
**The Institute of Chartered Accountants of India**  
**The Nagpur Branch of WIRC of ICAI**

**Basics of International Taxation & NRI Taxation and Regulatory aspects**  
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**OVERVIEW OF INTERNATIONAL TAX PRINCIPLES**

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**WHAT IS INTERNATIONAL TAXATION?**



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**International Taxation – Introduction**

- Body of legal provisions of different countries that covers the tax aspects of cross border transactions
- International taxation encompasses global tax rules that apply to transaction/s between two or more countries.
- Three basic rules of Taxation:
  - Source rule;
  - Residence rule; and
  - Citizenship rule

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**It's a Broader Concept !!!**

Three Limbs of International Taxation

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    graph TD
      A[Three Limbs of International Taxation] --> B[Domestic Tax Law Provisions]
      A --> C[Tax Treaty Provisions]
      A --> D[Foreign Country's Tax law Provisions]
      B --- B1[Income Tax Act, 1961]
      C --- C1[India-Singapore DTAA]
      D --- D1[Singapore Tax Laws]
    
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**International Taxation primarily involves the following provisions of the Income Tax Act, 1961**

| REFERENCE UNDER IT ACT                | PROVISION   |
|---------------------------------------|---|
| Section 4                             | Charging Section  |
| Section 2(31)                         | Definition of a Person  |
| Section 5                             | Scope of Total Income   |
| Section 6                             | Residence in India  |
| Section 9                             | Income deemed to accrue or arise in India   |
| Section 44B to 44BBB & 44C to 44DA    | Presumptive Tax   |
| Section 90                            | Agreement with foreign countries or specified territories   |
| Section 90A                           | Adoption by Central Government of agreement between specified associations for Double Taxation Relief |
| Section 91                            | Countries with which no agreement exists  |
| Section 115A to 115BBA & 115C to 115F | Provisions relating to Non - Residents  |
| Section 195                           | WHT obligation for payment to Non Resident  |
| Section 195A                          | Income payable 'Net of Tax'   |

## Section 4 – Basis of Charge

- ❑ Tax is assessed for the assessment year on the total income of the previous year of every person
- ❑ Some comments
  - Definition of income is not exclusive but inclusive based on its general and natural meaning (includes illegal income)
  - Tax law and rates are determined on April 1 of a financial year for the assessment year; subsequent changes generally do not apply
  - Each year is separately assessed – any shortfall cannot be taxed in another tax year
  - Tax is generally deducted at source or paid in advance during previous year with any balance remaining is payable under self assessment with tax return (sec.4(2))



## Section 5 – Scope of Total Income

Income is classified as

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

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

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## Section 6 – Residence in India

- ❑ **Residence (Individuals)**
  - ❑ Resident
    - Stay of at least 182 days in a previous year, or
    - Stay of at least 60 days in previous year (substituted as 182 days for (a) Indian citizens leaving India for employment abroad or as a crew member on an Indian ship or (b) Indian citizen or person of Indian origin visiting India) and 365 or more days in the preceding four years in India
  - ❑ Resident and ordinarily resident (R&OR)
    - Resident in at least 2 out of the 10 preceding previous years, and
    - Aggregate stay in India of at least 730 days in the 7 preceding previous years
  - ❑ Resident but not ordinarily resident (RBNOR)
    - Non-Resident for at least 9 out of 10 preceding previous years or
    - Aggregate stay in India less than 730 days in the 7 preceding previous years

## RESIDENTIAL STATUS – INDIVIDUALS (A Snapshot)

### Basic conditions for Resident:

- An individual who stays in India for:
  - 182 days or more; or
  - 60 days or more in a year and 365 days or more during preceding 4 years

### Additional Conditions for Ordinarily Resident:

- Resident in India for at least 2 out of preceding 10 years or
- Stays in India for an aggregate period of 730 days or more in the preceding 7 years

| Category                    | Resident and Ordinarily Resident | Resident but not Ordinarily Resident        | Non Resident                 |
|-----------------------------|----------------------------------|---|------------------------------|
| <u>Basic Condition</u>      | Either of the basic conditions   | Either of the basic conditions              | None of the basic conditions |
| <u>Additional Condition</u> | Both the additional Conditions   | Either or None of the additional Conditions | Not Applicable               |

## Section 6 – Residence in India (Contd...)

### ❑ Residence (Companies)

#### • Prior to amendment

A company is said to be resident in India in any previous year, if—

- (i) it is an Indian company ; or
- (ii) during that year, the control and management of its affairs is situated wholly in India.

- **The Finance Act, 2015 introduced amendment to introduce the concept of 'Place of effective management' for the company which has been made effective from 1-4-2017 (postponed by Finance Act, 2016):**

– (3) 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.

– Explanation.—For the purposes of this clause "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.**

## Taxation of Non-residents under Indian Tax law

- ❑ Non Resident taxpayers are taxed on
  - Income received in India
  - Income deemed to be received in India
  - Income accruing or arising in India
  - Income deemed to accrue or arise in India
- ❑ Non Residents are not subject to tax on income that accrues or arises outside India or received outside India **unless it is deemed to accrue or arise in India under its business connection rules**
- ❑ Only income attributable to Indian operations taxable
- ❑ Permanent Establishment ('PE') Rule under treaty overrides business connection rule.

**Tax treaty overrides domestic law, but taxpayer can apply domestic law if it is more beneficial**

## Income Deemed to Accrue or Arise in India

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

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

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

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

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

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

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

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

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

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

- ❑ Business activities through a person:
  - having authority to conclude contracts on behalf of NR provided he habitually exercises such authority.
  - who habitually maintains stock of goods on behalf of NR from which he regularly delivers goods & merchandise on behalf of NR without having authority.
  - who habitually secures orders mainly or wholly for NR or/and other NR entities controlling, controlled by or under the same control as NR
- ❑ Business connection will exclude any business activity through brokers or commission agents of independent status acting in ordinary course of their business.
- ❑ However, where such broker or commission agent works mainly on behalf of NR or/and other NR entities controlling, controlled by or under the same control as NR, such brokers will not be considered as having independent status.



## Rules for identifying Business Connection

- ❑ What is Business Connection
  - There is no definition in the Indian tax law
  - Meaning largely based on Indian case laws
- ❑ "Force of attraction" rule OR "effectively connected" rule?
- ❑ Significance of Business Connection
  - Relevant for transactions with "NOR"/"NR" on income that accrues or arises outside & not received/ deemed to be received in India
  - It is overruled by tax treaties e.g. if no PE exists



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## Guidelines to determine Business Connection

- ❑ A business connection in section 9 involves a relation between a business carried on by a non-resident which yields profits or gains and some activity in the taxable territories which contributes directly or indirectly to the earning of those profits or gains. It predicates an element of continuity between the business of the non resident and the activity in the taxable territories. An isolated transaction is normally not to be regarded as a business connection. [CIT v. R.D. Aggarwal & co. (1965) 56 ITR 20(SC)]
- ❑ The expression 'Business' is a much wider than trade or manufacture and includes professions and vocations and callings for a fairly long time. It means an activity carried on continuously and systematically by a person applying his labour and skill with a view to earn income. [Barendra Prasad Ray v. Income tax Officer (1981) 129 ITR 0295 (SC)]

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### Guidelines to determine Business Connection

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

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

- ❑ **Explanation 3:** In case of a business connection, only that income which is attributable to activities in India shall be deemed to accrue or arise in India. If no operations are carried out in India, no income can be deemed to accrue or arise in India even though there may be a "business connection" in India [CIT v Toshoku Ltd. 125 ITR 525 (SC)]
- ❑ **Explanation 4:** It is clarified that the expression "through" shall mean and include and shall be deemed to have always meant and included "by means of", "in consequence of" or "by reason of".
- ❑ **Explanation 5:** It is clarified that an asset or a capital asset being any share or interest in a company or entity registered or incorporated outside India shall be deemed to be and shall always be deemed to have been situated in India, if the share or interest derives, directly or indirectly, its value substantially from the assets located in India;

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

- ❑ **Explanation 6:** It is declared that
  - a) the share or interest 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 such assets—
    - (i) exceeds the amount of **ten crore rupees**; and
    - (ii) represents **at least fifty per cent** of the value of all the assets owned by the company or entity, as the case may be
  - b) the value of an asset shall be 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 such manner as may be prescribed (the CBDT has issued rules vide Notification No. 55/2016 dated 28<sup>th</sup> June, 2016 for determining the fair market value (FMV) of assets and the income attributable to assets in India in relation to the indirect transfer of assets)*

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

- ❑ **Explanation 7:** It is clarified that
  - a) 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, if the transferor (whether individually or along with its associated enterprises), at any time in the 12 months preceding the date of transfer, neither holds the right of management or control in relation to such company or entity, nor holds 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 such company or entity.
  - a) In a case where all the assets owned, by a company or, as the case may be, an entity, are not located in India, the income of the non-resident transferor, from transfer outside India of a share of, or interest in, such 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 such manner as may be prescribed*

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

- **Introduction of Rules for Indirect Transfer by CBDT –**

The key proposals under the said rules can be divided into the following three sections:

- ❑ Determination of FMV of assets of Indian and foreign company / entity – Rule 11UB;
- ❑ Determination of income attributable to assets in India – Rule 11UC; and
- ❑ Reporting requirements of the transferor company / entity (Form 3CT) and the underlying Indian concern (Form 49D) –Rule 114DB.

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

- ❑ **Property in India:** does not refer merely to buildings or lands. It includes any tangible property movable or immovable
- ❑ **Asset or source in India**
  - "Asset" will include all intangible rights (unlike property which covers only tangible)
  - "Source" is not a legal concept but something which a practical man would regard as a real source of income. For e.g. where broadcasting fee paid in England by All India Radio to the performing Right Society of England for broadcasting musical works belonging to the society, such income will accrue or arise to the society in India as the source of income lies in India. [Performing Right Society Ltd v. CIT]
- ❑ Bombay HC in case of **Kusumben Mahadevia v CIT** observed that expressions "source" [Sec 9(1)(i)] & "head of income" [Sec 14] are used in one & the same sense & they mean property belonging to or activity of assessee that yields/ brings income to him within the meaning of the Act.

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### Capital Asset in India

- ❑ Income accruing or arising, directly or indirectly through the transfer of capital asset is deemed to accrue or arise in India provided such capital asset is situated in India.
- ❑ The capital asset may be movable or immovable, tangible or intangible. Such income should be chargeable under the head "Capital Gain" under section 45 of the Act.
- ❑ The fact that the documents of transfer are registered outside India or consideration for transfer is paid outside India is irrelevant for income to be chargeable under this clause.

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### Section 9(1)(ii) – Income from Salary

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

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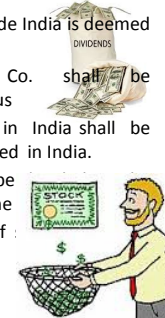
### Section 9(1)(iii) – Salary payable by Govt

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

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### Section 9(1)(iv) – Dividend Income


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



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### Section 9(1)(v) – Interest Income


| Interest payable by     | When deemed to accrue or arise in India   |
|-------------------------|---|
| Government 9(1)(v)(a)   | Always. Immaterial whether interest is payable on debt incurred or moneys borrowed in India   |
| Resident 9(1)(v)(b)     | Always, except where interest is payable in respect of debt incurred or moneys borrowed and used for business or profession outside India or for earning any income from any source outside India |
| Non-Resident 9(1)(v)(c) | Only when interest is payable in respect of debt incurred or moneys borrowed and used for business or profession carried on by such person in India   |



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### Section 9(1)(v) – Interest Income

- ❑ The words "or for the purpose of making or earning in source in India" as mentioned in clause (b) Sec 9(1)(v) are (c).
- ❑ By virtue of that interest payable by NR in respect of any money borrowed & used for purpose other than business or profession in India, the interest income is not deemed to accrue or arise in India under this clause.
- ❑ CBDT vide circular dt. 5/7/1976 clarified that if a lead bank outside India from a consortium of foreign banks and lends Indian concern, interest paid by the lead bank to the consortium will not attract liability towards tax in India.



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## Section 9(1)(vi) –Royalty

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

- ❑ First proviso excludes lump sum payments received under approved agreements made before 1/4/1976 if conditions in Explanation 1 to Sec 9(1)(vi) are satisfied.
- ❑ Royalty is not deemed to accrue/ arise in India if it consists of lump sum consideration for transfer or imparting information outside India in respect of any data/documentation/drawing/ specification relating to patent/invention/ model/ design/ secret formula/ process/trademark or similar property

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## Section 9(1)(vi) –Royalty

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

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

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## Section 9(1)(vi) – Royalty

- ❑ **Explanation 2:** Consideration (incl. lump sum consideration excl. CG) for:
  - Transfer of all or any rights (including license) in:
    - patent/invention/model/design/secret formula/process/trademark
    - Copyright, literary/artistic/scientific work etc.
  - Imparting of any information concerning:
    - working of or use of patent, model, design, secret formula or process
    - technical, commercial or scientific knowledge, experience or skill.
  - Use of:
    - patents, model, design, secret formula or process etc;
    - industrial, commercial or scientific equipment
  - Rendering of services in respect of the above

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## Section 9(1)(vi) –Royalty

- ❑ **Explanation 3:** "Computer software" means any computer programme recorded on disc, tape, perforated media/ other information storage device and includes any such programme or any customized electronic data.
- ❑ **Explanation 4** clarifies that transfer of all/ any rights w.r.t. any right, property or information includes and has always included right to use computer software (including granting license) irrespective of the medium of transfer.
- ❑ **Explanation 5:** Royalty includes & has always included consideration in respect of any right, property or information, whether or not—
  - (a) possession/ control is with the payer;
  - (b) such right, property or information is used directly by the payer;
  - (c) the location of such right, property or information is in India.

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## Section 9(1)(vi) –Royalty

- ❑ **Explanation 6** clarifies that the expression "process" includes and deems to always have included transmission by satellite (including up-linking, amplification, conversion for down-linking of any signal), cable, optic fibre or by any other similar technology, whether or not such process is secret.
- ❑ This amendment has tax implications of wide amplitude for telecom industry, cable operators, broad band service providers, etc.
- ❑ Royalty doesn't include payment to satellite companies for broadcasting by use of transponder capacity – Asia Satellite Co. Ltd. Vs DIT [2011] (Delhi)

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## Section 9(1)(vii) – Fees for Technical Services (FTS)

| Payable by  | When deemed to accrue or arise in India  |
|---|--|
| Government  | Always   |
| Resident  | Always, except where FTS payable in respect of services utilised in business or profession/ earning any income outside India |
| NR  | Only when FTS payable in respect of services utilised in a business or profession/ for earning any income in India           |
| Exception   | Any income by way of FTS payable in pursuance to an agreement made before 1 April 1976 and approved by CG                    |
| For this purpose, an agreement made on/after 1 April, 1976 will be deemed to have been made before that date: if the agreement is in accordance with proposal approved by CG before 1 April, 1976 |  |

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### Section 9(1)(vii) – Fees for Technical Services (FTS)

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

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### Section 9(2) - Pension



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

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### Section 9 – Other Comments

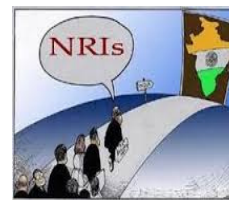
Supreme Court in **CIT v Ahmedbhai Umarbhai & Co.** held that Section 9 applies to all assessee irrespective of their residential status, nationality, domicile and place of business.

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

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### Rule 10 of Income Tax Rules

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



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### Presumptive Taxation

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

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### Shipping Business of NRs

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

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



## Shipping Business of NRs

- Section 172 – The rate of tax & amount on which it applies is identical to Sec. 44B. However, it applies to each individual carriage & hence is more beneficial to when there are only 1 (or few) calls on Indian Ports and assessee do not want to file Returns on a yearly basis but fulfil their Tax obligation at the time of departure itself.
- U/s 172, the Master of the vessel must before departure from India, prepare & furnish Return of the full amount paid/payable on account of carriage & on Assessment by AO pay tax determined as specified above (i.e. 7.5% of amount from carriage from or to India Ports).



## Exploration, etc. of Mineral Oils

**Section 44BB** – In case of NR engaged in the business of

- Providing services or facilities in connection with prospecting/ extraction/ production of, minerals oils, or
  - Supplying of Plant & Machinery on hire used, or to be used, in prospecting/ extraction/ production of, minerals oils
- 10% of the following amounts shall be deemed to be the profits & gains from the business chargeable to tax:
- amount paid/payable in/out of India
  - amount received/deemed to be received in India



## Operation of Aircrafts by NRs

**Section 44BBA** – Non-residents engaged in the business of operation of Aircrafts, 5% of the following shall be deemed to be the profits & gains from the business chargeable to tax:

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



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

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



## Deduction of Head Office Expenses

**Section 44C:** In computing "Profits & Gains" no amount in excess of the least of the following shall be allowed as a deduction in the nature of Head Office Expenses:—

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

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

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## Royalty/ FTS Income – NRs & Foreign Companies – Section 44DA

- In computing income (Royalty/ FTS) recd. from GOI (agreement before 1<sup>st</sup> April 1976), deduction shall not exceed 20% of Gross Amount of Royalty/ FTS.
- For agreements after 31<sup>st</sup> March 1976 but before 1<sup>st</sup> April 2003, no deduction shall be allowed in computing income (Royalty/ FTS).
- For agreements after 1<sup>st</sup> April 2003, if the NR/ Foreign Company carries on business in India through a PE, or performs professional services from a fixed place of profession, and the intangible from which income is earned is effectively connected with such PE/fixed place of profession, no deduction shall be allowed if not wholly & exclusively incurred for the



business & of any amount paid (except reimbursement of actual expenses) by the PE to the Head Office/ any other office.

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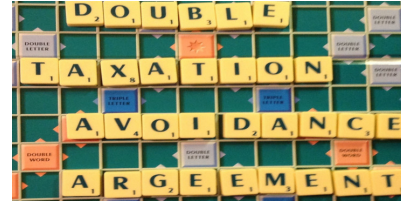


## Chapter IX – DTAA's

- **Section 90(1)** – Gives power to Govt to enter into Treaties with another country in order to grant relief from double taxation, avoid double taxation, exchange information and recovery of taxes.
- **Section 90(2)** – States that wherever the provisions of the treaty are more beneficial to an Assessee, the same will override the provisions of the Act.
- **Section 90(2A)** – Provides for GAAR overriding Sec 90(2) i.e. Chapter X-A will override any Treaty if GAAR is invoked
- **Section 90(4)** – Provides for obtaining a Tax Residency Certificate as a necessary, but not sufficient condition for availing benefits under any Treaty.
- **Rule 21AB** - Certificate to claim relief under DTAA (Forms 10F, 10FA, 10FB)
- **Section 91** – Procedure of relief from Double Taxation in cases where no Treaty exists



## International Taxation and Tax Treaties



ENTER INTO THE WORLD OF DTAA's with an OPEN MIND

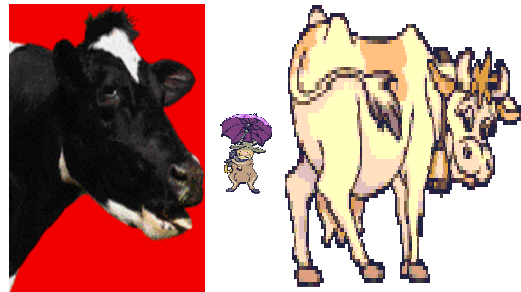
50

## What is a Tax Treaty

- A tax treaty is form of agreement between two or more national jurisdictions concerning taxes where the main purpose of which is to regulate matters concerning taxes.
- They are agreements between two countries and not two taxpayers
- Treaties limit taxing power of each state and involve a negotiated sharing of tax revenues by two States
- Treaties do not impose tax but provide relief from them.

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## Moving Cow - What is it's Nature ? Is It Movable or Immovable Property?



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- Refer definition of the term “Immovable Property” in Article 6 of DTAA
- Therefore, whenever you sit to understand DTAA's, please keep all the options open and don't have closed mind. Anything is possible. Results could be unexpected.

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### Various Treaty Models

- OECD Model
- U. N. Model
- US Model
- Andean Model
- Indian Model

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### Interpretation of Tax Treaties

- Commentaries
- Tax Treaties and Vienna Convention
- Supporting documents to the treaty
- Protocol and Memorandum
- Most Favoured Nation Clause (MFN)
- Meaning of Terms not defined in the Treaty

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### TREATY INTERPRETATION – SOME BROAD PRINCIPLES

- Tax treaty should be read liberally
- In case of conflict with domestic law, the treaty meaning prevails
- Interpretation must take object and purpose of treaty into account
- Words should be read in their natural or ordinary meaning
- Undefined words in treaty should follow domestic tax law, unless context otherwise requires
- Generally treaty cannot protect against subsequent changes in domestic law
- Treaty as part of domestic tax law overrides other provisions in domestic law

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### Typical Structure of Tax Treaties

The Articles in a treaty can be grouped into the following categories:

- Scope of the convention
- Definitions
- Taxation of Income
- Taxation of Capital
- Methods for elimination of double taxation
- Special Provisions
- Final Provisions

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### Applying Tax Treaties

- Step 1 What is the nature of the income ?
- Step 2 Does the treaty apply?
- Step 3 Determine which Article applies?
- Step 4 How are taxation rights assigned?
- Step 5 How is the income calculated?

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### Transfer Pricing Overview

- Transfer pricing has been defined as “setting of the price for goods and services sold between controlled (or related) legal entities within an enterprise”



- Transfer Pricing provisions were first introduced vide *Finance Act, 2001*

- In the Income-tax Act, 1961, It pertains to special provisions relating to the Avoidance of tax

## Types of Transactions covered -

- Transfer of tangible property
- Transfer of intangible property
- Provision of service
- Finance facility provided
- Cost sharing arrangements
- Advertisement, marketing and promotion expenses incurred by an enterprise on behalf of the associated enterprise
- Transaction of goods



## Arm's Length Principle & Methods of Computation

- Arm's Length Price:**  
The concept of "arm's length price" refers to a price at which a transaction should have been undertaken between the two unrelated independent enterprises.
- The 6 Methods prescribed by the Central Government are as follows:**
  - Comparable uncontrolled price (CUP) method
  - Resale price method (RPM)
  - Cost plus method (CPM)
  - Profit split method (PSM)
  - Transactional net margin method (TNMM)
  - Other specified method (Rule 10AB)

## Special Provisions Related To NRs

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

### Section 115A – Non-Residents and Foreign Company

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

### Section 115AB – Overseas Financial Organisation

|  |            |
|--|------------|
| Income from Units purchased in Forex   | <b>10%</b> |
| LTCG on Transfer of such Units   | <b>10%</b> |
| <ul style="list-style-type: none"> <li>▪ No deductions u/s 28 to 44C, 57 and Chapter VI-A are available</li> <li>▪ Second proviso to Section 48 (Indexation) not applicable</li> </ul> |            |

### Section 115AC – Non-Residents (including Foreign company)

|  |            |
|--|------------|
| Interest from Bonds of Indian/ Public Sector Co. purchased in Forex  | <b>10%</b> |
| Dividend (except 115-O) from GDR of Indian/ Public Sector Co. purchased in Forex through approved intermediary   | <b>10%</b> |
| LTCG on Transfer of such GDRs  | <b>10%</b> |
| <ul style="list-style-type: none"> <li>▪ No deductions u/s 28 to 44C, 57 and Chapter VI-A are available</li> <li>▪ Second proviso to Section 48 (Indexation) not applicable</li> <li>▪ If above is the only Income &amp; Tax is Deducted appropriately at source no Returns are required to be filed.</li> </ul> |            |

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

|   |            |
|---|------------|
| Income from GDR issued as part of ESOP, purchased in Forex  | <b>10%</b> |
| LTCG on Transfer of such GDRs   | <b>10%</b> |
| <ul style="list-style-type: none"> <li>▪ No deduction under the Act are available against such income</li> <li>▪ First &amp; Second proviso to Sec 48 not applicable</li> </ul> |            |

### Section 115AD – Foreign Institutional Investors

|  |            |
|--|------------|
| Dividend (except 115-O) from Securities (except 115AB)   | <b>20%</b> |
| Interest as mentioned in Sec 194LD from Securities   | <b>5%</b>  |
| STCG on Transfer of such Securities  | <b>30%</b> |
| STCG as mentioned in Sec 111A on Transfer of such Securities   | <b>15%</b> |
| LTCG on Transfer of such Securities  | <b>10%</b> |
| <ul style="list-style-type: none"> <li>▪ No deductions u/s 28 to 44C, 57 or Chapter VI-A available</li> <li>▪ First &amp; Second proviso to Sec 48 not applicable</li> </ul> |            |

| Section 115BBA – Sportsmen or Sports Association  |     |
|---|-----|
| NR Sportsman, Non Citizen, Income from participation in Game/ Advertisement/ Contribution to article in paper/journal etc.  | 20% |
| NR Sports Association/ Institution – amount guaranteed to be paid/ payable in relation to any Game  |     |
| NR Entertainer, not Citizen – income from performance in India  |     |
| <ul style="list-style-type: none"> <li>▪ No deduction under the Act are available against such income</li> <li>▪ No Return of Income if no other income &amp; appropriate TDS deducted</li> <li>▪ Game does not include that covered u/s 115BB</li> </ul> |     |
| Section 115BBD – Indian Company   |     |
| Dividend declared/ distributed or paid by Foreign Co. in which Indian Co. holds 26% or more value of Equity Share Capital   | 15% |
| No deduction under the Act shall be allowed against this Income   |     |

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## Special Provisions Related To Certain Income of NRs

### Section 115C – Definitions

- "Non-resident Indian" means an individual, being a citizen of India or a person of Indian origin who is not a "resident".
- "Investment income" means any income derived other than dividends referred to in section 115-O from a foreign exchange asset
- "Foreign exchange asset" means any specified asset which the assessee has acquired or purchased with, or subscribed to in, convertible foreign exchange
- Specified assets are :
  - i) Shares of an Indian company.
  - ii) Debentures or deposits with an Indian company, not being a private company.
  - iii) Any security of the Central Government.
  - iv) Other notified assets (no such asset has yet been notified.)

## Section 115D – Computation of total income

| A) Investment Income   | B) Long Term Capital Gains on Foreign Exchange Asset   |
|--|--|
| 1) No deduction will be allowed, for any actual expenditures incurred to earn such income. | 1) Deduction for transfer expenses will be allowed while computing Long Term Capital Gain, but Indexation Benefit will not be allowed. |
| 2) No deduction under Chapter VIA will be allowed.   | 2) No deduction under Chapter VIA will be allowed.   |
| 3) No Basic Exemption limit allowed to be adjusted.  | 3) No Basic Exemption limit allowed to be adjusted.  |

## Section 115 E – Tax Rates on Investment Income and Long Term Capital Gains

- 'Investment Income' will be chargeable to tax @ 20% + (Surcharge + Education Cess as applicable)
- LTCG on transfer of forex assets will be chargeable to tax @ 10% (Surcharge + Education Cess as applicable)

| Block I   | Block II  |
|---|---|
| Investment income U/S 115C + LTCG on transfer of Forex Asset                    | Other incomes including STCG on transfer of forex assets + LTCG on other assets   |
| 1) Special rates of tax apply.  | 1) Normal rates of tax apply.   |
| 2) No Basic Exemption Limit available against such Special Income.              | 2) Basic Exemption Limit will be available against such Income.   |
| 3) Deduction under Chapter VI A will not be available.                          | 3) Deduction under Chapter VI A will be available against such Block-II income.   |
| 4) No Indexation Benefit while computing LTCG arising on transfer of any asset. | 4) No Indexation Benefit while computing LTCG on transfer of Shares and Debentures of an Indian Company. (Proviso 1 to section 48). |
| 5) Expenses to earn 'Investment Income' will not be allowed.                    | 5) Actual expenses incurred to earn such Block-II income will be allowed as a deduction.  |

## Section 115 F – Exemption on LTCG arising from transfer of Forex Assets

- Exemption can be claimed from LTCG arising from transfer of Forex Asset, if the entire Net Sale Proceeds from such transfer are utilized in acquiring any of the following 2 assets within a period of 6 months from the date of transfer –
  - Another Forex Asset or
  - Certificates notified U/S 10(4B) [N.S.C. issued before 01/06/2002]
- However, if entire the Net Sale Proceeds are not utilized, then exemption will be in proportion to the Net Sale Proceeds utilized to acquire another Asset.
- The newly acquired asset should not be sold, transferred or converted into money otherwise than by way of transfer for a period of 3 years from the date of its acquisition. Otherwise, LTCG exempted earlier will become LTCG of the year of violation of condition.

## Section 115 G - Return of Income need not be filed

Return of Income need not be filed by NRI, if both the following 2 conditions are satisfied –

- NRI has no other income taxable in India other than those incomes, which are referred to in section 115D, i.e. Investment Income and LTCG arising from transfer of Forex Assets.
- Tax deductible at Source from these incomes, has been correctly deducted at source.

## Section 115 I – Non Resident may opt out of Chapter XII-A

- ❑ Till the time, the assessee is Non-Resident, by default the special provision of Chapter XII A shall apply to him.
- ❑ However, if normal provision of the Income Tax Act, 1961 are found to be more beneficial as compared to the special provisions of this chapter, then assessee can opt for normal provision by way of filing his ROI along with an application addressed to A.O., opting for normal provisions.
- ❑ This option can be changed every year on year-to-year basis.



## Section 195 – Withholding Tax on payments made to Non-Residents

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

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



Obligation to withhold taxes also applies to Non-Residents

## Section 195 (6) – Furnishing of Information

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

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

Form 15CB is not required to be obtained for:

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

## Remittances covered in the specified list (Rule 37BB)

| Sr. No. | Nature of payment  |
|---------|--|
| 1       | Indian investment abroad - in equity capital (shares)                        |
| 2       | Indian investment abroad - in debt securities                                |
| 3       | Indian investment abroad - in branches and wholly owned subsidiaries         |
| 4       | Indian investment abroad - in subsidiaries and associates                    |
| 5       | Indian investment abroad - in real estate                                    |
| 6       | Loans extended to Non-Residents  |
| 7       | Advance payment against imports  |
| 8       | Payment towards imports - settlement of invoice                              |
| 9       | Imports by diplomatic missions   |
| 10      | Intermediary trade   |
| 11      | Imports below Rs.5,00,000 - (For use by ECD offices)                         |
| 12      | Payment for operating expenses of Indian shipping companies operating abroad |
| 13      | Operating expenses of Indian Airlines companies operating abroad             |
| 14      | Booking of passages abroad - Airlines companies                              |
| 15      | Remittance towards business travel   |
| 16      | Travel under basic travel quota (BTQ)  |
| 17      | Travel for pilgrimage  |

## Remittances covered in the specified list (Rule 37BB)

| Sr. No. | Nature of payment   |
|---------|---|
| 18      | Travel for medical treatment  |
| 19      | Travel for education (including fees, hostel expenses etc.)   |
| 20      | Postal services   |
| 21      | Construction of projects abroad by Indian companies including import of goods at project site                           |
| 22      | Freight insurance - relating to import and export of goods  |
| 23      | Payments for maintenance of offices abroad  |
| 24      | Maintenance of Indian embassies abroad  |
| 25      | Remittances by foreign embassies in India   |
| 26      | Remittance by non-residents towards family maintenance and savings  |
| 27      | Remittance towards personal gifts and donations   |
| 28      | Remittance towards donations to religious and charitable institutions abroad  |
| 29      | Remittance towards grants and donations to other Governments and charitable institutions established by the Governments |
| 30      | Contributions or donations by the Government to international institutions  |
| 31      | Remittance towards payment or refund of taxes   |
| 32      | Refunds or rebates or reduction in invoice value on account of exports  |
| 33      | Payments by residents for international bidding.  |

## Introduction of Rule 37 BC w.e.f. 24<sup>th</sup> June, 2016

### Relaxation from deduction of tax at a higher rate under section 206AA-

❑ In the case of a non-resident, not being a company, or a foreign company (hereafter referred to as 'the deductee') and not having permanent account number the provisions of section 206AA shall not apply in respect of payments in the nature of interest, royalty, fees for technical services and payments on transfer of any capital asset, if the deductee furnishes the details and the documents specified in sub-rule (2) to the deductor.

- ❑ The deductee referred to in sub-rule (1), shall in respect of payments specified therein, furnish the following details and documents to the deductor, namely:-
  - Name, e-mail id, contact number
  - Address in the country outside India where the deductee is the resident
  - A certificate of his being resident in any country outside India from the Government of that country if the law of that country specifies for the issuance of such certificate
  - Tax identification number of the deductee

## REGULATORY ASPECTS FOR NON-RESIDENTS UNDER FEMA

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### Residential Status under FEMA

**Person resident in India (Individuals)**

- Residing in India for **more than 182 days** during the course of the **preceding financial year**  
*[AT LEAST 182 days and "previous year" under IT Act]*
- **Does not include**
  - Person who has **gone out of India** for
    - Employment
    - Business or vocation
    - Other purpose for stay outside India for an **uncertain period**.
  - Person who has **come to India** for **otherwise then**
    - Employment
    - Business or vocation
    - Other purpose for stay in India for an **uncertain period**.

A person resident **outside India** means a person who is **not resident in India**

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### Non Resident Indian

NRI means a person who is:

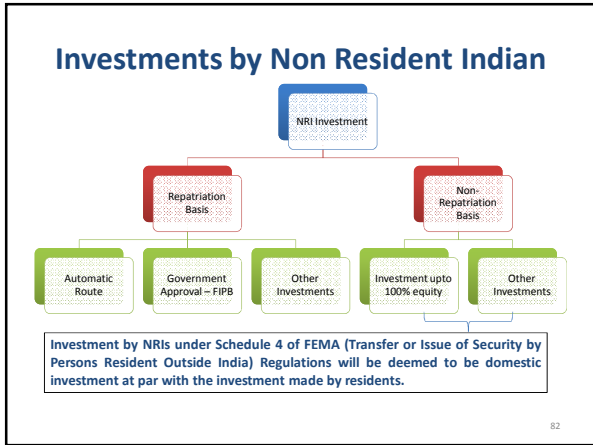
- a non-resident, and
- an Indian citizen; or
- a Person of Indian Origin (PIO).

PIO means a person who:

- held an Indian passport, or
- himself, or either of his parents, or either of his grandparents, was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955;
- is a spouse of an Indian citizen or a person a spouse of a PIO as discussed above.

- Citizens of Bangladesh and Pakistan are not considered as NRIs.

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### FORMS OF NRI INVESTMENT

|   |  |
|---|--|
| <div style="border: 1px solid black; padding: 5px; background-color: #e0e0e0;"> <b>PORTFOLIO INVESTMENT SCHEME</b><br/>           (REPATRIATION AS WELL AS NON-REPATRIATION BASIS)         </div> | <ul style="list-style-type: none"> <li>• Individual holding restricted to 5% of Total Paid-up cap</li> <li>• Aggregate Limit cannot exceed 10% of total paid-up cap</li> </ul>   |
| <div style="border: 1px solid black; padding: 5px; background-color: #e0e0e0;"> <b>PURCHASE / SALE OF SHARES OR CONVERTIBLE / NON CONVERTIBLE DEBENTURES</b> </div>                               | <ul style="list-style-type: none"> <li>• No limit on purchase on non-repatriation basis through inward remittance of funds from normal banking channels or NRE/NR/FCNR(B) accounts</li> <li>• Sale proceeds of shares / convertible debentures to be credited to NRO account</li> <li>• NRIs can invest in NCDs both on repatriation / non-repatriation basis</li> </ul> |

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### FORMS OF NRI INVESTMENT

|  |   |
|--|---|
| <div style="border: 1px solid black; padding: 5px; background-color: #4a7ebb; color: white;"> <b>INDIAN FIRM / PROPRIETARY CONCERNS</b> </div>     | <ul style="list-style-type: none"> <li>• Investment on repatriation basis subject to prior Government of India / RBI approval</li> <li>• Investment on non-repatriation basis possible by way of capital contribution if</li> <li>• amount invested via inward remittance through normal banking channels or NRE/NRO/FCNR (B) account debit</li> <li>• Firm not engaged in agricultural / real-estate activity</li> </ul> |
| <div style="border: 1px solid black; padding: 5px; background-color: #4a7ebb; color: white;"> <b>GOVERNMENT SECURITIES/PSU BONDS / IDRS</b> </div> | <ul style="list-style-type: none"> <li>• No limit on purchase on repatriation basis</li> <li>• Government securities, treasury bills, PSU bonds, Domestic mutual funds, PSE shares in accordance with disinvestment scheme conditions</li> <li>• IDRs issued in accordance with the Companies Deposit Rules / SEBI ICDR regulations, can be subscribed by NRIs</li> </ul>   |

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### Investment Opportunities in a nutshell

| Investment opportunities  | Non-Resident Indian | Non-Resident | Repatriation Basis | Non-Repatriation Basis |
|---|---------------------|--------------|--------------------|------------------------|
| Interest free Loans to close "relatives" under USD 250,000 scheme                                     | ✓                   | ✓            | ✓                  |                        |
| Lending in foreign currency in the form of ECB to Indian corporate who is holding at least 25% equity | ✓                   | ✓            | ✓                  |                        |
| Loans to persons other than companies   | ✓                   |              |                    | ✓                      |
| Deposit with proprietorship concern, partnership firm & companies                                     | ✓                   |              |                    | ✓                      |
| Investment in partnership firm or proprietary concern   | ✓                   |              |                    | ✓                      |
| Deposits under FCNR /NRE /NRO Account   | ✓                   |              | ✓                  | ✓                      |
| Investment in Immovable Properties  | ✓                   |              |                    | ✓                      |
| Investment in Portfolio Scheme  | ✓                   | ✓            | ✓                  | ✓                      |
| Investment under FDI scheme (Schedule 1)  | ✓                   | ✓            | ✓                  | ✓                      |
| Domestic Investment under Schedule 4  | ✓                   |              | ✓                  | ✓                      |
| Investment in Limited Liability Partnership (LLP) (Schedule 9)  | ✓                   | ✓            | ✓                  | 85                     |

### Investment by way of deposits to proprietorship concern, partnership firm & companies on non-repatriation basis

- Investment in deposits by NRIs will be on non-repatriation basis.
- The maturity period of deposit shall not exceed 3 years
- The amount of deposit shall be received by debit to NRO account only, provided that the amount of the deposit shall not represent inward remittances or transfer of funds from NRE/FCNR(B) accounts into the NRO account. (substituted by FEM(Deposit)(Amendment) Regulations, 2004.)
- If accepting company is NBFC the rate of interest payable on deposits shall be in conformity with guidelines issued by RBI for such companies.
- In other cases the rate of interest payable on deposits shall not exceed the ceiling rate prescribed from time to time under Companies Act.

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### Investment by NRI in partnership firm or proprietary concern in India

- Investment shall be by way of contribution to capital.
- Investment is by way of inward remittance or out NRE/FCNR(B)/NRO account.
- Restricted sectors
  - agricultural/plantation
  - real estate business (i.e. dealing in land and immovable property with a view to earning profit or earning income there from)
  - print media sector
- Investment on repatriation basis is allowed with prior permission of RBI.
- Profits can be repatriated under USD 1 million scheme by NRIs.

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### Investment by NRI in Immovable Properties

- Immovable Property (IP) is not defined term
- General Permission – BUT **Investment in Agricultural Property, Plantation and Farm House not permitted**
- PIO has to sell property to Resident Indian only. Sale to other NRI or PIO would require prior RBI approval.
- Transactions involving acquisition of immovable property under these regulations shall be subject to the applicable tax laws in India-A.P. (DIR Series) Circular No. 38 dated November 20, 2014

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### Liberalized Remittance Scheme

- Remittance scheme for resident individuals.
- All **resident** individuals, including minors, are allowed to freely remit up to USD 2,50,000 per financial year (April – March)
- Any permissible current or capital account transaction or a combination of both all consolidated.

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### Liberalized Remittance Scheme

- The permissible capital account transactions by an individual under LRS are:
- opening of foreign currency account abroad with a bank;
  - purchase of property abroad;
  - making investments abroad- acquisition and holding shares of both listed and unlisted overseas company or debt instruments; acquisition of ESOPs (the Scheme is in addition to acquisition of ESOPs linked to ADR / GDR and acquisition of qualification shares); investment in units of Mutual Funds, Venture Capital Funds, unrated debt securities, promissory notes;
  - setting up Wholly Owned Subsidiaries and Joint Ventures (with effect from August 05, 2013) outside India for bonafide business subject to the terms & conditions stipulated
  - extending loans including loans in Indian Rupees to Non-resident Indians (NRIs) who are relatives as defined in Companies Act, 1956.

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### Loan by R to NRI in INR

- ❑ Loan can be made to NRI/PIO close relative of resident ('relative' as defined in section 6 of the Companies Act, 2013) by way of crossed cheque/ electronic transfer
- ❑ **Interest:** Free of interest and the minimum maturity of the loan is one year.
- ❑ **Limit:** Should be within the LRS Cap (i.e. USD 2,50,000). Lender's responsibility to ensure this compliance
- ❑ **Purpose:** For meeting the borrower's personal requirements or for his own business purposes in India.
  - loan not to be utilised for any of the activities in which investment by persons resident outside India is prohibited (chit fund business/Nidhi Company/ agricultural or plantation activities/ in real estate business/construction of farmhouses/trading in Transferable Development Rights (TDRs)).
  - The loan amount should be credited to the NRO a/c of the NRI /PIO. Credit of such loan amount may be treated as an eligible credit to NRO a/c.
  - The loan amount shall not be remitted outside India.
  - Repayment of loan shall be made by way of inward remittances through normal banking channels or by debit to the Non-resident Ordinary (NRO)/ Non-resident External (NRE) / Foreign Currency Non-resident (FCNR) account of the borrower or out of the sale proceeds of the shares or securities or immovable property against which such loan was granted.

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### Gift by R to NRI in INR

- Gift to a NRI/PIO who is a close relative of the resident individual ['close relative' as defined in Section 6 of the Companies Act, 2013] by way of crossed cheque /electronic transfer.
- The amount should be credited to the Non-Resident (Ordinary) Rupee Account (NRO) a/c of the NRI / PIO and credit of such gift amount may be treated as an eligible credit to NRO a/c.
- Subject to LRS Cap of USD 2,50,000. Responsibility of the resident donor to ensure LRS compliance.

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### Loan by NRI to R in INR

- **Regulation 4 of FEMA Notification No.4** – Borrowing and lending in rupees
- **Mode of receipt** - Inward remittance through normal banking channel or through NRE/ NRO/ FCNR-B account of the lender maintained by AD
- **Rate of Interest** - Shall not exceed (2% + prevailing bank rate on date of availment of loan) (Current Bank Rate as per RBI website)
- **Maturity Period** - Shall not exceed 3 years
- **Mode of Repayment** –
  - If amount borrowed through NRSR A/c – Repayment through NRSR A/c
  - If amount borrowed through other mode – Repayment through account desired by lender (NRO or NRSR account).
- The borrowed funds shall not be used for any other purpose except the borrowers business unless the business is that of:
  - Agriculture or plantation activities
  - Real estate business or construction of farm houses
  - Trading in Transferable Development Rights
  - Chit fund
  - Nidhi Company
- The borrowed funds shall not be used for any investment by any means in any company, partnership firm, proprietorship concern or any entity or for relending.

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### Acceptance of deposits by Indian companies from a person resident outside India for nomination as Director

- Keeping deposits with an Indian company by persons resident outside India, in accordance with section 160 of the Companies Act, 2013, is a current account (payment) transaction and, as such, does not require any approval from Reserve Bank.
- All refunds of such deposits, arising in the event of selection of the person as director or getting more than twenty five percent votes, shall be treated similarly.`

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### Accounts maintained by NRI

- Non-Resident Ordinary Rupee Account (NRO Account)
- Non-Resident (External) Rupee Account (NRE Account)
- Foreign Currency Non Resident (Bank) Account – FCNR (B) Account

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| Particulars                                     | FCNR Account  | NRE Account                                | NRO Account  |
|---|---|--|--|
| <b>Who can Open an account?</b>                 | NRIs (individuals / entities of Bangladesh / Pakistan nationality / ownership require prior approval of RBI)  |  | Any person resident outside India (other than a person resident in Nepal and Bhutan). Individuals / entities of Pakistan nationality / ownership, entities of Bangladesh ownership and erstwhile Overseas Corporate Bodies require prior approval of the Reserve Bank. |
| <b>Joint account</b>                            | Two or more NRIs and/or PIOs or by an NRI/PIO with a resident relative(s) on 'former or survivor' basis. However, during the life time of the NRI/PIO account holder, the resident relative can operate the account only as a Power of Attorney holder. |  | With residents on 'former of survivor' basis. NRIs and PIOs may hold an NRO account jointly with other NRIs and PIOs.  |
| <b>Currency in which account is denominated</b> | Any permitted currency i.e. a foreign currency which is freely convertible  | INR  | INR  |
| <b>Repatriability</b>                           | Repatriable   |  | Not repatriable except for the following:<br>i) all current income and<br>ii) up to USD 1 (one) million per financial year (April-March), by A NRI/ PIO.   |
| <b>Type of Account</b>                          | Term Deposit only   | Savings, Current, Recurring, Fixed Deposit |  |



| Particulars                | FCNR Account   | NRE Account | NRO Account |
|----------------------------|--|-------------|-------------|
| <b>Rate of Interest</b>    | In accordance with the directions/ instructions issued by the Department of Banking Regulation, Reserve Bank of India  |             |             |
| <b>Loans</b>               | Banks in India can grant loans against the security of the funds held in accounts to the account holder/ third party in India, without any limits, subject to the usual margin requirements. The loan cannot be repatriated outside India and should be used for specified purposes only.  |             |             |
| <b>Permissible Credits</b> | Interest accruing on the account, Interest on investment, Transfer from other NRE/ FCNR(B) accounts, Maturity proceeds if such investments were made from this account or through inward remittance, Current income like rent, dividend, pension, interest etc. provided that AD is satisfied that these represent current income of NRI A/c holder and Tax has been paid on such income |             |             |
| <b>Permissible Debits</b>  | Local disbursements, Transfer to other NRE/ FCNR(B) and investments in India.  |             |             |

## NR Returning to India

- Foreign Assets** - NRIs can continue to hold assets outside India. The assets should have been acquired when he was an NRI
- Liabilities incurred abroad** - These become a borrowing for the country, and so if the NRI has taken any loans abroad, he will need RBI approval to continue with it.
- Indian Bank A/c** - The returning NRI must inform the bank to turn all his bank accounts (savings, fixed deposits, etc.) into resident accounts. In the case of FCNR/NRE, returning NRIs have the option of continuing them till maturity on the same rates of interest. On maturity, the balance including the interest in FCNR can be transferred to a Resident Foreign Currency (RFC) account and NRE Account should be converted into Ordinary Resident Accounts.
- Residential status under IT Act:** Not Ordinarily Resident/Resident
- Concessional tax rates** - Interest earned on deposits and debentures of Indian companies, and some government securities covered under Chapter XII-A benefits, whereby the NRI is liable to pay tax at 20 per cent on income earned on assets if they have been bought in foreign currency. This benefit is available to people even after returning to India—till such time as the assets mature.

# THANK YOU

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