amount received or deemed to be received in India by or on behalf of the taxpayer on account of carriage of passenger, livestock, mail or goods from any place outside India.

ILLUSTRATION 8

Mr. Q, a non-resident, operates an aircraft between Singapore and Chennai. He received the following amounts while carrying on the business of operation of aircrafts for the year ended 31.3.2026:

(i) *₹ 2 crores in India on account of carriage of passengers from Chennai.*

(ii) *₹ 1 crore in India on account of carriage of goods from Chennai.*

(iii) *₹ 3 crores in India on account of carriage of passengers from Singapore.*

(iv) *₹ 1 crore in Singapore on account of carriage of passengers from Chennai.*

The total expenditure incurred by Mr. Q for the purposes of the business during the year ending 31.3.2026 was ₹ 6.75 crores.

Compute the income of Mr. Q chargeable to tax in India under the head "Profits and gains of business or profession" for the assessment year 2026-27.

What would be your answer in case the business was carried on by a foreign company, Q Airlines (P) Ltd?

SOLUTION

Section 44BBA says for computing profits and gains of the business of operation of aircraft in the case of non-residents a sum equal to 5% of the aggregate of the following amounts -

(a) paid or payable, whether in or out of India, to the assessee or to any person on his behalf on account of the carriage of passengers, livestock, mail or goods from any place in India; and

(b) received or deemed to be received in India by or on behalf of the assessee on account of the carriage of passengers, livestock, mail or goods from any place outside India.

Keeping in view the provisions of section 44BBA, the income of Mr. Q chargeable to tax in India under the head "Profits and gains of business or profession" is worked out hereunder -

Particulars	₹
Amount received in India on account of carriage of passengers from Chennai	2,00,00,000
Amount received in India on account of carriage of goods from Chennai	1,00,00,000
Amount received in India on account of carriage of passengers from Singapore	3,00,00,000
Amount received in Singapore on account of carriage of passengers from Chennai	1,00,00,000
	7,00,00,000

Income from business under section 44BBA at 5% of ₹ 7,00,00,000 is ₹ 35,00,000, which is the income of Mr. Q chargeable to tax in India under the head “Profits and gains of business or profession” for the A.Y. 2026-27.

In case the assessee is a foreign company, say, Q Airlines (P) Ltd, the answer would be the same since section 44BBA does not distinguish corporate and non-corporate taxpayers who operate aircraft provided their residential status is that of non-resident.

(4) Special provision for computing profits and gains of foreign companies engaged in the business of civil construction etc. in certain turnkey power projects [Section 44BBB]

(i) Eligible assessee: A foreign company engaged in the business of civil construction or the business of erection of plant or machinery or testing or commissioning thereof in connection with a turnkey power project approved by the Central Government in this behalf.

(ii) Presumptive rate: A sum equal to 10% of the amount paid or payable (whether in or out of India) to the said assessee or to any person on his behalf on account of such civil construction, erection, testing or commissioning shall be deemed to be the profits and gains of such business chargeable to tax under the head 'profits and gains of business or profession'.

(iii) Option to claim lower profits: An assessee may claim lower income than the presumptive rate of 10%, if he keeps and maintains books of account under section 44AA(2) and get them audited and furnish a report of such audit under section 44AB. The assessment in all such cases shall be done by the Assessing Officer under section 143(3).

(iv) **No set-off of unabsorbed depreciation and brought forward loss:** Where an assessee declares profits and gains of business @10% for any previous year in accordance with the presumptive provisions under this section, no set off of unabsorbed depreciation and brought forward loss would be allowed to the assessee for such previous year.

(5) Special provision for computing profits and gains of business of operation of cruise ships in case of non-residents [Section 44BBC]

(i) **Eligible Assessee:** A non-resident engaged in the business of operation of cruise ships subject to prescribed conditions.

(ii) **Presumptive rate:** The profits and gains shall be deemed to be equal to **20%** of the following amounts:

- paid or payable to the eligible assessee or to any person on his behalf on account of the carriage of passengers; and
- received or deemed to be received by or on behalf of the assesse on account of the carriage of passengers.

The lease rentals paid by a foreign company which opts for presumptive regime under section 44BBC, would be exempt in the hands of the recipient company under section 10(15B), if such company is a foreign company and both these foreign companies are subsidiaries of the same holding company. This exemption would be available upto A.Y. 2030-31.

The CBDT has, vide Notification No. 9/2025 dated 21.01.2025 inserted Rule 6GB. Rule 6GB specified the conditions for non-resident, engaged in the business of operation of cruise ships for section 44BBC.

For the purposes of section 44BBC, an assessee, being a non-resident, engaged in the business of operation of cruise ships has to –

(i) operate a passenger ship having a carrying capacity of more than 200 passengers or length of 75 meters or more, for leisure and recreational purposes and having appropriate dining and cabin facilities for passengers;

(ii) operate such ship on scheduled voyage or shore excursion touching at least two sea ports of India or same sea ports of India twice;

(iii) operate such ship primarily for carrying passengers and not for carrying cargo; and

(iv) operate such ship as per the procedure and guidelines if any, issued by the Ministry of Tourism or Ministry of Shipping."

(6) Special provision for computing profits and gains of non-residents engaged in business of providing services or technology for setting up an electronics manufacturing facility or in connection with manufacturing or producing electronic goods, article or thing in India [Section 44BBD]

(i) ***Eligible assessee:*** *A non-resident engaged in the business of providing services or technology in India, for setting up an electronics manufacturing facility or in connection with manufacturing or producing electronic goods, article or thing in India -*

a. *to a resident company which is establishing or operating electronics manufacturing facility or a connected facility for manufacturing or producing electronics goods, article or thing in India, under a scheme notified by the Central Government in the Ministry of Electronics and Information Technology; and*

b. *the resident company satisfies the conditions prescribed in this behalf.*

(ii) ***Presumptive rate:*** *The profits and gains shall be deemed to be equal to* ***25%*** *of the following amounts:*

- *paid or payable to the non-resident assessee or to any person on his behalf on account of providing services or technology; and*
- *received or deemed to be received by non-resident assessee or on behalf of the non-resident assessee on account of providing services or technology.*

(iii) ***Non-applicability of section 44DA or section 115A:*** *The provisions of section 44DA or section 115A do not apply in respect of income covered by this section.*

(iv) ***No set-off of unabsorbed depreciation and brought forward loss:*** *Where an assessee declares profits and gains of business @25% for any previous year in accordance with the presumptive provisions under this section, no set off of unabsorbed depreciation and brought forward loss would be allowed to the assessee for such previous year.*

SUMMARY OF PRESUMPTIVE PROVISIONS APPLICABLE TO NON RESIDENTS

Particulars	44B	44BBA	44BB	44BBB	44BBC	44BBD
Nature of business	Shipping business other than cruise ship business u/s 44BBC	Operation of aircraft	Business of providing services or facilities in connection with, or supplying P & M on hire used, or to be used, in the prospecting for, or extraction or production of mineral oils	Business of civil construction or the business of erection of P&M or testing or commissioning thereof, in connection with turnkey power projects approved by the Central Government.	Business of operation of cruise ships	*Business of providing services or technology in India, for setting up an electronics manufacturing facility or in connection with manufacturing or producing electronic goods, article or thing in India*
Eligible assessee	Non-resident	Non-resident	Non-resident	Only Foreign Co.	Non-resident	*Non-resident*
Presumptive income	7.5% of specified sum	5% of specified sum	10% of specified sum	10% of specified sum	20% of specified sum	*25% of specified sum*
Specified sum	(i) Amount paid or payable on account of carriage of passengers, livestock, mail or goods shipped at/ from any port/place in India; and (ii) Amount received or deemed to be received in India on account of	(i) Amount paid or payable on account of the provision of such services or facilities for the aforesaid purposes in India; and (ii) Amount received or deemed to be	Amount paid or payable on a/c of such civil construction, erection, testing or commissioning	(i) Amount paid or payable on account of carriage of passengers; and (ii) Amount received or	*(i) Amount paid or payable to the non-resident assessee or to any person on his behalf on account of providing services or technology; and*	

	the carriage of passengers, livestock mail or goods shipped at/ from any port/place outside India	received in India on account of the provisions of services or facilities for the aforesaid purpose outside India.		deemed to be received on account of carriage of passengers	*(ii) Amount received or deemed to be received by non-resident assessee or on behalf of the non-resident assessee on account of providing services or technology*
Option to declare lower profits	Not available	Lower profits may be claimed u/s 44BB and u/s 44BBB provided the assessee maintains books of account u/s 44AA and gets them audited u/s 44AB. No set off of unabsorbed depreciation and brought forward loss would be allowed to the assessee in the previous year in which he/it declares profits and gains @10% in accordance with the presumptive provisions of section 44BB/ 44BBB.		Not available	*Not available.* *No set off of unabsorbed depreciation and brought forward loss would be allowed to the assessee in the previous year in which he/it declares profits and gains @25% in accordance with the presumptive provisions of section 44BBD.*

(6) Deduction in respect of head office expenses in case of non-residents [Section 44C]

In case of a non-resident, head office expenditure is allowed in accordance with the provisions of section 44C. This section is a non-obstante provision, and anything contrary contained in sections 28 to 43A is not applicable.

Deduction in respect of head office expenditure is restricted to the least of the following:

(a) an amount equal to 5% of **"adjusted total income"** or in case adjusted total income is a loss, 5% of the **"average adjusted total income"**; or

(b) the amount of so much of the expenditure in the nature of head office expenditure incurred by the assessee as is attributable to the business or profession of the assessee in India.

Meaning of certain terms:

Term	Meaning
Adjusted total income	Total income computed in accordance with the provisions of the Act without giving effect to the following :- ▪ Allowance under this section ▪ Unabsorbed depreciation allowance under section 32(2). ▪ Expenditure incurred by a company for the purpose of promoting family planning amongst its employees under first proviso to section 36(1)(ix). ▪ Business loss brought forward under section 72(1). ▪ Speculation loss brought forward under section 73(2). ▪ Loss under the head Capital Gain under section 74(1). ▪ Loss from certain specified source brought forward under Section 74A(3). ▪ Deduction under Chapter VI-A.
Average adjusted total income	(a) The total income of the assessee, assessable for each of the **three assessment years** immediately preceding the relevant assessment year, one third of the aggregate amount of the adjusted total income in respect of previous years relevant to the aforesaid three assessment years is average adjusted total income. (b) When the total income of the assessee is assessable only for **two of the aforesaid three assessment years**, one half of the aggregate amount of the adjusted total income in respect of the previous year's relevant to the aforesaid two assessment years is taken on average adjusted total income. (c) Where the total income of the assessee is assessable only for **one of the aforesaid three assessment years,** the amount of the adjusted total income in respect of the previous year relevant to that assessment year is average adjusted total income.

Head office expenditure	Executive and general administration expenditure incurred by the assessee outside India, including expenditure incurred in respect of: a. rent, rates, taxes, repairs or insurance of any premises outside India used for the purpose of the business or profession. b. salary, wages, annuity, pension, fees, bonus, commission, gratuity, perquisites or profit in lieu of or in addition to salary, whether paid or allowed to any employee or other person employed in, or managing the affairs of, any office outside India; c. traveling by any employee or other person employed in, or managing the affairs, of any office outside India; and d. such other matters connected with executive and general administrative as may be prescribed.

Deduction of Head Office expenditure in case of Non-residents while computing Profit and gains from business or profession

Lower of

5% of adjusted Total Income

Amount of Head Office expenditure incurred by the Non-resident attributable to the business or profession in India

Meaning of Adjusted Total Income

Total Income, without giving effect to:
(i) Head Office expenditure
(ii) Unabsorbed depreciation
(iii) Capital expenditure on family planning
(iv) Losses carry forward:
- Business loss u/s 72(1)
- Speculative business Loss u/s 73(2)
- LTCL/STCL u/s 74(1)
- Loss from owning and maintaining race horses u/s 74A(3)

(v) Deductions under Chapter VI-A from GTI

Meaning of Head Office expenditure

Executive and general administration expenditure incurred by the NR outside India, including:
(a) Rent, rates, taxes, repairs or insurance of any premises outside India used for business or profession
(b) Salary, wages, perquisites etc. to any employee or other person managing the affairs of any office outside India
(c) Travelling expenditure by any employee or other person managing the affairs of any office outside India
(d) Such other executive and general administration expenditure prescribed

ILLUSTRATION 9

The net result of the business carried on by a branch of foreign company in India for the year ended 31.03.2026 was a loss of ₹ 100 lakhs after charge of head office expenses of ₹ 200 lakhs allocated to the branch. Explain with reasons the income to be declared by the branch in its return for the assessment year 2026-27.

SOLUTION

Section 44C restricts the allowability of the head office expenses to the extent of lower of an amount equal to 5% of the adjusted total income or the amount actually incurred as is attributable to the business of the assessee in India.

For the purpose of computing the adjusted total income, the head office expenses of ₹ 200 Lakhs charged to the profit and loss account have to be added back.

The amount of income to be declared by the assessee for A.Y. 2026-27 will be as under:

Particulars	₹
Net loss for the year ended on 31.03.2026	(100 lakhs)
Add: Amount of head office expenses to be considered separately as per section 44C	200 lakhs
Adjusted total income	100 lakhs
Less: Head Office expenses allowable under section 44C is the lower of -	
(i) ₹ 5 lakhs, being 5% of ₹ 100 lakhs, or	
(ii) ₹ 200 lakhs.	5 lakhs
Income to be declared in return	**95 lakhs**

(7) Special provision for computing income by way of royalties etc. in case of non-residents [Section 44DA]

(i) Eligible Assessee: Section 44DA provides the method of computation of income by way of royalty or fees for technical services arising from the agreement made by the non-resident with the Indian company or Government of India after 31.03.2003 where:

(a) such non-resident carries business/profession in India through permanent establishment or fixed place of profession; and

(b) the right, property, or contract in respect of which the royalty or fees for technical services are paid is effectively connected with such permanent establishment or fixed place of service.

(ii) **Expenses not allowed as deduction**: While computing the income chargeable to tax under this section, the following expenses are not allowed as deduction:

- expenditure or allowance incurred which is not wholly and exclusively for such permanent establishment or fixed place of service in India
- amount paid (otherwise than reimbursement of actual expenses) by the permanent establishment to head office or to any of its other offices.

(iii) **Non-applicability of section 44BB:** The provisions of section 44BB do not apply in respect of income covered by this section.

(iv) **Mandatory requirement to maintain books of account and get them audited:** Under this section, the non-resident is mandatorily required to keep and maintain the books of account under section 44AA and get them audited before the date one month prior to the due date for furnishing the return of income under section 139(1) and furnish by that date a report of such audit.

	Assessee	Due date of filing return of income u/s 139(1)	Specified date of tax audit u/s 44AB
(i)	In case of an assessee who is required to furnish report referred to in section 92E	30th November of the A.Y.	31st October of the A.Y.
(ii)	In case of other assessees computing income u/s 44DA	31st October of the A.Y.	30th September of the A.Y.

21.5 CAPITAL GAINS TAXATION FOR NON RESIDENTS

Any person including a foreign company or non-corporate non-resident is liable to capital gains tax in India, if there is a transfer of a property (capital asset) in India which results in profit or gain. The provisions relating to non-residents in respect of capital gains taxation are discussed in detail in Chapter 4: Capital Gains in Module 1.

First Proviso to Section 48 read with Rule 115A:-

In case of non-residents who invest foreign exchange to acquire capital assets, exchange rate fluctuation benefit is allowed while computing the capital gains arising from the transfer of shares or debentures of an Indian company as per first proviso to section 48.

The same is to be computed in the following manner:

- The cost of acquisition, the expenditure incurred wholly and exclusively in connection with the transfer and the full value of the consideration are to be converted into the same foreign currency with which such shares or debentures were acquired.
- The resulting capital gains shall be reconverted into Indian currency.

The aforesaid manner of computation of capital gains shall be applied for every purchase and sale of shares or debentures in an Indian company.

Rule 115A of the Income-tax Rules, 1962 provides that the average of the telegraphic transfer buying rate and telegraphic transfer selling rate of the foreign currency initially utilized in purchase of the capital asset as on the date specified in column (3) in the table below, shall be considered to convert rupees into foreign currency for the purpose of computation of capital gains.

(1) S. No.	(2) Item	(3) Date
(a)	Cost of acquisition of capital asset	Date of acquisition of capital asset
(b)	Expenditure incurred wholly and exclusively in connection with transfer of capital asset	Date of transfer of capital asset
(c)	Full value of consideration received or accruing as a result of transfer of a capital asset	Date of transfer of capital asset

For reconverting capital gains computed in the foreign currency initially utilized in the purchase of the capital asset into rupees, the telegraphic transfer buying rate of such currency, as on the date of transfer of the capital asset, is to be considered.

Meaning of certain terms

Term	Meaning
Telegraphic transfer buying rate	The rate or rates of exchange adopted by the State Bank of India for buying foreign currency having regard to the guidelines specified from time to time by the RBI for buying foreign currency where such currency, made available to that bank through a telegraphic transfer.
Telegraphic transfer selling rate	The rate of exchange adopted by the State Bank of India for selling foreign currency where such currency is made available by that bank through telegraphic transfer.

However, the benefit of currency fluctuation would not be available in respect of capital gains arising from the transfer of the following long term capital assets referred to in section 112A –

(i) equity share in a company on which STT is paid both at the time of acquisition and transfer

(ii) unit of equity oriented fund or unit of business trust on which STT is paid at the time of transfer.

Other Important Points:

a. It is also provided that the aforesaid manner of computation of capital gains shall be applicable in respect of capital gains accruing or arising from every re-investment thereafter in and sale of shares in or debentures of an Indian company.

b. The shares and debentures (whether listed or non-listed) of Indian companies only are covered under first proviso to section 48. Indian company shall include Government company. However, bonds of Central Government/State Government and RBI are not covered for this purpose.

c. If the total income of an assessee includes any income chargeable under the head 'Capital Gains' arising from transfer of a capital asset being an equity share in a company or unit of an equity oriented fund or unit of a business trust, then, tax on short term capital gains shall be payable at the rates specified in section 111A if transaction of sale of such security has been entered on or after October 1, 2004 on which STT is chargeable; and tax on long-term capital gains shall be payable on such securities as per section 112A, if STT has been paid both at the time of acquisition and transfer of equity share or at the time of transfer of unit of equity oriented fund or unit of business trust.

d. Tax rates on long term capital gains arising to non-residents

S. No.	Long-term capital asset (LTCA)	Rate of tax
(i)	Unlisted securities or shares of a closely held company	12.5% without foreign currency fluctuation
(ii)	Other Assets (other than taxable u/s 112A)	12.5%

e. Section 50CA provides that where the consideration received or accruing as a result of transfer of a capital asset, being share of a company other than a quoted share, is less than the fair market value of such share determined in such manner as may be prescribed, such fair market value shall be deemed to be the full value of consideration received or accruing as a result of such transfer.

This provision would, however, not be applicable to any consideration received or accruing as a result of transfer by such class of persons and subject to such conditions as may be prescribed.

f. Section 50D provides that, in case where the consideration received or accruing as a result of the transfer of a capital asset by an assessee is not ascertainable or cannot be determined, then, for the purpose of computing income chargeable to tax as capital gains,

the fair market value of the said asset on the date of transfer shall be deemed to be the full value of consideration received or accruing as a result of such transfer.

ILLUSTRATION 10

Mr. A, a non-resident Indian, remits US $ 40,000 to India on 16.09.2006. The amount is partly utilised on 3.10.2006 for purchasing 10,000 equity shares in A Ltd, an Indian Company, at the rate of ₹ 12 per share. These shares are sold for ₹ 48 per share on 30.03.2026. Fair market value of these shares on 31.01.2018 was ₹ 35 per share.

The telegraphic transfer buying and selling rate of US dollars adopted by the State Bank of India is as follows:-

Date	Buying Rate (1 US$)	Selling Rate (1 US $)
16.09.2006	18	20
3.10.2006	19	21
30.3.2026	59	61

Compute the capital gain chargeable to tax for the A.Y. 2026-27 on the assumption that –

(a) These shares have not been sold through a recognised stock exchange

(b) These shares have been purchased and sold through a recognised stock exchange.

Ignore the provisions of Chapter XII-A

SOLUTION

(a) Where the shares are not sold through recognised stock exchange

Particulars	US $
Sale consideration (₹ 4,80,000/60)	8000
Less: Cost of Acquisition (1,20,000/20)	6000
Long term capital gain	**2000**

Long-term capital gain converted into $ 2000 x ₹ 59 = ₹ 1,18,000

(b) Where the shares are purchased and sold through a recognised stock exchange

Particulars		₹
Sale consideration		4,80,000
Less: Cost of Acquisition		
Higher of the following		
Cost of acquisition	1,20,000	

Lower of Fair market value as on 31.1.2018 and Full value of consideration (i.e., lower of ₹ 3,50,000 and ₹ 4,80,000)	3,50,000	3,50,000
Long term capital gain		**1,30,000**

Long term capital gains upto ₹ 1,25,000 would be exempt. Long term capital gains exceeding ₹ 1,25,000, i.e., ₹ 5,000 is taxable @12.5% under section 112A.

Rupee Denominated Bonds of an Indian company

As a measure to enable Indian companies to raise funds from outside India, the RBI has permitted them to issue rupee denominated bonds outside India. Accordingly, in case of non-resident assesses, any gains arising on account of appreciation of rupee between the date of purchase and the date of redemption of rupee denominated bond of an Indian company held by him against foreign currency in which investment is made shall not be included in computation of full value of consideration. This would provide relief to the non-resident investor who bears the risk of currency fluctuation **[Fifth Proviso to Section 48].**

21.6 SPECIAL PROVISIONS PRESCRIBED UNDER CHAPTER XII-A

Chapter XII-A, introduced in the Income-tax Act 1961 with effect from June 01, 1983, contains seven sections viz. 115C, 115D, 115E ,115F,115G,115H and115-I. The provisions of this Chapter are applicable to a non-resident Indian who derives investment income from a foreign exchange asset and/ or long term capital gains in respect thereof.

(1) Definitions [Section 115C]

	Terms	Meaning
(a)	Convertible foreign exchange	Foreign exchange which is for the time being treated by the Reserve Bank of India as convertible foreign exchange for the purposes of the Foreign Exchange Management Act, 1999, and any rules made thereunder.
(b)	Foreign exchange asset	Any specified asset which the assessee has acquired or purchased with, or subscribed to in, convertible foreign exchange.
(c)	Investment income	Any income derived from a foreign exchange asset.
(d)	Long-term capital gains	Income chargeable under the head "Capital gains" relating to a capital asset, being a foreign exchange asset which is not a short-term capital asset.

(e)	Non-resident Indian	An individual, being a citizen of India or a person of Indian origin who is not a "resident. A person shall be deemed to be of Indian origin if he, or either of his parents or any of his grandparents, was born in undivided India
(f)	Specified asset	Any of the following assets, namely: (i) Shares in an Indian company; (ii) Debentures issued by an Indian company which is not a private company (iii) Deposits in an Indian Company which is not a private company (iv) Any security of the Central Government (v) Any other asset which the Central Government may notify

(2) Special provisions relating to taxation of investment income and long-term capital gains of a non-resident [Sections 115D to 115F]

(i) **Taxation on gross basis [Section 115D(1)]:** Section 115D deals with the computation of total income of non-residents. In computing the investment income of non-resident Indian, no deduction is to be allowed under any provision of the Act in respect of any expenditure or allowance thereabout.

(ii) **No deduction allowed [Section 115D(2)]:** No deduction under Chapter VI-A shall be allowed and indexation benefit will **not** be available, where the gross total income of a non-resident Indian consists only of investment income or/and long term capital gain.

However, where the gross total income includes investment incomes or/and long term capital gain, the deduction under Chapter VI-A shall be allowed only on that portion of gross total income which does not include the investment income and long term capital gain.

(iii) **Tax rate on investment income and long term capital gains [Section 115E]:** Under section 115E, tax payable by non-resident Indian shall be aggregate of –

(a) income-tax on Investment income at 20%;

(b) income-tax on long term capital gains from transfer of specified assets (i.e., purchased in foreign currency) at 12.5%

(c) income-tax on his other total income

Investment Income ↓ 20% + Surcharge (if applicable) + Health and Education Cess@4%
Long-term Capital Gain on Foreign Exchange Assets ↓ 12.5% + Surcharge (if applicable) + Health and Education Cess@4%

(iv) **Exemption for long-term capital gains [Section 115F]**

Where a non-resident Indian has long term capital gain from transfer of a foreign exchange asset and has within a period of six months after the date of such transfer, invested the whole or part of the net consideration in any specified asset then

(a) If the cost of the new asset is not less than the net consideration in respect of the original asset, the whole of the capital gains shall not be charged to tax under section 45

(b) If the cost of the new asset is less than the net consideration in respect of the original asset, the amount as calculated below shall not be charged to tax under section 45

$$\text{Capital Gains} \times \frac{\text{Cost of acquisition of new asset}}{\text{Net Consideration}}$$

Important points:

1. Net consideration means the full value of consideration from transfer less expenditure incurred wholly and exclusively in connection with transfer.

2. Where the new asset is transferred or converted into money within a period of 3 years from the date of its acquisition, the amount of capital gains arising from the transfer of original asset not charged to tax earlier shall be deemed to be the income under the head "Capital Gains '' relating to long term capital assets. The same shall be charged to tax in the previous year in which new asset is transferred or converted into money.

ILLUSTRATION 11

A non-resident Indian acquired shares in an Indian company, A Ltd., on 1.1.2009 for ₹ 1,00,000 in foreign currency. These shares are sold by him on 1.1.2026 for ₹ 3,00,000. He invests ₹ 3,00,000 in shares on 31.03.2026 and these shares are sold by him on 30.06.2026 for ₹ 3,50,000. Discuss the tax implications. Ignore the effect of first proviso to section 48.

SOLUTION

Computation of Long term Capital Gain for Assessment Year 2026-27

Particulars	Amount (₹)
Sale consideration	3,00,000
Less: Cost of Acquisition	1,00,000
Long term capital gain	2,00,000
Less: Exemption under section 115F	2,00,000
Exempt long-term capital gain	**NIL**

Capital Gain for Assessment year 2027-28:

1. LTCG of ₹ 2,00,000 which was exempt in A.Y.2026-27 becomes taxable this year.

2. STCG of ₹ 50,000 is also taxable this year.

ILLUSTRATION 12

Mr. John, a non-resident Indian, purchased unlisted shares of an Indian Company at a cost of ₹ 70,000 on 01.07.2010 in foreign currency. Mr. John sold the said shares for a consideration of ₹ 2,50,000 on 01.08.2025 and the expenditure incurred wholly or exclusively in connection with the transfer is ₹ 10,000. Compute the taxable capital gain if he deposited in specified assets ₹ 1,50,000 out of sale consideration. Ignore the effect of first proviso to section 48.

SOLUTION

Particulars	Amount (₹)
Sale Consideration	2,50,000
Less: Transfer Expenses	10,000
Net Consideration	2,40,000
Less: Cost of Acquisition	70,000
Long-term capital gain	1,70,000
Less: Exemption u/s 115F	1,06,250*
Taxable long-term capital gain	**63,750**

$$* \frac{1,70,000 \times 1,50,000}{2,40,000} = ₹\ 1,06,250$$

(v) **Option not to file income-tax return [Section 115G]**

A non-resident Indian need not furnish a return of income under section 139(1) if he satisfies the following two conditions:-

(a) His total income consists only of investment income or income by way of long-term capital gains or both; and

(b) Tax deductible at source has been deducted from such income.

(vi) **Continuance of benefits after the non-resident becomes a resident [Section 115H]**

(a) Where a person who is an NRI in any previous year becomes assessable as a resident in any subsequent year, then he may furnish a declaration in writing along with the return of income under section 139 for the year in which he is so assessable.

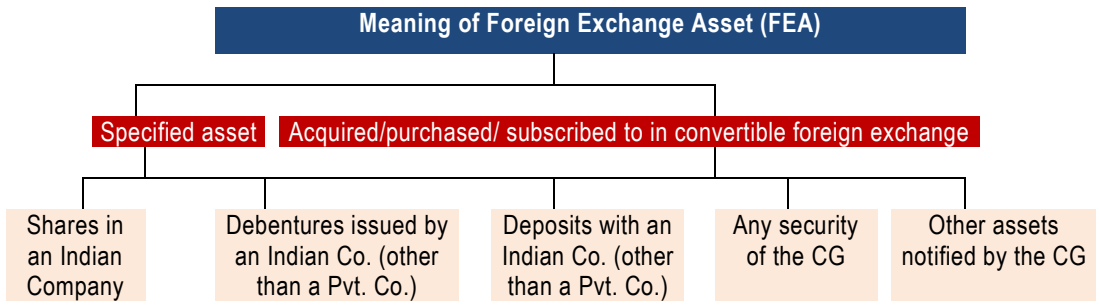
(b) The declaration shall be to the effect that the provisions of this chapter shall continue to apply to him in respect of the investment income derived from foreign exchange assets being debentures, deposits, securities of Central Government and such other notified assets as specified under section 115C.

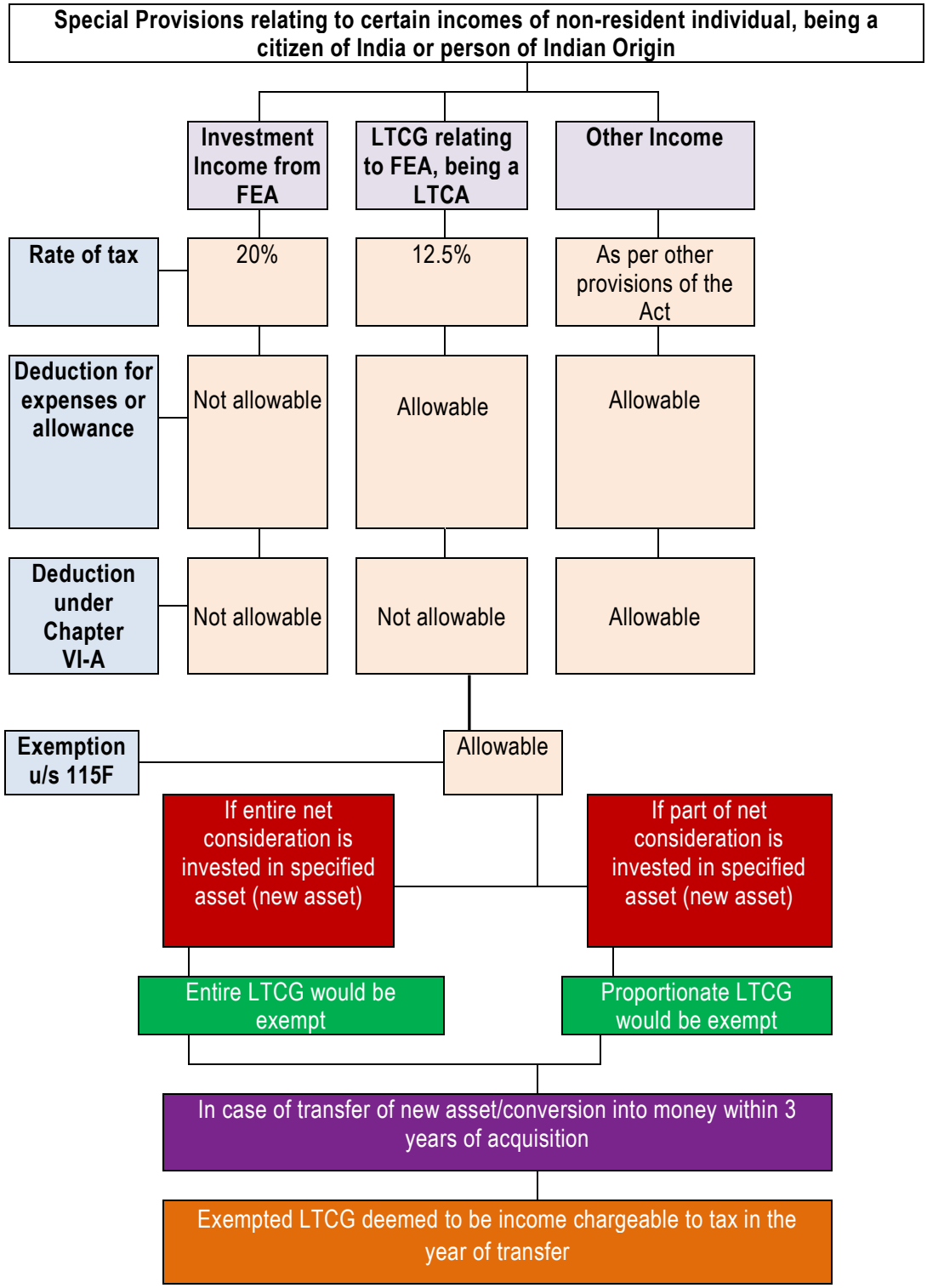
(c) If he does so, the provisions of this chapter shall continue to apply to him in relation to such income for that assessment year and every subsequent year until the transfer or conversion into money of such assets.

(vii) **Option to opt out of Chapter XII-A [Section 115-I]**

This section gives an option to a non-resident Indian to elect that he should not be governed by the special provisions of Chapter XII-A for any particular assessment year by furnishing his return of income for that assessment year under section 139 declaring therein that the provisions of Chapter XII-A shall not apply to him for that assessment year. In case where such an option is exercised by a non-resident Indian, his total income for that assessment year would be charged to tax under the general provisions of the Act.

A Quick Recap





21.7 DETERMINATION OF TAX IN CERTAIN SPECIAL CASES [CHAPTER XII]

Sections 111A, 112 and 112A have already been discussed in detail in Chapter 4: Capital Gains in Module 1. The special provisions contained in other sections under Chapter XII are discussed hereunder -

(1) Special provisions for computing tax on income by way of royalty, fees for technical service, interest etc. [Section 115A]

(i) **Tax on dividend and interest in case of non-corporate non-residents and foreign companies:**

Where the total income of a foreign company or a non-corporate non- resident includes any income by way of	Rate of Tax
(1) - Dividends received from a unit in an IFSC, referred to in section 80LA(1A)	10%
- Dividend other than mentioned above	20%
(2) Interest received from the Government or an Indian concern on monies borrowed or debt incurred by the Government /Indian concern in foreign currency, other than 3 and 4 mentioned below	20%
(3) Interest received from an infrastructure debt fund referred to in section 10(47)	5%
(4) Interest referred to in section 194LC received from an Indian company or business trust –	
- in respect of monies borrowed by an Indian company or business trust in foreign currency from sources outside India • Under a loan agreement between 1.7.2012 and 30.6.2023 or • by way of issue of long-term infrastructure bonds between 1.7.2012 and 30.9.2014 or • by way of issue of long-term bonds including long term infrastructure bond between 1.10.2014 and 30.6.2023 as approved by the Central Government	5%
- in respect of monies borrowed from sources outside India by way of rupee denominated bond on or before 30.6.2023	5%
- in respect of monies borrowed by it from a source outside India by way of issue of any long-term bond or rupee denominated bond between 1.4.2020 and 30.6.2023, which is listed only on a recognised stock exchange located in any IFSC	4%
- in respect of monies borrowed by it from a source outside India by way of issue of any long-term bond or rupee denominated bond on or after 1.7.2023, which is listed only on a recognised stock exchange located in any IFSC	9%

	to the extent to which such interest does not exceed the interest calculated at the rate approved by the Central Government	
(5)	Distributed income referred to in section 194LBA(2), being interest income of a business trust from a SPV, distributed by business trust to its non-resident unit holders	5%
(6)	Income received in respect of units purchased in foreign currency of a mutual fund specified under section 10(23D) or of the Unit Trust of India	20%

(ii) **Tax on royalty or fees for technical services in case of non-residents**

Where the total income of a foreign company or a non-corporate non-resident includes any income by way of royalty or fees for technical services (FTS) other than the income referred to in section 44DA	Applicable Rate of Tax
(1) Received from the Government in pursuance of an agreement made by the non-resident/foreign company with the Government	20% of such royalty or FTS. However, if DTAA provides for a rate lower than 20%, then, the provisions of DTAA would apply.
(2) Received from the Indian concern in pursuance of an agreement made by the non-resident/foreign company with the Indian concern and the agreement is approved by the Central Government or where it relates to industrial policy of Government of India, the agreement in accordance with that policy.	

Important Points:

1. Special rate of tax is applicable on the above mentioned incomes. The remaining income of the assessee will be chargeable to tax at normal rates applicable to assessee.

2. No deduction in respect of any expenditure or allowance shall be allowed to the assessee under sections 28 to 44C and section 57 in computing the above income.

3. Deduction under Chapter VI-A is not available in respect of dividend and interest referred to in (i) above. However, this condition would not be applicable to deduction allowed to a unit of an International Financial Services Centre (IFSC) under section 80LA i.e. a unit of an IFSC can claim deduction under section 80LA against dividend and interest referred to in (i) above.

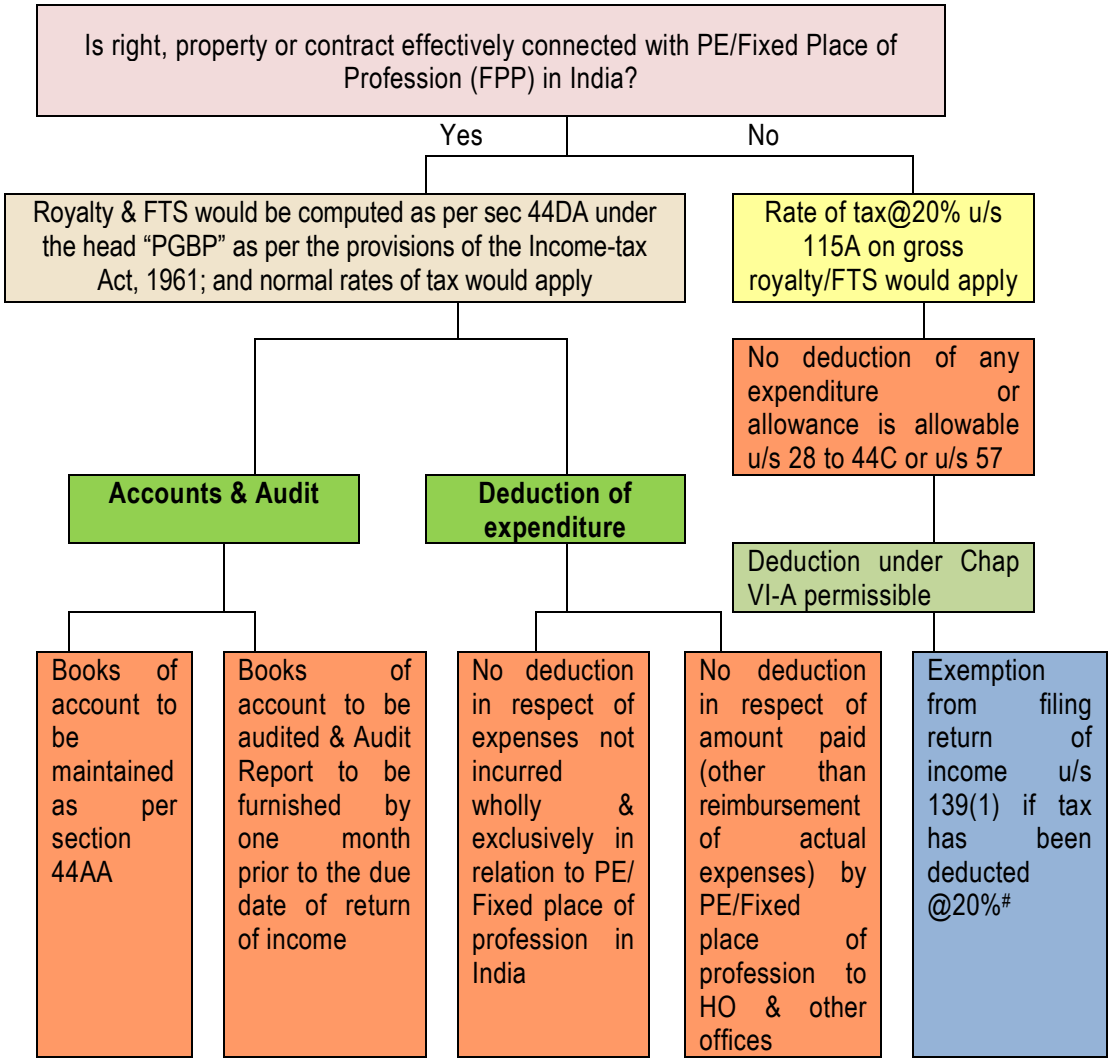
4. It shall not be necessary for the assessee to furnish a return of income if the following conditions are satisfied:

   (a) The total income consists of only the interest or dividend income referred to in (i) above or royalty or fees for technical services referred to in (ii) above; and

   (b) Tax deductible at source has been deducted from such income and the rate of such deduction is not less than the rate specified in (i) or the rate of 20% specified in (ii).

A Quick Recap

Tax treatment of Royalty & Fees for technical service received from Government/Indian concern in pursuance of approved agreement



If tax has been deducted at a rate lower than 20% by availing the beneficial provisions of DTAA, then, no exemption would be available from filing return of income.

(2) Special provision for computing tax on income from units purchased in foreign currency or capital gains arising from their transfer in case of offshore fund [Section 115AB]

Where the total income of an overseas financial organisation (Offshore Fund) includes the following incomes namely-

(i) Income received in respect of units purchased in foreign currency or

(ii) by way of long-term capital gains arising from the **transfer of units** of a mutual fund specified under section 10(23D) or units of UTI purchased in **foreign currency**,

then, the income tax payable shall be the aggregate of the following:

(a) At the rate of **10%** on income in respect of units purchased in foreign currency

(b) At the rate of **12.5%** of income by way of long-term capital gain

(c) the amount of income-tax with which the Offshore Fund would have been chargeable had its total income been reduced by the amount of long-term capital gains and income received referred to above.

Important Points:

(i) The benefit of indexation shall **not** be available in the computation of long- term capital gains.

(ii) No deduction shall be allowed to the assessee under sections 28 to 44C or section 57(i)/(iii) or under Chapter VI-A in computing the above income.

(iii) Where the gross total income of the Overseas Financial Organisation consists of other incomes, then, the deduction under Chapter VI- A will be available in respect of other incomes. The normal provisions of the Income-tax Act, 1961 will apply for computation of other income.

(iv) **"Overseas Financial Organisation"** means any fund, institution, association or body, whether incorporated or not, established under the laws of a country outside India, which has entered into an arrangement for investment in India with any public sector bank or public financial institution or a mutual fund specified under section 10(23D). Such arrangement should be approved by the Securities and Exchange Board of India.

(v) It may be noted that short term capital gains on units of equity oriented fund are taxable @20% under section 111A provided securities transaction tax has been paid on the sale of such units.

(vi) It may be noted that capital gain on transfer of unit of specified mutual fund (mutual fund where not more than 35% of its total proceeds is invested in the equity shares of domestic companies) is a short term capital gain [Section 50AA].

(3) Special provision for computing tax on income from bonds or Global Depository Receipts purchased in foreign currency or capital gains arising from their transfer [Section 115AC]

(i) **Eligible assessee and special rate of tax:** According to section 115AC(1), where the total income of an assessee, being a non-resident includes:

(a) income by way of interest on bonds of an Indian company issued in accordance with such scheme as the Central Government may notify or on bonds of a public sector company sold by the Government, and purchased by him in foreign currency; or

(b) income by way of dividends on Global Depository Receipts –

(1) issued in accordance with such scheme as the Central Government may specify against the initial issue of shares of an Indian company and purchased by him in foreign currency through an approved intermediary; or

(2) issued against the shares of a public sector company sold by the Government and purchased by him in foreign currency through an approved intermediary; or

(3) issue or re-issued in accordance with such scheme as the Central Government may specify against the existing shares of an Indian company purchased by him in foreign currency through an approved intermediary; or

(c) income by way of long-term capital gains arising from the transfer of above bonds or GDRs,

then, the income tax payable shall be the aggregate of the following:

(I) At the rate of **10%** in respect of interest or dividend referred to in (a) and (b) above

(II) At the rate of **12.5%** in respect of long-term capital gain from the transfer of above bonds or GDRs

(III) the amount of income-tax with which the non -resident would have been chargeable had its total income been reduced by the amount of long-term capital gains and income received referred to above.

(ii) **Deductions not allowable [Section 115AC(2)]:** Where the gross total income of the non-resident consists only the aforesaid interest or dividend income referred to in (a) and (b) of (i) above, no deduction shall be allowed to him under section 28 to 44C or section 57(i) or 57(iii) or under Chapter VIA.

Deduction under Chapter VI-A is also **not** allowable against long term capital gains arising from transfer of bonds or GDRs.

Where the gross total income of the non-resident consists of incomes other than interest, dividend and long term capital gains referred to in (a), (b) and (c) of (i) above, then, the deduction under Chapter VI-A will be available in respect of other incomes.

(iii) **Non-availability of indexation benefit and computation of capital gains in foreign currency [Section 115AC(3)]:** The indexation benefit and benefit of computation of capital gains in foreign currency, shall not be available for the computation of long-term capital gains arising out of the transfer of long term asset, being bonds or GDRs.

(iv) **Filing of Return of Income not required [Section 115AC(4)]:** It shall not be necessary for a non-resident to furnish under section 139(1), a return of income if his total income in respect of which he is assessable under the Act during the previous year consisted only of aforesaid interest or dividend income, and the tax deductible at source under the provisions of Chapter XVII-B has been deducted from such income.

(v) **Concessional tax treatment for GDR/Bonds acquired in course of Amalgamation [Section 115AC(5)]:** Where the assessee acquired GDR or bonds in an amalgamated or resulting company by virtue of his holding GDR or bonds in the amalgamating or demerged company, in accordance with the provisions of 115AC(1), the concessional tax treatment would apply to such GDR or bonds.

(vi) **Meaning of Global Depository Receipts:** "Global Depository Receipts" means any instrument in the form of a depository receipt or certificate (by whatever name called) created by the Overseas Depository Bank outside India or in an IFSC and issued to investors against the issue of —

(a) ordinary shares of issuing company, being a company listed on a recognized stock exchange in India;

(b) foreign currency convertible bonds of issuing company; or

(c) ordinary shares of issuing company, being a company incorporated outside India, if such depository receipt or certificate is listed and traded on any IFSC.

(4) Special provisions for computing tax on income of Specified Fund or Foreign Institutional Investors from securities or capital gains arising from their transfer [Section 115AD]

(i) **Special rate of tax:** Where the total income of a Specified Fund or Foreign Institutional Investor includes the income referred to in column (2), the same would be subject to tax at the rate mentioned in column (3):

(1)	(2)	(3)
S. No.	Income	Rate of Tax
(a)	Income received in respect of securities **other than** income on units referred to in section 115AB i.e., units of Mutual Fund specified u/s 10(23D) or UTI	20% in case of FII, 10% in case of specified fund
(b)	Income by way of Short term capital gains arising from the transfer of securities (other than Short term capital gains u/s 111A)	30%
(c)	Income by way of Short term capital gains u/s 111A	20%
(d)	*Income by way of Long term capital gains arising from the transfer of securities (other than Long term capital gains u/s 112A)*	*12.5%*
(e)	Income by way of long term capital gains u/s 112A exceeding ₹ 1.25 lakh	12.5%
(f)	Other income of Specified Fund or FII	At normal rates of tax

In case of specified fund, the provision of this section would apply only to the extent of income that is attributable to units held by non-resident (not being a permanent establishment of a non-resident in India) calculated in the prescribed manner.

The specified fund has to furnish an annual statement of income eligible for concessional taxation electronically under digital signature on or before the due date u/s 139(1), which is duly verified in the manner indicated therein.

The income of a specified fund attributable to the units held by a non-resident (not being the permanent establishment of a non-resident in India), would not be eligible for tax rates specified under section 115AD unless it furnishes the annual statement of income eligible for concessional taxation on or before the said due date. [Notification no. 64/2022 dated 16.6.2022]

Where the specified fund is investment division of an offshore banking unit, the provisions of this section would apply to the extent of income that is attributable to the investment division

of offshore banking units [granted certificate of registration as a Category-I foreign portfolio investor under the SEBI (Foreign Portfolio Investors) Regulations, 2019 made under the SEBI Act, 1992, and fulfills the prescribed conditions, including maintenance of separate accounts for its investment division] calculated in the prescribed manner.

The eligible investment division has to furnish an annual statement of income, eligible for taxation under section 115AD(1B) in the prescribed form electronically under digital signature on or before the due date specified u/s 139(1).

The income of an eligible investment division would not be eligible for tax rates specified under section 115AD unless the eligible investment division furnishes an annual statement of income eligible for taxation under section 115AD(1B) on or before the said due date [Notification no. 64/2022 dated 16.6.2022].

(ii) Surcharge:

Under normal provisions of the Act

Surcharge applicable on tax on total income of individuals/AoPs[3]/BoIs/ Artificial Juridical Persons (having any income under section 115AD and such person has shifted out of the default tax regime and opted to pay tax under the normal provisions of the Act) for payment of advance tax for A.Y.2026-27 –

	Particulars	Rate of surcharge on income-tax	Example	
			Components of total income	Applicable rate of surcharge
(i)	Where the total income > ₹ 50 lakhs but ≤ ₹ 1 crore	10%	**Example:**	
			• Capital gains on securities referred to in section 115AD(1)(b) ₹ 60 lakhs; **and** • Other income ₹ 35 lakhs;	Surcharge would be levied@10% on income-tax computed on total income of ₹ 95 lakhs.
(ii)	Where total income > ₹ 1 crore but ≤ ₹ 2 crore	15%	**Example:**	
			• Capital gains on securities referred to in section 115AD(1)(b) ₹ 1.20 crore; **and**	Surcharge would be levied@15% on income-tax computed on total income of

[3] AoPs(other than AoP consisting of only companies as its members)

			• Other income ₹ 60 lakhs;	₹ 1.80 crore.
(iii)	Where total income [excluding dividend and STCG/LTCG on securities referred to in section 115AD(1)(b)] > ₹ 2 crore but ≤ ₹ 5 crore	25%	**Example:**	
			• Dividend ₹ 1.05 crore • Capital gains on securities referred to in section 115AD(1)(b) ₹ 1.05 crore; **and** • Other income ₹ 2.1 crores;	Surcharge would be levied: @15% on income-tax leviable on dividend of ₹ 1.05 crore and capital gains of ₹ 1.05 crore refered to in section 115AD; **and** @25% on income-tax computed on other income of ₹ 2.1 crores included in total income
	Rate of surcharge on the income-tax payable on dividend and the portion of income chargeable to tax u/s 115AD(1)(b)	Not exceeding 15%		
(iv)	Where total income [excluding dividend and STCG/ LTCG on securities referred to in section 115AD(1)(b)] > ₹ 5 crore	37%	**Example:**	
			• Dividend ₹ 1.05 crore • Capital gains on securities referred to in section 115AD(1)(b) ₹ 1.70 crore; and • Other income ₹ 6 crore	Surcharge would be levied - @15% on income-tax leviable on dividend of ₹ 1.05 crore and capital gains of ₹ 1.70 crore referred to in section 115AD; **and** @37% on income-tax computed on other income of ₹ 6 crore included in total income.
	Rate of surcharge on the income-tax payable on dividend and the portion of income chargeable to tax u/s 115AD(1)(b)	Not exceeding 15%		

(v)	Where total income [including dividend and STCG/ LTCG on securities referred to in 115AD(1)(b)] > ₹ 2 crore in cases not covered under (iii) and (iv) above	15%	**Example:**	
			• Dividend ₹ 1.05 crore • Capital gains on securities referred to in section 115AD(1)(b) ₹ 1.10 crore; **and** • Other income ₹ 1.60 crore;	Surcharge would be levied@15% on tax on total income of ₹ 3.75 crore.

Surcharge and health and education cess would not be applicable to specified fund in respect of income received from securities referred to in section 115AD(1)(a).

Note – *In case of default tax regime, the maximum rate of surcharge would be 25% (instead of 37%).*

In case of an AoP consisting of only companies as its members, the rate of surcharge would be 10%, where the total income > ₹ 50 lakhs but ≤ ₹ 1 crore and 15%, where the total income > ₹ 1 crore.

(iii) **No deduction is allowed [Section 115AD(2)]:** Where the gross total income of the specified fund or Foreign Institutional Investor comprises only of the aforesaid interest or dividend income from securities, no deduction shall be allowed to it under sections 28 to 44C or section 57(i) or 57(iii) or under Chapter VI-A.

Deduction under Chapter VI-A is also not allowable in case of short term capital gain or long term capital gain arising from transfer of securities.

Where the gross total income of the specified fund or Foreign Institutional Investor consists of incomes other than income referred to in (a) to (e) of table in (i) above, then, the deduction under Chapter VI-A will be available in respect of other incomes. However, the provisions of AMT under section 115JEE would not apply to specified fund.

(iv) **First and second provisos to section 48 shall not apply [Section 115AD(3)]:**The benefit of computation of capital gains in foreign currency and the benefit of indexation would not be available for the computation of capital gains arising on transfer of securities.

(v) Meaning of certain terms

S. No.	Term	Meaning
1	Investment division of offshore banking unit	An investment division of a banking unit of a non-resident located in an IFSC, as referred to in section 80LA(1A) and which has commenced its operations on or before ***31.3.2030***
2	Specified fund	(i) A fund established or incorporated in India in the form of a trust or a company or a LLP or a body corporate,– (I) (a) which has been granted a certificate of registration as a Category III Alternative Investment Fund and is regulated under the SEBI (Alternative Investment Fund) Regulations, 2012, made under the SEBI Act, 1992 or IFSC Authority Act, 2019; *(b) which has been granted a certificate as a retail scheme or an Exchange Traded Fund and satisfies the conditions laid down for such schemes or funds under the IFSC Authority (Fund Management) Regulations, 2022, made under the IFSC Authority Act, 2019;* (II) which is located in any IFSC and (III) of which all the units are held by non-residents other than units held by a sponsor or manager; However, this condition would not apply where any unit holder or holders, being non-resident during the previous year when such unit or units were issued, becomes resident under section 6(1) or (1A) in any previous year subsequent to that year, if the aggregate value and number of the units held by such resident unit holder or holders do not exceed 5% of the total units issued and fulfill such other conditions as may be prescribed. (ii) investment division of an offshore banking unit, which has been (a) granted a certificate of registration as a Category-I foreign portfolio investor under the SEBI (Foreign Portfolio Investors) Regulations, 2019 made under the SEBI Act, 1992 and which has commenced its operations on or before 31.3.2030; and (b) fulfils such conditions including maintenance of separate accounts for its investment division, as may be prescribed.

(5) Special provision for computing tax on non-resident sportsmen or sports associations [Section 115BBA]

(i) **Eligible assessee and special rate of tax:** Where the total income of an assessee, referred to in column (2) includes income referred to in column (3) of the table below, such income would be chargeable to tax@20%.

	Assessee	Income
(1)	(2)	(3)
(a)	A sportsman (including an athlete), who is not a citizen of India and is a non-resident	Any income received or receivable by way of— (i) participation in India in any game (other than a game the winnings wherefrom are taxable under section 115BB, being winning from crossword puzzles, races including horse races, card games and other games of any sort of gambling or betting) or sport; or (ii) advertisement; or (iii) contribution of articles relating to any game or sport in India in newspapers, magazines or journals;
(b)	A non-resident sports association or institution	Any amount guaranteed to be paid or payable to such association or institution in relation to any game (other than a game the winnings wherefrom are taxable under section 115BB) or sport played in India
(c)	An entertainer who is not a citizen of India and is a non-resident	Any income received or receivable from his performance in India

(ii) **Deduction of expenditure not permissible:** No deduction in respect of any expenditure or allowance shall be allowed under any provision of this Act in computing the income referred to in (*a*) or (b) or (c) in the table given above.

(iii) **Filing of return of income not required:** The assessee is **not** required to furnish under section 139(1) a return of his income if—

(a) his total income in respect of which he is assessable under this Act during the previous year consisted **only** of income referred to in (a) or (b) or (c) above; and

(b) the tax deductible at source under the provisions of Chapter XVII-B has been deducted from such income.

ILLUSTRATION 13

During the financial year 2025-26, Nadal, a tennis professional and a Spanish citizen participated in India in a Tennis Tournament and won prize money of ₹ 15 lakhs. He contributed articles on the tournament in a local newspaper for which amount of ₹ 1 lakh is payable to him. He also earned ₹ 5 lakhs from a Soft Drink company for appearance in a T.V. advertisement. Although his expenses in India were met by the sponsors, he had to incur ₹ 3 lakhs towards his travel costs to India. He was a non-resident for tax purposes in India.

What would be his tax liability in India for A.Y. 2026-27? Is he required to file his return of income?

SOLUTION

Under section 115BBA, all the three items of receipts in India viz. prize money of ₹ 15 lakhs, amount received from newspaper of ₹ 1 lakh and amount received towards TV advertisement of ₹ 5 lakhs - are chargeable to tax. No expenditure is allowable as deduction against such receipts. The rate of tax chargeable under section 115BBA is 20%, *plus* health and education cess @4%. The total tax liability works out to ₹ 4,36,800 being 20.8% of ₹ 21 lakhs. Thus, Nadal will be liable to tax on the income earned in India

He is not required to file his return of income if -

(a) his total income during the previous year consists only of income arising under section 115BBA; **and**

(b) the tax deductible at source under the provisions of Chapter XVII-B have been deducted from such incomes.

21.8 SPECIAL PROVISIONS RELATING TO CONVERSION OF INDIAN BRANCH OF A FOREIGN BANK INTO A SUBSIDIARY COMPANY [CHAPTER XII-BB]

(1) Conversion of an Indian branch of foreign company into subsidiary Indian company [Section 115JG(1)]

(i) The provisions of this section apply to a foreign company engaged in banking business in India through its branch situated in India, which is converted into an Indian subsidiary company in accordance with the scheme framed by RBI.

(ii) If the conditions notified by the Central Government in this behalf are satisfied, then capital gains arising from such conversion would not be chargeable to tax in the assessment year relevant to the previous year in which such conversion takes place.

(iii) Also, the provisions of the Act relating to computation of income of foreign company and Indian subsidiary company would apply with such exceptions, modifications and adaptations as specified in the notification.

(iv) Further, the benefit of set-off of unabsorbed depreciation, set-off or carry forward and set-off of losses, tax credit in respect of tax paid on deemed income relating to certain companies available under the Act shall apply with such exceptions, modifications and adaptations as specified in the notification.

Accordingly, the Central Government has, vide Notification no. 85/2018, specified the conditions to be fulfilled –

(1) For Capital Gains exemption:

Where a foreign company is engaged in the business of banking through its Indian branch and converts such Indian branch into its Indian subsidiary company in accordance with the scheme framed by RBI, the capital gains arising from such conversion would not be chargeable to tax, if -

(a) the Indian branch amalgamates with the Indian subsidiary company in accordance with the scheme of amalgamation approved by the shareholders of the foreign company and the Indian subsidiary company and sanctioned by the RBI[4]

(b) all the assets and liabilities of the Indian branch immediately before conversion would become the assets and liabilities of the Indian subsidiary company;

(c) the asset and liabilities of the Indian branch are transferred to the Indian subsidiary company at values appearing in the books of account of the Indian branch immediately before its conversion.

Note - Any change in the value of assets consequent to their revaluation would not be considered while determining the value of the assets.

(d) the foreign bank or its nominee shall hold the whole of the share capital of the Indian subsidiary company during the period beginning from the date of conversion and ending on the last day of the previous year in which the conversion took place and continue to

[4]under paragraph 20(h) of the Framework for setting up of wholly owned subsidiaries by foreign banks in India issued by the Reserve Bank of India *vide* Press release number 2013-2014/936 dated 6th November, 2013

hold the shares of Indian subsidiary company carrying not less than 51% of the voting power for a period of five years immediately succeeding the said previous year;

(e) the foreign company does not receive any consideration or benefit, directly or indirectly, in any form or manner, other than by way of allotment of shares in the Indian subsidiary company.

(2) Application of the provisions of the Income-tax Act, 1961 with modifications/ exceptions

The provisions of the Income-tax Act, 1961 relating to unabsorbed depreciation, set off or carry forward and set off of losses, tax credit in respect of tax paid on deemed income relating to certain companies and the computation of income in case of foreign company and Indian subsidiary company shall apply with following modifications, exceptions and adaptation –

	Purpose	Modification/exception/adaptation
(a)	**Allowance of depreciation under section 32**	The aggregate deduction, in respect of depreciation on buildings, machinery, plant or furniture, being tangible assets, or know-how, patents, copyrights, trademarks, licenses, franchises or any other business or commercial rights of similar nature, being intangible assets, allowable to the Indian branch and the Indian subsidiary company shall not exceed in any previous year the deduction calculated at the prescribed rates as if the conversion had not taken place. Such deduction would be apportioned between the Indian branch and the Indian subsidiary company in the ratio of the number of days for which the assets were used by them;
(b)	**Set-off and c/f of loss and depreciation**	The accumulated loss and the unabsorbed depreciation of the Indian branch would be deemed to be the loss or allowance for depreciation of the Indian subsidiary company for the previous year in which conversion was effected; and provisions of the Income-tax Act, 1961, relating to set off and carry forward of loss and allowance for depreciation shall apply accordingly.
(c)	**Determination of actual cost u/s 43(1)**	The actual cost of the block of assets in the case of the Indian subsidiary company shall be the written down value of the block of assets as in the case of the Indian branch on the date of its conversion into the Indian subsidiary company The actual cost of any capital asset on which deduction has been allowed or is allowable under section 35AD, shall be treated as 'nil' in the case of the Indian subsidiary company if the capital asset became the property of the Indian subsidiary company as a result of conversion of the Indian branch.

(d)	**Cost of acquisition of other capital assets**	Where the capital asset other than those referred to in (c) above became the property of the Indian subsidiary company as a result of conversion of the Indian branch, the cost of acquisition of the asset for the purposes of computation of capital gains shall be deemed to be the cost for which the Indian branch acquired it or, as the case may be, the cost for which previous owner has acquired it.
(e)	**Tax credit**	The tax credit of the Indian branch shall be deemed to be the tax credit of the Indian subsidiary company for the purpose of the previous year in which conversion was effected; and the provisions of section 115JAA of the Income-tax Act, 1961 shall apply accordingly.
(f)	**Amortisation of VRS Expenditure**	The provisions of 35DDA of the Act shall be, as far as may be, apply to the Indian subsidiary company, as they would have applied to the Indian branch, if the conversion had not taken place
(g)	**Deemed credit balance in provision for bad and doubtful debts**	The credit balance in the provision for bad and doubtful debts account made under section 36(1)(viia) of the Indian branch on the date of conversion shall be deemed to be the credit balance of the Indian subsidiary company and the provisions of section 36 of the Income-tax Act, 1961, shall apply accordingly
(h)	**Non-applicability of section 56(2)(x)**	The provisions of section 56(2)(x) shall not apply to the transaction of receipt of shares in the Indian subsidiary company by the foreign company or its nominee in consequence of the conversion of the Indian branch into the Indian subsidiary company.

Meaning of certain terms:

Term	Meaning
Accumulated loss	So much of the loss of the Indian branch before its conversion into Indian subsidiary company under the head "Profits and gains of business or profession" (not being a loss sustained in a speculation business) which such Indian branch would have been entitled to carry forward and set off under the provisions of section 72, if the conversion had not taken place.
Unabsorbed depreciation	So much of the allowance for depreciation of the Indian branch before its conversion into Indian subsidiary company, which remains to be allowed and which would have been allowed to the Indian branch under the provisions of the Act, if the conversion had not taken place.
Previous owner	In relation to any capital asset owned by the Indian subsidiary company means the last previous owner of the capital asset who

	acquired it by a mode of acquisition other than those referred in section 49(1)(i)/(ii)/(iii)/(iv) or section 115JG(1).
Tax credit	So much of the tax credit of the Indian branch before conversion into Indian subsidiary company which such Indian branch would have been entitled to carry forward and set off under the provisions of section 115JAA of the Act, if the conversion had not taken place.
Date of conversion	The date, which the Reserve Bank of India appoints for the vesting of undertaking of the Indian branch in Indian subsidiary company[5]

(2) Consequences of failure to comply with the specified conditions [Section 115JG(2)]

If the conditions specified in the scheme of RBI or notification issued by the Central Government are not complied with, then, all the provisions of the Act would apply to the foreign company and Indian subsidiary company without any benefit, exemption or relief under this section.

(3) Consequences of subsequent failure to comply with the conditions [Section 115JG(3)]

(i) If the benefit, exemption or relief has been granted to the foreign company or Indian subsidiary company in any previous year and thereafter, there is a failure to comply with any of the conditions specified in the scheme or notification, then, such benefit, exemption or relief shall be deemed to have been wrongly allowed.

(ii) In such a case, the Assessing Officer is empowered to re-compute the total income of the assessee for the said previous year and make the necessary amendment. This power is notwithstanding anything contained in the Income-tax Act, 1961.

(iii) The provisions of rectification under section 154, would, accordingly, apply and the four year period within which such rectification should be made has to be reckoned from the end of the previous year in which the failure to comply with such conditions has taken place.

(iv) Every notification under issued under this section shall be laid before each House of Parliament.

[5]under paragraph 20(i) of the Framework for setting up of wholly owned subsidiaries by foreign banks in India issued by the Reserve Bank of India vide press release number 2013-2014/936 dated 6th day of November, 2013.

21.9 WITHHOLDING TAX PROVISIONS FOR NON-RESIDENTS

(1) Salary payable in foreign currency [Section 192]

By virtue of section 9(1)(ii), salary is deemed to accrue or arise in India, if services are rendered in India. Therefore, if a non-resident renders services in India, the salary income would be chargeable to tax in India and the person responsible for paying the salary income i.e., the employer, has to deduct withholding tax in accordance with the provisions of section 192, at the rates in force for the financial year in which the payment is made where the employee exercises option to opt out of new tax regime under section 115BAC.

(i) **Tax on non-monetary perquisites paid by employer [Section 192(1A)] –** In case of non-monetary perquisite, employer can opt to pay tax on whole or part of such income without making any deduction therefrom at the time tax was otherwise deductible.

Such tax will have to be calculated at the average rate applicable to aggregate salary income of the employee and payment of tax will have to be made every month along with tax deducted at source on monetary payment of salary, allowances etc. [Section 192(1)].

(ii) **Meaning of Average rate of income-tax –** Average rate of income-tax means the rate arrived at by dividing the amount of income-tax calculated on the total income, by such total income.

(iii) **Deferment of TDS on perquisite of specified security or sweat equity shares provided by an eligible start-up [Section 192(1C)] -** An employer, being an eligible start up referred to in section 80-IAC, responsible for paying any income to the assessee by way of perquisite being any specified security or sweat equity shares allotted or transferred free of cost or at concessional rate to the assessee, has to deduct or pay, as the case may be, tax on the value of such perquisite provided to its employee within 14 days from the earliest of the following dates –

- after the expiry of 48 months from the end of the relevant assessment year; or
- from the date of the sale of such specified security or sweat equity share by the assessee; or
- from the date of the assessee ceasing to be the employee of the employer who allotted such shares

Such tax has to deducted or paid for the financial year in which said specified security or sweat equity share is allotted or transferred.

(iv) Calculation of TDS where salary is payable in foreign currency [Section 192(6)] - Section 192(6) deals with the provisions of withholding tax in case of salary payable in foreign currency. In case, where salary is payable in foreign currency, the amount of tax deducted is to be calculated after converting the salary payable into Indian currency at the telegraphic transfer buying rate as adopted by State Bank of India on the last day of the month immediately preceding the month in which the salary is due, or is paid in advance or in arrears [Rule 26 read with Rule 115].

Students may note that the Rule 26 and Rule 115 have been given as Annexure – 1 at the end of this module.

(2) Payments to non-resident sportsmen or sports association [Section 194E]

(i) Applicability

This section provides for deduction of tax at source in respect of any income referred to in section 115BBA payable to a non-resident sportsman (including an athlete) or an entertainer who is not a citizen of India or a non-resident sports association or institution.

(ii) Rate of TDS

Deduction of tax at source **@20%** (*plus* surcharge, if applicable, and health and education cess@4%) should be made by the person responsible for making the payment. Health and education cess @4% on TDS rate of 20% would be leviable, since payment is made to a non-resident.

(iii) Time of deduction of tax

Such tax deduction should be 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 issue of a cheque or draft or by any other mode, whichever is earlier.

(iv) Income referred to in section 115BBA

(i) income received or receivable by a non-resident sportsman (including an athlete), who is not a citizen of India, by way of-

(a) participation in any game or sport in India (However, games like crossword puzzles, horse races etc. taxable under section 115BB are not included herein); or

(b) advertisement; or

(c) contribution of articles relating to any game or sport in India in newspapers, magazines or journals.

(ii) Guarantee amount paid or payable to a non-resident sports association or institution in relation to any game or sport played in India. However, games like crossword puzzles, horse races etc. taxable under section 115BB are not included herein.

(iii) income received or receivable by a non-resident entertainer (who is not a citizen of India) from his performance in India.

Note: The issue as to whether the non-resident match referees and umpires in the games played in India fall within the meaning of "sportsmen" to attract taxability under the provisions of section 115BBA, and consequently attract the TDS provisions under section 194E in the hands of the payer was taken up by the Calcutta High Court in *Indcomv. CIT (TDS) (2011) 335 ITR 485*.

In order to attract the provisions of the section 194E, the person should be a non-resident sportsperson or non-resident sports association or institution whose income is taxable as per the provisions of section 115BBA.

Umpires and match referees can be described as professionals or technical persons who render professional or technical services, but they cannot be said to be either non-resident sportsmen (including an athlete) or non-resident sports association or institution so as to attract the provisions of section 115BBA and consequently, the provisions of tax deduction at source under section 194E are can not be attracted.

The Calcutta High Court held that although the payments made to non-resident umpires and the match referees are "income" which has accrued and arisen in India, the same are not taxable under the provisions of section 115BBA and thus, the assessee is not liable to deduct tax under section 194E.

It may be noted that since income has accrued and arisen in India to the non-resident umpires and match referees, the TDS provisions under section 195 would be attracted and tax would be deductible at the rates in force.

Board of Control for Cricket in Sri Lanka v. DIT (International Taxation) & Pilcom v. CIT (2020) 425 ITR 312 (SC)

The International Cricket Council (ICC), having its headquarters in London, is the organisation which makes and alters the rules of the game of cricket, sets the different levels and minimum standards at which the game is to be played in each country to get its recognition, the different formats of the game, e. g. test cricket, first class cricket, limited overs competition and so on. It has affiliates from similar organisations in countries, all over the world. It controls, supervises and regulates the game of cricket in every respect.

At a special meeting of the ICC held in London in the year 1993, India, Pakistan and Sri Lanka were chosen to co-host the world cup. A joint management committee of these three countries, [(Pak-Indo-Lanka) joint management committee (PILCOM)] was formed to conduct this world cup cricket tournament. Bank accounts were opened by PILCOM in London to be operated jointly by the India and Pakistan Cricket Boards. In this account were deposited moneys from sponsorships, TV rights, etc. The Board of Control for Cricket in India (BCCI) appointed its own committee, INDCOM, for discharge of its functions. INDCOM had its bank account at Calcutta. From the bank account of PILCOM at London certain amounts were transferred to the bank accounts of the host countries for the purpose of payment of fees to umpires and referees, defraying administrative expenses and payment of prize money. PILCOM paid £ 43,50,000 which included £ 19,55,000 as guarantee money to eleven cricket associations.

The payments of £ 8,85,000 representing guarantee money paid to the Boards of Australia, England, New Zealand, Sri Lanka and Kenya with whom Double Taxation Avoidance Agreements exist, and of £ 7,10,000 representing guarantee money paid to the Boards of Pakistan, West Indies, Zimbabwe and Holland were in the nature of guarantee money paid to non-resident sports associations. The payments were not made by the assessee in India but through its bank accounts at London or elsewhere. The non-resident sports associations had participated in the event, where cricket teams of these associations had played various matches in the country. Though the payments were described as guarantee money, they were intricately connected with the event where various cricket teams were scheduled to play and did participate in the event. The source of income was in the playing of the matches in India.

The mandate under section 115BBA(1)(b) is that if the total income of a non-resident sports association includes the amount guaranteed to be paid or payable to it in relation to any game or sports played in India, the amount of Income-tax calculated in terms of the section shall become payable. The expression “in relation to” emphasises the connection between the game or sport played in India on the one hand and the guarantee money paid or payable to the non-resident

sports association on the other. Once the connection is established, the liability under the provision must arise. To the extent the payments represented amounts which could not be subject matter of charge under the provisions of the Act, appropriate benefit had already been extended to the assessee.

The payments made to the non-resident sports associations represented their income which accrued or arose or was deemed to have accrued or arisen in India. Consequently, the assessee was liable to deduct tax at source in terms of section 194E.

ILLUSTRATION 14

Smith, a foreign national and a cricketer came to India as a member of Australian cricket team in the year ended 31st March, 2026. He earned ₹ 5 lakhs for participation in matches in India. He also earned ₹ 1 lakh for an advertisement of a product on TV. He contributed articles in a newspaper for which he earned ₹ 10,000. When he stayed in India, he also won a prize of ₹ 20,000 from horse racing in Mumbai. He has no other income in India during the year.

(i) Compute tax liability of Smith for Assessment Year 2026-27.

(ii) Are the income specified above subject to deduction of tax at source?

(iii) Is he liable to file his return of income for Assessment Year 2026-27?

(iv) What would have been his tax liability, had he been a match referee instead of a cricketer and pays tax under the default tax regime under section 115BAC?

SOLUTION

(i) Computation of tax liability of Smith for the A.Y.2026-27

Particulars	₹	₹
Income taxable under section 115BBA		
Income from participation in matches in India	5,00,000	
Advertisement of product on TV	1,00,000	
Contribution of articles in newspaper	10,000	
Income taxable under section 115BB		
Income from horse races	20,000	
Total income	**6,30,000**	
Tax@ 20% under section 115BBA on ₹ 6,10,000		1,22,000

Tax@ 30% under section 115BB on income of ₹ 20,000 from horse races		6,000
		1,28,000
Add: Health and Education cess@4%		5,120
Total tax liability of Smith for the A.Y.2026-27		**1,33,120**

(ii) Yes, the above income is subject to tax deduction at source.

Income referred to in section 115BBA (i.e., ₹ 6,10,000, in this case) is subject to tax deduction at source@ 20% under section 194E.

Income referred to in section 115BB (i.e.,₹ 20,000, in this case) is subject to tax deduction at source@30% under section 194BB.

Since Smith is a non-resident, the amount of tax to be deducted calculated at the prescribed rates mentioned above, would be increased by health and education cess@4%.

(iii) Section 115BBA provides that if the total income of the non-resident sportsman comprises of only income referred to in that section and tax deductible at source has been fully deducted, it shall not be necessary for him to file his return of income. However, in this case, Mr. Smith has income from horse races as well. Therefore, he cannot avail the benefit of exemption from filing of return of income as contained in section 115BBA. Hence, he would be liable to file his return of income for A.Y.2026-27.

(iv) The Calcutta High Court in *Indcom v. CIT (TDS)(2011) 335 ITR 485* has held that 'match referee' would not fall within the meaning of "sportsmen" to attract the provisions of section 115BBA.Therefore, although the payments made to non-resident 'match referee' are "income" which has accrued and arisen in India, the same are not taxable under the provisions of section 115BBA. They are subject to the normal rates of tax under section 115BAC.

Particulars		₹
Tax@30% under section 115BB on winnings of ₹ 20,000 from horse races		6,000
Tax on ₹ 6,10,000 at normal rate of tax		
Upto ₹ 4,00,000	Nil	
4,00,000 – 6,10,000 @5%	10,500	10,500
		16,500
Add: Health and Education cess@4%		660
Total tax liability		**17,160**

(3) Income by way of interest from Infrastructure Debt Fund [Section 194LB]

(i) Special rate of tax on interest received by non-residents from notified infrastructure debt funds

Interest income received by a non-corporate non-resident or a foreign company from notified infrastructure debt funds set up in accordance with the prescribed guidelines would be subject to tax at a concessional rate of ***5%*** under section 115A on the gross amount of such interest income as compared to tax @20% on other interest income of non-resident. The concessional rate of tax is expected to give a fillip to infrastructure and encourage inflow of long-term foreign funds to the infrastructure sector.

(ii) Rate of TDS

Accordingly, tax would be deductible @***5%*** *plus* surcharge, if applicable, *plus* health and education cess @4% on interest paid/credited by such fund to a non-resident/foreign company.

(iii) Time of deduction

The person responsible for making the payment 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 issue of a cheque or draft or by any other mode, **whichever is earlier**, deduct income-tax.

(4) Income by way of interest from an Indian company or business trust [Section 194LC]

(i) Concessional rate of tax on interest on foreign currency borrowings by an Indian company or business trust

Interest paid by an Indian company or business trust to a foreign company or a non-corporate non-resident would be subject to tax at a concessional rate on gross interest (as against the rate of 20% of gross interest applicable in respect of other interest received by a non-corporate non-resident or foreign company from Government or an Indian concern on money borrowed or debt incurred by it in foreign currency)

Tax is deductible at concessional rate of 5% on the following interest paid by an Indian company or business trust to a foreign company or a non-corporate non-resident -

(a) in respect of borrowing made in foreign currency from sources outside India

- under a loan agreement at any time between 1.7.2012 and 30.6.2023 or

- by way of issue of long-term infrastructure bonds during the period between 1.7.2012 and 30.9.2014 or
- by way of issue of any long-term bond, including long-term infrastructure bond during the period between 1.10.2014 and 30.6.2023

as approved by the Central Government in this behalf.

(b) in respect of monies borrowed by it from a source outside India by way of issue of rupee denominated bond on or before 30.6.2023.

Tax is deductible at concessional rate of **4%** in respect of monies borrowed by an Indian company or business trust from a source outside India by way of issue of any long-term bond or rupee denominated bond between 1.4.2020 and 30.6.2023, which is listed only on a recognised stock exchange located in any IFSC.

Tax is deductible at concessional rate of **9%** in respect of monies borrowed by an Indian company or business trust from a source outside India by way of issuance of any long-term bond or rupee denominated bond on or after 1.7.2023, which is listed only on a recognised stock exchange located in any IFSC.

The interest to the extent the same does not exceed the interest calculated at the rate approved by the Central Government, taking into consideration the terms of the loan or the bond and its repayment, will be subject to tax at a concessional rate of **5%, 4% or 9%, as the case may be,** *plus* surcharge, wherever applicable, *plus* health and education cess @4%.

Note *- Interest payable by an Indian company or a business trust to a non-resident, including a foreign company, in respect of rupee denominated bond issued outside India during the period from 17.9.2018 to 31.3.2019 shall be exempt from tax, and consequently, no tax shall be deducted on the payment of interest in respect of the said bond under section 194LC.*

(ii) Non-applicability of higher rate of TDS under section 206AA for non-furnishing of PAN

Section 206AA provides that any person whose receipts are subject to deduction of tax at source i.e., the deductee, shall mandatorily furnish his PAN to the deductor failing which the deductor has to deduct tax at source at higher of the following rates –

(i) the rate prescribed in the Act;

(ii) at the rate in force i.e., the rate mentioned in the Finance Act; or

(iii) at the rate of 20%

Levy of higher rate of TDS under **section 206AA in the absence of PAN would not be attracted** in respect of payment of interest on long-term bonds, as referred to in section 194LC, to a non-corporate non-resident or to a foreign company and other payment subject to prescribed conditions.

For the purpose of reducing the compliance burden, Rule 37BC provides for relaxation to a non-corporate non-resident or a foreign company not having PAN in respect of payment in the nature of interest, royalty, fees for technical services, dividends and payments on transfer of any capital asset, subject to the deductee furnishing the following details and documents to the deductor, namely:-

a. name, e-mail id, contact number;

b. address in the country or specified territory outside India of which the deductee is a resident;

c. a certificate of his being resident in any country or specified territory outside India from the Government of that country or specified territory if the law of that country or specified territory provides for issuance of such certificate;

d. Tax Identification Number of the deductee in the country or specified territory of his residence and in case no such number is available, then a unique number on the basis of which the deductee is identified by the Government of that country or the specified territory of which he claims to be a resident.

(5) Other sums (payable to non-residents) [Section 195]

(i) Applicability

Any person responsible for paying interest (other than interest referred to in section 194LB or section 194LC) or any other sum chargeable to tax (other than salaries) to a non-corporate non-resident or to a foreign company is liable to deduct tax at source at the rates prescribed by the relevant Finance Act. Such persons are also required to furnish the information relating to payment of any sum in such form and manner as may be prescribed by the CBDT.

Payee to be a non-resident - In order to subject an item of income to deduction of tax under this section the payee must be a non-corporate non-resident or a foreign company.

Payer may be a resident or non-resident - Under section 195(1), the obligation to deduct tax at source from interest and other payments to a non-resident, which are chargeable to tax in India, is on "any person responsible for paying to a non-resident or to a foreign company".

The words "any person" used in section 195(1) is intended to include both residents and non-residents. Therefore, a non-resident person is also required to deduct tax at source before making payment to another non-resident, if the payment represents income of the payee non-resident, chargeable to tax in India. Therefore, if the income of the payee non-resident is chargeable to tax, then tax has to be deducted at source, whether the payment is made by a resident or a non-resident.

Explanation 2 clarifies that the obligation to comply with section 195(1) and to make deduction thereunder applies and shall be deemed to have always applied and extends and shall be deemed to have always extended to all persons, resident or non-resident, whether or not the non-resident has:-

(a) a residence or place of business or business connection in India; or

(b) any other presence in any manner whatsoever in India.

(ii) Time of deduction

The tax is to be deducted at source 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.

Where any interest or other sum as aforesaid is credited to any account, whether called "Interest payable account" or "Suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee.

However, in the case of interest payable by the Government or a public sector bank within the meaning of section 10(23D) or a public financial institution within the meaning of section 10(23D), deduction of tax shall be made only at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode.

(iii) Payments subject to tax deduction

The statutory obligation imposed under this section would apply for the purpose of deduction of tax at source from any sum being income assessable to tax (other than salary income) in the hands of the non-resident non-corporate/foreign company.

Payment to a non-resident by way of royalties and payments for technical services rendered in India are common examples of sums chargeable under the said provisions of the Act to which the liability for deduction of tax at source would apply.

(iv) Certificate of non-deduction of tax at source

(a) Under section 195(3), any person entitled to receive any interest or other sum on which income-tax has to be deducted under section 195(1) may make an application in the prescribed form to the Assessing Officer for grant of certificate authorizing him to receive such interest or other sum without deduction of tax thereunder.

(b) Where any such certificate is granted, every person responsible for paying such interest or other sum to the person to whom certificate is granted make payment of such interest or other sum without deduction of tax at source under section 195(1), so long as the certificate in force.

(c) Such certificate shall remain in force till the expiry of the period specified therein. However, if it is cancelled by the Assessing Officer before the expiry of such period, the certificate shall remain in force till such cancellation.

(d) The CBDT is empowered to make rules specifying the cases in which, and the circumstances under which, an application may be made for the grant of certificate. While doing so, it should take into account the convenience of the assessees and the interests of the revenue.

(e) Such Rules would provide for the conditions subject to which such certificate may be granted and any other matter connected therewith.

(v) Person responsible for paying any sum to non-resident to furnish prescribed information

Section 195(6) provides that the person responsible for paying any sum, whether or not chargeable to tax under the provisions of the Act, to a non-corporate non-resident or to a

foreign company, shall be required to furnish the information relating to payment of such sum in the prescribed form and prescribed manner.

(vi) Specified class or classes of persons, making payment to the non-resident, to mandatorily make application to Assessing Officer to determine the appropriate proportion of sum chargeable to tax

(a) Under section 195(1), any person responsible for paying to a non-corporate non-resident or to a foreign company, any interest or any other sum chargeable under the provisions of the Act (other than salary), has to deduct tax at source at the rates in force.

(b) Under section 195(2), where the person responsible for paying any such sum chargeable to tax under the Act (other than salary) to a non-resident, considers that the whole of such sum would not be income chargeable in the hands of the recipient, he may make an application in such form and manner to the Assessing Officer, to determine in such manner, as may be prescribed, the appropriate proportion of such sum so chargeable. When the Assessing Officer so determines, the appropriate proportion, tax shall be deducted under section 195(1) only on that proportion of the sum which is so chargeable.

(c) Section 195(7) provides that, notwithstanding anything contained in sections 195(1) and 195(2), the CBDT may, by notification in the Official Gazette, specify a class of persons or cases, where the person responsible for paying to a non-corporate non-resident or to a foreign company, any sum, whether or not chargeable under the provisions of this Act, shall make an application in the prescribed form and manner to the Assessing Officer, to determine in the prescribed manner, the appropriate proportion of sum chargeable to tax. Where the Assessing Officer determines the appropriate proportion of the sum chargeable, tax shall be deducted under sub-section (1) on that proportion of the sum which is so chargeable.

(d) Consequently, where the CBDT specifies a class of persons or cases, the person responsible for making payment to a non-corporate non-resident or a foreign company in such cases has to mandatorily make an application in the prescribed form and manner to the Assessing Officer, whether or not such payment is chargeable under the provisions of the Act.

Accordingly, the CBDT has inserted Rule 29BA to specify the following form and manner of making application to the Assessing Officer and manner for determining the appropriate fraction on which tax is deductible at source:

Sub-rule	Provision
(1)	**Form and manner of making application:** An application by a person for determination of appropriate proportion of sum chargeable in the case of non-resident recipient under section 195(2)/(7) has to be made in **Form 15E** electronically – (i) under digital signature; or (ii) through electronic verification code.
(2)	**Determination of appropriate proportion of sum chargeable to tax after examining the taxability of the amount as per the Act and the relevant DTAA:** The Assessing Officer has to examine whether the sum being paid or credited is chargeable to tax under the provisions of the Act read with the relevant DTAA, if any. If the sum is chargeable to tax, he has to determine the appropriate proportion of such sum chargeable to tax.
(3)	**Issuance of certificate determining appropriate proportion of sum chargeable to tax:** The Assessing Officer has to examine the application and on being satisfied that the whole of such sum would not be the income chargeable in case of the recipient, he may issue a certificate determining appropriate proportion of such sum chargeable under the provision of the Act, for the purposes of tax deduction under section 195(1).
(4)	**Information to be considered while examining the application:** While examining the application, the Assessing Officer has to take into consideration, following information in relation to the recipient:- (i) tax payable on estimated income of the previous year relevant to the assessment year (ii) tax payable on the assessed or returned or estimated income, as the case may be, of preceding four previous years (iii) existing liability under the Income-tax Act, 1961 (iv) advance tax payment, tax deducted at source and tax collected at source for the assessment year relevant to the previous year till the date of making application in Form 15E.
(5)	**Validity of the certificate:** The certificate would be valid only for the payment to non-resident named therein and for such period of the previous year as may be specified in the certificate, unless it is cancelled by the Assessing Officer at any time before the expiry of the specified period.
(6)	**Application for fresh certificate:** An application for a fresh certificate may be made, if the assessee so desires, -

	- after the expiry of the period of validity of the earlier certificate or - within three months before the expiry thereof.
(7)	**Procedures, formats and standards to be laid down for ensuring secure capture and transmission of data and uploading of documents:** The PDGIT (Systems) or the DGIT (Systems), as the case may be, has to lay down procedures, formats and standards for ensuring secure capture and transmission of data and uploading of documents. They would also be responsible for evolving and implementing appropriate security, archival and retrieval policies in relation to the furnishing of Form No 15E and issuance of Certificate.

(vii) Refund for denying liability to deduct tax under section 195 [Section 239A]:

(a) Application for refund of tax - This section provides that where under an agreement or other arrangement, in writing, the tax deductible on any income, other than interest, under section 195 is to be borne by the person by whom the income is payable, and such person having paid such tax to the credit of the Central Government, claims that no tax was required to be deducted on such income, he may file an application before the Assessing Officer for refund of such tax in prescribed form 29D. The claim for refund of tax shall be accompanied by a copy of an agreement or arrangement as applicable.

(b) Time limit for filing application - Such application may be filed within 30 days from the date of payment of such tax.

(c) Passing of order by Assessing Officer - The Assessing Officer has to, by an order in writing, allow or reject the application. However, no application would be rejected unless an opportunity of being heard has been given to the applicant. The Assessing Officer, may, before passing an order make such inquiry as he considers necessary.

(d) Time limit for passing order - The order has to be passed within 6 months from the end of the month in which application for refund is received.

(viii) Procedure for refund of TDS under section 195 to the person deducting tax in cases where tax is deducted at a higher rate prescribed in the DTAA

(I) The CBDT has, through *Circular No.7/2011 dated 27.9.2011*, modified Circular No.07/2007, dated 23.10.2007 which laid down the procedure for refund of tax deducted at source under section 195 of the Income-tax Act, 1961 to the person deducting tax at source from the payment to a non-resident. The said Circular

allowed refund to the person making payment under section 195 in the circumstances indicated below where, after the deposit into Government account of the tax deducted at source under section 195,

(a) the contract is cancelled, and no remittance is made to the non-resident;

(b) the remittance is duly made to the non-resident, but the contract is cancelled. In such cases, the remitted amount has been returned to the person responsible for deducting tax at source;

(c) the contract is cancelled after partial execution and no remittance is made to the non-resident for the non-executed part;

(d) the contract is cancelled after partial execution and remittance related to non-executed part is made to the non-resident. In such cases, the remitted amount has been returned to the person responsible for deducting the tax at source or no remittance is made but tax was deducted and deposited when the amount was credited to the account of the non-resident;

(e) there occurs exemption of the remitted amount from tax either by amendment in law or by notification under the provisions of Income-tax Act, 1961;

(f) an order is passed under section 154 or 248 or 264 of the Income-tax Act, 1961 reducing the tax deduction liability of a deductor under section 195;

(g) there occurs deduction of tax twice from the same income by mistake;

(h) there occurs payment of tax on account of grossing up which was not required under the provisions of the Income-tax Act, 1961;

(i) there occurs payment of tax at a higher rate under the domestic law while a lower rate is prescribed in the relevant double taxation avoidance treaty entered into by India.

In the cases mentioned above, income does not either accrue to the non-resident or it accrues but the excess amount in respect of which refund is claimed, is borne by the deductor. The amount deducted as tax under section 195 and paid to the credit of the Government therefore belongs to the deductor.

In the type of cases referred to in (a), the non-resident not having received any payment would not apply for a refund. For cases covered in (b) to (i), no claim may be made by the non-resident where he has no further dealings with the resident deductor of tax or the tax is to be borne by the resident deductor. The resident

deductor was therefore put to genuine hardship as he would not be able to recover the amount deducted and deposited as tax.

In the type of cases referred to above, where no income has accrued to the non-resident due to cancellation of contract or where income has accrued but no tax is due on that income or tax is due at a lesser rate, the amount deposited to the credit of Government to that extent under section 195, cannot be said to be "tax".

Therefore, the CBDT decided that this amount can be refunded to the person who deducted it from the payment to the non-resident, under section 195.

Refund to the person making payment under section 195 is being allowed as income does not accrue to the non-resident or if the income is accruing no tax is due or tax is due at a lesser rate. The amount paid into the Government account in such cases to that extent, is no longer "tax".

If a resident deductor is entitled for the refund of tax deposited under section 195, then, it has to be refunded with interest under section 244A from the date of payment of such tax [Circular No. 11/2016 dated 26.4.2016].

In case of refund being made to the person who made the payment under section 195, the Assessing Officer may, after giving intimation to the deductor, adjust it against any existing tax liability of the deductor under the Income-tax Act, 1961, or any other direct tax law. The balance amount, if any, should be refunded to the person who made such payment under section 195.

A refund in terms of this circular should be granted only after obtaining an undertaking that no certificate under section 203 of the Income-tax Act has been issued to the non-resident. In cases where such a certificate has been issued, the person making the refund claim under this circular should either obtain it or should indemnify the Income-tax Department from any possible loss on account of any separate claim of refund for the same amount by the non-resident. A refund in terms of this circular should be granted only if the deductee has not filed return of income and the time for filing of return of income has expired.

The refund as per this circular is, *inter alia*, permitted in respect of transactions with non-residents, which have either not materialized or have been cancelled subsequently. It, therefore, needs to be ensured by the Assessing Officer that they disallow corresponding transaction amount, if claimed, as an expense in the case of the person, being the deductor making refund claim. Besides, in all cases, the Assessing Officer should also ensure that in the case of a deductor making the

claim of refund, the corresponding disallowance of expense amount representing TDS refunded is made.

(II) The said Circular, however, did not cover a situation where tax is deducted at a rate prescribed in the relevant DTAA which is higher than the rate prescribed in the Income-tax Act, 1961. Since the law requires deduction of tax at a rate prescribed in the relevant DTAA or under the Income-tax Act, 1961, whichever is lower, there is a possibility that in such cases excess tax is deducted relying on the provisions of relevant DTAA.

(III) Accordingly, in order to remove the genuine hardship faced by the resident deductor, the CBDT has modified *Circular No. 07/2007, dated 23-10-2007* to the effect that the beneficial provisions under the said Circular allowing refund of tax deducted at source under section 195 to the person deducting tax at source shall also apply to those cases where deduction of tax at a higher rate under the relevant DTAA has been made while a lower rate is prescribed under the domestic law.

(6) Income from units of mutual fund or specified company [Section 196A]

(i) **Applicability and rate of TDS:** The person responsible for paying to non-corporate non-resident or a foreign company any income in respect of units of a mutual fund specified under section 10(23D) or from the specified company referred to in section 10(35) shall deduct tax **@20%** plus surcharge, wherever applicable, plus health and education cess@4%.

However, where an agreement referred to in section 90(1) or section 90A(1) applies to the payee and if the payee has furnished a tax residency certificate referred to in section 90(4) or section 90A(4), as the case may be, then, tax thereon shall be deducted @20% or at the rate or rates of income-tax provided in such agreement for such income, whichever is lower.

(ii) **Time of deduction:** Tax shall be deducted at the time of credit of such income to the account of the payee or at the time of payment thereof by any mode, whichever is earlier.

Where any such income is credited to any account, whether called "Suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section will apply accordingly.

(iii) **Non-applicability in certain cases:** No deduction of tax is to be made from any income payable in respect of units of the Unit Trust of India to a non-resident Indian or a non-resident Hindu undivided family, where the units have been acquired from the Unit Trust of India out of the funds in a Non-resident (External) Account maintained with any bank in India or by remittance of funds in foreign currency, in accordance, in either case, with the provisions of the Foreign Exchange Management Act, 1999 (42 of 1999), and the rules made thereunder.

(iv) **Meaning of non-resident:** An individual, being a citizen of India or a person of Indian origin who is not a "resident. A person would be deemed to be of Indian origin if he, or either of his parents or any of his grandparents, was born in undivided India.

(7) Income from units [Section 196B]

The person responsible for making the following payment to an Offshore Fund shall deduct tax at the time of credit of such income to the account of the payee or at the time of payment thereof by any mode, whichever is earlier at the following rates:

- **@10%** plus surcharge, wherever applicable, plus health and education cess@4% in respect of income in respect of units referred to in section 115AB(1)((i) i.e., income received in respect of **units** of a mutual fund specified under section 10(23D) or units of UTI purchased in foreign currency; or
- **@12.5%** plus surcharge, wherever applicable, plus health and education cess @4% in respect of long-term capital gains arising from the transfer of such units referred to in section 115AB.

(8) Income from foreign currency bonds or shares of Indian company [Section 196C]

The person responsible for making the following payments to a non-resident has to deduct tax at the time of credit of such income to the account of the payee or at the time of payment thereof by any mode, whichever is earlier at the following rates:

- **@10%** plus surcharge, wherever applicable, plus health and education cess@4% in respect of income by way of interest or dividend from bonds or Global Depository Receipts referred to in section 115AC or
- **@12.5%** plus surcharge, wherever applicable, plus health and education cess@4% in respect of long-term capital gains arising from the transfer of such bonds or Global Depository Receipts.

(9) Income of foreign institutional investors and specified funds from securities [Section 196D]

(i) Applicability and rate of TDS: The person responsible for making the payment in respect of securities referred to in section 115AD(1)(a)

- to a Foreign Institutional Investor has to deduct tax **@20%** or
- to a specified fund referred to in section 10(4D) has to be deduct tax **@10%**

plus surcharge, wherever applicable**,** *plus* health and education cess@4% at the time of credit of such income to the account of the payee or at the time of payment thereof by any mode, whichever is earlier.

However, where an agreement referred to in section 90(1) or section 90A(1) applies to the Foreign Institutional Investor and if the FII has furnished a tax residency certificate referred to in section 90(4) or section 90A(4), as the case may be, then, tax thereon shall be deducted @20% or at the rate or rates of income-tax provided in such agreement for such income, whichever is lower.

Note – The enhanced rate of surcharge@25% and 37% of tax payable are **not** applicable in case of tax deductible u/s 196D on dividend income.

Surcharge and health and education cess would not be applicable to specified fund in respect of income received from securities referred to in section 115AD(1)(a)

(ii) Non-applicability of TDS: No deduction shall be made in respect of

- income exempt under section 10(4D) in the hands of specified fund; or
- income, by way of capital gains arising from the transfer of securities referred to in section 115AD, payable to a Foreign Institutional Investor.

The summary of withholding tax provisions relating to non-residents is given below. These provisions are discussed in detail in the following chapters mentioned in Column (4):

Section	Nature of payment	Rate of TDS	Chapter
(1)	(2)	(3)	(4)
192	Salary	Concessional rate u/s 115BAC/ normal slab rates if the individual has exercised the option to shift out of the default tax regime	13: Deduction, Collection and Recovery of Tax (Module 3)

192A	Premature withdrawal from EPF, aggregating to ₹ 50,000 or more	10%	
194B	Income by way of winnings from lotteries, crossword puzzles, card games and other games of any sort or from gambling or betting of any form or nature whatsoever, where amt in respect of single transaction > ₹ 10,000.	30%	
194BA	Income by way of winnings from any online game	30%	
194BB	Income by way of winnings from horse races, where amt in respect of single transaction > ₹ 10,000.	30%	
194G	Commission etc. on the sale of lottery tickets, where amount payable to a person > ₹ 20,000	2%	
194N	On withdrawal of cash in excess of ₹ 1 crore Where the recipient is a co-operative society, the higher threshold limit of ₹ 3 crores is applicable for withdrawals	2% on amount exceeding ₹ 1 crore	
	In case the recipient has not filed ROI for all the 3 immediately preceding P.Y.s, for which time limit u/s 139(1) has expired, the sum shall be the amt or agg. of amts, in cash > ₹ 20 lakh during the P.Y.	- @2% of the sum, where cash withdrawal > ₹ 20 lakhs ≤ ₹ 1 crore (₹ 3 crores, where the recipient is a co-operative society) - @5% of the sum, where cash withdrawal exceeds ₹ 1 crore (₹ 3 crores, where the recipient is a co-operative society)	

194T	Distribution of any sum by a firm in the nature of salary, remuneration, commission, bonus or interest to a partner of the firm, where amt or aggregate of amts paid to a partner of firm > ₹ 20,000.	10%	
194LBA(2)	Distribution of any interest income, received or receivable by a business trust from a SPV, to its unit holders.	5%	10: Assessment of Trusts, Political Parties and other Special Entities (Module 2)
	Distribution of any dividend income, received or receivable by business trust from a SPV exercising option to pay tax at concessional rate under section 115BAA, to its unit holders However, if the SPV is not exercising the option to pay tax at concessional rate under section 115BAA, dividend income would be exempt in the hands of unit holders and tax would not be deductible at source.	10%	
194LBA(3)	Distribution of any income received from renting or leasing or letting out any real estate asset directly owned by the business trust, to its unit holders.	At the rates in force	
194LBB	Investment fund paying income to a unit holder [other than income which is exempt under section 10(23FBB)].		
194LBC(2)	Income in respect of investment made in a securitisation trust (specified in *Explanation* to section 115TCA)		
194E	Income referred to under section 115BBA payable to non-resident sportsmen/sports association or an entertainer	20%	21: Non Resident Taxation (Module 4)

194LB	Interest payable by infrastructure debt fund to a non-corporate non-resident or foreign company	5%	
194LC	Interest payable by an Indian Company or a business trust to a non-corporate non-resident or foreign company - in respect of money borrowed in foreign currency from a source outside India • under a loan agreement between 1.7.2012 and 30.6.2023 or • by way of issue of long-term infrastructure bonds during the period between 1.7.2012 and 30.9.2014 • by way of issue of long term bonds (including long term infrastructure bond) between 1.10.2014 and 30.6.2023 as approved by Central Government or - in respect of money borrowed from source outside India by way of rupee denominated bond on or before 30.6.2023	5%	
	Interest payable by an Indian company or a business trust to a non-corporate non-resident or foreign company, in respect of monies borrowed by it from a source outside India by way of issue of any long-term bond or rupee denominated bond between 1.4.2020 and 30.6.2023, which is listed only on a recognised stock exchange located in any International Financial Services Centre	4%	

	Interest payable by an Indian company or a business trust to a non-corporate non-resident or foreign company, in respect of monies borrowed by it from a source outside India by way of issue of any long-term bond or rupee denominated bond on or after 1.7.2023, which is listed only on a recognised stock exchange located in any International Financial Services Centre	9%	
	Interest payable by an Indian company or a business trust to a non-resident, including a foreign company, in respect of rupee denominated bond issued outside India during the period from 17.9.2018 to 31.3.2019	Nil (Since such interest is exempt u/s 10(4C), no tax is deductible u/s 194LC)	
195	Any other sum payable to a non-resident	At the rates in force	
196A	Income on units of a mutual fund specified under section 10(23D) or from the specified company referred to in section 10(35) payable to non-corporate non-resident or foreign company. Where a DTAA applies to the payee and if the payee has furnished a TRC then, tax thereon shall be deducted @20% or at the rate or rates of income-tax provided in such agreement for such income, whichever is lower.	20%	
196B	Income from units of a mutual fund or UTI purchased in foreign currency (including long term capital gain on transfer of such units) payable to an Offshore Fund	10% in respect of income from units 12.5% in respect of long term capital gain on transfer of such units	

196C	Income by way of interest or dividend on bonds of an Indian company or public sector company sold by the Government and purchased by a non-resident in foreign currency or GDRs referred to in section 115AC (including long term capital gain on transfer of such bonds or GDRs) payable to a non-resident	10% in respect of interest or dividend from bonds or GDRs 12.5% in respect of long-term capital gains on transfer of such bonds or GDRs	
196D	Income of foreign Institutional Investors from securities (not being capital gain arising from such securities). Where a DTAA applies to the payee and if the payee has furnished a TRC then, tax thereon shall be deducted @20% or at the rate or rates of income-tax provided in such agreement for such income, whichever is lower.	20%	
	Income of specified fund from securities [not being income exempt u/s 10(4D)]	10%	

Note: *In all the above cases, the rate of tax would be increased by surcharge, wherever applicable, and health and education cess @4% except in case of deduction u/s 196D on income of a specified fund.*

21.10 MISCELLANEOUS PROVISIONS

(1) Recovery of tax in respect of non-resident from his assets [Section 173]

In a case where the person entitled to the income arising from any business connection in India 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 situated in India is a non-resident, the tax chargeable thereon, whether in his name or in the name of his agent who is liable as a representative assessee, may be recovered by deduction under any of the provisions of Chapter XVII-B. Further, any arrears of tax may be recovered also in accordance with the provisions of the Income-tax Act from any assets of

the non- resident which are, or may at any time come, within India. These provisions are without prejudice to the provisions of section 161(1) or of section 167.

(2) Recovery against the assessee's property in foreign countries [Section 228A]

Where an assessee is in default or is deemed to be in default in making a payment of tax, the Tax Recovery Officer may, if the assessee is a resident of a country (being a country with which the Central Government has entered into an agreement for the recovery of income tax under this Act and the corresponding law in force in that country) or has any property in that country, forward to the CBDT a certificate drawn up by him under section 222. Thereafter, the CBDT may take such action thereon as it may deem appropriate having regard to the terms of the agreement with such country.

Similarly, the Government of the other country or any authority under that Government may send to the CBDT a certificate of recovery of any tax due under such corresponding law from a person having property in India and the CBDT may forward such certificate to Tax Recovery Officer having jurisdiction over the resident or within whose jurisdiction such property is situated, for recovery of such tax. Tax Recovery Officer can proceed to recover the amount specified in the Certificate by –

(a) attachment and sale of assesses movable or immovable property

(b) arrest of the assessee and his detention in prison.

(c) appointing a receiver for the management of assesses movable and immovable property.

He shall thereafter remit the sum so recovered to the CBDT.

(3) Submission of statement by a non-resident having liaison office [Section 285]

(i) A non-resident can operate in India through a branch or a liaison office set up after getting the approval of the Reserve Bank of India. Since the branch constitutes a permanent establishment of the non-resident, it has to file its return of income.

(ii) Such a non-resident is required to file a statement in the prescribed form [Form No.49C] to the Assessing Officer having jurisdiction, within ***eight months from the end of such financial year***, a statement providing the details in respect of activities carried out by the liaison office in India during the financial year.

(iii) This requirement has to be complied with by every person, being a non-resident having a liaison office in India set up in accordance with the guidelines issued by the RBI under the Foreign Exchange Management Act, 1999.

(iv) The statement is to be verified by a Chartered Accountant or by the Authorized Signatory i.e., the person authorized by the non-resident in this behalf.

(4) Furnishing of information or documents by an Indian Concern [Section 285A]

(i) There shall be a reporting obligation on the Indian concern through or in which the Indian assets are held by a foreign company or entity.

(ii) For the purposes of determination of any income accruing or arising in India under section 9(1)(i), an Indian concern has to furnish, within the prescribed period to the prescribed income-tax authority, the information or documents, in prescribed manner, if -

- any share of, or interest in, a company or an entity registered or incorporated outside India derives, directly or indirectly, its value substantially from the assets located in India, as referred to in *Explanation 5* to section 9(1)(i), and
- such company or, entity, holds, directly or indirectly, such assets in India through, or in, the Indian concern.

(iii) The information has to be furnished in Form No.49D electronically within a period of 90 days from the end of the financial year in which the transfer of such share or interest referred to above takes place. However, if the share or the interest has the effect of directly or indirectly transferring the rights of management or control in relation to the Indian concern, the information has to be furnished in Form No.49D within a period of 90 days of the transaction.

(iv) If any Indian concern fails to furnish the information or documents, the income-tax authority, as may be prescribed under the said section, may direct that such Indian concern shall pay, by way of penalty under section 271GA,—

(a) @2% of the value of the transaction in respect of which such failure has taken place, if such transaction had the effect of directly or indirectly transferring the right of management or control in relation to the Indian concern;

(b) ₹ 5,00,000 in any other case.

Note – *Rule 114DB prescribes the time limit and information or documents to be furnished under section 285A*[6]*.*

[6] For detailed reading of Rule 114DB of the Income-tax Rules, 1962, students may visit https://incometaxindia.gov.in/Pages/rules/income-tax-rules-1962.aspx

(5) Statutory agent of non-residents [Section 163]

According to section 163, an agent, in relation to a non-resident person, includes any person in India:

(i) who is employed by or on behalf of the non-resident;

(ii) who is having any business connection with the non-resident;

(iii) from or through whom the non-resident is in receipt of any income, whether directly or indirectly;

(iv) who is trustee of the non-resident; and

any other person who (whether resident or non-resident) has acquired a capital asset in India by means of a transfer from the non-resident.

In the first four cases stated above, the person sought to be assessed as the agent of a non-resident must necessarily be in India whereas it need not be so in the fifth case. Thus, a non-resident may be treated as the agent of another non-resident. The appointment of the agent may be made any time before or after the expiry of the relevant previous year. An agent of a non-resident may be appointed under this section even if at the date of such appointment, the non-resident is not alive.

According to the proviso to this section, where transactions are carried on in the ordinary course of business through a broker in India and the broker does not deal directly with or on behalf of a non-resident principal but deals with or through a non-resident broker and such non-resident broker also carries on such transactions in the ordinary course of his business and not as a principal, the broker in India cannot be treated as statutory agent in respect of the income arising to the non-resident from such transactions. Thus, where *bona fide* hedging transactions take place through a broker in India and a foreign broker acting for an undisclosed principal, the Indian broker cannot be deemed to be agent of the foreign principal.

For the purposes of section 163(1), the expression "business connection" shall have the meaning assigned to it in *Explanation 2* to clause (i) of section 9(1) of the Income-tax Act, 1961. [*Explanation* to section 163(1)]

Before a person can be treated as an agent of a non-resident he must be given a reasonable opportunity of being heard by the Assessing Officer as to his liability to be so treated.

In certain cases, the income received by one person can be assessed in the hands of another. Persons who are liable to be assessed on behalf of other because of their association with the real recipient of the income are known as representative assessees.

In respect of Income of a non-resident which is deemed to accrue or arise to him in India under section 9(1), agent of a non-resident including a person who is treated as an agent under section 163 would be considered a representative assessee under section 160. As per the provisions of section 161, every representative assessee, shall be subject to the same duties, responsibilities and liabilities as the assessee and the taxes shall be levied upon and recovered from him in like manner and to the same extent as it would be leviable upon and recoverable from the person represented by him.

TEST YOUR KNOWLEDGE

Questions

1. *Peeyush, who returned to India on 12th June, 2025 for permanently residing in India after a stay of about 20 years in U.K., provides the sources of his various incomes and seeks your opinion to know about his liability to income tax thereon in India in A.Y. 2026-27 assuming that he has exercised the option to shift out of the default tax regime under section 115BAC:*

   (i) Income of rent of the flat in London which was deposited in a bank there. The flat was given on rent by him after his return to India since July, 2025.

   (ii) Dividends on the shares of three German Companies which are being collected in a bank account in London. He proposes to keep the dividend on shares in London with the permission of the Reserve Bank of India.

   (iii) He has got two sons, one of whom is of 12 years and other 19 years. Both his sons are staying in London and not returning to India with him. Each of his sons is having income of ₹ 75,000 in U.K. in foreign currency (not received in India) and of ₹ 20,000 in India.

   (iv) During the preceding accounting year when he was a non-resident, he had sold 1000 shares which were acquired by him in British Pound Sterling and the sale proceeds were repatriated. The profit in terms of British Pound Sterling on sale of these 1000 shares was 175% of the cost at ₹ 37,500 while in terms of Indian Rupee it was ₹ 50,000.

2. *Mr. David, a citizen of India, serving in the Ministry of External Affairs in India, was transferred to Indian Embassy in Canada on 31.03.2025. He did not visit India any time during the previous year 2025-26. He has received the following income for the Financial Year 2025-26:*

S.No.	Particulars	₹
(i)	Salary (Computed)	5,00,000
(ii)	Foreign Allowance	4,00,000
(iii)	Interest on fixed deposit from bank in India	1,00,000
(iv)	Income from agriculture in Country X	2,00,000
(v)	Income from house property in Country X	2,50,000

Compute his gross total income for Assessment Year 2026-27.

3. *Mr. A, a citizen of India, left for USA for the purposes of employment on 1.5.2025. He has not visited India thereafter. Mr. A borrows money from his friend Mr. B, who also left India for employment purpose one week before Mr. A's departure, to the extent of ₹ 10 lakhs and buys shares in X Ltd., an Indian company. Discuss the taxability of the interest charged @10% in B's hands, if the said interest has been received in New York.*

4. *JJ Limited, a company incorporated in Australia has entered into an agreement with KK Limited, an Indian company for rendering technical services to the latter for setting up a fertilizer plant in Orissa. As per the agreement, JJ Limited rendered both off-shore services and on-shore services to KK Limited at fee of ₹ 1 crore and ₹ 1.5 crore, respectively. JJ Limited is of the view that it is not liable to tax in India in respect of fee of ₹ 1 crore as it is for rendering services outside India. Discuss the correctness of the view of JJ Limited.*

5. *Examine with reasons whether the following transactions attract income-tax in India, in the hands of recipients under section 9 of Income-tax Act, 1961:*

   (i) A non-resident German company, which did not have a permanent establishment in India, entered into an agreement for execution of electrical work in India. Separate payments were made towards drawings & designs, which were described as "Engineering Fee". The assessee contended that such business profits should be taxable in Germany as there is no business connection within the meaning of section 9(1)(i) of the Income-tax Act, 1961.

   (ii) A firm of solicitors in Mumbai engaged a barrister in UK for arguing a case before Supreme Court of India. A payment of 5000 pounds was made as per terms of professional engagement.

   (iii) Amount paid by Government of India for use of a patent developed by Mr. A, who is a non-resident.

   (iv) Sai Engineering, a non-resident foreign company entered into a collaboration agreement on 25/6/2025, with an Indian Company and was in receipt of interest on 8% debentures for ₹ 20 lakhs, issued by Indian Company, in consideration of providing technical know-how utilised in its business in Mumbai during previous year 2025-26.

6. *Z, an American tourist, comes to India for the first time on June 17, 2025. He leaves India on September 29, 2025. Determine his residential status for the assessment year 2026-27.*

Would your answer change if he is a person of Indian origin and his total income from Indian sources for A.Y.2026-27 is ₹ 16 lakhs?

7. *M/s. Global Airlines incorporated as a company in USA operated its flights to India and vice versa during the year 2025-26 (April, 2025 to March, 2026) and collected charges of ₹ 125 lakhs for carriage of passengers and cargo out of which ₹ 65 lakhs were received in New York in U.S Dollars for the passenger fare booked from New York to Mumbai. The total expenses for the year on operation of such flights were ₹ 95 lakhs. Compute the income chargeable to tax of the foreign airlines.*

8. *Atlant Italy, a company incorporated in France, was engaged in manufacture, trade and supply equipment and services for GSM Cellular Radio Telephones Systems. It supplied hardware and software to various entities in India. Software licensed by assessee embodied the process which is required to control and manage the specific set of activities involved in the business use of its customers, and also made available to its customers, who used it to carry out their business activities. The Assessing Officer contended that the consideration for supply of software embedded in hardware is 'royalty' under section 9(1)(vi).*

   Examine the correctness of the action of the Assessing Officer assuming that the software that was loaded on the hardware and embedded in the system does not have any independent existence.

9. *Singtel Ltd. is a company incorporated in Singapore and 55% of its shares are held by Godavari (P) Ltd., an Indian company. Singtel Ltd. has its presence in India also. The details relating to Singtel Ltd. for the P.Y.2025-26, are as under:*

Particulars	India	Singapore
Fixed assets at depreciated values for tax purposes (₹ in crores)	120	80
Intangible assets (₹ in crores)	50	200
Other assets (value as per books of account) (₹ in crores)	40	120
Income from trading operations (₹ in crores)	25	50
The above figure includes:		
(i) Income from transactions where purchases are from associated enterprises and sales are to unrelated parties	2	4
(ii) Income from transactions where sales are to associated enterprises and purchases are from unrelated parties	3	5

(iii) Income from transactions where both purchases and sales are from/to associated enterprises	*5*	*10*
Interest and dividend from investments (₹ in crores)	*20*	*15*
Number of employees (Residents in respective countries)	*70*	*90*
Payroll expenses on employees (₹ in crores)	*8*	*12*

Determine the residential status of Singtel Ltd. for A.Y.2026-27, if during the F.Y.2025-26, eight board meetings were held – 3 in India and 5 in Singapore.

10. *STYLE Inc., a notified Foreign Institutional Investor (FII), derived the following incomes for the financial year 2025-26:-*

(1) Dividend from listed shares of Indian companies – ₹ 6,20,000

(2) Interest on securities – ₹ 17,32,000 (Expenses of ₹ 26,000 has been incurred to earn such income)

(3) Income from sale of securities and shares:

(i) Bonds of J Ltd.
[Date of purchase 5 May, 2018; Date of sale 7 March, 2026]

Sale proceeds : ₹ 47,00,000

Cost of purchase : ₹ 32,00,000

Cost Inflation Index: F.Y.2018-19:280; F.Y.2025-26:376

(ii) Listed Shares of E Ltd.
[Date of purchase – 2 May, 2025; Date of sale – 9 February, 2026]

Sale Consideration ₹ 12,40,000

Purchase cost ₹ 7,80,000

[STT paid both at the time of purchase and sale]

(iii) Unlisted equity shares of M Ltd.
[Date of purchase – 1 July, 2025; Date of sale – 7 March, 2026]

Sale Consideration ₹ 8,40,000

Purchase cost ₹ 3,72,000

Compute the total income and tax liability of the FII, STYLE Inc., for the A.Y. 2026-27 as per section 115AD, assuming that no other income is derived by STYLE Inc. during the F.Y.2025-26.

Answers

1. Peeyush returned to India on 12th June 2025 for permanently residing in India after staying in UK for 20 years. During the P.Y.2025-26, he stays in India for 293 days. Since he has stayed in India for a period of 182 days or more during the previous year 2025-26, he would be a resident in India for the A.Y.2026-27. However, he would be a resident but not ordinarily resident, assuming that he was a non-resident in nine out of ten previous years preceding P.Y.2025-26 his stay in India during the seven previous years is less than 730 days. The residential status of Peeyush for A.Y.2026-27 is, therefore, **Resident but Not Ordinarily Resident.**

As per section 5(1), only income which is received/ deemed to be received/ accrued or arisen/ deemed to accrue or arise in India is taxable in case of a Resident but not Ordinarily Resident. Income which accrues or arises outside India shall not be included in his total income, unless it is derived from a business controlled in, or a profession set up in India.

(i) Rental income from a flat in London which was deposited in a bank there shall not be taxable in the case of a resident but not ordinarily resident, since both the accrual and receipt of income are outside India.

(ii) Dividends from shares of three German Companies, collected in a bank account in London, would also not be taxable in the case of a resident but not ordinarily resident since both the accrual and receipt of income are outside India.

(iii) As per section 64(1A), all income accruing or arising to a minor child is includible in the hands of the parent, after providing for deduction of ₹ 1,500 per child under section 10(32).

Accordingly, income of ₹ 20,000 accruing to his minor son, aged 12 years, in India is includible in the income of Peeyush, after providing deduction of ₹ 1,500. Therefore, ₹ 18,500 is includible in the income of Peeyush. Income accruing to the minor child outside India (which is also received outside India) is **not** includible in the income of Peeyush.

Since the other son is major, his income is not includible in the income of Peeyush.

(iv) Repatriation of sale proceeds of 1000 shares sold in the preceding accounting year, when Peeyush was a non-resident, is not taxable in the A.Y.2026-27 since it is not the income of the P.Y.2025-26.

Consequently, only the income includible under section 64(1A) would form part of the total income of Mr. Peeyush for A.Y.2026-27. Since his total income (i.e., ₹ 18,500) is less than the basic exemption limit, there would be no liability to income-tax for A.Y.2026-27.

2. As per section 6(1), Mr. David is a non-resident for the A.Y. 2026-27, since he was not present in India at any time during the previous year 2025-26.

As per section 5(2), a non-resident is chargeable to tax in India only in respect of following incomes:

(i) Income received or deemed to be received in India; and

(ii) Income accruing or arising or deemed to accrue or arise in India.

In view of the above provisions, income from agriculture in Country X and income from house property in Country X would not be chargeable to tax in the hands of David, assuming that the same were received in Country X.

Income from 'Salaries' payable by the Government to a citizen of India for services rendered outside India is deemed to accrue or arise in India as per section 9(1)(iii). Hence, such income is taxable in the hands of Mr. David, even though he is a non-resident. However, allowances or perquisites paid or allowed as such outside India by the Government to a citizen of India for rendering service outside India is exempt under section 10(7). Hence, foreign allowance of ₹ 4,00,000 is exempt under section 10(7).

Gross Total Income of Mr. David for A.Y. 2026-27

Particulars	₹
Salaries	5,00,000
Income from other sources (Interest on fixed deposit in India)	1,00,000
Gross Total Income	**6,00,000**

3. An individual is said to be resident in India in any previous year, if he -

(i) has been in India during that year for a total period of 182 days or more, or

(ii) has been in India during the four years immediately preceding that year for a total period of 365 days or more and has been in India for at least 60 days in that year.

In the case of an Indian citizen leaving India for the purposes of employment outside India during the previous year, the period of stay during the previous year in condition (ii) above, to qualify as a resident, would be 182 days instead of 60 days.

In this case, Mr. A is an Indian citizen who left India for employment outside India on 01.05.2025. Mr. A has been in India only from 1.4.2025 to 01.05.2025 i.e. for 31 days. Since his stay in India during the previous year 2025-26 is only 31 days, he does not satisfy the minimum criterion of 182 days stay in India for being a resident. Hence, his residential status for A.Y. 2026-27 is non-resident. Mr. B, who left India one week before A's departure, is also a non-resident for the same reasons.

Section 9(1)(v) provides that income by way of interest payable by a non-resident in respect of any debt incurred, or moneys borrowed and used, for the purposes of a business or profession carried on by such person in India shall be deemed to accrue or arise in India.

Therefore, interest payable by a non-resident in respect of any debt incurred, or moneys borrowed and used, for the purpose of making or earning any income from any source other than a business or profession carried on by him in India, shall **not** be deemed to accrue or arise in India. Therefore, interest payable by Mr. A on money borrowed from Mr. B to invest in shares of an Indian company shall **not** be deemed to accrue or arise in India and hence, is not taxable in India in the hands of Mr. B.

4. The *Explanation* below section 9(2) clarifies that income by way of, *inter alia*, fees for technical services from services utilized in India would be deemed to accrue or arise in India under section 9(1)(vii) in case of a non-resident and be included in his total income, whether or not such services were rendered in India.

In this case, the technical services rendered by the foreign company, JJ Ltd., were for setting up a fertilizer plant in Orissa. Therefore, the services were utilized in India. Consequently, as per the *Explanation* below section 9(2), the fee of ₹ 2.5 crore for technical services rendered by JJ Ltd. (both off-shore and on-shore services) to KK Ltd. is deemed to accrue or arise in India and includible in the total income of JJ Ltd.

Therefore, the view of JJ Ltd. that it is not liable to tax in India in respect of fee of ₹ 1 crore (as it is for rendering services outside India) is **not** correct.

5. **(i)** Fees for technical services is taxable under section 9(1)(vii). In this case, the separate payments made towards drawings and designs (described as "engineering fee") are in the nature of fee for technical services and, therefore, it is taxable in India by virtue of section 9(1)(vii), since the services are utilized for execution of electrical work in India *[Aeg Aktiengesllschaft v. CIT (2004) 267 ITR 209 (Kar.)]*.

As per *Explanation* below section 9(2), where income is deemed to accrue or arise in India under section 9(1)(vii), such income shall be included in the total income of

the non-resident German company, regardless of whether it has a residence or place of business or business connection in India.

(ii) As per section 9(1)(i), all income accruing or arising, whether directly or indirectly, through or from any business connection in India is deemed to accrue or arise in India.

In this case, there was a professional connection between the firm of solicitors in Mumbai and the barrister in UK. The expression "business" includes not only trade and manufacture; it includes, within its scope, "profession" as well. Therefore, the existence of professional connection amounts to existence of "business connection" under section 9(1)(i). It was so held by the Supreme Court in *Barendra Prasad Roy v. ITO (1981) 129 ITR 295.*

Hence, the amount of 5,000 pounds paid to the barrister in UK as per the terms of the professional engagement constitutes income which is deemed to accrue or arise in India under section 9(1)(i). Hence, it is taxable in India.

(iii) As per section 9(1)(vi), income by way of royalty payable by the Government of India is deemed to accrue or arise in India. "Royalty" means consideration for, *inter alia*, use of patent. Therefore, the amount paid by Government of India for use of patent developed by Mr. A, a non-resident, is deemed to accrue or arise in India. Hence, it is taxable in India in the hands of Mr. A.

(iv) ₹ 20 lakhs, being the value of debentures issued by an Indian company in consideration of providing technical know-how for use in its business in India, is in the nature of fee for technical services, deemed to accrue or arise in India to Sai Engineering, a non-resident foreign company, under section 9(1)(vii). Hence, it is taxable in India.

Further, as per section 9(1)(v), income by way of interest payable by a person who is a resident of India is deemed to accrue or arise in India. Therefore, interest income from debentures of an Indian company is deemed to accrue or arise in India in the hands of Sai Engineering by virtue of section 9(1)(v). Hence, it is taxable in India.

Note *– Since the question specifically requires the candidates to examine the taxability of the above transactions under section 9, the provisions of double taxation avoidance agreement, if any, applicable in the above cases, have not been taken into consideration.*

6. Previous year 2025-26: 105 [14+31+31+29]

Previous year 2024-25: Nil

Previous year 2023-24: Nil

Previous year 2022-23: Nil

Previous year 2021-22: Nil

He is non-resident for the assessment year 2026-27 as he does not satisfy either of the basic conditions.

Even if he is a person of Indian origin whose total income from Indian sources exceeds ₹ 15 lakhs, he would still be a non-resident for A.Y.2026-27. For becoming a resident but not ordinarily resident, he should have stayed in India for atleast 120 days in the previous year 2025-26 and 365 days in four immediately preceding previous years. Since his stay in India in the P.Y.2025-26 is less than 120 days, he would be **non-resident** in India for A.Y.2026-27.

7. As per section 44BBA, in case of a non-resident engaged in the business of operation of aircraft, 5% of the following amounts would be deemed to be the profits and gains from such business:

(a) paid or payable, whether in or out of India, to the assessee or to any person on his behalf on account of the carriage of passengers, livestock, mail or goods from any place in India; and

(b) received or deemed to be received in India by or on behalf of the assessee on account of the carriage of passengers, livestock, mail or goods from any place outside India.

In the present case, the income chargeable to tax of M/s Global Airlines applying the provisions of section 44BBA are as follows:

Particulars	Fare booked from India to outside India whether received in India or not (₹)	Fare booked from New York to Mumbai and received outside India (₹)
Fare	60,00,000 (1,25,00,000 – 65,00,000)	65,00,000
Deemed income @5% u/s 44BBA	3,00,000 (60,00,000 × 5%)	Nil (since the amount not received in India)

8. The issue under consideration in this case is whether consideration for supply of software embedded in hardware would tantamount to 'royalty' for attracting deemed accrual of income under section 9(1)(vi).

As per section 9(1)(vi), income by way of royalty payable by a person who is a resident in India would be deemed to accrue or arise in India. However, where it is payable for the transfer of any right or the use of any property or information or for the utilization of services for the purposes of a business or profession carried on by such person outside India or for the purposes of making or earning any income from any source outside India, the amount payable by way royalty would not be deemed to accrue or arise in India, in the hands of non-resident.

For this purpose, 'royalty' includes transfer of all or any right for use or right to use a computer software irrespective of the medium through which such right is transferred.

The facts of the case are similar to the facts in *CIT v. Alcatel Lucent Canada (2015) 372 ITR 476*, wherein the above issue came up before the Delhi High Court. The Court observed that the software supply is an integral part of GSM mobile telephone system and is used by the cellular operators for providing cellular services to its customers. Where payment is made for hardware in which the software is embedded and the software does not have independent functional existence, no amount could be attributed as 'royalty' for software in terms of section 9(1)(vi).

In this case, since the software that was loaded on the hardware and embedded in the system does not have any independent existence, there could not be any independent use of such software. Therefore, the rationale of the Delhi High Court ruling can be applied to the case on hand. Accordingly, the action of the Assessing Officer in treating the consideration for supply of software embedded in hardware as royalty under section 9(1)(vi) is **not** correct.

9. The residential status of a foreign company is determined on the basis of place of effective management (POEM) of the company.

For determining the POEM of a foreign company, the important criteria is whether the company is engaged in active business outside India or not.

A company shall be said to be engaged in "**Active Business Outside India"** (ABOI) for POEM, if

- the passive income is not more than 50% of its total income; **and**
- less than 50% of its total assets are situated in India; **and**

- less than 50% of total number of employees are situated in India or are resident in India; **and**
- the payroll expenses incurred on such employees is less than 50% of its total payroll expenditure.

Singtel Ltd. shall be regarded as a company engaged in active business outside India for P.Y.2025-26 for POEM purpose only if it satisfies all the four conditions cumulatively.

Condition 1: The passive income of Singtel Ltd. should not be more than 50% of its total income

Total income of Singtel Ltd. during the P.Y. 2025-26 is ₹ 110 crores [(₹ 25 crores + ₹ 50 crores) + (₹ 20 crores + ₹ 15 crores)]

Passive income is the aggregate of, -

(i) income from the transactions where both the purchase and sale of goods is from/to its associated enterprises; and

(ii) income by way of royalty, dividend, capital gains, interest or rental income;

Passive Income of Singtel Ltd. is ₹ 50 crores, being sum total of :

(i) ₹ 15 crores, income from transactions where both purchases and sales are from/to associated enterprises (₹ 5 crores in India and ₹ 10 crores in Singapore)

(ii) ₹ 35 crores, being interest and dividend from investment (₹ 20 crores in India and ₹ 15 crores in Singapore)

Percentage of passive income to total income = ₹ 50 crore/ ₹ 110 crore x 100 = 45.45%

Since passive income of Singtel Ltd. **is 45.45%, which is not more than 50%** of its total income, the first condition is satisfied.

Condition 2: Singtel Ltd. should have less than 50% of its total assets situated in India

Value of total assets of Singtel Ltd. during the P.Y. 2025-26 is ₹ 610 crores [₹ 210 crores, in India + ₹ 400 crores, in Singapore]

Value of total assets of Singtel Ltd. in India during the P.Y. 2025-26 is ₹ 210 crores

Percentage of assets situated in India to total assets = ₹ 210 crores/₹ 610 crores x 100 = 34.43%

Since the value of assets of Singtel Ltd. **situated in India is less than 50%** of its total assets, the second condition for ABOI test is satisfied.

Condition 3: Less than 50% of the total number of employees of Singtel Ltd. should be situated in India or should be resident in India

Number of employees situated in India or are resident in India is 70

Total number of employees of Singtel Ltd. is 160 [70 + 90]

Percentage of employees situated in India or are resident in India to total number of employees is 70/160 x 100 **= 43.75%**

Since employees situated in India or are residents in India of Singtel Ltd. **are less than 50%** of its total employees, the third condition for ABOI test is satisfied.

Condition 4: The payroll expenses incurred on employees situated in India or resident in India should be less than 50% of its total payroll expenditure

Payroll expenses on employees employed in and resident of India = ₹ 8 crores.

Total payroll expenses = ₹ 20 crores (₹ 8 crores + ₹ 12 crores)

Percentage of payroll expenses of employees situated in India or are resident in India to the total payroll expenses = 8 x 100/20 = 40%

Since the payroll expenses incurred on employees situated in India or resident in India **is less than 50% of its total payroll expenditure**, the fourth condition for ABOI test is also satisfied.

Thus, since Singtel Ltd. has satisfied all the four conditions, the company would be said to be engaged in "active business outside India" during the P.Y. 2025-26.

POEM of a company engaged in active business outside India shall be presumed to be outside India, if the majority of the board meetings are held outside India.

Since Singtel Ltd. is engaged in active business outside India in the P.Y. 2025-26 and majority of its board meetings i.e., 5 out of 8, were held outside India, POEM of Singtel Ltd. would be outside India.

Therefore, Singtel Ltd. would be non-resident in India for the P.Y. 2025-26.

10. Computation of total income of STYLE Inc., a notified FII, for A.Y.2026-27

Particulars	₹	₹
Dividend income	6,20,000	
Interest on securities [No deduction is allowable in respect of expenses incurred in respect thereof]	17,32,000	23,52,000

Long-term capital gains on sale of bonds of J Ltd.		
Sale consideration	47,00,000	
Less: Cost of acquisition [Benefit of indexation is not allowable]	32,00,000	15,00,000
Short-term capital gains on sale of STT paid equity shares of E Ltd.		
Sale consideration	12,40,000	
Less: Cost of acquisition	7,80,000	4,60,000
Short-term capital gains on sale on unlisted equity shares of M Ltd.		
Sale consideration	8,40,000	
Less: Cost of acquisition	3,72,000	4,68,000
Total Income		**47,80,000**

Computation of tax liability of STYLE Inc. for A.Y.2026-27

Particulars	₹
Tax@20% on interest on securities and dividend =20% x ₹ 23,52,000	4,70,400
Tax@12.5% on long-term capital gains on sale of bonds of J Ltd. = 12.5% x ₹ 15,00,000	1,87,500
Tax @ 20% on short-term capital gains on sale of listed equity shares of E Ltd., in respect of which STT has been paid = 20% of ₹ 4,60,000	92,000
Tax @ 30% on short-term capital gains on sale of unlisted equity shares of M Ltd. = 30% of ₹ 4,68,000	1,40,400
	8,90,300
Add: HEC@4%	35,612
Tax liability	**9,25,912**
Tax liability (rounded off)	**9,25,910**