

“NON-RESIDENTS TAXATION”

Section 115A: Tax on interest, royalty and technical service fees in case of Non-Residents:-

Applicability	Income Covered	Tax Rate	Other Relevant Provisions										
(1)(a) Foreign company, or Other non-resident	(i) Dividends from: - from a unit in an IFSC: - from other	10% 20%	<p><u>Applicable for both clauses (a) & (b) of section 115A(1):</u></p> <p>➤ No deduction under the head PGBP or I/O/S.</p> <p>➤ Chapter VI (i.e. Provisions relating to Setoff of loss) shall apply as usual. (It's implied here that unabsorbed depreciation can't be setoff as it is covered u/s 32 which falls in 28 to 44C).</p> <p>❖ Procedural Relief (i.e. No need of ROI u/s 139)</p> <p>(a) if total income consists only incomes as referred to in clause (a) or clause (b) of subsection (1); and</p> <p>(b) TDS has been deducted from such income and rate of such deduction is not less than the rate specified under clause (a) or, as the case may be, clause (b) of section 115A(1).</p> <p>.....</p> <p><u>Applicable for only clause (a) of sec. 115A(1):</u></p> <p>❖ No deduction u/s 80C to 80U against such interest or dividend income (except u/s 80LA in case of unit of an IFSC).</p>										
	(ii) Interest from Government or Indian concern on money borrowed in foreign currency.	20%											
	(iia) Interest received from Infrastructure debt fund.	5%											
	(iiaa) Interest received from Indian Company or Business Trust on: <i>Money borrowed* from a source outside India</i> (a) by way of issue of any long-term bond; or (b) Through rupee denominated bond <i>on or after 1st July, 2023, which is listed only on a recognised stock exchange located in any IFSC.</i> * Such borrowing & interest must be as per rate approved by CG.	9%											
FII & Qualified Foreign Investor	(iiab) Interest income in respect of the investment made by the payee in municipal debt securities on or after 01/04/2020 but upto 30/06/2023.	5%	<p style="text-align: center; background-color: black; color: white; padding: 5px;">Special TDS Provisions:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr style="background-color: #cccccc;"> <th style="width: 50%;">Income covered</th> <th style="width: 50%;">Liable for TDS u/s</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">115A(1)(a)(iia)</td> <td style="text-align: center;">194LB</td> </tr> <tr> <td style="text-align: center;">115A(1)(a)(iiaa)</td> <td style="text-align: center;">194LC</td> </tr> <tr> <td style="text-align: center;">115A(1)(a)(iiab)</td> <td style="text-align: center;">194LD</td> </tr> <tr> <td style="text-align: center;">115A(1)(a)(iiac)</td> <td style="text-align: center;">194LBA</td> </tr> </tbody> </table>	Income covered	Liable for TDS u/s	115A(1)(a)(iia)	194LB	115A(1)(a)(iiaa)	194LC	115A(1)(a)(iiab)	194LD	115A(1)(a)(iiac)	194LBA
Income covered	Liable for TDS u/s												
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115A(1)(a)(iiab)	194LD												
115A(1)(a)(iiac)	194LBA												
Non-resident Unit holder	(iiac) Proportionate Share in Interest from SPV out of	5%											

	distributed income by Business Trust		115A(1)(a)(iii)	196A
	(iii) Income on units, purchased in foreign currency of a Mutual Fund or of UTI	20%	Rate of TDS : 5% / 4% / 9% / 20% (as the case may be)	
			For surcharge & cess (wherever occur under this Chapter), Please refer Chapter of TDS.	
(1)(b) Foreign company, or other non-resident	Royalty or Fees for Technical Services (other than covered u/s 44DA) in pursuance of agreement with Government or Indian concern	20%	<u>Applicable for only clause (b) of sec. 115A(1):</u> ❖ In case of agreement with Indian concern, approval of CG is required.	

Section 44DA: Special provisions for computing income by way of royalties etc. in case of non-residents and foreign co.-

Applicability	Income Covered	Tax Rate	Other Relevant Provisions
Foreign company or other non-resident	Royalty or fees for technical services earned through its permanent establishment or fixed place of profession situated in India	at normal rate	Such income shall be computed under the head “Profits and gains of business or profession” <u>as per the normal provisions</u> (i.e. after deductions and allowance under the head “PGBP”). <u>But, no deduction in respect of the following:</u> (i) Any expenditure which is not exclusively related from such PE; or (ii) Any payment to its head office (other than re-imbursalment of actual expense). ➤ Maintenance of books of accounts and audit is compulsory.

Section 115AC: Tax on income from bonds / GDR purchased in foreign currency or capital gains arising from their transfer-

Applicability	Assets Covered	Income Covered	Tax Rate	Restriction On Proviso To Sec. 48	Other Relevant Provisions
Non – Residents	(i) Bonds of Public Sector company sold by the Govt. (ii) Bonds (i.e. Euro bonds) <u>Or</u> GDRs	Interest, Dividend & LTCG**	10% 10% 10%	Ist & IInd (i.e. Conversion and Indexation Provisions) shall not apply	➤ No deduction under the head “PGBP” or “I/O/S” and u/s 80 C to 80 U. ➤ Chapter VI (i.e. Setoff provisions...) shall apply as usual. ➤ Procedural Relief [i.e. No need of ROI u/s 139 (1)] if total income consists only dividend or/and interest income as referred to in this section and TDS has been deducted on such income. ➤ <u>In case of Amalgamation / Demerger, Benefit continued</u> in respect of bonds /

	of Indian Co. (Purchased in Foreign currency)				<p>GDRs of amalgamated / resulting company.</p> <ul style="list-style-type: none"> ➤ <u>If non-resident transferred security of section 115AC to another non-resident outside India</u>, then, <i>no capital gain tax implications will arise.</i> Section 47(via) ➤ <i>Payer will deduct TDS u/s 196C @ 10% (or @12.5% on LTCG, if such transfer is made on or after 23rd July, 2024) on income taxable u/s 115AC at the time of its credit or payment (whichever is earlier).</i>
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Section 115AD: Tax on income of foreign institutional investors from securities or capital gains arising from their transfer :- as amended by F.A. 2024

Applicability	Assets Covered	Income Covered	Tax Rate	Restriction on Proviso to Sec. 48	Other Relevant Provisions	
Foreign Institutional Investors (FII) or Specified Fund (SF) as referred to in section 10(4D) i.e. Category III AIF located in IFSC in which All units are held by NR except held by sponsor / manager, or investment division of an offshore banking unit	Any Security (other than units covered u/s 115AB)	Dividend/Interest income (other than interest liable to tax u/s 115A @ 5%)	20% for FII	Ist & IInd (i.e. Conversion and Indexation Provisions) shall not apply	<ul style="list-style-type: none"> ➤ No deduction u/h “PGBP” or “I/O/S”, and u/s 80C to 80U. ➤ Chapter VI (i.e. Provisions of Setoff....) shall apply as usual. ➤ Income of Specified fund as attributable to units held by NR (except PE of NR in India), will only be covered under this section. ➤ <u>If specified fund is investment division of an offshore banking unit</u>, the provisions of this section shall apply to the extent of income that is attributable to the investment division of such banking units. ➤ <u>In case of applicability of section 115AC (like, transfer of euro-bonds / GDRs by the FII)</u>, that special section shall prevail over the provisions of this section 115AD. ➤ Payer will deduct TDS u/s 196D @ 20% / 10% (SF) on interest/dividend income @ its credit or payment (whichever is earlier). [No TDS on capital gain as referred to in this section]. 	
		LTCG	10% for SF			
		LTCG covered u/s 112A** in excess of exemption limit as given under that section (i.e. ₹ 1,25,000/-)	10%			**(or @12.5%, if such transfer is made on or after 23 rd July, 2024)
		STCG covered u/s 111A##	15%			##(or @20%, if such transfer is made on or after 23 rd July, 2024)
		Other STCG	30%			

Section 10(4D): Exemption of certain income received by a specified fund:-

Exemption is available to a **SPECIFIED FUND** in respect of the following:

- Any income accrued or arisen or received
 - as a result of transfer of **capital asset referred to in section 47(viiab)**, on a recognised stock exchange located in any International Financial Services Centre and *where the consideration for such transaction is paid or payable in convertible foreign exchange* or
 - as a result of **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 "PGBP",
 - 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.

Explanation to section 10(4D): "Specified fund" means-

(i) *a fund which satisfies the following conditions-*

- It is a fund **established or incorporated in India** in the form of a trust or a company or a limited liability partnership or a body corporate.
- It has a certificate of registration as a **Category III Alternatives Investment Fund** and is regulated under SEBI (Alternative Investment Fund) Regulations, 2012/regulated under IFSC Authority (Fund Management) Regulations, 2022, made under the International Financial Services Centre Authority Act, 2019.
- It is **located in any International Financial Services Centre**.
- **All units of the fund** (other than held by a sponsor/manager) **are held by non-residents:**

Provided that this condition shall not apply where any unit holder or holders, being non-resident during the previous year when such unit or units were issued, becomes resident u/s 6(1)/(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 unit holders do not exceed 5% of the total units issued and fulfil such other conditions as may be prescribed, which is as follows:

the unit holder of the specified fund, other than the sponsor or manager of such fund, who becomes a resident u/s 6(1) or (1A) during any previous year subsequent to the previous year in which such unit or units were issued, shall cease to be a unit holder of such specified fund within 3 months from the end of the previous year in which he becomes a resident.

(ii) *an investment division of an offshore banking unit, which satisfies the following conditions-*

- It has a certificate of registration as a **Category-I foreign portfolio investor** under the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019.
- It has **commenced its operations on or before the 31st March, 2025**; and

– It fulfils such other conditions as may be prescribed, which is as follows:

- a) it has to maintain separate accounts for the registered investment division reflecting the true and fair accounts of all transactions relating to the investment division and which would ensure that direct and indirect expenses relating to the incomes are properly recorded and apportioned to these activities;
- b) it has to get the accounts, as specified in (a) above, audited by an accountant before the specified date i.e., one month prior to the due date u/s 139(1). Such accountant has to furnish by that date the report of such audit in the prescribed form electronically under digital signature;
- c) it has to maintain proper documentation in respect of, —
 1. inbound remittance for buying and selling the investments; and
 2. the use of inward remittance made to India;
- d) it has to maintain bank statement of all accounts of the registered investment division;
- e) it has to maintain contract notes relating to purchase and sale of securities by the registered investment division; and a statement of securities issued by the custodian.

Manner of computation of exempt income of specified fund, attributable to units held by non-resident (not being the permanent establishment of a non-resident in India) in a specified fund:

As per Rule 21AI, the income attributable to units held by non-resident (not being the permanent establishment of a non-resident in India) in a specified fund shall be computed as follows –

Capital Gain on transfer of capital asset* referred to in section 47(viiab)

OR

Capital Gain on transfer of security** (other than shares in a company resident in India)

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Aggregate of daily “AUM” i.e. closing balance of the value of assets or investments of the specified fund held by NR unit holders (not being PE of a non-resident in India), from the date of acquisition of such capital asset* or security**, as the case may be, to the date of transfer of such capital asset or security, as the case may be.

Income from securities[#] issued by a non-resident (not being PE of a non-resident in India)

OR

Business Income from a securitisation trust

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“AUM” i.e. closing balance of the value of assets or investments of the specified fund held by NR unit holders (not being PE of a non-resident in India), as on the date of receipt of such income from securities[#], or Business Income from a securitisation trust, as the case may be.

Total “AUM” i.e. total closing balance of the value of assets or investments of the specified fund, as on the date of receipt of such income from securities[#], or Business Income from a securitisation trust, as the case may be.

➤ As per Rule 21AJA, income of specified fund attributable to the investment division of an offshore banking unit shall be:

- ✓ Capital gain accrued or arisen to, or received by the eligible investment division
 - on transfer of capital asset referred to in section 47(viiab) held by it, or
 - on transfer of security (other than shares in a company resident in India) held by it.
- ✓ Any income accrued or arisen to, or received by the eligible investment division
 - from securities held by it and issued by a non-resident (not being PE of a non-resident in India), or
 - from a securitisation trust which is chargeable under the head "PGBP".

❖ Students may kindly note that, for the purpose of section 115AD, same manner has been prescribed in Rule 21AJ and 21AJAA, as given above in Rule 21AI and 21AJA.

Note: As per section 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 would be exempt.

CHAPTER XII-A

“SPECIAL PROVISIONS RELATING TO CERTAIN INCOMES OF NRIs”

SECTION	APPLICABILITY	ASSETS COVERED	INCOME COVERED	TAX RATE	RESTRICTION ON PROVISION TO SEC. 48	OTHER RELEVANT PROVISIONS
Section 115-C To 115-I	Non – resident Indian (NRIs)	Foreign Exchange Assets [i.e. Specified assets (viz. shares, debenture, deposits, security of Central Govt.) as purchased in foreign currency]	Investment Income & LTCG <div style="border: 1px solid black; padding: 2px; width: fit-content; margin: 5px auto;"> ** (or @12.5%, if such transfer is made on or after 23rd July, 2024) </div>	20% 10%	IInd (only) (i.e. Indexation provisions) shall not apply	<ul style="list-style-type: none"> ▶ No benefit (i.e. deduction or allowance) under any provision of the Act in computing the investment income. ▶ Capital gain will be exempt if net consideration invested within 6 months in any specified asset (for which there is lock-in-period of 3 years, and if violation, then, earlier allowed exemption will be withdrawn prospectively). ▶ Benefit can be continued even after become resident by filing a declaration with ROI (of the year of becoming resident). ▶ Procedural Relief [i.e. No need of ROI u/s 139 (1)] if total income consists only Investment income or/and LTCG & TDS has been deducted on such income. ▶ Chapter is optional.

“CHAPTER XII”

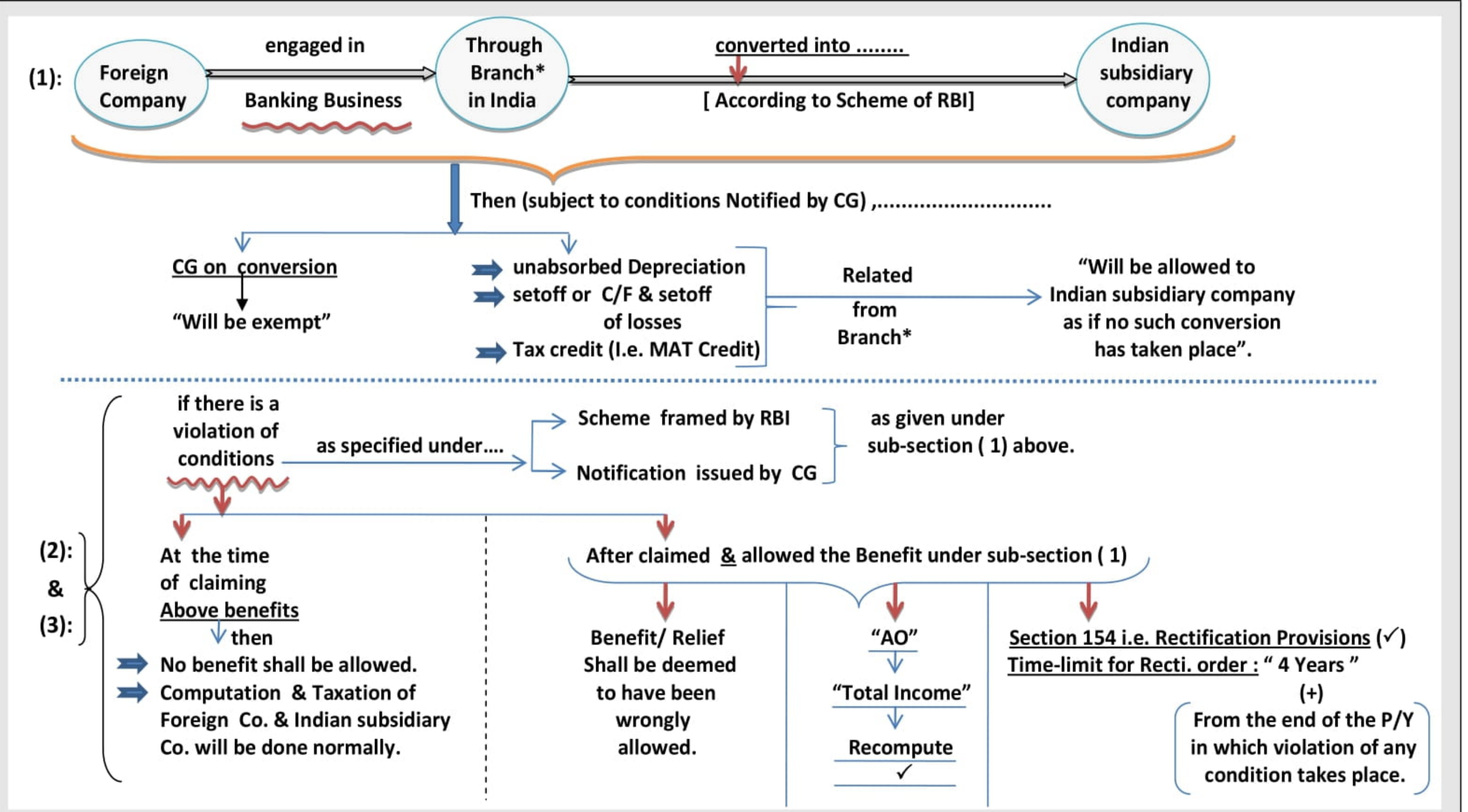
Section 115BBA:- Tax on Non-resident sportsman or sports association: -

APPLICABILITY	INCOME COVERED	TAX RATE	OTHER RELEVANT PROVISIONS
Non-resident Non – Indian citizen sports man	<u>Income by way of -</u> ✓ Participation in any game except 115BB; ✓ Advertisement; or ✓ Contribution of articles.	20%	❖ No deduction under ANY provision of this Act. ❖ Procedural Relief [i.e. No need of ROI u/s 139 (1)] if total income consists only income referred to in section <u>and</u> TDS has been deducted on such income. ❖ <u>Payer will deduct TDS u/s 194E @ 20%</u> on such income at the time of its credit or payment (whichever is earlier).
NR Sports association	Guarantee money	20%	
NR Non – Indian citizen Entertainer	Income from performance in India	20%	

Indcom v/s Commissioner of Income tax (TDS)(2011)(Calcutta-HC):

The umpires and the 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 / sports association so as to attract the provisions of section 115BBA and consequently, the provisions of tax deduction at source under section 194E are also not attracted in this case.

Section 115JG: Conversion of Indian branch of Foreign Co. into subsidiary Indian company:-



Section 115JH: Special provisions relating to foreign company held to be resident in India:-

- (1) If a foreign company has never been resident in India,
- becomes resident in India in the relevant previous year first time due to its POEM in India, then,
 - for the said previous year, benefit, exemption or relief, as may be specified in the notification of Central Government (subject to conditions specified therein), will be allowed in relation to the following:
 - ▶ computation of total income,
 - ▶ treatment of unabsorbed depreciation,
 - ▶ set off or carry forward and set off of losses,
 - ▶ collection and recovery and special provisions relating to avoidance of tax.
- If POEM of a foreign company for any previous year has been determined in assessment proceedings, then, *in addition such previous year, any other previous year which ends on or before such assessment completion date, aforesaid benefit, exemption, relief will be allowed.*
- ☞ **If benefit of this section has been allowed and subsequently there is violation of notified conditions**, then, provisions relating to withdrawn of benefit as discussed given u/s 115JG will also apply here.

	Exemptions under Section 10(48)	Section 10(48A)	Section 10(48B)
Eligible Assessee	Foreign Company	Foreign Company	Foreign Company
Eligible Income	<u>Income from:</u> (i) Sale of crude oil; (ii) Sale of any other notified goods; (iii) Rendering of notified services, To any person in India.	<u>Income from:</u> Indian storage and sale of crude oil to any person resident in India.	<u>Income from:</u> Sale of left over stock of crude oil, as stored in India, after the expiry of agreement or on termination of the said agreement as referred to in section 10(48A).
Relative Conditions	(1) Such income must be received in India in Indian currency.	—	—
	(2) Such receipt (sale) must be in pursuance of agreement entered / approved by the CG.		Conditions (as may be notified by the CG) must be satisfied
	(3) Not engaged in any other activity in India.		

Section 10(15): Exemption to NR on interest income from unit located in IFSC:-

- (1) Assessee (i.e., Recipient of interest) is a non-resident.
- (2) Interest is payable by a unit located in an International Financial Service Centre.

(3) *Interest pertains to money borrowed by it on or after 1st September, 2019.*

☞ If all aforesaid conditions are satisfied, interest income will be exempt under section 10(15).

Section 10(15B): Exemption to foreign company on income from lease rental of cruise ships-

- Any income of a *foreign company* As inserted by F. A., 2024
- **from lease rentals**, by whatever name called, **of cruise ships**,
- *received from a specified company which operates such ship or ships in India*,
- 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 assessment year 2030-31 or preceding thereof**.

For the purposes of this clause, "**specified company**" means 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*.

Section 10(4E): Exemption in respect of the transfer of non-deliverable forward contracts entered into with an offshore banking unit of IFSC:-

This section has been inserted to exempt the income of a **non-resident** which fulfils the following conditions:

(1)	the income arises as a result of <ul style="list-style-type: none"> (i) transfer of non-deliverable forward contracts <u>or offshore derivative instruments or over-the-counter derivatives</u>; or (ii) <i>distribution of income on offshore derivative instruments.</i> As inserted by F. A., 2023
(2)	the <u>contract is entered into with</u> an offshore banking unit of an IFSC as referred to in section 80LA(1A),
(3)	the conditions as may be provided by rules are fulfilled.

Rule 21AK: Conditions for the purpose of clause (4E) of section 10:-

(a)	Such offshore banking unit of an IFSC <u>must holds a valid certificate of registration</u> granted under IFSC Authority (Banking) Regulations, 2020 by the IFSC Authority; and
(b)	such contract, instrument or derivative is not entered into by the non-resident through or on behalf of its permanent establishment in India.

Section 10(4F): Exemption to non-resident on leasing of aircraft or a ship to an IFSC unit:-

This section has been inserted to exempt the income of a **non-resident** which fulfils the following conditions:

- (i) The income is **by way of royalty or interest**.
- (ii) Royalty or interest should be **on account of lease of an aircraft or a ship*** in the previous year.
- (iii) The royalty or interest is **paid by a unit of an IFSC** referred to section 80LA(1A).
- (iv) The **unit has commenced its operations on or before 31st March, 2024**.

For this purposes:

- "aircraft" means an aircraft / helicopter, or an engine or any part of an aircraft / helicopter;
- "ship" means a ship or an ocean vessel, engine of a ship or ocean vessel, or any part thereof.

Section 10(4G): Exemption to a non-resident in respect of income arising from portfolio managed through IFSC-

AS INSERTED BY F. A., 2022

This clause has been inserted to provide an exemption to **income earned by a non-resident from its portfolio** subject to the following conditions:

- (i) The income is received by a **non-resident**
- (ii) The income is received:
 - (a) **from the portfolio of securities or financial products or funds, managed or administered by any portfolio manager** on behalf of such non-resident; or
 - (b) **from such activity carried out by such person, as may be notified by the Central Government in the Official Gazette.**
- (iii) The income is received in an account maintained with an Offshore Banking Unit in any IFSC; and
- (iv) The income accrues or arises outside India and is not deemed to accrue or arise in India.

As inserted by F. A., 2023

Notification No. 04/2024 dated 04.01.2024: Activity notified for exemption u/s 10(4G) with regards to income received by a non-resident in an account maintained with an Offshore Banking Unit in any IFSC:

Central Government has notified that the income received by a non-resident from the activity of investment in a financial product by the non-resident, in accordance with a contract between such non-resident and a capital market intermediary, being a Unit of an IFSC would be exempt. The income from such investment should be received in the account of the non-resident maintained with an Offshore Banking Unit of such IFSC.

S. No.	Term	Meaning
(i)	Financial product	It means <ul style="list-style-type: none"> (i) securities; (ii) contracts of insurance; (iii) deposits; (iv) credit arrangements; (v) foreign currency contracts other than contracts to exchange one currency for another that are to be settled immediately; and (vi) any other product or instrument that may be notified by the Central Government from time to time.
(ii)	Capital market intermediary	It means an intermediary and is registered with the IFSC Authority under IFSCA (Capital Market Intermediaries) Regulations, 2021.

Section 10(4H): Capital gain Exemption to Unit of an IFSC :-

AS INSERTED BY F. A., 2023

- Any income of
 - (a) a **non-resident** or
 - (b) a **Unit of an International Financial Services Centre**
- *engaged primarily in the business of leasing of an aircraft,*

- by way of *capital gains* arising from the transfer of **equity shares**
- of domestic company, being a **Unit of an International Financial Services Centre, engaged primarily in the business of lease of an aircraft** which has commenced operations on or before the 31st March, 2026.

Provided that the provisions of this clause shall apply for capital gains arising from the transfer of equity shares of such domestic company in a previous year relevant to an assessment year falling within the —

- (a) *period of ten assessment years beginning with the assessment year relevant to the previous year in which the domestic company has commenced operations; or*
- (b) *period of ten assessment years beginning with the assessment year commencing on the 1st April, 2024, where the period referred to in clause (a) ends before the 1st April, 2034.*

Explanation: "aircraft" means an aircraft/helicopter, or an engine of an aircraft or a helicopter, or any part thereof;

Section 10(23FF): Exemption to capital gains arising to a non-resident or a specified fund on account of relocation of offshore funds to IFSC:-

In order to encourage offshore funds to shift to IFSC, this section has been inserted to **exempt income of a non-resident or a specified fund** which satisfies the following conditions:

- (i) The income is **on account of transfer of share**.
- (ii) *The share is in a company resident in India.*
- (iii) The **transfer is made by the resultant fund or a specified fund** to the extent attributable to units held by *non-resident* (not being a permanent establishment of a non-resident in India) in prescribed manner.
- (iv) **Such shares were transferred from the original fund to the resultant fund in relocation** or such shares were transferred from wholly owned SPV of the original fund to the resultant fund in relocation.
- (v) **Capital gains on such shares was not chargeable to tax if that relocation had not taken place.**

Rule 2DD: Income of the nature of capital gains, attributable to units held by non-resident (not being PE of a non-resident in India) in a specified fund shall be computed as follows:

Capital Gain on transfer of shares of a company resident in India, by the specified fund and where such shares were received by the specified fund, being resultant fund, in relocation from the original fund, or from its wholly owned SPV

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Aggregate of daily "AUM" i.e. closing balance of the value of assets or investments of the specified fund held by NR unit holders (not being PE of a non-resident in India), *from the date of acquisition of such shares of a company resident in India, by the specified fund, to the date of transfer of such shares.*

Aggregate of daily total "AUM" i.e. total closing balance of the value of assets or investments of the specified fund, *from the date of acquisition of such shares of a company resident in India, by the specified fund, to the date of transfer of such shares.*

➤ The specified fund has to furnish an annual statement of exempt income in the prescribed form (viz. Form No. 10-IJ) electronically under digital signature on or before the due date u/s 139(1).

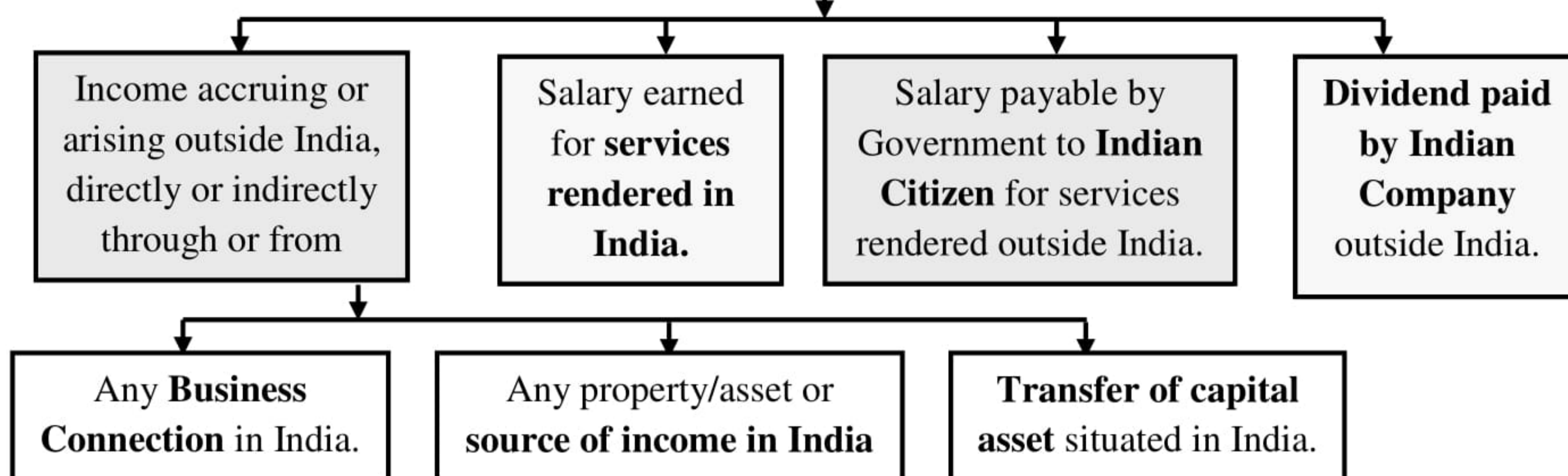
Section 195 : Deduction of tax from other sums :-

TDS on..	Responsible Payer	Payee (Deductee)	Timing of Deduction	TDS Rate	OTHER RELEVANT PROVISIONS
Any sum chargeable under this Act other than covered under any other specific provision like, 194LB, 194LC, etc.	Any person <i>whether resident or non-resident</i> In case of <u>non-resident</u> <u>resident person (i.e. deductor)</u> <u>whether or not he has—</u> (i) a residence or place of business or business connection in India; or (ii) any other presence in any manner whatsoever in India.	Foreign company or other non-resident	Credit or payment, (whichever is Earlier) [*Deeming Fiction available i.e. Crediting to other account in Payer's books shall be deemed to be the credit of such income to the account of the payee]	at the rates in force	<p>TDS liability will arise only if the income is chargeable to tax in India.</p> <p>Where the responsible payer considers that the <i>whole of such sum would not be income chargeable in the case of recipient</i>, he may make an application in prescribed form and manner to the AO to determine in prescribed manner the appropriate chargeable proportion of such sum, and upon such determination, tax shall be deducted only on that proportion of the sum which is so chargeable.</p> <p>But, the aforesaid finding (as given by AO on application of payer) will not restrict the AO from taking a contrary view in the assessment proceeding. [CIT v/s Elbee services P. Ltd. (Bom.)]</p> <p>The Board may specify a class of persons or cases in which person responsible for paying any sum, whether or not chargeable under the provisions of this Act, shall make an application in prescribed form and manner to the AO to determine in prescribed manner the appropriate chargeable proportion, and upon such determination, tax shall be deducted on that proportion of the sum which is so chargeable.</p> <p>The person responsible for paying to a foreign company or other non-resident, any sum, whether or not chargeable under the provisions of this Act, shall furnish the information relating to payment of such sum, in prescribed form and manner. Section 195(6)</p>
“CORRESPONDING PROVISION RELATING TO PENALTY”					
Section 271-I	Failure to furnish information or furnishing inaccurate informations under section 195(6)				₹ 1,00,000/-

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"NON-RESIDENTS TAXATION – OTHER MISCELLANEOUS PROVISIONS"

Income deemed to accrue or arise in India [Clause (i), (ii), (iii) & (iv) of Section 9(1)]

**Business connection:**

Where any business or profession is carried on abroad by a non-resident and in connection with such business or profession a certain activity is carried on in India, then, it establishes business connection.

Explanation 2 to section 9(1)(i):**“Business connection” shall also include**

Any business activities carried through a person who, acting on behalf of the non-resident,

- (a) - **habitually concludes contracts or**
- **habitually plays the principal role leading to conclusion of contracts by the non-resident.**

This rule is applicable if the contracts is-

- (i) in the name of the non-resident; or
 - (ii) for the transfer of the ownership of property owned by that non-resident or that the non-resident has the right to use; or
 - (iii) for the provision of services by that non-resident.
- (b) 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 or for that non-resident and other non-residents controlling, controlled by, or subject to the same common control, as that non-resident.

Explanation 1 to section 9(1)(i):

In the case of a Non-resident, following shall not be treated as business connection in India:

- (1) In the case of a business, in respect of which all operations are not carried out in India such part of income which cannot be reasonably attributed to the operations in India, is not deemed to accrue or arise in India.
- (2) Purchase of goods in India for export.
- (3) Collection of news and views in India for transmission out of India.
- (4) Shooting of cinematograph films in India.

Explanation 2A: Significant Economic Presence:-

Significant economic presence of a non-resident in India shall also constitute "business connection" in India and "significant economic presence" for this purpose, shall mean-

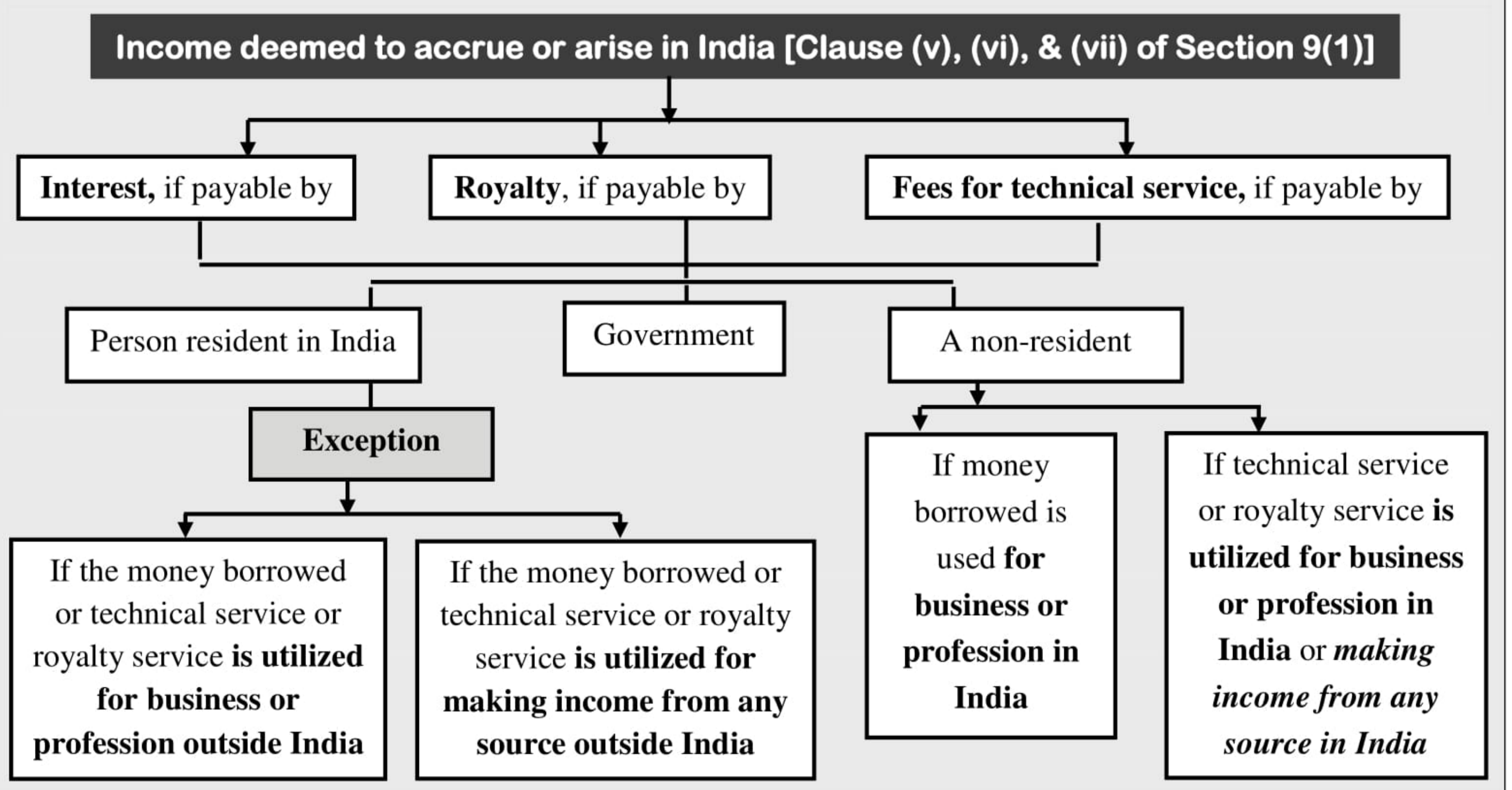
- (a) transaction in respect of any goods, services or property carried out by a non-resident with any person in India including provision of download of data or software in India, if the aggregate of payments arising from such transaction or transactions during the previous year exceeds ₹ 2 crore; or
- (b) systematic and continuous soliciting of business activities or engaging in interaction with at least 3 lakh users in India.

Provided further that *only so much of income as is attributable to the transactions or activities referred to in clause (a) or clause (b) shall be deemed to accrue or arise in India.*

Explanation 3A to section 9(1)(i):

Income attributable to the operations carried out in India, as referred to in Explanation 1, shall include income from-

- (i) *such advertisement which targets a customer who resides in India or a customer who accesses the advertisement through internet protocol address located in India;*
- (ii) *sale of data collected from a person who resides in India or from a person who uses internet protocol address located in India; and*
- (iii) *sale of goods or services using data collected from a person who resides in India or from a person who uses internet protocol address located in India.*



Interest paid by India PE to its foreign head office bank:-

[Explanation to section 9(1)(v)]

If -

- (1) The assessee is a **non-resident** and engaged in the business of banking.
- (2) Interest is payable by the **permanent establishment in India** of such non-resident to the head office of any permanent establishment or any other part of such non-resident outside India.

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

☞ Section 9 provides that such interest payable by the permanent establishment in India to its foreign head office or any other part of such head office outside India shall be deemed to accrue or arise in India and shall be chargeable to tax in addition to any income attributable to the permanent establishment in India.

☞ Accordingly, the PE in India shall be obligated to deduct tax at source on any interest payable to either the head office or any other part or PE, etc., of the non-resident outside India.

Further, **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.**

“Meaning of Royalty:

[Explanation 2 to section 9(1)(vi)]

Any consideration except chargeable as income under the head "Capital gains" for—

- (i) **the transfer of all or any rights (including the granting of a license)** any 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** any 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;
- (iva) the use or right to use any industrial, commercial or scientific equipment;
- (v) **the transfer of all or any rights** (including the granting of a 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.

As per Explanation 4 to section 9(1)(vi):

- the transfer of all or any rights in respect of any right, property or information (i.e. royalty) includes
- transfer of all or any rights for use or right to use a computer software (including granting of a license)
- irrespective of the medium through which such right is transferred.

Important Rulings:-

Engineering Analysis Centre of Excellence P. Ltd v/s CIT and Another (2021)(Supreme Court):

Issue: Would 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? If yes, is it liable for deduction of tax at source u/s 195?

Analysis and Decision:

- 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 assigned in existing DTAA** “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 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 would 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.*

In all the above cases, 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 for the use of copyright in the computer software.**

The provisions contained in the Income-tax Act, 1961 [i.e. section 9(1)(vi) read with Explanations 2 & 4 thereof], which deal with royalty are wider in scope, not being more beneficial to the assessee, have no application in the facts of these cases, because as per section 90(2), normal provisional treatment or the treatment as per treaty, whichever is more beneficial to the assessee shall prevail. *Consequently, consideration paid to non-resident software manufacturers/suppliers would not be chargeable to tax India. Hence, no TDS is required u/s 195.*

Godaddy.Com LLC v/s ACIT (2023)(Delhi High Court):**Facts of the case:**

The assessee is based in USA and does not have a PE in India. It is an *accredited registrar* for the Internet Corporation for Assigned Names and Numbers (ICANN). The assessee provides services such as domain name registration, website design, and web hosting and charges a fee from its customers. Fees for facilitating domain name registration is shared in three ways. Part of the fee received from the customers is kept by the assessee whereas the remaining portion is shared with ICANN and the *registry*. The Assessing Officer categorized the fee received for providing domain registration services as royalty on the ground that the same was for rights to use or the use of servers maintained by the appellant in the country. The Tribunal also concurred that the consideration received is royalty *but on the ground that it involved right to use or use of a trademark.*

Issue: *Whether the fees received by a foreign company as consideration towards providing domain name registration services amounts to 'royalty' under section 9(1)(vi)?*

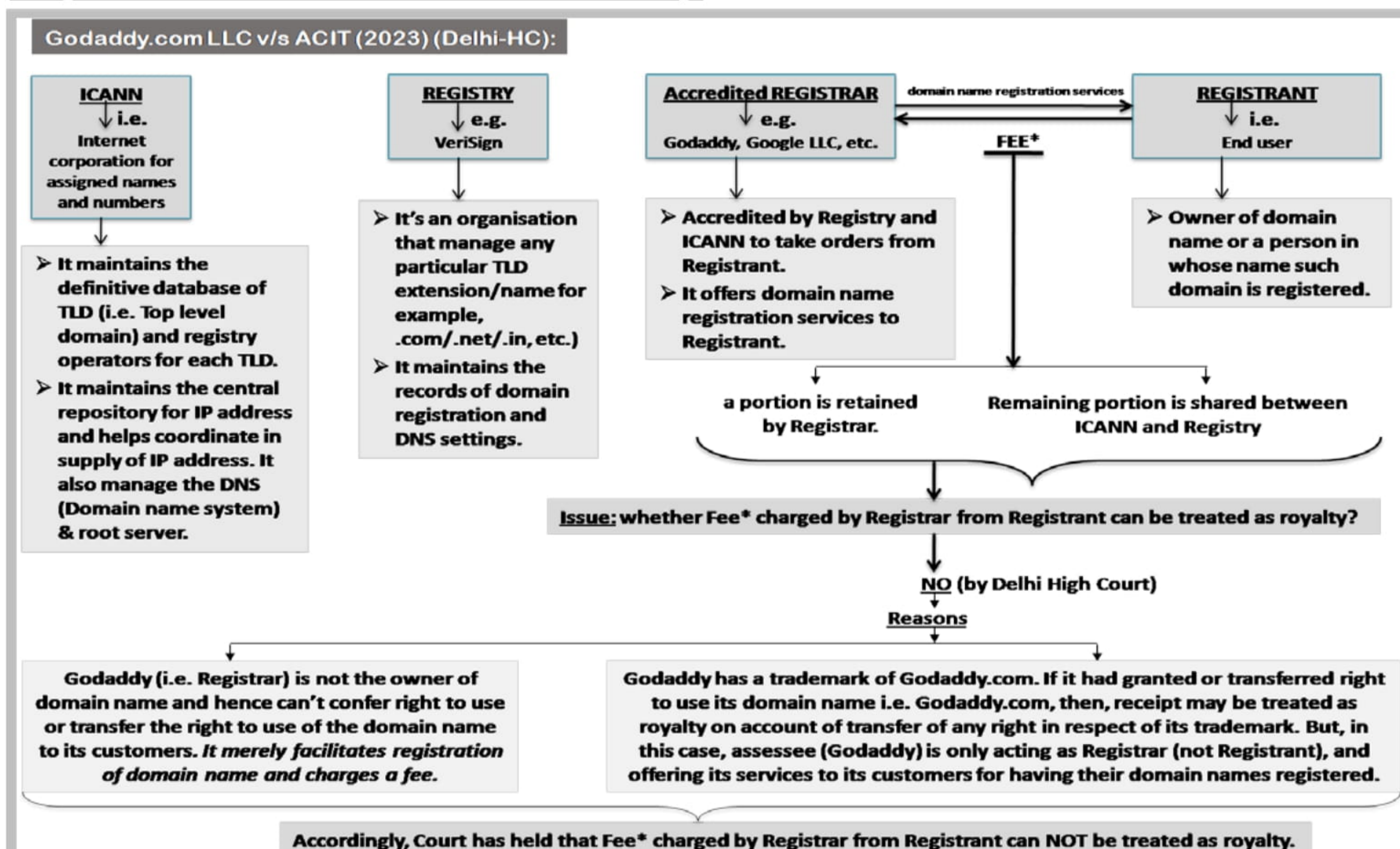
Relevant Provision of law:

As per *Explanation 2* to section 9(1)(vi), "royalty" means consideration (including any lump sum consideration but excluding chargeable under the head "Capital gains") *inter alia* for the transfer of all or any rights in respect of a patent, invention, model, design, secret formula or process or **trademark** or similar property.

Analysis and Decision:

The Delhi High Court observed that assessee is not the owner of the domain name and hence it does not confer / transfer the right to use of the domain name to its customers *but merely facilitates the registration of domain name with registrar and charges a fees*. As regards domain name having the attributes of a trademark, the **Supreme Court**, in *Satyam Infoway* held that it is the registrant (and not the Registrar) who owns the domain name and can protect its goodwill by initiating passing off action against a subsequent registrant of the same/deceptively similar domain name. This principle may have been attracted in the case of the appellant/assessee if it had granted rights or transferred right to use its domain name, i.e., Godaddy.com to a third person. However, in this case, the appellant/assessee is only acting as a Registrar and thus offering its services to its customers for having their domain names registered. *Therefore, the rationale of Satyam Infoway's case cannot be applied to this case* Accordingly, the High Court held that the **fee received by the assessee for registration of domain names to its customers, cannot be treated as royalty.**

Diagrammatic Presentation of aforesaid ruling:



Explanation as given at the end of section 9:

For the purposes of section 9(1)(v)/(vi)/(vii), income of a non-resident shall be deemed to accrue or arise in India and 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.

Part of Explanation 1 of section 9:

In the 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 the display of uncut and unassorted diamond in any special zone notified by the Central Govt. in the Official Gazette in this behalf.

Section 9(1)(viii):

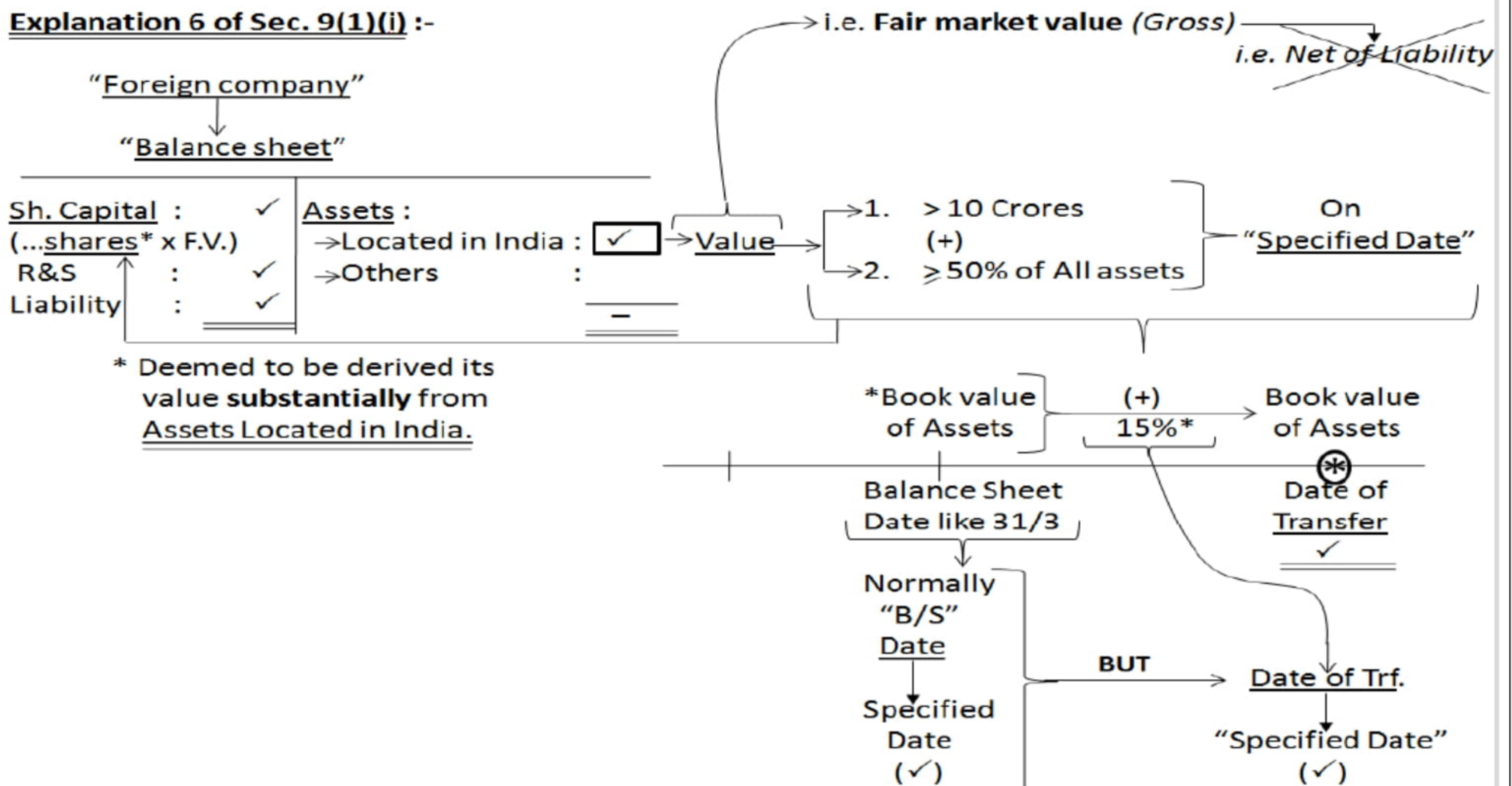
- (1) Payer is resident in India (i.e. money is received from a person resident in India).
- (2) Recipient is NOR/NR/foreign company (i.e. money is received by NOR/NR/foreign company).
- (3) Income arises outside India and transaction is not covered by any exceptions as given u/s 56(2)(x).

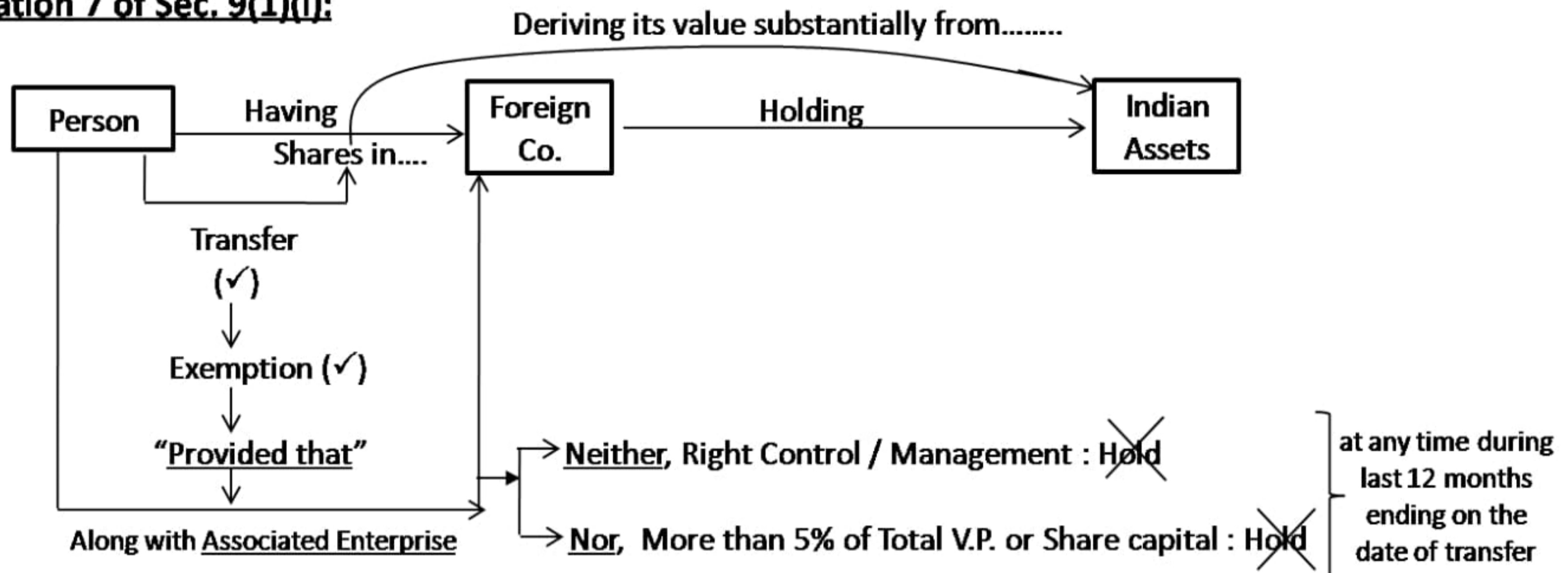
If these conditions are satisfied, money received by a non-resident / foreign company / not-ordinarily resident, shall be deemed to accrue or arise in India

Explanation 5:

- An asset or a capital asset
- (being any share or interest in a company 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 6 of Sec. 9(1)(i) :-



Explanation 7 of Sec. 9(1)(i):**“SECTION 6: DETERMINATION OF RESIDENTIAL STATUS”****An INDIVIDUAL will be resident in any previous year if:**

- He is a citizen of India who leaves India during the previous year for the purposes of employment outside India or as a member of crew of an Indian ship and is in India in that previous year for a period/s of 182 days or more; or
- He is a citizen of India or a person of Indian origin who being outside India, comes on a visit to India in any previous year and is in India for a period/s of 182 days or more in that previous year**; or
- In any other case:
 - Is in India for a period/s of 182 days or more in that previous year; or
 - Having within the 4 years immediately preceding that previous year been in India for a period/s amounting to 365 days or more in aggregate and is in India for a period/s of 60 days or more in that previous year.

Resident and ordinarily resident / resident but not ordinarily resident:

An individual is said to be a **resident and ordinarily resident** if he satisfies both the following conditions:

- He is a resident in any 2 years (or more) out of the last 10 previous years preceding the relevant previous year, and
- His total stay in India in last 7 years preceding the relevant previous year is 730 days or more.

❖ **If an individual satisfies only one of the aforesaid conditions or none of the conditions are satisfied, then such individual will be treated resident but not ordinarily resident.**

**** Exceptional Cases as inserted by the Finance Act, 2020:**

➤ An individual shall be deemed to be a **resident but not-ordinarily resident** in the following case:

- The individual is an **Indian citizen or person of Indian origin**;
- His **total income** (except income from foreign sources) **exceeds ₹ 15 lakhs** during the previous year; and
- He **comes on a visit to India** during the relevant previous year **for 120 days or more but less than 182 days** and has been in India **365 days or more within 4 years** immediately preceding the relevant previous year.

➤ An individual shall be deemed to be resident but not-ordinarily resident in India if the following conditions are fulfilled:

- (a) The individual is an **Indian citizen**;
- (b) His **total income** (except income from foreign sources) **exceeds ₹ 15 lakhs** during the previous year; and
- (c) **He is not liable to tax in any other country or territory by reason of his domicile or residence or any other criteria of similar nature.**

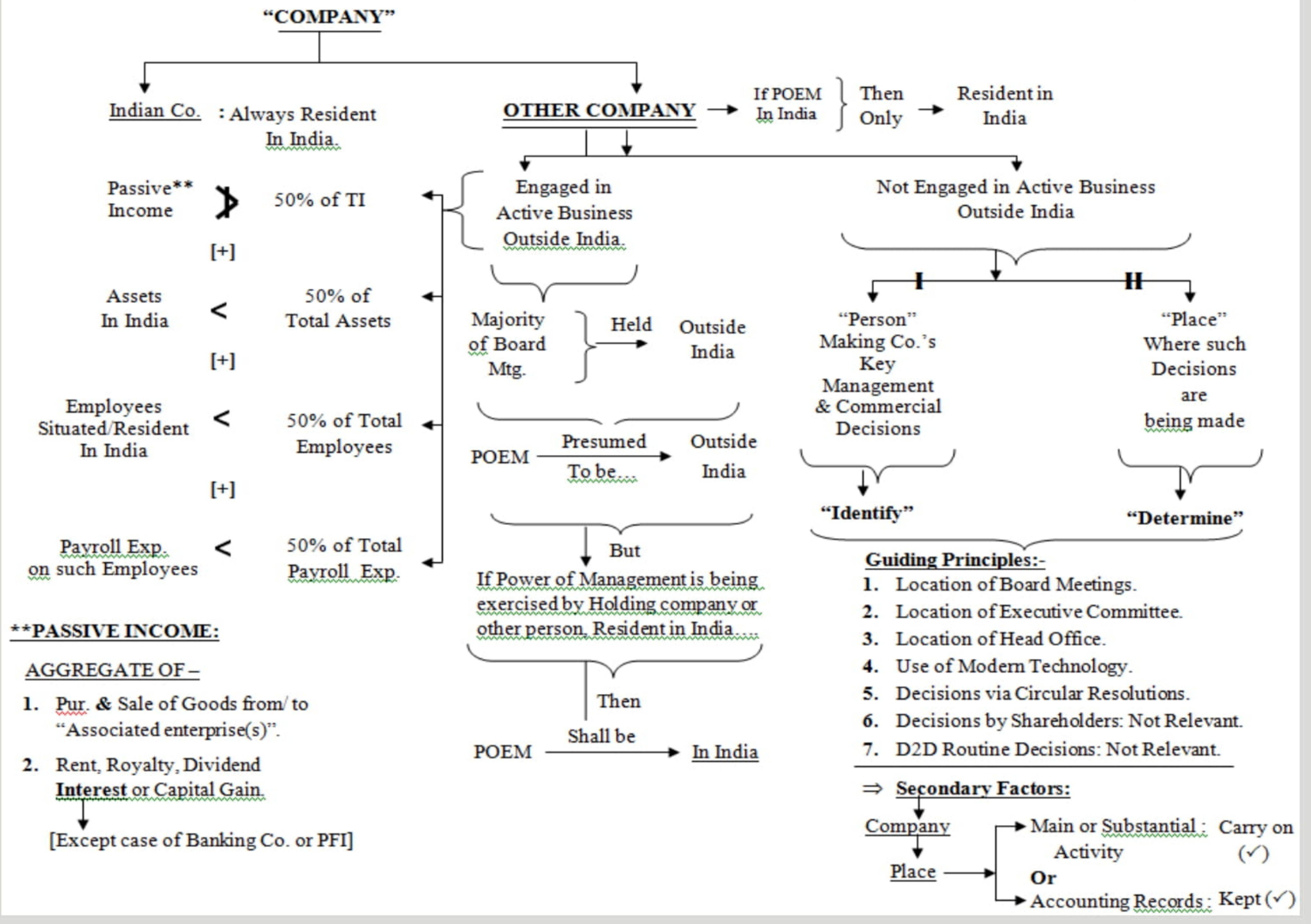
For the aforesaid both amendments, "income from foreign sources" means *income which accrues or arises outside India (except income derived from a business controlled in or a profession set up in India).*

Determination of Residential Status of Company:-

A company is said to 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.**

CONCEPT OF PLACE OF EFFECTIVE MANAGEMENT (POEM)



➤ POEM provision of section 6(3)(ii) of the Act, shall not apply to a company having turnover or gross receipts of ₹ 50 crores or less in a financial year.