

Nuances in return filing of non-residents -The Chamber of Tax Consultants



**The Chamber of
Tax Consultants**

**Prepared by -
CA Naman Maloo & CA Vartika Vijay**

**Presented by -
CA Naman Shrimal**



8-Dec-2021

Ground Rules



01

Speaker - Group Leader

~~Lecture Meeting~~- Study Circle -My role is to ask questions and moderate discussion

02

Consensus- Brainstorming

There is no one answer - Aim not reach consensus, but to invoke thought process

03

~~One-sided~~- Interactive

VC - Limitation, Still Lets make it interactive

04

Exclusive- Inclusive

Covered Nuances which we have faced

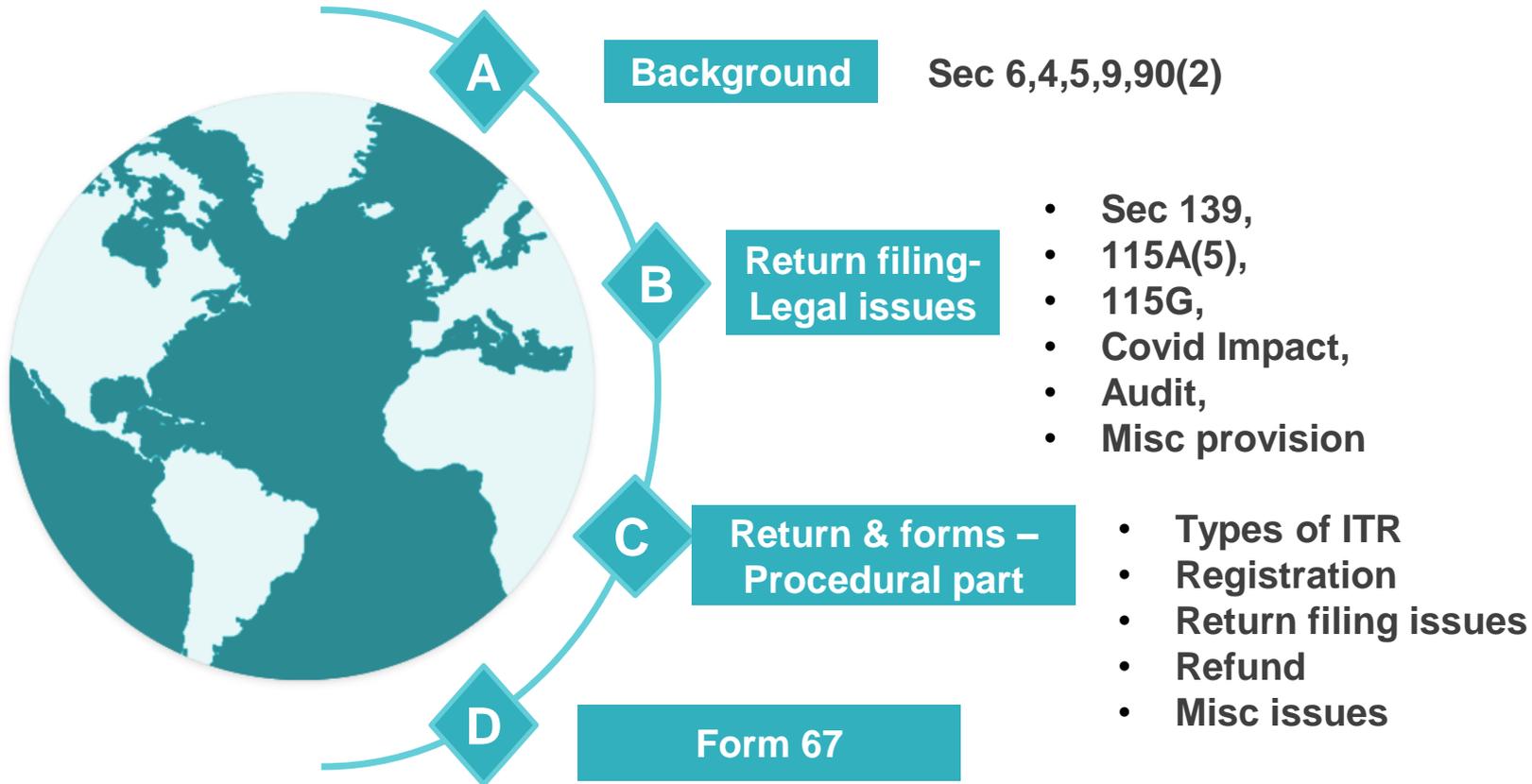
05

Taxability- Return filing (non-filing)

Beyond Taxability !!

Let's question everything and learn together – be like PK!!

Agenda



Background

Sec 6- Residential status- Individual

Clause	Individual	Condition	Resident- No. of Days	Condition R-NOR Status
1)	Any Individual	-	- 182 Days or more OR - 60 days + 365 days in 4 PY	- NR in 9/10 PY or - 729 days or less in 7 PY
Clause (a) of Ex 1	COI (leaves India)	-India Ship Crew Member or -For the purpose of Employment outside India	182 +365 days in 4 PY	
Clause (b) of Ex 1	COI/POI	- Visits India from outside India -Total Income other than FI)of Rs 15 Lakh or more	182 +365 days in 4 PY 120 +365 days in 4 PY	The Period of 120 days to 181 days
(1A)	COI	Total Income other than FI) of Rs 15 Lakh or more and not liable to tax in any other country	-	Always R-NOR

Sec 6- Residential status- Company



As per **section 6(3)** of Income tax Act, a company is said to be a 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 business of an entity as a whole are, in substance made.

Charge of Income Tax

■ Section 4:

Deals with how the income earned will be taxed under the Income tax wherein

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

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

Income tax rates are defined every year in the First Schedule of Finance Act and it is not a part of Income Tax act.

Sec 5: Taxability of Income based on residential status

Taxability of Income	Resident	Resident but not ordinary	Non-Resident
Income received or deemed to be receive in India	Taxable	Taxable	Taxable
Income accrue/ arise or deemed to accrue/ arise in India	Taxable	Taxable	Taxable
Income (other than above) earned outside India from Business controlled from India or profession set up in India	Taxable	Taxable	Non-Taxable
Income accrue or arise outside India	Taxable	Non-Taxable	Non-Taxable

Section 9- Income deemed to accrue or arise in India

■ The following income shall be deemed to accrue or arise in India:

In	With
<ul style="list-style-type: none">▷ All income accruing or arising, whether <u>directly or indirectly</u>, through or from<ul style="list-style-type: none">▷ any business connection in India, or▷ any property in India, or▷ any asset or source of income in India, or▷ through the transfer of a capital asset situate in India.▷ Income chargeable under the head "Salaries" payable by the Government to a citizen of India for service outside India.	<ul style="list-style-type: none">▷ A dividend paid by an Indian company outside India.▷ Income by way of interest.▷ Income by way of royalty.▷ Income by way of fees for technical services.▷ Income arising outside India, being any sum of money referred to in sub-clause (xviiia) of clause (24) of section 2 (gift income relating to immovable property), paid on or after the 5th day of July, 2019 by a person resident in India to a non-resident, not being a company, or to a foreign company.

Beneficial Provision

- **Sec- 90(2)** - Where the Central Government has entered into an agreement with the Government of any country outside India or specified territory outside India, as the case may be, under sub-section (1) for granting relief of tax, or as the case may be, avoidance of double taxation, then, in relation to the assessee to whom such agreement applies, the **provisions of this Act shall apply to the extent they are more beneficial to that assessee.** -
- **Both for Scope and Rate**

IT ACT	DTAA
Sec- 115A Royalty @10% 	As per DTAA- Royalty @ 15%

IT Act	DTAA
Sec - 115A(1)(b) FTS @10.4% plus surcharge	As per DTAA FTS @10% 

Income Tax = Residential status * Income * Rate (IT Act or DTAA- beneficial provision)

After computing the income tax, return is required to be file.



Return filing – Legal Issues

Sec 139

Mandatory filing of return

Whether Non-resident Foreign Companies Are Required To File Return Of Income In India

■ Requirement of filing of return u/s 139

As per section 139(1) of the Act, following persons shall be required to furnish return of income before the prescribed due date;

- ▶ Company or firm; or;
- ▶ Any person other than company or firm where total income of such person exceeds the basic exemption limit.

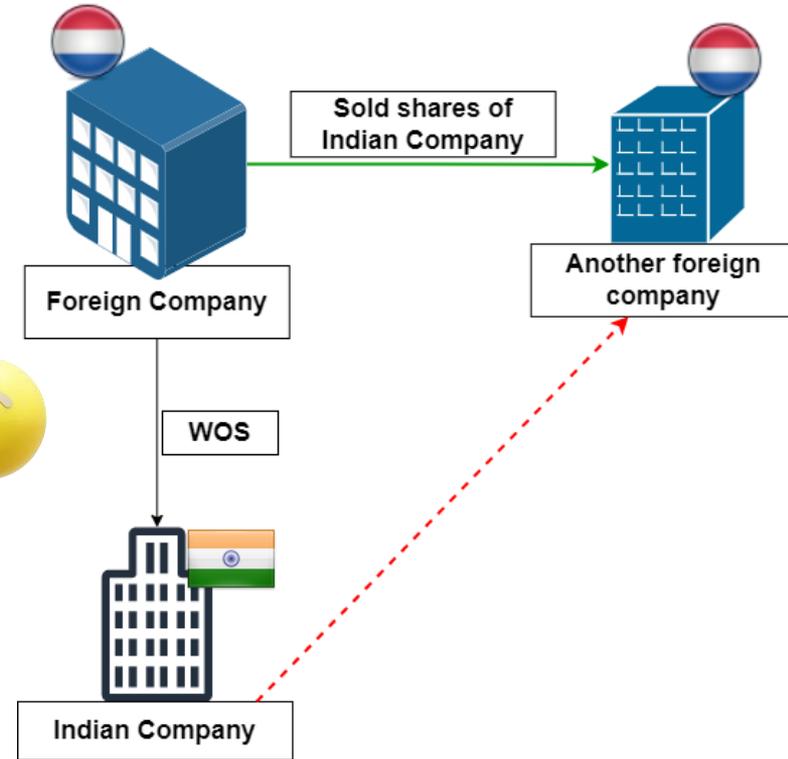
Each Foreign company/firm will be covered under this section.
Any other persons - whose total income exceeds the basic limit of Rs. 2,50,000 will be covered under this section.

Sec 139(1)

Provided also that **every company or a firm shall furnish** on or before the due date the return in respect of its **income or loss in every previous year** :

Income Taxable in India as per Income Tax Act 9(1)(i)
However not taxable in India as per DTAA between India-
Netherlands.

Whether Foreign company required to file return in India?



Judicial view on requirement to file return by non-resident

- As far as judicial viewpoint is concerned, there are various conflicting judgements by Authority of Advance Rulings (AAR). Relevant judgements of AAR are tabulated as under:

Have to file return	Do not have to file return
<p>VNU International B.V. (2011) - 10 Taxmann.com 157 – New Delhi</p> <ul style="list-style-type: none"> Fact of the case: A Netherlands company sold shares of wholly owned Indian company's shares to another Swiss company. Not taxable in India- The same income is not taxable in India as per the DTAA between the India-Netherlands company. Filing return- Ruling- In section 139(1), there is no expression for company as 'exceeded the maximum amount which is not chargeable to income-tax'. As per the third proviso, every company is required to file its return of income, whether it has an income or a loss. Foreign company is covered within the definition of a company under section 2(17) of the Act. 	<p>Vanenburg Group B.V. [2007] 159 Taxman 219 – New Delhi</p> <ul style="list-style-type: none"> Fact of the case- Netherlands company sold shares of its entire shares of Indian subsidiary company to another Netherlands company for its corporate reorganization. Not taxable in India- The same income is not taxable in India as per the DTAA between the India-Netherlands company. Filing return- Ruling- Liability to pay tax is founded upon sections 4 & 5 of the Act, which are the charging sections. Section 139 and other sections are merely machinery sections to determine the amount of tax. There would be no occasion to call a machinery section in aid where there is no liability at all Therefore, not be required to furnish any tax return.

Judicial view on requirement to file return by non-resident



Have to file return

Deere & Co. [2011] 11 taxmann.com 388 (AAR)- New Delhi

- **Fact of the Case:** The assessee is a USA based entity, who has sold entire shareholding of Indian entity **without any consideration** to another Singapore company for restructuring of group.
- **Taxability in India-** No taxability arises u/s 45 of the IT Act.
- **Return filing requirement-** applicant is bound to file return of income under section 139 notwithstanding that there is no taxability under Act.

Do not have to file return

Factset Research Systems Inc [2009] 182 Tax- man 268

- **Fact of the Case:** The assessee maintains database located outside India and receives subscription fees from its customers outside India.
- **Taxability in India:** Will not be considered as Royalty under the IT Act.
- **Return Filing requirement- Ruling-**
- Since the income is not taxable under the IT Act as well as DTAA, there is no obligation to file the return.

Judicial view on requirement to file return by non-resident

Have to file return

SmithKline Beecham Port Louis Ltd [2012] 24 taxmann.com 153- New Delhi

- **Fact of the case:** The assessee, a Mauritius company sold its shares held in an Indian company to another foreign company.
- **Taxability in India:** Not taxable as per DTAA between Mauritius – India.
- **Return filing requirement – ruling-** Once there is chargeability to tax under the Act, the return of income will have to be filed under section 139, even if the benefit of the Double Taxation Avoidance Convention (DTAC) is claimed or a ruling is given on that basis. The applicant will therefore have the obligation to file a return of income in terms of section 139.



Do not have to file return

Dow Agro Sciences Agricultural Products Ltd [2016] 65 taxmann.com 245

- **Fact of the case:** The assessee a Mauritius company sold its entire shareholding of Indian company to another Singapore company for restructuring.
- **Taxability in India-** Not taxable in India.
- **Filing return-** Since transfer of shares not subject to tax in India therefore no not required to file return.

Firms and Companies – specifically separated in 1961 Act :

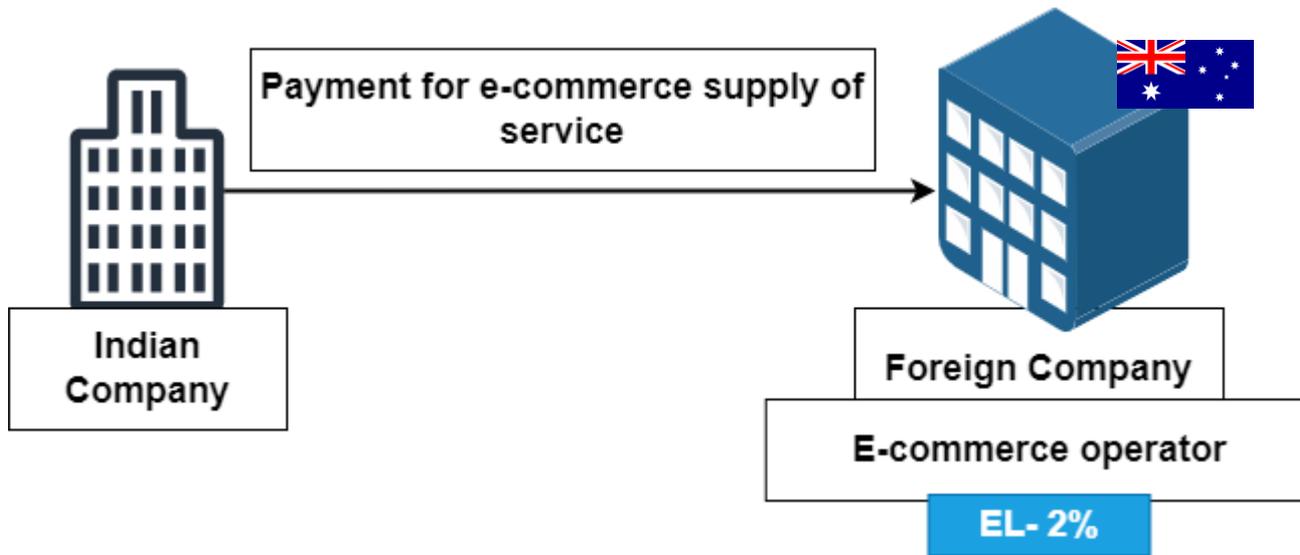
Indian Income Tax Act, 1922- s. 22(i)-

every person whether resident or non-resident **whose income exceeds the maximum amount exempt from tax** is obliged to submit a return.

"every person " in s. 22 (1) of the Indian Income-tax Act, 1922, includes all persons who are liable to pay tax and non-residents are not exempted from liability to submit a return pursuant to the general notice thereunder.

Income Tax Act, 1961- S. 139(1) of the Act, following persons shall be required to furnish return of income before the prescribed due date;

- Company or firm; or;**
- Any person other than company or firm where total income of such person exceeds the basic exemption limit.



Equalization levy –
separate Act- not
included in Income tax



Sec 10(50) of the IT Act
– exempt EL income



Whether company
earning only exempt
income – return is
required to file ?

Equalisation levy- Consideration received by a non-resident e-commerce operator from e-commerce supply or service is liable to equalisation levy at the rate of 2%.

Sec 10(50)- If equalization levy is applicable then such income would be exempt from income tax except royalty and FTS.

Sec 115A(5)
Relief from filing of return
**Special provision for non-
residents**

Non-residents not required to file return in India

- **Section 115A(5):** It shall not be necessary for a **non-resident** (not being a company) or of a **foreign company** to furnish under sub-section (1) of section 139 a return of his or its income if—
 - a) his or its total income in respect of which he or it is assessable under this Act during the previous year **consisted only of income referred** to in clause (a) [or clause (b)] of sub-section (1); and
 - b) the tax deductible at source under the **provisions of Part B of Chapter XVII** has been deducted from such income and the rate of such deduction is not less than the rate specified under clause (a) or, as the case may be, clause (b) of sub-section (1).
- **Clause (a) - Dividend and Interest**
- **Clause (b) - Royalty & Fees for technical services**

Amendment in Sec 115A(5)

Before Finance Act, 2020	After Finance Act, 2020
<p>5) It shall not be necessary for an assessee referred to in sub-section (1) to furnish under sub-section (1) of section 139 a return of his or its income if—</p> <p>a) his or its total income in respect of which he or it is assessable under this Act during the previous year consisted only of income referred to in clause (a) of sub-section (1); and</p> <p>b) the tax deductible at source under the provisions of Chapter XVII-B has been deducted from such income.</p>	<p>Section 115A(5): It shall not be necessary for a non-resident (not being a company) or of a foreign company to furnish under sub-section (1) of section 139 a return of his or its income if—</p> <p>a) his or its total income in respect of which he or it is assessable under this Act during the previous year consisted only of income referred to in clause (a) [or clause (b)] of sub-section (1); and</p> <p>b) the tax deductible at source under the provisions of Part B of Chapter XVII has been deducted from such income and</p> <p>the rate of such deduction is not less than the rate specified under clause (a) or, as the case may be, clause (b) of sub-section (1).</p>

Amended provision:

1. **Coverage extended** from only dividend and interest income with **Royalty, or FTS Income** and
2. Additional condition for **the rate of such deduction is not less than the rate specified** under clause (a) or, as the case may be, clause (b) of sub-section (1). – **Rate restricted.**

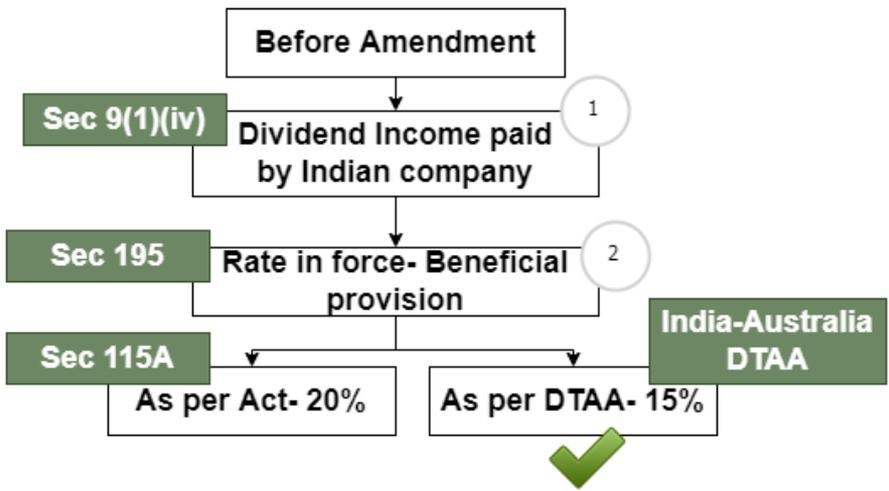
1

2

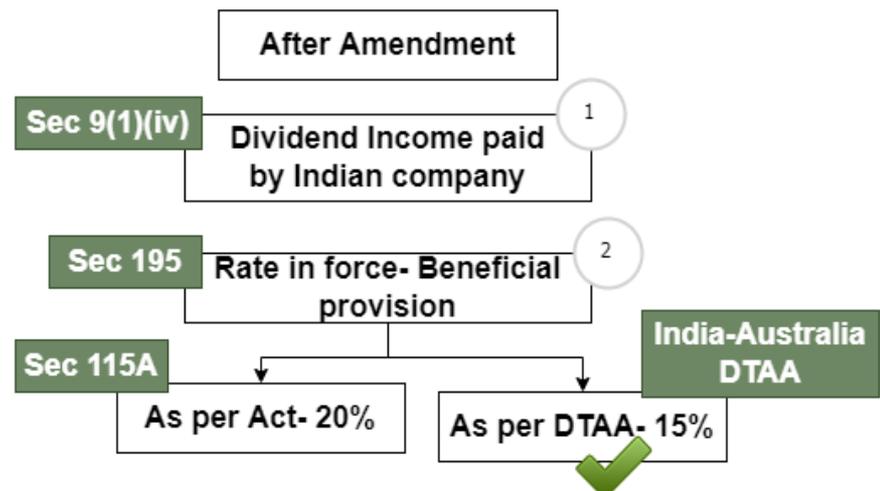
3

4

Impact of Amendment for Dividend & Interest transaction



Whether return required to file ??



Whether return required to file ??

3 Rate not less than provided in clause (a) i.e. 20%

Transaction - Usage of Software



1st Condition- his or its **total income** in respect of which he or it is assessable **under this Act** during the previous year consisted only of income referred to in clause (a) [or clause (b)] of sub-section (1);

IT Act -
definition covers usage of
computer software



DTAA -
definition does not covers usage of
computer software



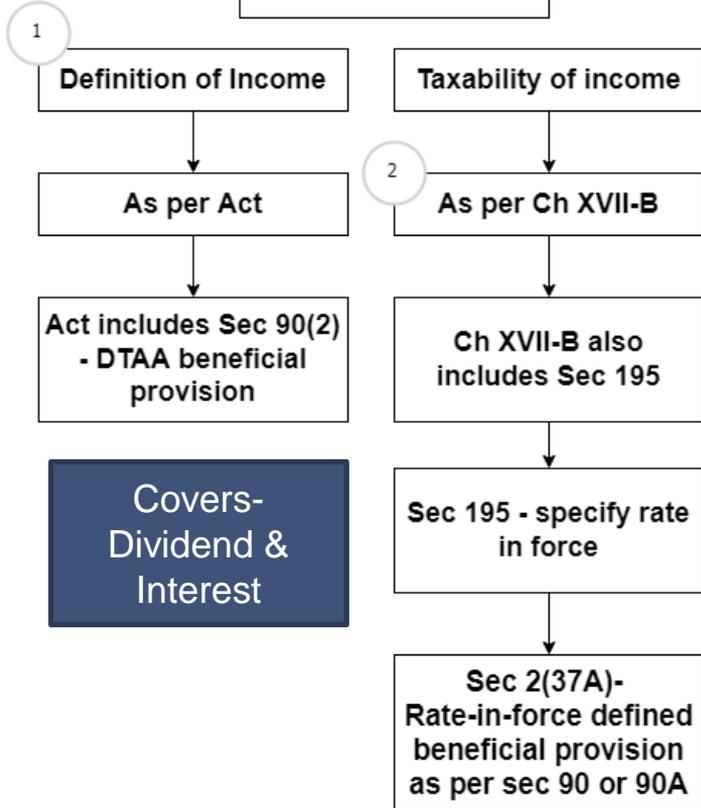
Whether return is required to file?

Impact of Amendment- Criteria extended

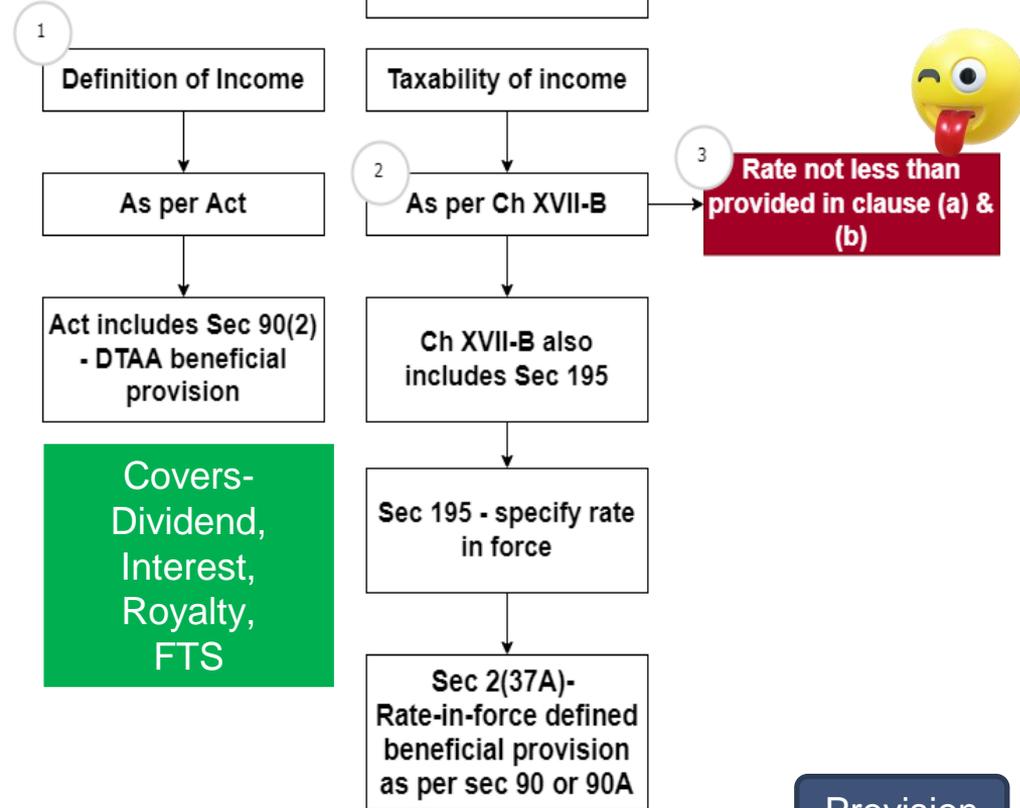
- The amendment will bring a relief to non-residents based in Australia, Belarus, Brazil, Bulgaria, Canada, Denmark, Jordan, Kyrgyz Republic, Mauritius, Mongolia, Nepal, Oman, Philippines, Poland, Turkey, United Kingdom and United States where the tax rate in case of 'royalty' prescribed in the respective Tax Treaties is higher than the rate prescribed in the Act.
- In case of non-residents based in Belarus, Bulgaria, Denmark, Jordan, Kyrgyz Republic, Mongolia, Oman, Poland, Spain, Turkey, United Kingdom and United States, the amendment would be beneficial if they derive income in the nature of FTS since the tax rate prescribed in the respective Tax Treaty is higher than the rate provided in the Act.
- The proposed amendment would also be beneficial to residents of Australia, Canada, U.K. and U.S. in case the benefit of the "make available" clause available in the respective tax treaties is not to be availed in respect of income earned by way of FTS.
- With respect to Dividend and Interest Criteria has been restricted

Summary – 115A(5)

Before Amendment



After Amendment



Sec 115G
Relief from filing of return
Non-Resident Indian

Sec 115G

- ▶ **Section 115G:** It shall not be necessary for a **non-resident Indian** to furnish under sub-section (1) of section 139 a return of his income if—
- (a) his total income in respect of which he is assessable under this Act during the previous year consisted only of investment income or income by way of long-term capital gains or both; and
 - (b) the tax deductible at source under the provisions of Chapter XVII-B has been deducted from such income.

- The voluntary filing of a return by a non-resident Indian is exempted where he **has only "investment income" or "LTCG"**, as defined in **section 115C** and tax has been **deducted under Chapter XVIIB** in respect thereof.
- These **conditions are cumulative**.

1

2

3

4

5



Mr. Peter (NRI)

Purchased shares on 01.04.2017 from NRO a/c

Sold shares on 01.04.2021

Under 115G- consisted only of investment income or income by way of long-term capital gains or both;

Whether Return needs to be filed or not??



S. 115C: "long-term capital gains" means income chargeable under the head "Capital gains" relating to a capital asset, being a **foreign exchange asset** which is not a short-term capital asset;

"foreign exchange asset" means any specified asset which the assessee has acquired or purchased with, or subscribed to **in, convertible foreign exchange;**

"convertible foreign exchange" means **foreign exchange** which is for the time being treated by the Reserve Bank of India as convertible foreign exchange for the purposes of the **Foreign Exchange Management Act, 1999** (42 of 1999), and any rules made thereunder;

<https://rbidocs.rbi.org.in/rdocs/notification/PDFs/FNT14RBBC96EA1D8574325AF4314261DE5133A.PD>



Mr. Peter (NRI)

Purchased shares on 01.04.2017 using convertible foreign exchange

Bonus shares received on 01.04.2019 - sold 01.04.2021

Whether Return needs to be filed or not??

Under 115G- consisted only of investment income or income by way of long-term capital gains or both;

CIT v. Sham L. Chellaram [2015] 54 taxmann.com 348 (Bom.)- High court

Definition under Chapter XII-A of the Act to mean 'any income **derived from** a Foreign Exchange Asset'. Supreme Court in *Combay Electric Supply Industrial Co. Ltd. v. CIT* [1976] 113 ITR 84 held that **the expression "attributable" to wider than the expression "derived from"**.

It was held that income arising from sale of asset which is not derived from foreign exchange asset will not cover within the meaning of sec 115E of the Act.

M. Manohar (Dr) v. ACIT (2011) 339 ITR 49/201 Taxman 106 / 62 DTR 148/ 244 CTR 642 (Mad.)(High Court) Where assessee received interest on investment made out of foreign funds which chargeable to tax at concessional rate under section 115H, said special treatment could not be extended to **interest on interest re-deposited with original sum**. (A. Y. 1996-97).

Can STCG be considered as “investment income”??



Under 115G- consisted only of investment income or income by way of long-term capital gains or both;

Mr. Peter (NRI)

Purchased shares on 01.05.2020 in foreign currency

Sold shares on 01.02.2021

Whether Return filing is required?

S 115C: “Investment income” means any income derived [other than dividends referred to in section 115-O from a foreign exchange asset;

CIT v. Sham L. Chellaram [2015] 54 taxmann.com 348 (Bom.)- High court

- **Tax On Investment Income And Long-term Capital Gains-** Definition of income given in **section 2(24)(vi)** which covers capital gain cannot be applied in context of section 115E.
- It is equally true that in exceptional cases, additional words may be ignored on the basis that they were introduced only to allay the fears of those who would otherwise feel that exemption would not be extended to long term capital gains. However, if this was so then the words Income by way of short term capital gains would have been introduced in Section 115E of the Act along with the words long term capital gains. This not having been done is a clear indication that Parliament restricted the benefit of Section 115E of the Act only to long term capital gains and Investment Income.

Short term capital gain – included??

Smt. Trishla Jain v. Dy. Commissioner of Income-tax [1990] 34 ITD 523 (Delhi)[03-08-1990]

Short-term gain falls within the definition of 'income' as per the Act, and hence would be covered under the definition of 'investment income'. ✓

- Since, the language of the **Statute** is **unambiguous** and that the short term capital gains falls within the definition of "investment income" we hold that the assessee are entitled to concessional rate of tax @ 20% on short term capital gains being investment income within the meaning of Section 115E read with Section 115C

Sunderdas Haridas v. ACIT [1998] 67 ITD 89 (Mum.)

'investment income' does not cover short-term capital gains. ✗

- 'Investment income' is to be considered 'income' in the Act. While the 'income' definition covers capital gains, the same **cannot be covered under the phrase 'investment income'**.
- The benefit can be provided to short-term capital gains, the same would **have been specified in the Act clearly** as is done in other sections.
- The exclusion of short-term gains from the benefits of Section 112 is with the specific purpose to restrict the outflow of hot money. The concessional tax rate is extended to traders or investors who are dedicated to the Indian market for a sufficiently long time thus deriving income like dividends, interest, or long-term capital gains.

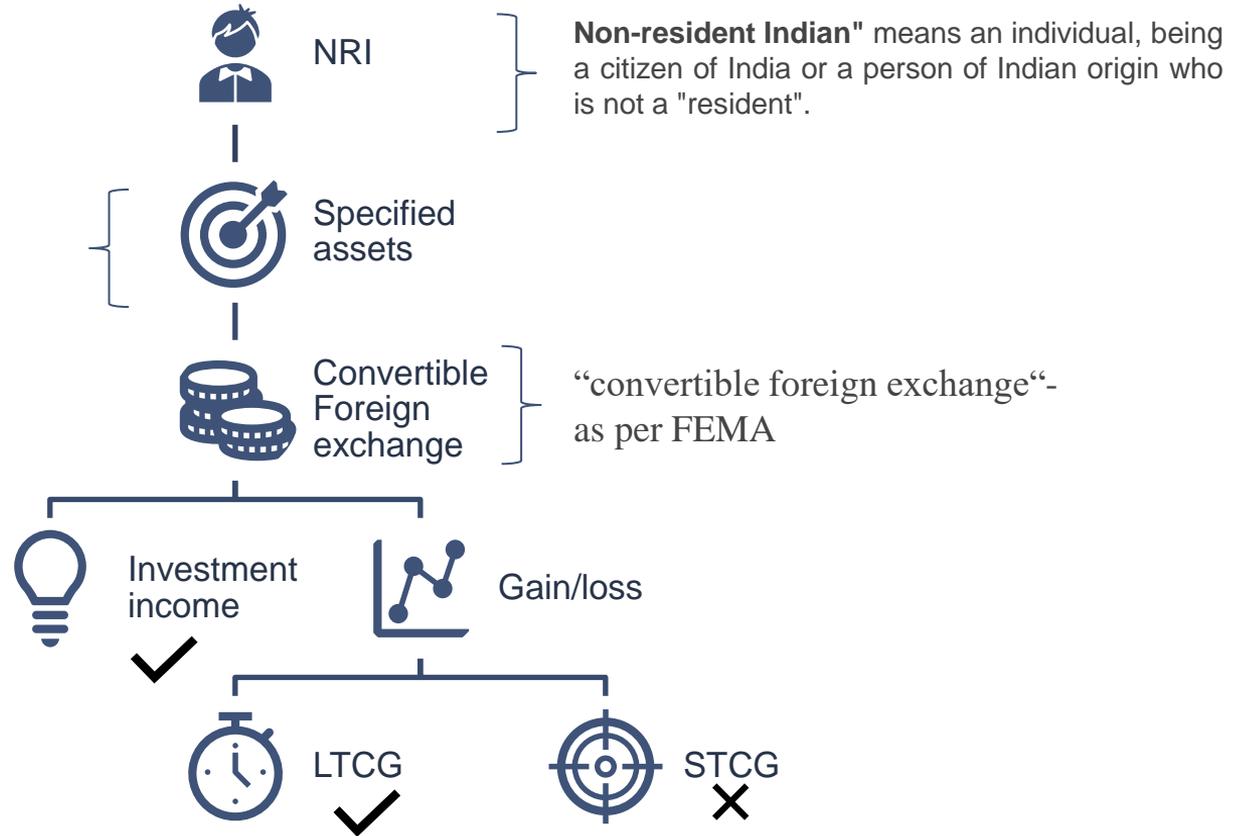


Provision

"specified asset" means –

- (i) shares in an Indian company;
- (ii) debentures issued by an Indian company which is not a private company,
- (iii) Deposits with an Indian company which is not a private company,
- (iv) any security of the Central Government as defined in clause (2) of section 2 of the Public Debt Act, 1944 (18 of 1944);
- (v) such other assets as the Central Government may specify in this behalf by notification in the Official Gazette.

Summary chart



Section 115G

Judicial pronouncement

Income from Investment income-

Ravi Narayanan, In re [2008] 168 Taxman 65 (AAR - New Delhi)-

- **Foreign Exchange Asset:** Non-Resident Ordinary (NRO) deposit **acquired with convertible foreign exchange** in a banking company, which is not a private company as per Companies Act, 1956, shall be treated as a foreign exchange asset under section 115C(b). **Interest on such NRO deposit** shall be treated as investment income under section 115C(c) which is liable to be taxed at rate of 20 per cent under section 115E-V.

M. Manohar (Dr) v. ACIT (2011) 339 ITR 49/201 Taxman 106 / 62 DTR 148/ 244 CTR 642 (Mad.)(High Court)

- Where assessee received interest on investment made out of foreign funds which chargeable to tax at concessional rate under section 115H, said special treatment could not be extended to interest on interest re-deposited with original sum. (A. Y. 1996-97).

Section 115G

Judicial pronouncement

Original source:

CIT v. M. C. George (2011) 60 DTR 166/ 243 CTR 404 / 198 Taxman 466 (Ker.) (High Court)

- If the original source of the deposit is convertible foreign exchange, the transfer of such foreign exchange asset, namely **from one bank to another will not affect its identity as a foreign**. exchange asset, assessee was entitled to concessional rate of tax on the interest earned from NRNR deposits under section 115H read with section 115E.

Non Resident at time of sale :

CIT v. N.P. Mathew (2006) 280 TTR 44 / (2005) 147 Taxman 670 / 198 CTR 551 (Ker.)(High Court):

- Assessee, a non resident, deposited money in non resident account with various banks in India and on his return to India, he claimed concessional rate of tax under section 115H, his claim was to be allowed; there is no merit in contention that **in order to get benefit of section 115H assessee should be a non resident** and should have been assessed as such in previous year. (A.Y. 1991-92)

Specified asset:

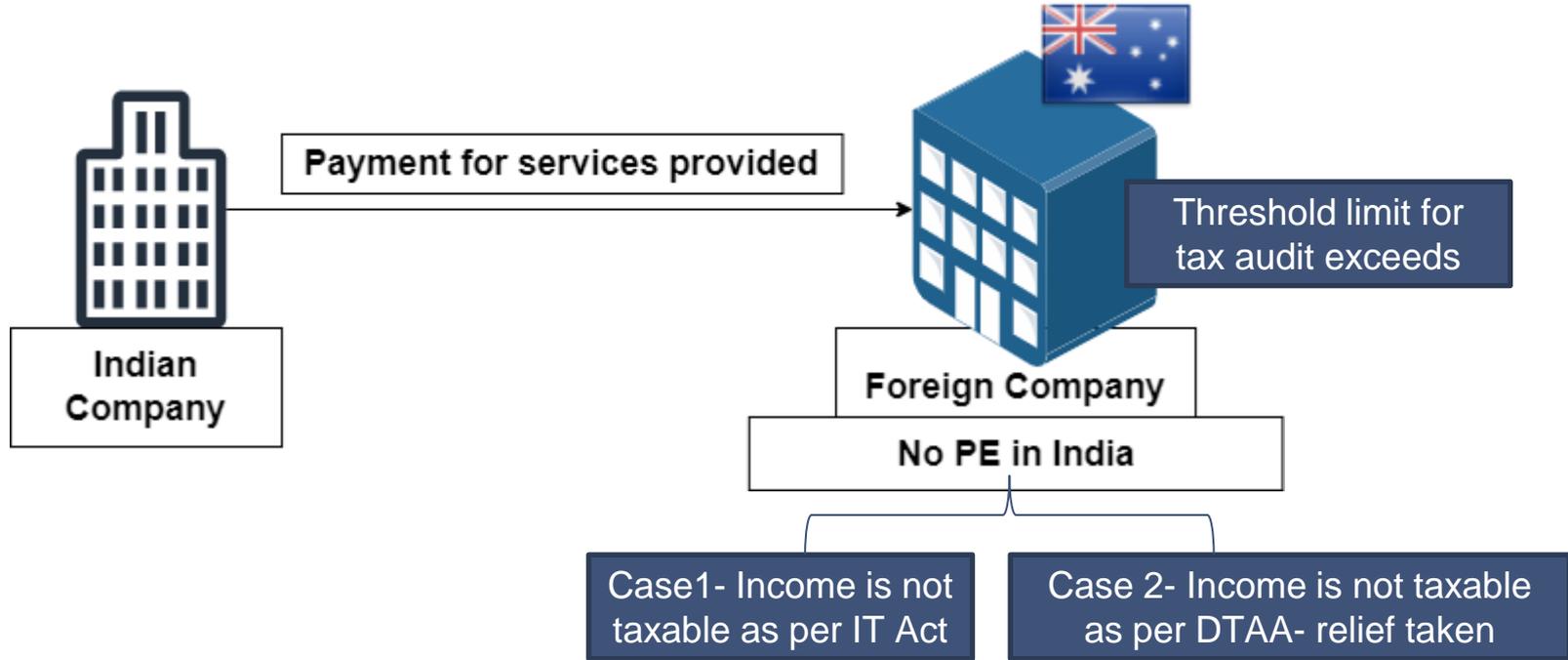
Dr. Virindra Kumar Raina, In re[2009] 176 Taxman 222 (AAR-New Delhi).

- NRO accounts opened by applicant in SBI, **which is a public company, would be specified asset** and interest arising therefrom would be taxable at concessional rate of 20 per cent as specified in section 115E-

Audits



Requirement of Tax Audit



Whether foreign entity required to file Tax Audit in India?



Tax audit- Provision

- **Sec 44AB.** Every person, (a) carrying on business shall, if his total sales, turnover or gross receipts, as the case may be, in business exceed or exceeds one crore rupees in any previous year
- **Sec 2(13)** "business" includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture;
- **Sec 2(31)** "person" includes—
 - ▷ (i) an individual,
 - ▷ (ii) a Hindu undivided family,
 - ▷ (iii) a company,
 - ▷ (iv) a firm,
 - ▷ (v) an association of persons or a body of individuals, whether incorporated or not,
 - ▷ (vi) a local authority, and
 - ▷ (vii) every artificial juridical person, not falling within any of the preceding sub-clauses.
 - ▷ *Explanation.*—For the purposes of this clause, an association of persons or a body of individuals or a local authority or an artificial juridical person shall be deemed to be a person, whether or not such person or body or authority or juridical person was formed or established or incorporated with the object of deriving income, profits or gains;

Tax audit- Judicial Judgement

ITO V Volst Alpine Industrielagenbau GMBH (1998) 67 ITD 219 (Cal-Trib).

- **Fact of the Case:** The assessee a non-resident foreign company, filed its return of income for the AY 1995-96 as Nil, on scrutiny of return the AO, it was found that the assessee had received some amount from India on account of “technical services” therefore, AO is of opinion that the assessee company has not filed a valid return as it is under obligation to file tax audit report.
- **Taxability in India:** The said income is taxable in India as per IT Act however not taxable as per DTAA.
- **Requirement of Tax audit-**
 - according to the provisions of [s. 44AB](#), the main contention as indicated by the title or the heading of that section is that "every person,-carrying on business or profession" shall get his accounts audited. But in the instant case, the assessee-company did not carry on any business in India and they did not maintain any permanent establishment in India.
 - The main contention that the assessee carried on **business in India** as not proved by the Department and, therefore, the provisions of [s. 44AB](#) were not applicable.
 - **Ruling-** The non-resident was not subject to tax in India as per DTAA and **hence there was no scope of applicability of the provisions of s. 44AB.**

Tax audit- Judicial Judgement

Snam Progetti Spa v/s JCIT [2005] (95 TTJ 424) (Delhi ITAT)

- **Fact of the Case:** The assessee, a foreign company whose income for the year was assessed under s. 44D r/w s. 115A of the IT Act for the income earned from technical service and royalty services. The AO levied penalty u/s 271B for non-filing of tax audit report u/s 44AB.
- **Assessee's contention:** Sec 44D starts with non obstante clause, which obscures or eclipses the provisions of ss. 28 to 44C of the Act which also includes Sec 44AB. The exclusionary effect brought about thereby exempts the assessee from the requirement of its accounts being audited.
- **Ruling-** The objection of the assessee that it is exempted, by virtue of that *non obstante* clause, from carrying out the mandate of s. 44AB, is not sustainable and rejected.
- *Under the **gross basis of taxation**, as is the case herein, where a foreign company files a return of income without claiming any expenditure or allowances as deductible expenses, conducting a tax audit would be redundant. In the present case also, the assessee is taxable at a flat rate of 20 per cent under s. 44D r/w s. 115A. The assessee has not claimed any deductible expenses comprising expenditure or allowances. **Therefore, it is justified in asserting that conducting an audit under s. 44AB would not at all be required.** Moreover, in such circumstances, penalising the assessee for not getting its accounts audited is entirely uncalled for. As such, when in the said facts, the provisions of s. 44AB do not apply to the assessee, the penalty imposed cannot be sustained.*

Tax audit

Significant economic presence: (SEP)

Explanation 2A to Sec 9(1)(i):

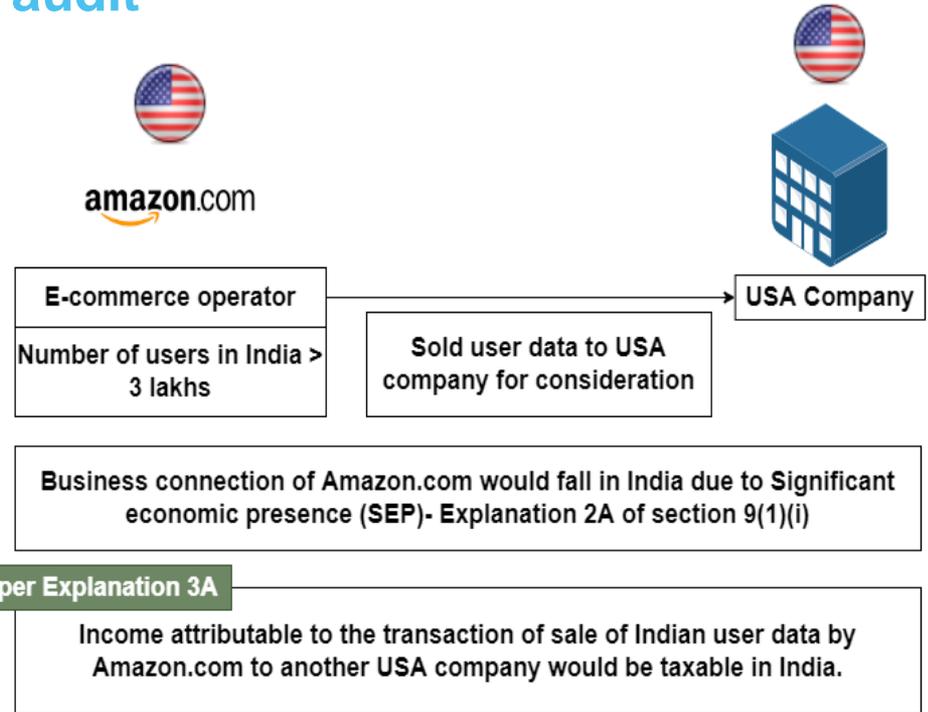
Business connection of foreign entity would fall in India if specified threshold limit exceeds.

Threshold limit:

1. Transaction of goods/services/property > 2 Crore
2. Users in India > 3 Lakhs

• Income attribution for explanation 2A:

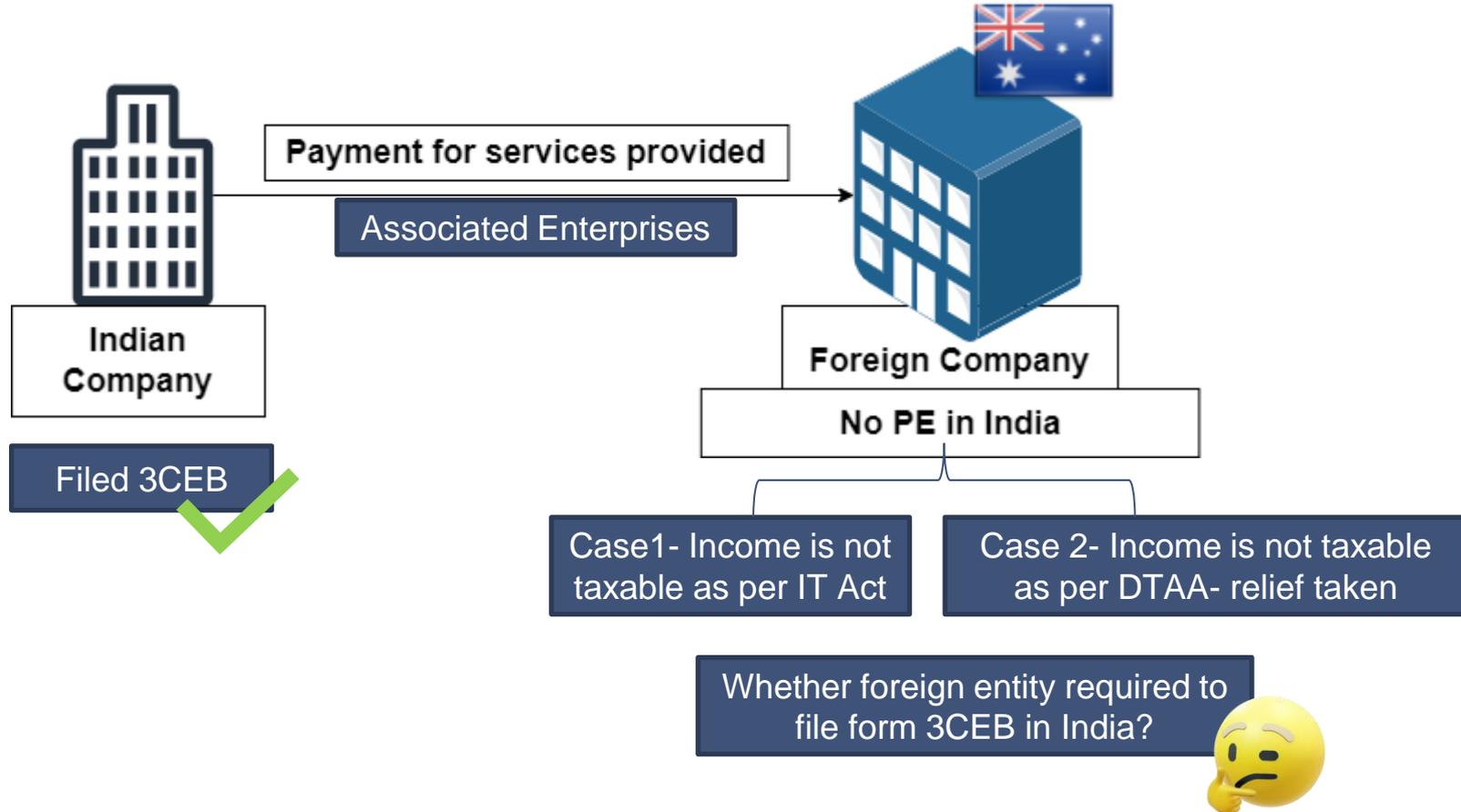
- Sale of advertisement
- Sale of data
- **Sale of goods or services using data**



Whether Tax Audit required to file in India??



Requirement of Transfer Pricing Compliance



Whether Transfer pricing Compliance required for non resident entity?

S. 92E

Every **person** who has entered into an international transaction or specified domestic transaction during a previous year shall obtain a report from an accountant and furnish such report.....



S. 2(31)

Every "person" includes—

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



S 2(17)- "company" includes-
(ii) any body corporate incorporated by or under the laws of a country outside India,
or....

S 2(23) "Firm"- shall have the meaning assigned to it in the Indian Partnership Act, and shall include a limited liability partnership as defined in the Limited Liability Partnership Act, 2008;
foreign firm can also be registered under Indian partnership Act.

Yes !! As non of the section bifurcates compliance requirement into resident or non-resident



Transfer Pricing Compliance- Case law

Deere & Co. [2011] 11 taxmann.com 388 (AAR)- New Delhi

- **Fact of the Case:** The assessee is a USA based entity, who has sold entire shareholding of Indian entity **without any consideration** to another Singapore company for restructuring of group.
- **Taxability in India-** No taxability arises u/s 45 of the IT Act.
- **Return filing requirement-** Yes
- **Requirement of transfer pricing provisions (sections 92 to 92F of the Act)-** section 92 of Income-tax Act provides that computation of income arising from an international transactions having regard to the arm's length price. This provision cannot be applied to a transaction which is not chargeable to tax under the Income-tax Act. Only when income accrues, it can be computed having regard to the arm's length price.

VNU International B.V. (2011) - 10 Taxmann.com 157 – New Delhi

- **Fact of the case:** A Netherlands company sold shares of wholly owned Indian company' s shares to another swiss company.
- **Taxability in India-** Not taxable in India as per the DTAA between the India-Netherland .
- **Return filing requirement-** Yes
- **Transfer pricing requirement-** The taxability of the capital gains would arise only in the Netherlands and the transaction would not be liable to tax in India. The transfer pricing provisions from sections 92 to 92F of the Act would not be attracted as the sale and purchase of shares is between non- resident companies of the Netherland and Switzerland. The revenue conceded the applicant's contention on transfer pricing requirement.

Transfer Pricing Compliance- Case law

Vanenburg Group B.V. [2007] 159 Taxman 219 – New Delhi

- **Fact of the case-** Netherlands company sold shares of its entire shares of Indian subsidiary company to another Netherlands company for its corporate reorganization.
- **Not taxable in India-** Not taxable in India as per the DTAA between the India-Netherland .
- **Filing return-** No
- **Transfer pricing requirement-** "Coming to the question of transfer pricing, it is seen that sections 92 to 92F are contained in Chapter-X of the Act under heading "Special Provisions Relating to Avoidance of Tax". These provisions are aimed at preventing avoidance of tax by certain well known devices, determination of arm's length price, computation of income in certain cases etc. in relation to international transactions. These are again machinery provisions which would not apply in the absence of liability to pay tax."

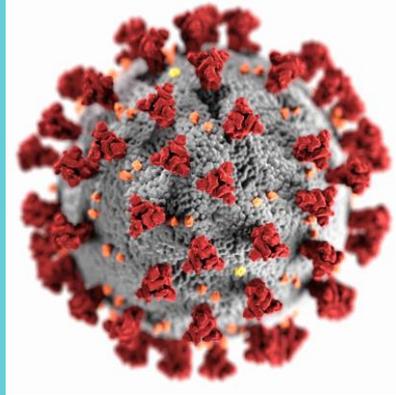
Praxair Pacific Ltd., In re [2010] 326 ITR 276 / 193 Taxman 1 (AAR)- New Delhi

- **Fact of the Case:** The assessee a Mauritius company sold its entire shareholding of Indian entity to another Singapore company with the object of group reorganization.
- **Taxability in India:** Not taxable in India as per DTAA between India-Mauritius Article 13(4) as the assessee does not have PE in India.
- **Filing return-** No
- **Requirement of transfer pricing provisions (sections 92 to 92F of the Act)-** transfer pricing provisions of sections 92 to 92F of the Act would not attract **in the absence of liability to pay tax on the capital gain.**

Transfer Pricing Compliance

- In case, taxability has not arisen, AARs are in favour of applicant.
- However, in case income is liable to tax in India, legally no relaxation has been provided in respect of transfer pricing compliance. Accordingly, the foreign company is still required to file a transfer pricing certificate in Form 3CEB, and prepare and maintain transfer pricing documentation prescribed under Section 92D.
- In cases where the foreign company is not required to file an income tax return in India, **it is advisable that sufficient documentation, namely invoices, withholding tax certificates, underlying agreements, etc. is maintained each year. This will help the companies to respond effectively respond to any queries raised by the Indian tax authorities.**

Impact of Covid-19



COVID Impact

- Where several nations of the world suspending air travel and closing borders to prevent spread of COVID-19 which caused mayhem. India was no exception, as the Government of India imposed lockdown with effect from March 25, 2020 leaving number of individuals trapped in India or stranded outside India contrary to their will and plans.
- However, the Income Tax Act, 1961, just like tax statutes in other nations, does not in itself distinguish between intended or unintended stay in India while determining the 'residential status' of an Individual which is pivotal in determination of the tax liability of such individual for the relevant financial year under Indian law.
- Circular No 11/2020 and Circular No 2/2021
- Whether **such number of days which are unintended stay in India should be excluded from counting "stay in India" for residential status?**
- Were stay in India exceeds 182 days (including unintended stay in India), should a NRI choose Non-resident as residential status?
- If yes, whether number of days differs from passport would be accepted?

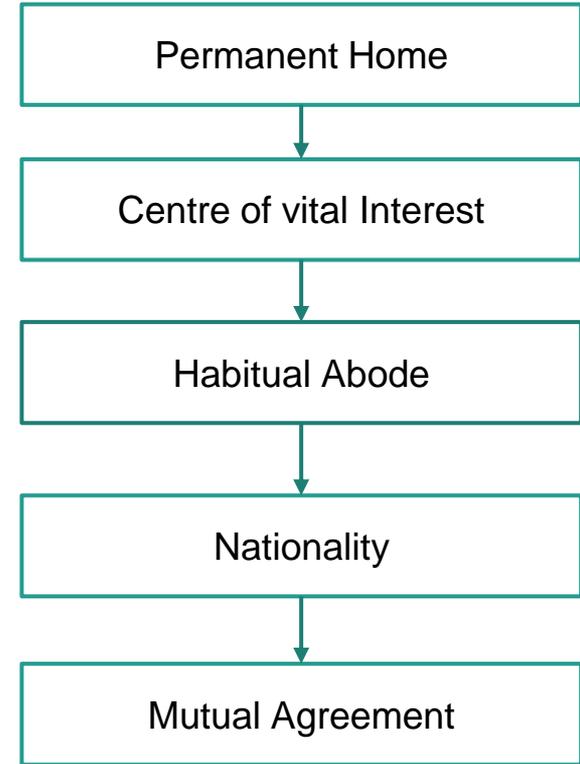
Option 1 - “Delhi High Court confirms exclusion of period of wrongful impounding of passport while determining residential status in India- Suresh Nanda”

- The taxpayer was a non-resident for the period 1985 to 2006 and visited India routinely from United Arab Emirates (UAE).
- The taxpayer was subjected to search operations on account of alleged involvement in brokering defence. deals and his passport was impounded by government agencies rendering him unable to travel abroad.
- The taxpayer filed his return as a non-resident for the Assessment Year (AY) 2007-08 and 2008-09. However, based on his stay details in India, the Assessing Officer (AO) treated the taxpayer as a resident for the said AY's and accordingly, the AO made additions to the taxpayer's income which was confirmed later by CIT(A).
- **The High Court noted that the strict interpretation of Section 6(1)(a) of the Act would render the taxpayer a resident but the same would be unfair in consonance with the intention of the legislature. The High Court also opined that the taxpayer was compelled by external circumstances beyond his control to stay in India.**
- **However, the High Court also pronounced that the observation in this case cannot be treated as a thumb rule to the effect that each period of involuntary stay must be invariably excluded from the computation for the purpose of Section 6(1) of the Act and each case must be examined on its own merits in the light of facts and circumstances leading to 'involuntary stay, if any, in India.**

Option 2 – PIL - Hon’ble Supreme Court dismissed the plea NRI Gaurav Baid who was stuck in India due to Covid-19

- The petitioner (NRI) submitted that he arrived in India on March 6 and was compelled to extend his stay in India, later he was able to leave the country on October 5, by that time his stay in India (Financial year 2020-21) had already crossed a period of 182 days due to the lockdown imposed in India.
- The bench, stated that there was a transport bubble system created for such passengers, which the petitioner could have availed.
- **“We won’t entertain such petition unless and until you show us that you are completely powerless and confined to the shores of this country, then only we will consider the matter from the standpoint of Article 32 but if this is the situation, the transport bubble was created from July 1 onwards and yet you chose not to avail, that is the matter to go into individual cases,” Court said.**
- Advocate Abhishek Singhvi, along with a Senior Advocate, submitted that the bubble system created was only available after 91 days of the start of April 2020 financial year, now benefit of 91 days is not being given.

Option 3 - Tie Breaker Rule- For Individual under DTAA



Option 3 – To opt for Tie breaker rule



- Practical difficulty while filing ITR- there is **no provision in the ITR** for individuals to claim status as ‘tax treaty non-residents’ if they are residents under the provisions of the Income Tax Act .
- It has become mandatory to provide details of period of stay in India in the ITR and, therefore, issues shall arise in cases where stay in India exceeds 182 days but the tie-breaker results in non-residence in India.
Could lead to misrepresentation of facts
- There may not be any tie to break – as they may not qualify as resident of foreign country – due to short number of days spent in that country (For USA – resident is on citizen based and for UAE – resident is based on number of days spent in the country)

Option 4 – File as resident but ignore foreign income and assets

- Assessee may simply claim all foreign source income as exempt even though his status is disclosed as a resident.
- Filing as a resident – Have to make unnecessary additional disclosures and compliances, such as in respect of foreign assets. However, if such disclosures are rightly not made, this may attract additional scrutiny and also the potential for proceedings under the Black Money law.
- Misrepresentation of fact.

Or pay tax

Recent amendments on in residential status

Residential status- Individual

Clause	Individual	Condition	Resident- No. of Days	Condition R-NOR Status
1)	Any Individual	-	- 182 Days or more OR - 60 days + 365 days in 4 PY	- NR in 9/10 PY or - 729 days or less in 7PY
Clause (a) of Ex 1	COI (leaves India)	-India Ship Crew Member or -For the purpose of Employment outside India	60 days 182 +365 days in 4 PY	
Clause (b) of Ex 1	COI/POI	- Visits India from outside India -Total Income of Rs 15 Lakh or more	60 days 182 +365 days in 4 PY 60 days 120 +365 days in 4 PY	The Period of 120 days to 181 days
(1A)	COI	Total Income of Rs 15 Lakh or more and not liable to tax in any other country	-	Always R-NOR

Taxability of Income based on residential status

Effect due to Finance Act 2020

Taxability of Income	Resident	Resident but not ordinary	Non-Resident
Income received or deemed to be receive in India	Taxable	Taxable	Taxable
Income accrue/ arise or deemed to accrue/ arise in India	Taxable	Taxable	Taxable
Income (other than above) earned outside India from Business controlled from India or profession set up in India	Taxable	Taxable	Non-Taxable
Income accrue or arise outside India	Taxable	Non-Taxable	Non-Taxable

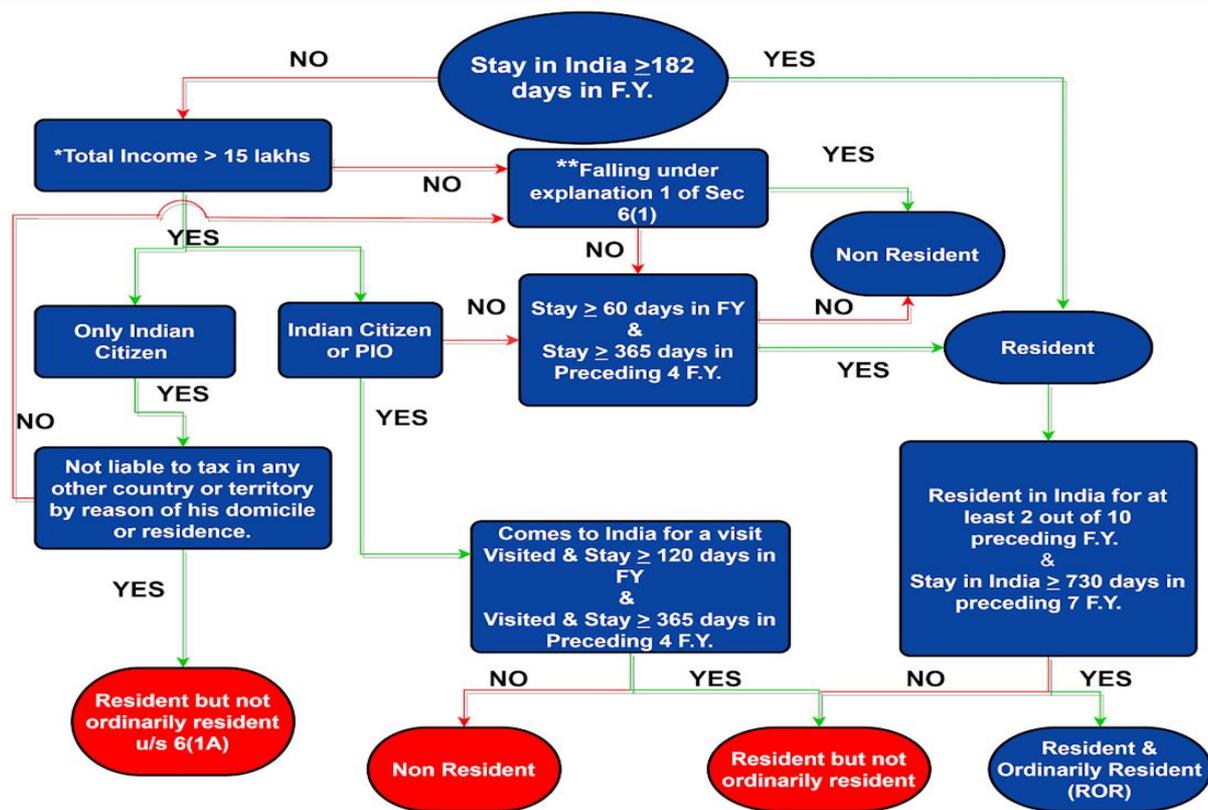
Impact of amendments- NR to RNOR

Negative impact –

- **Rates of tax:** Chapter XII concessional rate available for NR not to RNOR.
- **Exemptions:** Available for NR and not to RNOR eg. Sec 115A(1)(a), 115A(1)(b) and Sec 115AC.
- Certain **benefits available to NR but not to RNOR:**
 - 10 % on LTCG on unlisted shares,
 - Additional tax compliance framework such as TDS obligations, tax return filing, etc. which RNOR required.
- Reduced number of years threshold for NRIs for NOR status

Positive impact-

- Benefit under India DTAA network in respect of foreign sourced incomes would be available
- Though RNOR, they will be eligible to claim **Foreign Tax Credit** for doubly taxed incomes
- **Section 195:** higher rates of tax for NR, however, for RNOR lower rates of taxes will be applicable
- **Senior citizens:** slab rates available for NORs.



Will effect returning Indians

*Total income other than income from foreign sources

** Falling under explanation 1 Sec 6(1):

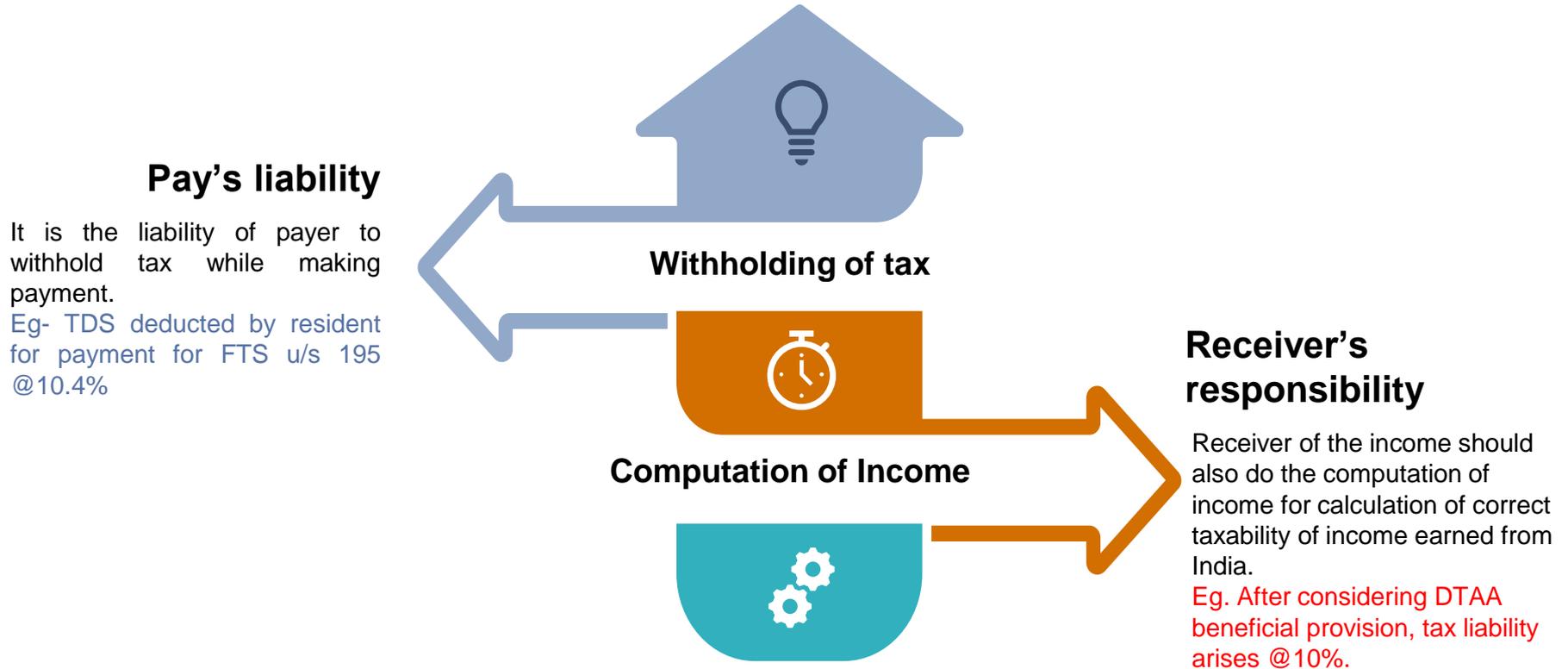
Explanation 1(a). Leaves India for the purpose of employment outside India or as a member of the crew of an Indian ship

Explanation 1(b). Comes to visit to India excluding Indian Citizen or PIO having total income excluding income from foreign sources more than 15 Lakhs

PIO- Person of Indian Origin
F.Y.- Financial Year

Miscellaneous Provision

Withholding of Tax vs. Computation of income



Do NRIs Have to Pay Advance Tax?

- If your tax liability exceeds Rs 10,000 in a financial year, you are required to pay advance tax. Interest under Section 234B and Section 234C is applicable when you don't pay your advance tax.
- Non-residents are also obliged to pay advance tax voluntarily, if there is such liability even in respect of book profit. - P.No. 14 of 1997, In re (1998)234 ITR 335 (AAR).

Investment in Provident Fund

- An NRI cannot invest in PPF, however, if one's residential status subsequently changes to NRI, the account is allowed to be run till maturity. PPF is a 15-year scheme, which can be extended indefinitely in blocks of five years. However, for a resident turned NRI, the extension is not allowed. Therefore Non Resident Indians are not eligible to extend/continue PPF account after maturity.
- NRIs can withdraw their investment prematurely but after five years from account opening. The amount is not taxable in India. But it is taxable in the country of residence.
- U/s 10(11), any payment from a provident fund to which the Provident Funds Act, 1925 applies is exempt, this sub-section does not bifurcate into payment made by resident and non-resident. Therefore amount received by non-resident on maturity would be exempted.

New provisions where return filing is not required

The CBDT in the [notification no. 119/2021](#) dated 11 October 2021, exempts the following class of persons subject to fulfilment of certain conditions;

1. A NRI or foreign company-

- who does not earn any income during the P.Y. other than income from **investment in the specified fund** referred to in sec 10(4D), explanation (c)(I). **AND**
- Who satisfies the conditions specified in **sub-rule (1) of rule 114AAB**

- **Specified funds:** those funds which have been granted a certificate of registration as a **Category III Alternative Investment Fund** and is regulated under the SEBI (Alternative Investment Fund) Regulations, 2012.
- **Conditions specified under sub-rule (1) of rule 114AAB** are as follows:
 1. Person does not have any income other than income from specified funds
 2. TDS has been correctly deducted under section 194LLB of the Act.
 3. The non-resident furnishes the details such as name, email ID, contact no., address, declaration that he is a resident of a country, TIN, etc to the specified funds.

New provisions where return filing is not required

2. A non-resident being an eligible foreign investor
 - who has made transaction only in **capital asset referred to in section 47(viiab)** of the said Act,
 - Which are listed on a recognised stock exchange located in any IFSC and
 - The consideration on transfer of such capital asset is paid or payable in foreign currency, and
 - Such person does not earn any income in India during the previous year other than the income from transfer of capital asset referred in section 47(viiab). AND
 - The satisfied the conditions mentioned in **sub-rule (2A) of rule 114AAB**.
- **Capital asset referred to in clause (viiab) of section 47** includes:
 1. Bond or Global Depository Receipt referred to in section 115AC(1); or
 2. Rupee denominated bond of an Indian company; or
 3. Derivative; or
 4. Such other securities as may be notified by the Central Government in this behalf
- Condition laid down in **sub-rule(2A) of rule 114AAB** are as follows:
 1. The foreign investor does not earn any income other than income from transfer of capital assets.
 2. The eligible foreign investor furnishes the details such as name, email ID, contact no., address, declaration that he is a resident of a country, TIN or unique number of the foreign country, etc. to the stock broker.

7th Proviso to Section 139 (1) of the IT Act-

Provided also that a person referred to in clause (b), who is not required to furnish a return under this subsection, and who during the previous year—

(i) has deposited an amount or aggregate of the amounts exceeding one crore rupees in one or more current accounts maintained with a banking company or a co-operative bank; or

(ii) has incurred expenditure of an amount or aggregate of the amounts exceeding two lakh rupees for himself or any other person for travel to a foreign country; or

(iii) has incurred expenditure of an amount or aggregate of the amounts exceeding one lakh rupees towards consumption of electricity; or

(iv) fulfils such other conditions as may be prescribed,

shall furnish a return of his income on or before the due date in such form and verified in such manner and setting forth such other particulars, as may be prescribed.]

Sec 115AC

Tax on income from bonds or Global Depository Receipts purchased in foreign currency or capital gains arising from their transfer:

It shall not be necessary for a non-resident to furnish under sub-section (1) of section 139 a return of his income if—

- (a) his total income in respect of which he is assessable under this Act during the previous year consisted only of income referred to in clauses (a) and (b) of sub-section (1); and
- (b) the tax deductible at source under the provisions of Chapter XVII-B has been deducted from such income.

Income includes for this section-

- (a) income by way of interest on bonds of an Indian company issued in accordance with such scheme as the Central Government may, by notification in the Official Gazette, specify in this behalf, or on bonds of a public sector company sold by the Government, and purchased by him in foreign currency; or
- (b) income by way of dividends on Global Depository Receipts—



Return & forms— procedural part

Things to keep in mind for registration on IT portal- NRs

- Check name printed on PAN card and name in the PAN database of IT department should be same.
- While registration, you need to tick that you are “non-resident”.
- Two mandatory field for registration- mobile no. and email-ID – different OTPs would be received on both.
- Mobile no. can also be of foreign territory
- Address- can mention foreign address.

The screenshot shows the e-Filing portal registration page for Non-Resident (NR) users. The page features a navigation bar with options like Home, Individual/HUF, Company, Non-Company, Tax Professionals & Others, Downloads, and Help. A progress indicator shows four steps: 1. Get Started, 2. Fill Details, 3. Verify Details, and 4. Secure Your Account. The main content area is titled "Let's get started" and includes a "Register as" section with "Taxpayer" and "Others" buttons. Below this is a "PAN" field with a "Validate" button. At the bottom, there are "Continue" and "Cancel" buttons. A list of eligible entities is provided on the right side of the form.

Do not have an account? [Register](#)

Home Individual/HUF Company Non-Company Tax Professionals & Others Downloads Help

1 Get Started 2 Fill Details 3 Verify Details 4 Secure Your Account

Register and find all your tax data in a single secure platform! * Indicates mandatory fields

Let's get started

Register as

Taxpayer Others

PAN *

Individuals / Hindu Undivided Family / Company / Trust / Local Authority / Artificial Juridical Person / Firm / Limited Liability Partnership / Association Of Persons / Political Party / Government / Body Of Individuals

Which ITR to be File- For Non Resident

Which ITR to be File- For Non Resident



ITR-1	For individuals being a resident (other than not ordinarily resident) having total income upto Rs.50 lakh, having Income from Salaries, one house property, other sources (Interest etc.), and agricultural income upto Rs.5 thousand] [Not for an individual who is either Director in a company or has invested in unlisted equity shares	✗ Its for Resident only, even not ordinarily resident can't file this form
ITR 2	For Individuals and HUFs not having income from profits and gains of business or profession	✓ Can File
ITR 3	For individuals and HUFs having income from profits and gains of business or profession	✓ Can File Even in case of presumptive income u/s 44B/BB/BBA etc, File ITR-3 only.
ITR 4	For Individuals, HUFs and Firms (other than LLP) being a resident having total income upto Rs.50 lakh and having income from business and profession which is computed under sections 44AD, 44ADA or 44AE	✗ Its for Resident.

Which ITR to be File- For Non Resident

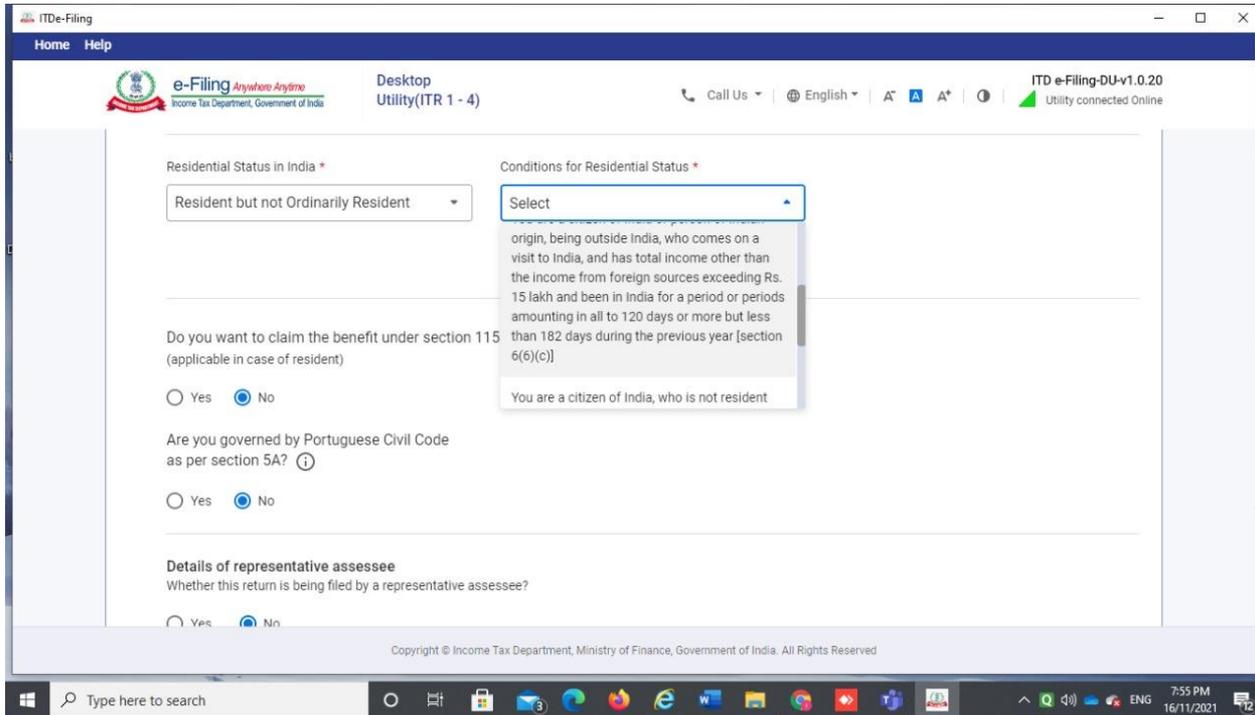


ITR-5	For persons other than- (i) individual, (ii) HUF, (iii) company and (iv) person filing Form ITR-7	✓ can file
ITR 6	For Companies other than companies claiming exemption under section 11	✓ Can File Companies includes Foreign Companies
ITR 7	For persons including companies required to furnish return under sections 139(4A)/(4B)/(4C)/(4D) only	Foreign trust registered in The India trust Act 1882- ✓ Foreign trust not registered in The India trust Act 1882 ✗

Relevant Schedules in filing return

Residential Status

- While choosing residential status in new e-filing portal you will get the option to choose yourself as 'resident but not ordinarily resident' due to sec 6(6)(c) and 6(6)(d).



Schedule AL

3.22 Schedule AL

If your total **income exceeds ₹50 lakh**, it is mandatory to disclose the details of movable and immovable assets in Schedule AL along with liabilities incurred in relation to such assets.

It will include Indian as well as Foreign assets even though same has been shown under Schedule FA.

For Non-resident or 'resident but not ordinarily resident': only the details of assets located in India are to be mentioned.

Dashboard / e-File / File Income Tax Return / Filing returns for A.Y. 2021-22 (ITR-2) / Schedule AL

Schedule AL

Assets and liabilities at the end of the year (applicable in a case where total income exceeds ₹ 50 lakh)

Expand all | Collapse all

> A. Details of immovable assets ₹ 14,00,000

∨ B. Details of movable assets [Edit] [Delete]

<input type="checkbox"/>	Sl. No. (1)	Description (2)	Amount (3)
<input type="checkbox"/>	i	Archaeological collections, drawings, paintings, sculpture, any work of art	₹ 14,000
<input type="checkbox"/>	ii	Financial Assets Hide details	
		a. Bank (including all deposits)	₹ 10,000
		b. Shares and securities	₹ 10,000
		c. Insurance policies	₹ 10,000
		d. Loans and advances given	₹ 10,000
		e. Cash in hand	₹ 10,000

Do you want to add more movable assets?
[Add Another]

Total amount ₹ 64,000

C. Liabilities in relation to Assets at (A + B) ₹

< Back to Schedules Confirm

Schedule EI

3.16 Schedule Exempt Income (EI):

In Schedule EI, you need to provide your details of exempt income i.e., income not to be included in total income or not chargeable to tax.



Whether income which is not chargeable to tax as per DTAA, is exempted income?

e-Filing Anytime Anywhere
Income Tax Department, Government of India

Call Us | English | A+ | A- | Jatin Mishra Individual

Dashboard | e-File | Authorised Partners | Services | Pending Actions | Grievances | Help | Session Time 14:53

Dashboard / e-File / File Income Tax Return / Filing returns for A.Y. 2021-22 (ITR-2) / Schedule EI

Schedule EI

Removed "2. Dividend Income" * indicates mandatory fields

Details of exempt income (income not to be included in total income or not chargeable to tax) [Expand all](#) [Collapse all](#)

1. Interest income	₹ 14,000
2. Agricultural income	
Add Details	
3. Other exempt income (including exempt income of minor child)	₹ 0
4. Income not chargeable to tax as per DTAA	₹ 0
5. Pass through income not chargeable to tax (Schedule PTI) ⓘ	₹ 0
Please ensure that corresponding income is reflected in schedule PTI	
6. Total Exempt Income (1 + 2 + 3 + 4 + 5)	₹ 0

[Back to Schedules](#) [Confirm](#)

Schedule TR- Not applicable

3.19 Schedule TR:

In Schedule TR, you need to provide a summary of tax relief which is being claimed in India for taxes paid outside India in respect of each country.

This schedule captures a summary of detailed information furnished in Schedule FSI.

Only in case of Resident

Dashboard / e-File / File Income Tax Return / Filing returns for A.Y. 2021-22 (ITR-2) / Schedule TR

Schedule TR

Summary of tax relief claimed for taxes paid outside India (Available in case of resident)

1. Summary of tax relief claimed

Country Code (a)	Taxpayer Identification Number (b)	Total taxes paid outside India (c) ⓘ	Total tax relief available (d) ⓘ	Tax Relief Claimed under section (e) ⓘ
2- United States of America	3456TYR34456	total of 'c' of Schedule FSI in respect of each country	total of 'd' of Schedule FSI in respect of each country	Specify 90, 90A or 91
Total		₹ 50,000	₹ 50,000	

2. Total tax relief available in respect of country where DTAA is applicable (section 90/90A) ⓘ Part of total of 1(d) ₹ 50,000

3. Total tax relief available in respect of country where DTAA is not applicable (section 91) ⓘ Part of total of 1(d) ₹ 40,000

4. Whether any tax paid outside India, on which relief was allowed in India, has been refunded/credited by the foreign tax authority during the year?

Yes No

Amount of Tax Refunded: ₹ 1,43,400

Assessment Year in which tax relief allowed in India: 2018-19

< Back to Schedules Confirm

Schedule FA- Not Applicable

3.20 Schedule FA:

In Schedule FA, you need to provide details of **foreign asset or income from any source outside India.**

This Schedule need not be filled up if you are 'not ordinarily resident' or a 'non-resident'

Dashboard / e-File / File Income Tax Return / Filing returns for A.Y. 2021-22 (ITR-2) / Schedule FA

Schedule FA

Details of foreign assets and income from any source outside India ⓘ

Expand all | Collapse all

▼ A1. Details of Foreign Depository Accounts held (including any beneficial interest) at any time during the relevant accounting period

<input type="checkbox"/>	Sl. No. (1)	Country Name & Code (2)	Name of the Financial Institution (3)	Address of the Financial Institution (4)	ZIP Code (5)	Account Number (6)	Status (7)	Account Opening Date (8)	Peak balance during the period (9)	Closing balance (10)
<input checked="" type="checkbox"/>	1	United States of America	JP Morgan	Lorem ipsum dolor sit amet, consectetur adipiscing elit	21452	214523675678	Owner	12-Mar-2019	₹ 10,000	₹ 10,000

Do you want to add more foreign assets?

[Add Another](#)

[< Back to Schedules](#) [Confirm](#)

Schedule FSI- Not applicable

3.18 Schedule Foreign Source Income (FSI): In Schedule Foreign Source Income (FSI), you need to report the details of income, which is accruing or arising from any source outside India.

This schedule is applicable for residents only.

The screenshot displays the e-Filing portal interface for Schedule FSI. It shows two entries for foreign source income: one for the United States of America and one for Australia. Each entry includes a table with columns for Sl. No., Heads of Income, Income from outside India, Tax paid, Tax payable, Tax relief, and Relevant article of DTAA. The United States entry shows a salary of ₹ 14,00,000 with ₹ 50,000 tax paid and ₹ 14,00,000 tax payable, resulting in ₹ 50,000 tax relief. The Australia entry shows a salary of ₹ 14,00,000 and house property of ₹ 14,00,000, with ₹ 50,000 tax paid and ₹ 14,00,000 tax payable, resulting in ₹ 1,00,000 tax relief. The interface includes navigation options like 'Back to Schedules' and 'Confirm', and a status bar at the bottom indicating '1 of 1 items'.

Call Us | English | A A A | Jatin Mishra Individual

Dashboard e-File Authorised Partners Services Pending Actions Grievances Help Session Time 1 4 : 5 3

Schedule FSI

Details of income from outside India and tax relief (Available in case of resident)

2 - United States of America Edit Delete

Tax Identification Number
3456TYR34456

Sl. No.	Heads of Income (a)	Income from outside India offered for tax in India (b) (1)	Tax paid outside India (c)	Tax payable on such income under normal provisions in India (d)	Tax relief available in India (e) (1)	Relevant article of DTAA if relief claimed u/s 90 or 90A (f)
i	Salary	₹ 14,00,000	₹ 50,000	₹ 14,00,000	Lower of c & d	Article 13
Total		₹ 14,00,000	₹ 50,000	₹ 14,00,000	₹ 50,000	

61 - Australia Edit Delete

Tax Identification Number
3456TYR34456

Sl. No.	Heads of Income (a)	Income from outside India offered for tax in India (b) (1)	Tax paid outside India (c)	Tax payable on such income under normal provisions in India (d)	Tax relief available in India (e) (1)	Relevant article of DTAA if relief claimed u/s 90 or 90A (f)
i	Salary	₹ 14,00,000	₹ 50,000	₹ 14,00,000	Lower of c & d	Article 13
ii	House Property	₹ 14,00,000	₹ 50,000	₹ 14,00,000	₹ 50,000	Article 13
Total		₹ 28,00,000	₹ 1,00,000	₹ 28,00,000	₹ 1,00,000	

Do you want to add more TIN? 1 of 1 items < >

+ Add Another

< Back to Schedules Confirm

Refund



- In order to get refund of tax deposited, NRs have to open an Indian bank account (NRO a/c) and the same will be verified in the portal.
- For refund of taxes, bank a/c mandatorily required to be pre-validated.
- For successful pre-validation, you must have a valid PAN registered with e-Filing, and an active bank account linked with the PAN.
- The pre-validation process is automatic. Once your request is submitted, it is sent to your bank. The validation status is updated in your e-Filing account within 10 - 12 working days.
- Some banks also open **SNRR accounts (Special Non-Resident Rupee Account) for NRs specifically for taking income tax refunds.**

Refund- Reissue

■ Prerequisites for refund re-issue-

- ▷ Failure of refund
- ▷ Pre-validated bank a/c

■ Steps for refund-reissue

- ▷ Step 1: Log in to the e-Filing portal using your user ID and password.
- ▷ Step 2: On your Dashboard, click Services > Refund Reissue.
- ▷ Step 3: On the Refund Reissue page, the details and status of refund reissue requests you have raised is displayed. To create a new request for refund reissue, click Create Refund Reissue Request.
- ▷ Step 4: On the Create Refund Reissue Request page, select the record for which you want to submit request of refund reissue and click Continue.
- ▷ Step 5: On the Select a Bank Account page, select the bank account where you would like to receive the refund and click Proceed to Verification.
- ▷ Step 6: After successful verification of the bank details, select your preferred option on the **e-Verify** page.

Refund- Reissue

■ E-Verify

- **Aadhaar OTP** - NRs generally don't have Aadhaar
- **Electronic Verification Code (using bank account / demat account)**- you should have Indian mobile no. for OTP.
- **Electronic Verification Code (using Bank ATM - offline method)**-
- **Net Banking**-
- **Digital Signature Certificate**- If DSC is with other person in India- there can be identity theft issue or it can be misused.

Refund

Income tax department has also issued list of preferred banks for taking refund.

List of Banks suggested by Income tax Department – If a/c is not in suggested banks, you can face some issues in refund.

Bank of Baroda	Indian Bank
The Saraswat Cooperative Bank Ltd	Union Bank of India
IDFC FIRST BANK LIMITED	Indian Overseas Bank
The Cosmos Cooperative Bank Ltd	Canara Bank
JANA SMALL FINANCE BANK LTD	Central Bank of India
IDBI Ltd	Federal Bank Ltd
UCO Bank	HDFC Bank Ltd
Axis Bank	ICICI Bank Ltd
Punjab National Bank	Karur Vysya Bank
South Indian Bank	Kotak Mahindra Bank
	State Bank of India

In some cases the foreign tax authorities may require the non-resident to furnish a copy of the Indian income tax return for allowing claim of foreign tax credit qua taxes withheld in India. This may be required to ensure that such person has not claimed refund of tax withheld in India.

Misc. issues for Non-residents

- Check **Residential status checked every year.**- Advice to maintain travel details every year
- While filing the return you need to provide information of your stay in India for previous year and preceding 4 financial year.
- You also need to provide your jurisdiction name in which you are a resident for that relevant year, Tax identification no. of that jurisdiction, or passport number.
- Kindly check that your income is reconciled with Form 26AS.
- For NRI Senior citizens, the slab rate available would be Rs. 2,50,000.
- No 87A rebate is available for non-residents
- If your status has changed from Resident to NRI or vice versa, you must provide a declaration informing your tax deductor so that appropriate TDS can be deducted.
- Requirement of Indian mobile number for foreign director's profile
- As per Section 140, a non-resident company can file return via its POA holder , and such POA should be attached in the return. Where to attach??

Taxman's demand for PAN Details of key people puts FPIs in a spot

■ PAN requirement:

- ▶ The tax department has made it **mandatory for all non-individual tax** fillers to mention the PAN number of authorised signatories in the income tax returns along with their signature.
- ▶ This requirement is impacting the most to the foreign portfolio investors (FPIs) structured as **non-corporate trusts and association of persons (AOPs)**. – where all the trustees & partners belongs to foreign country.
- ▶ Trustees and partners of overseas funds, who are foreign nationals, are reluctant to obtain a PAN card because of:
 - ▶ it may **make them as a registered Indian taxpayer**
 - ▶ Some of them have **data privacy concern**, as they would need to provide personal documents for KYC.
 - ▶ Once they have obtained PAN card, **need to file IT return every year?**
 - ▶ **Requirement of DSC** for PAN card
- ▶ The compliance challenges don't end with the obtaining PAN card, if there are any discrepancies, tax department will have powers to go after the PAN card holders **bringing personal liability into picture.**

Consequences of Non-filing of Return of Income



■ Penalty Provision:

- ▶ Sec 234F: Rs.5,000 if ITR is reported before 31st December of the Assessment Year, Rs.10,000 if ITR is reported after 31st December but before 31st March of the Assessment Year.
- ▶ Misreporting - residential status
- ▶ Tax Audit - Non-compliance of tax audit regulations by taxpayers attracts a penalty of whichever is lower from the following:
 - 0.5% of total sales or Turnover or Gross receipts or
 - Rs. 1,50,000
- ▶ TP Report - Minimum penalty of INR 100,000



Foreign Tax Credit – Timeline for Form 67

Form No. 67 - Foreign Tax credit

- Form 67, needs to be filed by the assessee online when he needs to claim credit of tax whether u/s 90/ 90A/ 91. This needs to be filed by the assessee to take foreign tax credit in the year in which he offers corresponding income to tax in India.
- As per Rule 128, timeline to file the form is due date mentioned as per 139(1) i.e. due date for original return filing.
- There were many cases where either the assessee have file the form 67 beyond the timeline.
- Department has denied such credit, stating the default in timeline which has lead to lot of hue and cry.

Ms. Brinda RamaKrishna Vs. The Income Tax Officer, Ward 5(3)(1)

Foreign tax credit can be claimed even when Form 67 is filed belatedly: ITAT Bangalore

- The assessee an Individual claimed FTC in revised return and form 67 filed after the revised return.
- The revenue disallowed the FTC claim on the basis that the assessee has not filed Form 67 before the time allowed under section 139(5) of the Act, further the Rule 128 is mandatory in nature.

Ruling:

- Rule 128(9) provides that Form 67 should be filed on or before the due date of filing the return of income as prescribed u/s 139(1) of the Act. However, the Rule nowhere provides that if the said Form 67 is not filed within the above stated time frame, the relief as sought by the assessee u/s 90 of the Act would be denied. Therefore Rule 128(9) of the Rules does not provide for disallowance of FTC in case of delay in filing Form No.67.
- Filing of Form 67 is a procedural/directory requirement and is not a mandatory requirement. It was submitted that violation of procedural norm does not extinguish the substantive right of claiming the credit of FTC.
- DTAA overrides the provisions of the Act and the Rules cannot be contrary to the Act and the Assessee has vested right to claim the FTC under the tax treaty, the same cannot be disallowed for mere delay in compliance of a procedural provision.
- So the Assessee can be allowed to claim FTC in the ITR.

The ultimate Gyan

“Within infinite myths lies the eternal truth

Who sees it all?

Varuna has but a thousand eyes,

Indra has a hundred,

You and I, only two.”

Devdutt Pattanaik

Questions/Comments/Suggestions





THANKS!

Let's Stay Connected



@namanshrial@jainshrial.com
<https://www.linkedin.com/in/naman-shrial>

91-9636111444

Disclaimer

- We by means of this presentation are not rendering any professional advice, or services whatsoever.
- We have taken reasonable care to ensure that the information in this presentation is accurate. However we accept no legal responsibility for any consequential incidents that may arise from errors or omissions contained in this presentation
- This presentation is based on the information available to us at the time of preparing the same, all of which are subject to changes which may, directly or indirectly impact the information and statements given in this presentation.
- This presentation has been prepared on the basis of information available in the public domain and is intended for guidance purposes only.
- This information is not comprehensive and has not been independently verified as to accuracy, or completeness by us.
- We will not be responsible for any loss however sustained by any person or entity who relies on this presentation. Interested parties are strongly advised to examine their precise requirements for themselves, form their own judgments and seek appropriate professional advice.