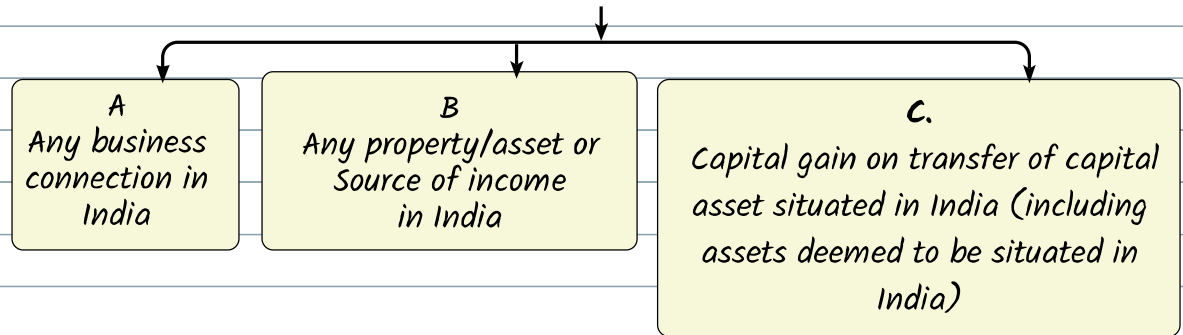


1. *Income accrue or arise outside India [Sec 9 (1)(i)]-*

Income accrued or arise directly or indirectly to assessee, through or from the following processes.



A. *Any business connection in India*

1. *Agency Relationship*

Any business activity carried out by following person on behalf of a non-resident considered as business connection in India.

i *Concluding Agent-* These agents habitually concludes contracts on behalf of the non-resident .

ii *Stocking Agent-* These agents habitually maintains a stock of goods from which he regularly delivers goods on behalf of the non-resident.

iii *Indenting Agent-* Habitually secures order in India, mainly or wholly for the Non-Resident.

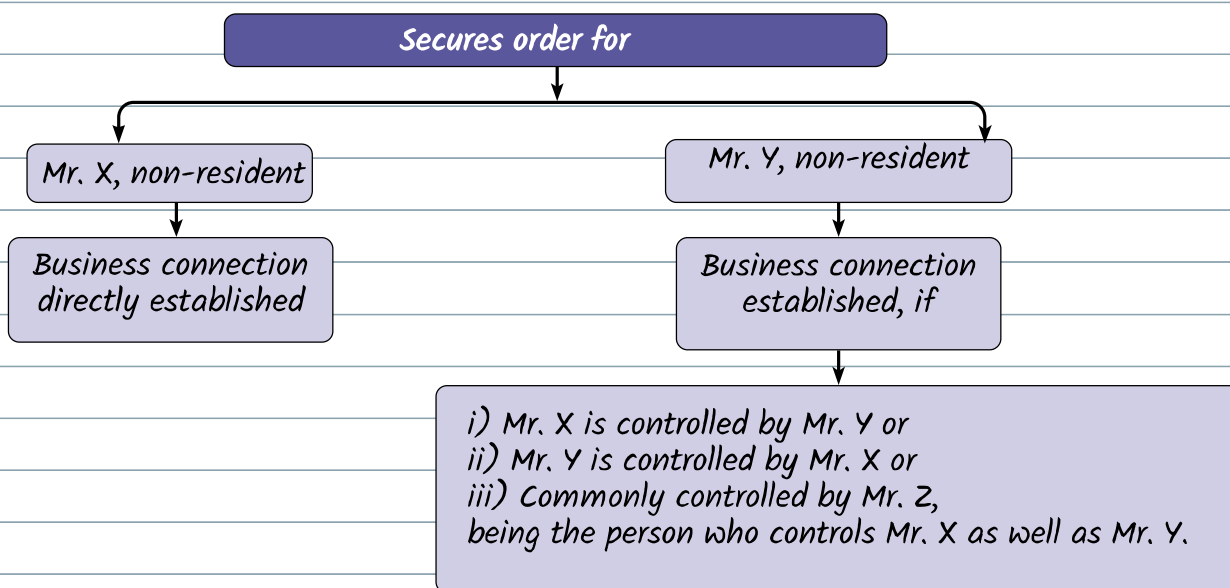
Further there may be situations when the person acting on behalf of the non-resident secure order for other non-residents. In such situation, business connection for other non-residents is established if,

- i *such other non-resident controls the non-resident or*
- ii *such other non-resident is controlled by the non-resident or*
- iii *such other non-resident is subject to same control as that of non-resident.*

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

Example-

Mr. A acting on behalf of Mr. X (Non-resident)



Note 1 - Agents having independent status are not included in Business Connection-

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

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

He will, however, not be considered to have an independent status in the three situations explained above, where he is employed by such a non - resident.

Where a business is carried on in India through a person referred to in (1), (2) or (3) of (A) above, only so much of income as is attributable to the operations carried out in India shall be deemed to accrue or arise in India.

2. Significant Economic Presence

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

	Nature of Transaction	Condition
(a)	in respect of any goods, services or property carried out by a non-resident with any person in India including provision of download of data or software in India	Aggregate of payments arising from such transaction or transactions during the previous year should exceed ₹2 crores.
(b)	systematic and continuous soliciting of business activities or engaging in interaction with users in India	The number of users should be at least 3 lakhs.

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

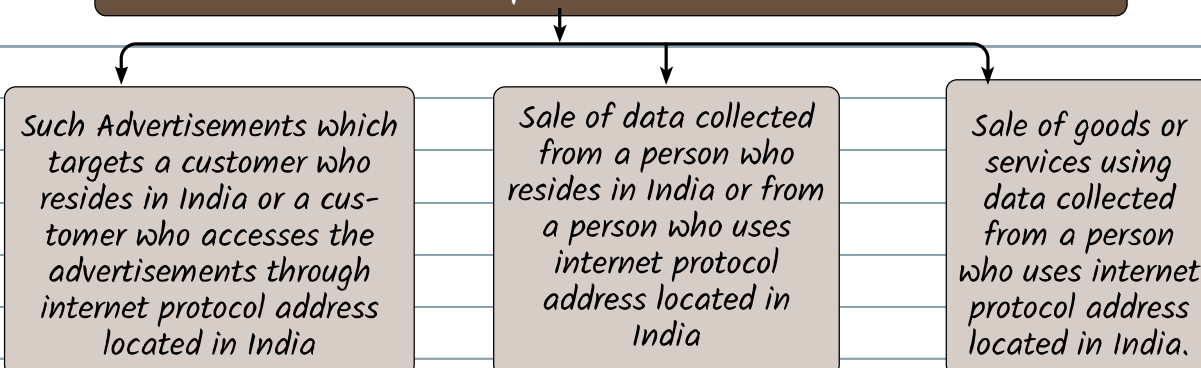
- i the agreement for such transactions or activities is entered in India;
- ii the non-resident has a residence or place of business in India; or
- iii the non-resident renders services in India;

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

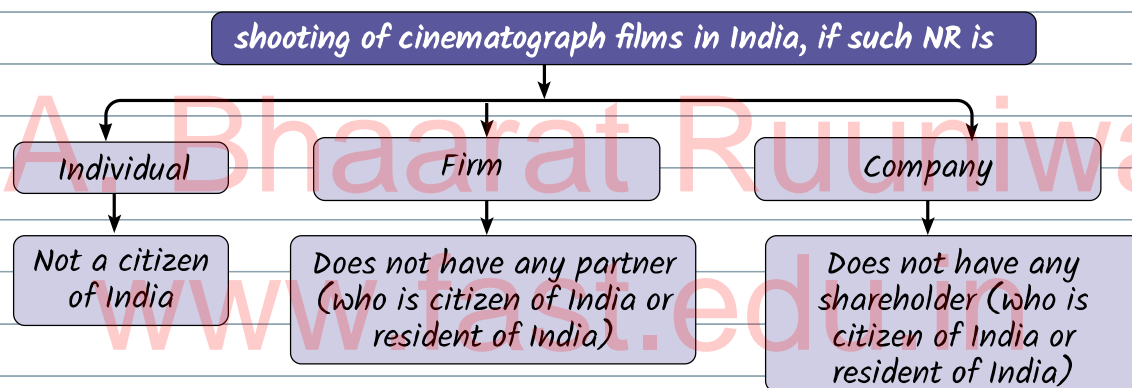
Exception of Business Connection in India

- 1 In the case of a business, in respect of which all the operations are not carried out in India— In case of a business, of which the operations are not carried out in India, the income of the business deemed to accrue or arise in India shall be only such part of income as is reasonably attributable to the operations carried out in India. Therefore, it follows that such part of income which cannot be reasonably attributed to the operations in India, is not deemed to accrue or arise in India.

Income attributable to the operations carried out in India includes—



- 2** *Purchase of goods in India for export - Income earned by a non-resident engaged in purchase of goods in India for the purpose of export.*
- 3** *Collection of news and views in India for transmission out of India- Income earned by a non-resident engaged in the business of running a news agency/publishing newspapers, magazines, journals, from the activities confined to collection of news and views in India for their transmission out of India.*
- 4** *Shooting of cinematograph films in India- Income earned from operations of shooting cinematograph films in India, by a non-resident being*
 - i** *An individual who is not an Indian citizen;*
 - ii** *A firm not having a partner who is either a citizen of India or resident in India, and*
 - iii** *A company not having any shareholder who is either citizen of India or resident in India.*



- 5** *Activities confined to display of rough diamonds in SNZs- Income earned by a foreign company engaged in the business of mining of diamonds from the activities which are confined to the display of uncut and unassorted diamond in any special zone notified by the Central Government in the Official Gazette in this behalf.*

B Any Property/Asset or Source of Income in India

If any income accrues or arises because of any asset/property or any source, which is situated in India then it will be treated as deemed to accrue or arise in India

C Capital Gain on transfer of capital assets situated in India (including assets Deemed to be Situated in India)

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

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

*DEEMED TO BE SITUATED IN INDIA

Capital Assets being Share/Interest in a company/ entity registered outside India



Such share/interest Derives its Value (directly or indirectly)



Substantially from Assets Located in India



Then such assets will be treated as deemed to be situated in India

Note -

Substantially means The share of a foreign entity derive its value substantially from the assets located in India on the Specified Date (Valuation Date); means-

- FMV of Indian assets held by foreign company is more than ₹10 crores, and
- it represents at least 50% of value of all assets owned by foreign company

Meaning of specific terms -

- ① Specified date (valuation date)- last day of accounting year (last b/s date) preceding the date of transfer. However, if book value of assets on the date of transfer is higher by 15 % or more of the book value of assets as on the last day of the last accounting year then valuation date shall be the date of transfer.
- ② FMV of assets- FMV of assets on valuation date without reduction of liabilities.
- ③ Accounting year- Each 12 months periods end on 31st March. If company follow any other period as accounting year (like calendar year) as per the law of foreign country then that period shall be the accounting year.

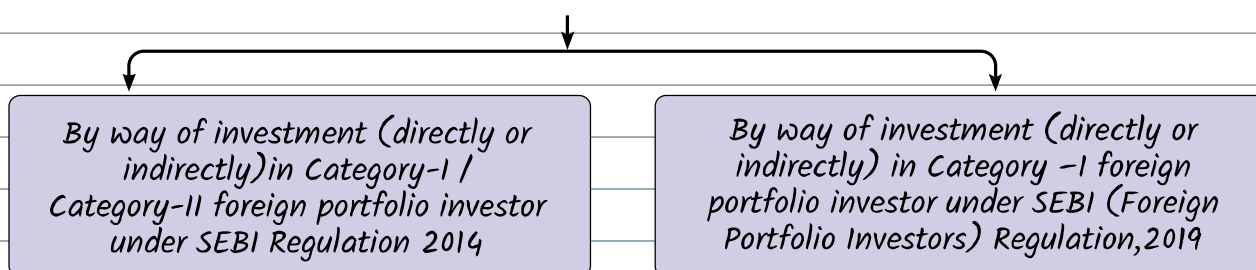
- 4 Where all the assets owned by the foreign entity are not located in India, only so much of income as is proportionate to the assets located in India shall be deemed to accrue or arise in India.

Exceptions

Exception 1 - Income shall not be deemed to accrue or arise to a non - resident from

Transfer interest in an foreign entity if the transferor along with its associated enterprises does not hold, the right of management or control in foreign entity or voting power / share capital more than 5 % of the total voting power / share capital in the foreign entity at any time during the 12 months preceding the date of transfer.

Exception 2 - Capital assets held by NR is not deemed to be situated in India



Steps to determine assets deemed to be located/situated in India -

Step-1 - Determine the Specified Date - for this we have to take last day of accounting year preceding the date of transfer (for company which derives value from Indian company).
(BUT if 115% of BV of Assets on the date of transfer > BV of Assets on the last date of accounting year, then date of transfer will be the Specified Date).

Step-2- Check following two points (All values will be taken on Specified Date)

i) Investment in Indian Assets (held by FC) > ₹10 Cr.

AND

ii) Investment in Indian Assets (held by FC) > 50% of Total Assets of FC.

Step-3 - if both the above conditions fulfilled then compute income deemed to accrue or arise in India in the hands of transferor who transfers share of Foreign Company (whose value derives from Indian Company).

2. Salary of services rendered in India [Sec 9 (1)(ii)]-

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

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

3. Salary by Govt. to Indian citizen for services rendered outside India [Sec 9 (1) (iii)]-

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

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

4. Dividend paid by Indian Company [Sec 9 (1)(iv)]-

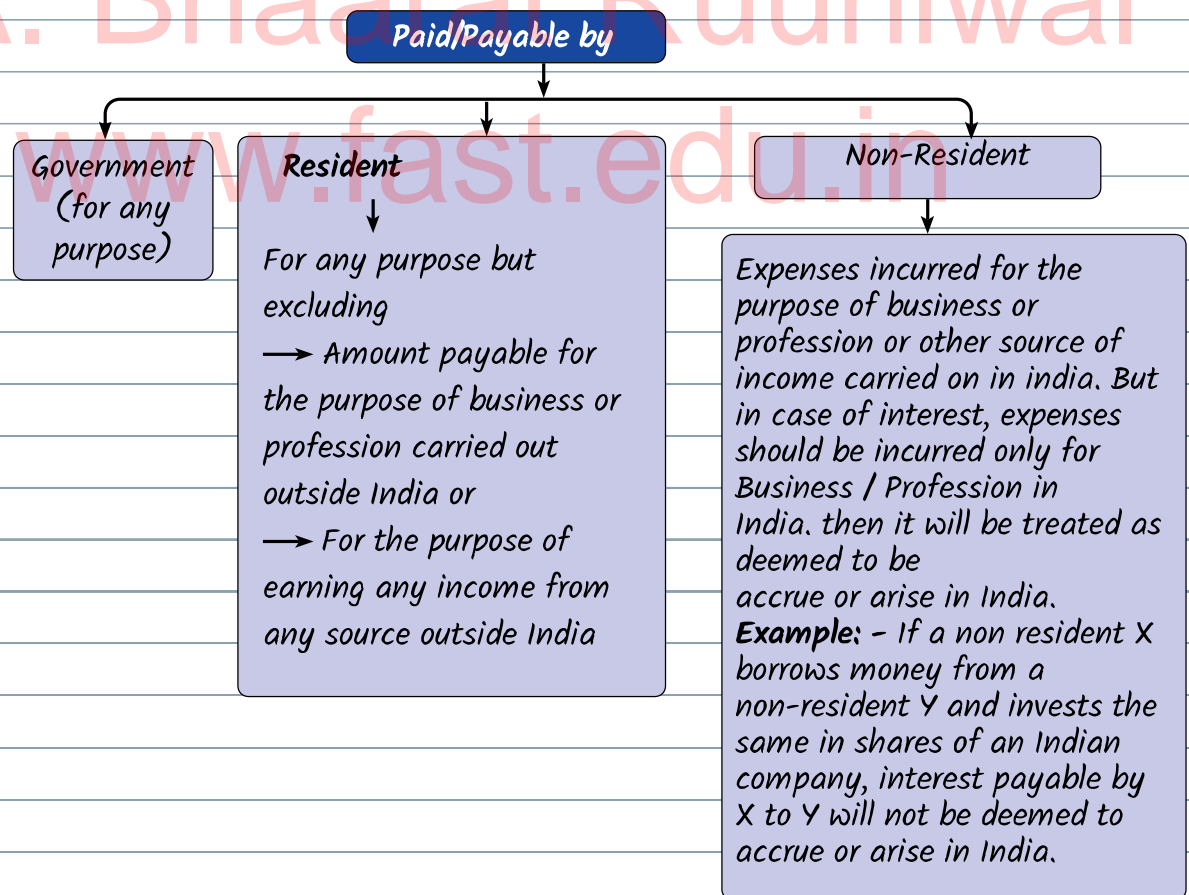
Dividend paid by an Indian company outside India is deemed to be accrue or arise in India and would be taxable in India in the hands of non-resident shareholders.

5. Interest/Royalty and Fees for technical services (details mentioned below)

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

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

Fees for Technical Services [Section 9(1)(vii)]



Meaning of some Important Terminology -

1. Meaning of Royalty-

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

- i the transfer of all or any rights (including the granting of a license) in respect of a patent, invention, model, design, secret formula or process or trade mark or similar property;
 - ii the use of any patent, invention, model, design, secret formula or process or trade mark or similar property;
 - iii the imparting of any information concerning the working of, or the use of, a patent, invention, model, design, secret formula or process or trade mark or similar property;
 - iv the imparting of any information concerning technical, industrial, commercial or scientific knowledge, experience or skill;
 - v the use or right to use any industrial, commercial or scientific equipment but not including the amounts referred to in section 44BB;
 - vi the transfer of all or any rights (including the granting of license) in respect of any copyright, literary, artistic or scientific work including films or video tapes for use in connection with television or tapes for use in connection with radio broadcasting.
 - vii the rendering of any service in connection with the activities listed above.
- The definition of 'royalty' for this purpose is wide enough to cover both industrial royalties as well as copyright royalties. The definition specially excludes income which should be chargeable to tax under the head 'capital gains'.

2. Meaning for Fees for technical services-

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

SPECIAL NOTES

- ① Interest paid or payable by the PE of non resident or foreign company engaged in banking business to the any part of NR outside India (HO/any PE) will be treated as deemed to accrue or arise in India.
- ② Consideration for use or right to use of computer software is royalty by clarifying that, transfer of all or any rights in respect of any right, property or information includes and has always included transfer of all or any right for use or right to use a computer software (includes granting of a license) irrespective of the medium through which such right is transferred.

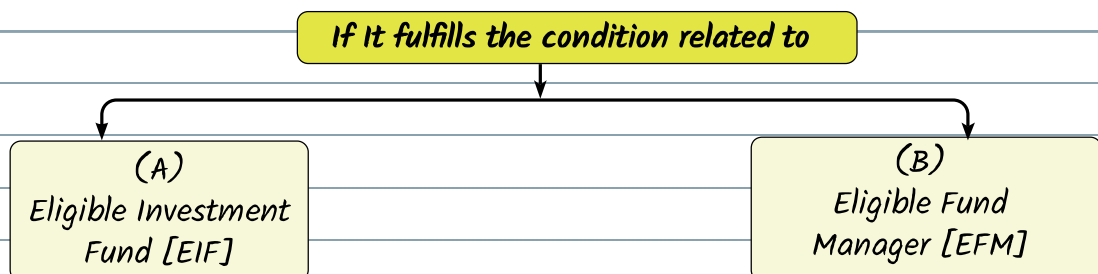
Consequently, the provisions of tax deduction at source u/s 194J and 195 would be attracted in respect of consideration for use or right to use computer software since the same falls within the definition of royalty.

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

- ① the software is acquired in a subsequent transfer without any modification by the transferor;
- ② tax has been deducted either under section 194J or under section 195 on payment any previous transfer of such software; and
- ③ the transferee obtains a declaration from the transferor that tax has been so deducted along with the PAN of the transferor.

Section 9A

Presence of Eligible Fund Manager in India, not to Constitute Business Connection in India of Eligible Investment Fund



A. Eligible Investment Fund (EIF)

Fund Which is incorporated/ Established outside India & collects funds from its members for investment to give benefit to member.

&

Should fulfill the following Conditions-

- a It should not be a person resident in India.
- b It should be resident of that country/ specific territory with whom India has DTAA (90/90A)/ notified by Central Government.
- c Participation or investment in the fund by a person being resident in India $\leq 5\%$ of total corpus Fund.
- d It should be regulated by investor protection regulations of their resident country.
- e It should have minimum 25 members (should not be connected with each other directly/ indirectly)

&

Single member participation [with connected person] $\leq 10\%$ of fund

Aggregate participation of ten or less members (with connected person) $< 50\%$ of fund

- f Investment by fund in any single entity $\leq 20\%$ of total Corpus.
- g No investment should be in Associate Entity.
- h Monthly average of the corpus $\geq ₹100$ Cr. (If the fund has been established or incorporated in the previous year, the corpus of fund should not be less than ₹100 crore at the end of a period of twelve months from the last day of the month of its establishment or incorporation)
- i It should not carry on or control or manage any business in India.
- j Should not be engaged in any activity which constitutes any business connection in India.
- k Remuneration paid to Eligible Fund Manager should not be less than prescribed amount.

Note- Condition mentioned in (e) shall not apply in case of an investment fund set up by the government or the Central Bank of a foreign State or sovereign fund or such other fund notified by the Central Government (i.e., an investment fund set up by a Category-I or Category-II Foreign Portfolio Investor registered under the SEBI (Foreign Portfolio Investors) Regulations, 2014, made under the SEBI Act, 1992)

(B) Eligible Fund Manager (EFM)

Any person who is engaged in Fund Management & fulfills following Conditions

- a** Should not be an employee of Eligible Investment Fund (EIF) or a Connected person of EIF.
- b** Should be registered as fund manager or investment advisor in accordance with specified regulations (SEBI)
- c** Should be acting as fund manager in ordinary course of his business.
- d** Should not be entitled to get > 20% of profit of EIF (From the transaction of EIF through such EFM)

Furnishing of Statement in prescribed form:

Every eligible investment fund shall, in respect of its activities in a financial year, furnish within 90 days from the end of the financial year, a statement in the prescribed form to the prescribed income-tax authority. The statement should contain information relating to -

- a** the fulfillment of the above conditions; and
- b** such other relevant information or document which may be prescribed.

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

Non-applicability of special taxation regime under section 9A-

This special taxation regime would not have any impact on taxability of any income of the eligible investment fund which would have been chargeable to tax irrespective of whether the activity of the eligible fund manager constituted business connection in India of such fund or not. Further, the said regime shall not have any effect on the scope of total income or determination of total income in the case of the eligible fund manager.

Meaning of Certain Terms-

- i Associate Entity-** An entity in which a director or a trustee or a partner or a member or a fund manager of the investment fund or a director or a trustee or a partner or a member or a fund manager of such fund, holds, either individually or collectively, share or interest, being more than 15% of its share capital or interest, as the case may be.

- ii Corpus-The total amount of funds raised for the purpose of investment by the eligible investment fund as on a particular date.
- iii "Connected Person" same as specified person as per sec. 40A(2).

Note- CG may by notification specify that any one or more of the conditions specified in clauses (a) to (k) of EIF or clause (a) to (d) of EFM shall not apply or shall apply with such modifications, as may be specified in such notification, in case of an eligible investment fund and its eligible fund manager, if such fund manager is located in an IFSC, and has commenced its operations on or before the 31st March 2024.

CG Notification

- a **Eligible Investment Fund(EIF), the conditions specified in -**
 - i. Clause (e) shall not apply ;
 - ii. Clause (i) shall be modified in the following manner, namely- "the fund shall not carry on, or participate in, the day to day operations of any person in India and for this purpose the monitoring mechanism to protect the investment in such person including to right to appoint directors on executive director shall not be considered participation in day to day operations of such person in India."
- b **Eligible Fund Manager (EFM) the conditions specified in clause (b) shall be modified in the following manner-**

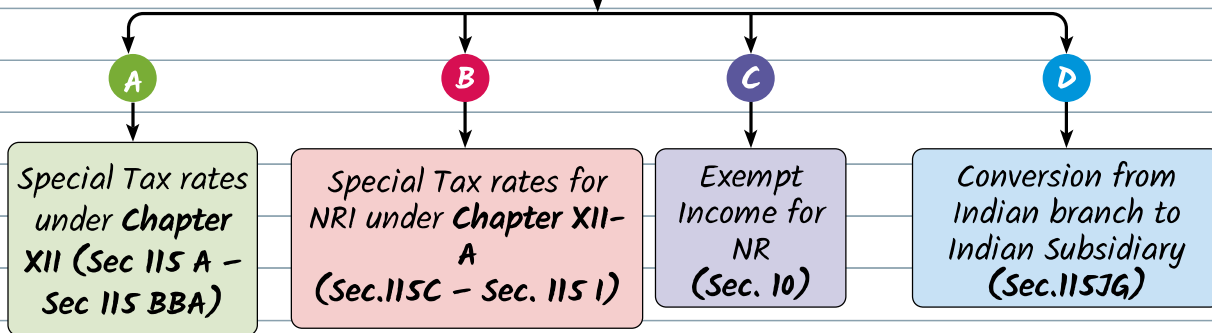
the person is registered as a portfolio manager or an investment advisor in accordance with the IFSC Authority (capital Market Intermediaries) Regulation 2021 as notified under the IFSC Authority Act, 2019 or such other regulations madae under the IFSC Authority Act, 2019.

Notes

Notes

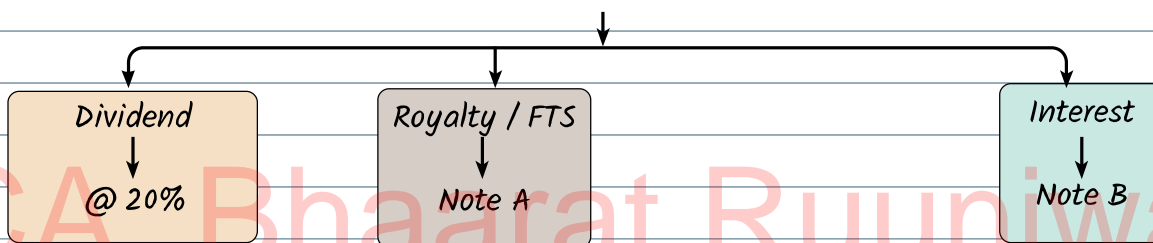
CA. Bhaarat Ruuniwal
www.fast.edu.in

Part II-TAX ON INCOME OF NR / FOREIGN COMPANY

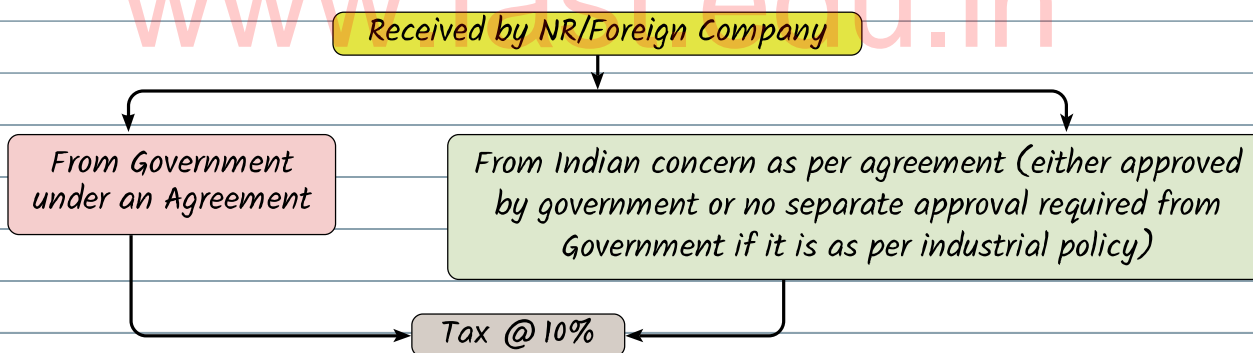


A. SPECIAL TAX RATES UNDER CHAPTER -XII

I. Sec 115A- Income derived by Non-Resident/Foreign Company
(By way of Dividend/ Interest/ Royalty or FTS)



Note A- Royalty & FTS (other than covered u/s 44DA)



Notes

BUT IF DTAA exist, then tax will be lower of the following (whichever is beneficial to assessee)-

- ① Tax rate prescribed under IT Act or
- ② Rates prescribed under DTAA

Note- Rate of tax u/s 115A is not applicable on Royalty/FTS paid to NR/FC, which is connected with PE in India, such payment would be treated as business income & taxable @ 40% (Sec 44DA)

Example 1-

ICO makes payment of ₹5 lakhs for consultancy services taken from UK firm.

Payment is made in accordance with industrial policy of the Government. Compute the tax liability (Excluding applicable surcharge and education cess) on such payment as per Section 115A?

Solution -

Consulting income of UK firm would be taxable at 10% under Section 115A. Thus, tax liability would be ₹50,000.

Example 2-

In Example 1, assume that such payment is exempt from tax under India-UK DTAA, what would be the rate of tax?

Solution -

Non-residents can compute their tax liability as per -

- ① The tax rates prescribed under the Income-tax Act ; or
- ② at the rates prescribed under the DTAAs,

Whichever are more beneficial

In this case, such payment is exempt from tax under India-UK DTAA. Thus, UK firm will avail benefit of DTAA and claim exemption on such income. The rate of tax on such income could be Nil.

Example 3-

UK firm has Permanent Establishment (PE) in India. Such PE is engaged in the business of manufacturing of software, and has ownership rights to such software.

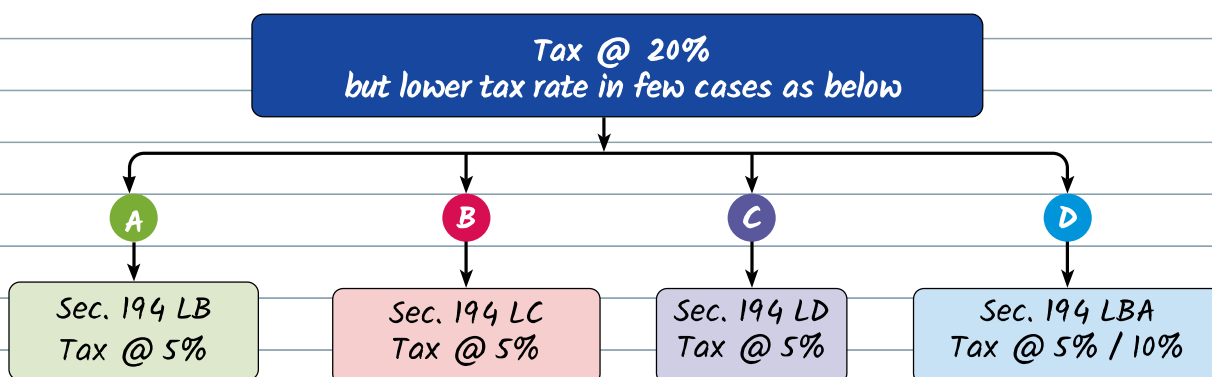
ICO makes payment of royalty of ₹5 lakh to UK firm for usage of such software.

Payment is made in accordance with industrial policy of the Government. Compute the tax liability on such payment as per Section 115A?

Solution-Tax will not be calculated as per Sec 115 A, as UK firm has PE in India so tax will be calculated as per the provisions of 44DA(as per normal tax rate).

Note B- Interest

Interest received from government or Indian concern on borrowing / debt (in foreign currency)



A. Sec. 194 LB- Income by way of Interest from Infrastructure Debt Fund

Interest received from Notified Infrastructure Debt Fund (referred in Sec 10(47))

TDS to be deducted @ 5%

[At the time of payment OR at the time of credit to payee (whichever is earlier)]

Note - Interest received by NR is taxable to him @ 5% u/s 115A

B. Sec 194 LC- Income by way of Interest from Indian Company / Business Trust

Money borrowed in foreign currency -

- a Under long-term loan agreement between 1.7.2012 to 30.6.2023
- b By way of long-term bonds issued up to 30.6.2023
- c By way of RDB (Rupee Denominated Bond) issued up to 30.6.2023
- d Long Term Bonds / Rupee Denominated Bonds, which is listed on a recognised stock exchange in IFSC between 1.4.2020 to 30.6.2023

TDS to be deducted @ 5%

[At the time of payment OR at the time of credit to payee (whichever is earlier)]

Note 1- Tax and TDS @ 4% in case of Long Term Bonds/RDB listed on a Recognised stock exchange in IFSC.

Note 2- Interest received by NR is taxable to him @ 5% u/s 115A.

C. Sec 194 LD- Income by way of Interest on certain bonds & Government Securities. Interest payable to FII (Foreign Institutional Investors) / QFI (Qualified Foreign Investor)

- ▶ **Up to 30.6.2023 in respect of investment made in**
 - RDB of Indian company
 - Govt. Securities
- ▶ **Between 1.4.2023 to 30.6.2023 in respect of investment made in Municipal Debt Security**

TDS to be deducted @ 5%

[At the time of payment OR at the time of credit to payee (whichever is earlier)]



Note - Interest received by NR is taxable to him @ 5% u/s 115A.

D. Sec 194 LBA- Certain income from units of a Business Trust

Income received by Business Trust from SPV is not taxable in the hands of trust [Sec 10 (23FC) / (23 FCA)] However, when such interest is distributed by Business Trust to unit holder, who are NR/ Foreign Company then it will be taxable for unit holders.

TDS to be deducted @ 5% or 10%

[At the time of payment OR at the time of credit to payee (whichever is earlier)]



Interest
@ 5%

Dividend
@ 10%

Note: - Interest/Dividend received by NR is taxable to him @ 5% / 10% u/s 115A

2. Sec 115 AB - Income/LTCG to OF / OFO (Offshore Fund/Overseas Financial Organisation) on units of UTI/Mutual Fund (Purchased in foreign Currency)



Income (Int/
Div.) Tax @ 10%

Long Term Capital Gain
(LTCG) Tax @ 10%

Note-

- 1 “Overseas Financial Organisation” means any fund, institution, association or body, whether incorporated or not, established under the laws of a country outside India, which has entered into an arrangement for investment in India with any public sector bank or public financial institution or a mutual fund specified under section 10(23D). Such arrangement should be approved by the Securities and Exchange Board of India.
- 2 It may be noted that long term capital gains up to ₹ 1,00,000 on units of equity oriented fund would be exempt and long term capital gains exceeding Rs.1,00,000 shall be taxable @ 10% under section 112A provided securities transaction tax has been paid on the sale of such units.
- 3 It may be noted that short term capital gains on units of equity oriented fund are taxable @ 15% under section 111A provided securities transaction tax has been paid on the sale of such units.

3. Sec 115 AC- Income / LTCG from Bonds / GDR (Purchased in Foreign Currency)

Income (Interest/Dividend) Tax @ 10%

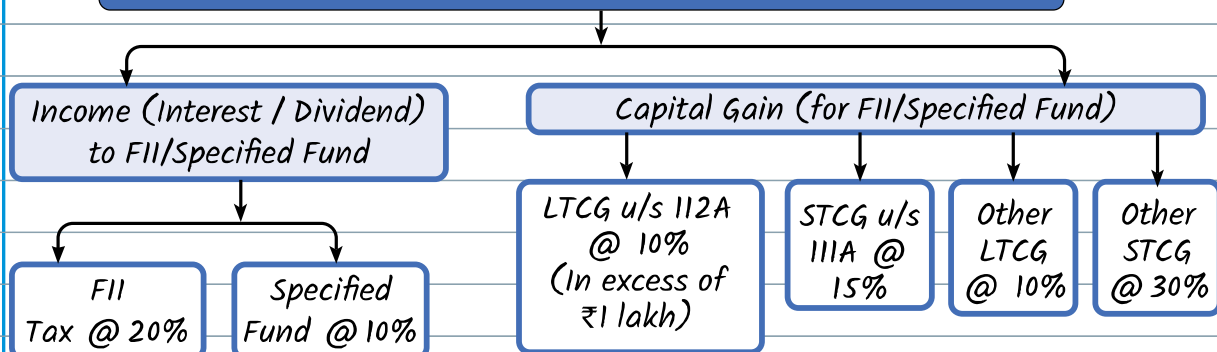
Long Term Capital Gain (LTCG) Tax @ 10%

Note-

- 1 Filing of Return of Income not required - It shall not be necessary for a non-resident to furnish under section 139(1), a return of income if his total income in respect of which he is assessable under the Act during the previous year consisted only of aforesaid interest or dividend income, and the tax deductible at source under the provisions of Chapter XVII-B has been deducted from such income.
- 2 Concessional tax treatment for GDR/Bonds acquired in course of Amalgamation- Where the assessee acquired GDR or bonds in an amalgamated or resulting company by virtue of his holding GDR or bonds in the amalgamating or demerged company, in accordance with the provisions of 115AC(1), the concessional tax treatment would apply to such GDR or bonds.
- 3 Meaning of Global Depository Receipts- “Global Depository Receipts” means any instrument in the form of a depository receipt or certificate (by whatever name called) created by the Overseas Depository Bank outside India and issued to investors against the issue of —

- a Ordinary shares of issuing company, being a company listed on a recognized stock exchange in India; or
- b Foreign currency convertible bonds of issuing company;

4. Sec 115 AD – Income/Capital Gain on securities (other than units of UTI/MF) to Specified Fund/FII

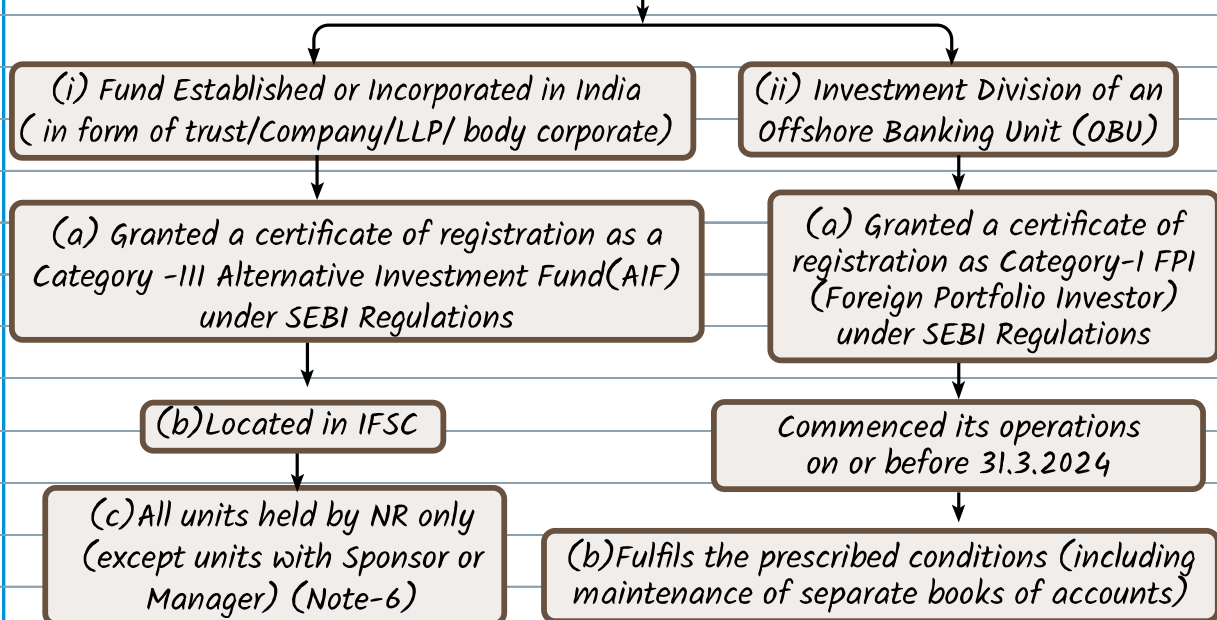


Note 1 – Surcharge @ 25% / 37% (Higher Surcharge Rate on Individual/ HUF/ AOP/ AJP having income u/s 115AD) not applicable in case of Dividend Income & Capital Gain (STCG/ LTCG) whether covered u/s 111A / 112A or not), so maximum surcharge will be @ 15%.

Note 2 – For the Specified Fund (mentioned in below Note 3) provisions of 115AD will apply up to the extent of income which is attributable to units held by NR (not being a PE of a NR in India) & it will be calculated as per prescribed manner.

Note 3 –

Sec. 10 (4D) Specified Fund means

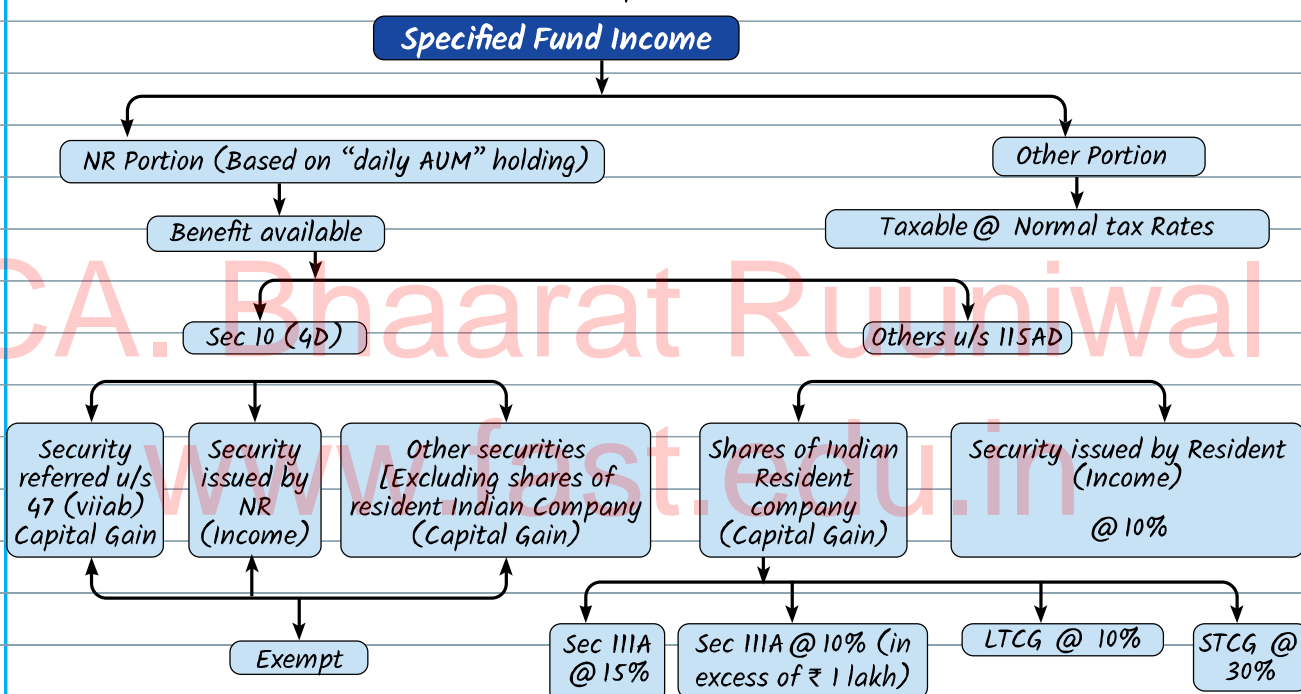


Note 4 - In case of specified fund is investment division of an OBU, the provisions of this section shall apply only to the extent of income that is attributable to the investment division of such OBU, referred to in section 10(4D), as a category-1 portfolio investor under the SEBI (FPI) Regulations, 2019, computed in such manner as may be prescribed.

Note 5- In case of specified fund, the provision of this section shall apply only to the extent of income that is attributable to units held by NR (not being a PE of a NR in India) calculated in the prescribed manner.

Note 6 - Provided that the condition specified in (c) item of point (i) shall not apply where any unit holder or holders, being NR during the PY when such unit or units were issued, becomes resident u/s 6(1) or (1A) in any PY subsequent to that year, if the aggregate value and number of the units held by such resident unit holder or holders do not exceed 5% of total units issued and fulfill such other conditions as may be prescribed. (Condition as per Rule 21A1A-The unit holders who becomes a resident during any subsequent previous year shall cease to be a unit holder of such specified fund within a period of 3 months from the end of the PY in which he becomes a resident.

Some of Income/ Capital Gain exempt for NR/Foreign Company u/s 10(4D)
[In the ratio of Income / Capital Gain attributable to NR/Foreign Company
(as per Rule 21A1/21A1J)]



{Rule 21A1/21A1J}

Income (Interest / Dividend) / Capital Gain attributable to NR for the purpose of Sec.10(4D) and IISAD-

A $Income = (Income) / (AUM \text{ of Specified Fund}) \times AUM \text{ of NR (Based on units held by him)}$

Note a) AUM calculate based on date of receipt of income.

Note b) AUM= Assets under Management

B $Capital \text{ Gain} = (Capital \text{ Gain}) / (Aggregate \text{ daily AUM of Specified Fund}) \times Aggregate \text{ daily AUM of NR (Based on units held by him)}$

Note a) Aggregate daily AUM calculate from date of Acquisition till date of Transfer of Capital Assets.

5. Sec 115 BBA- Income of NR Sportsman/ Sports Association or NR Entertainer

Total Income of Assessee will be taxable @ 20% in following cases-

(1)	Assessee (2)	Income (3)
(a)	A sportsman (including an athlete), who is not a citizen of India and is a non- resident	Any income received or receivable by way of— (i) participation in India in any game (other than a game the winnings wherefrom are taxable under section 115BB, being winning from crossword puzzles, races including horse races, card games and other games of any sort of gambling or betting) or sport; or (ii) advertisement; or (iii) contribution of articles relating to any game or sport in India in newspapers, magazines or journals;
(b)	A non-resident sports association or institution	Any amount guaranteed to be paid or payable to such association or institution in relation to any game (other than a game the winnings wherefrom are taxable under section 115BB) or sport played in India
(c)	An entertainer who is not a citizen of India and is a non- resident	Any income received or receivable from his performance in India

Note- 1 Deduction of expenditure not permissible- No deduction in respect of any expenditure or allowance shall be allowed under any provision of this Act in computing the income referred to in (a) or (b) or (c) in the table given above.

Note-2 Filing of return of income not required- The assessee is not required to furnish under section 139(1) a return of his income if—
his total income in respect of which he is assessable under this Act during the previous year consisted only of income referred to in (a) or (b) or (c) above; and
The tax deductible at source under the provisions of Chapter XVII-B has been deducted from such income

Note-3 Umpires and match referees can be described as professionals or technical persons who render professional or technical services, but they cannot be said to be either non-resident sportsman (including an athlete) or non-resident sports association or institution so as to attract the provisions of section 115BBA and consequently, the provisions of tax deduction at source under section 194E are cannot be attracted.

It may be noted that since income has accrued and arisen in India to the non-resident umpires and match referees, the TDS provisions under section 195 would be attracted and tax would be deductible at the rates in force.

Illustration-

Smith a foreign national and a cricketer came to India as a member of Australian cricket team in the year ended 31st March, 2021. He received ₹5 lakhs for participation in matches in India. He also received ₹1 Lakh for an advertisement of a product on TV. He contributed articles in a newspaper for which he received ₹10,000. When he stayed in India, he also won a prize of 20,000 from horse racing in Mumbai, He has no other income in India during the year.

- Compute tax liability of Smith for Assessment Year 2023-24.
- Are the income specified above subject to deduction of tax at source?
- Is he liable to file his return of income for Assessment Year 2023-24?
- What would have been his tax liability, had he been a match referee instead of a cricketer?

Solution

- Computation of tax liability of Smith for the A.Y. 2023-24

Particulars	₹	₹
Income taxable under section 115BBA		
Income from participation in matches in India	5,00,000	
Advertisement of product on TV	1,00,000	
Contribution of articles in newspaper	10,000	
Income taxable under section 115BB		
Income from horse races	20,000	
Total Income	6,30,000	
Tax @ 20% under section 115BB on 6,10,000		1,22,000
Tax @ 30% under section 115BB on income of 20,000 from horse races		6,000
Add: Health and Education cess @ 4%		1,28,000
Total tax liability of Smith for the A.Y. 2023-24		5,120
		1,33,120

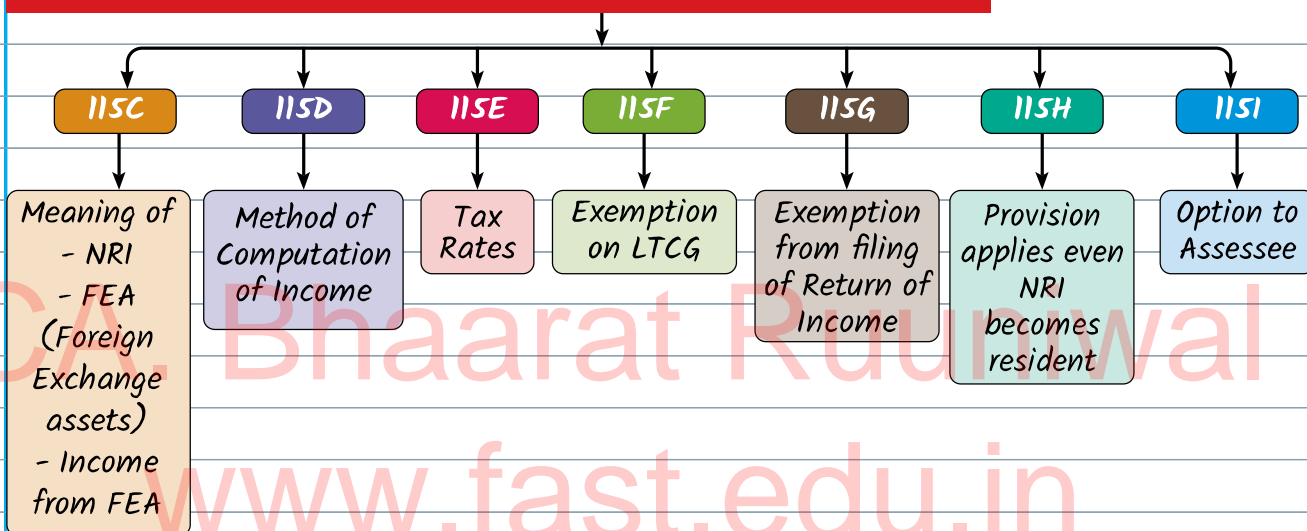
- ii) Yes, the above income is subject to tax deduction at source.
Income referred to in section 115BBA (i.e. ₹6, 10,000 in the case) is subject to tax deduction at source @ 20% under section 194E.
Income referred to in section 115BB (i.e. ₹20,000 in the case) is subject to tax deduction at source @ 30% under section 194BB.
Since Smith is a non-resident, the amount of tax to be deducted calculated at the prescribed rates mentioned above, would be increased by health and education cess @ 4%.
- iii) Section 115BBA provides that if the total income of the non-resident sportsman comprises of only income referred to in that section and tax deductible at source has been fully deducted, it shall not be necessary for him to file his return of income. However in this case Mr. Smith has income for horse races as well. Therefore, he cannot avail the benefit of exemption for filing of return of income as contained in section 115BBA. Hence, he would be liable to file his return of income for A.Y 2023-24.
- iv) The Calcutta High Court in *Indcom v. CIT (TDS) (2011) 335 ITR 485* has held that 'match referee' would not fall within the meaning of "sportsman" to attract the provisions of section 115BBA. Therefore, although the payments made to non-resident 'match referee' are "income" which has accrued and arisen in India, the same are not taxable under the provisions of section 115BBA. They are subject to the normal rates to tax. Since Mr. Smith does not have any deduction, it would be beneficial for Mr. Smith to opt for section 115BAC.

Particulars	₹
Tax @ 30% under section 115BB on winnings of ₹20,000 from horse races	6,000
Tax on ₹6,10,000 at the rates in force	
Up to ₹2,50,000 Nil	
₹2,50,000 - ₹5,00,000 @ 5% ₹12,500	
₹5,00,000 - ₹6,10,000 @ 10% ₹11,000	23,500
	29,500
Add: Health and Education cess @ 4%	1,180
Total tax liability	30,680

Common Notes for provisions applicable for NR/Foreign Company as per chapter-XII-

- 1 Above provisions are mandatory.
- 2 Basic Exemption Benefit NOT Available against above income, as it is a part of special income.
- 3 Deduction u/s 28 to 44C or Sec 57 not allowed against above income.
- 4 Deduction under chapter VI-A (except 80LA) not available (except Royalty & FTS), so Deduction u/c VI-A is available against Royalty and FTS referred in section 115A.
- 5 Indexation benefits & First Proviso to sec 48 not available on capital gain, as it is taxable as per above rates.

B. SPECIAL TAX RATES FOR NRI UNDER CHAPTER -XII A

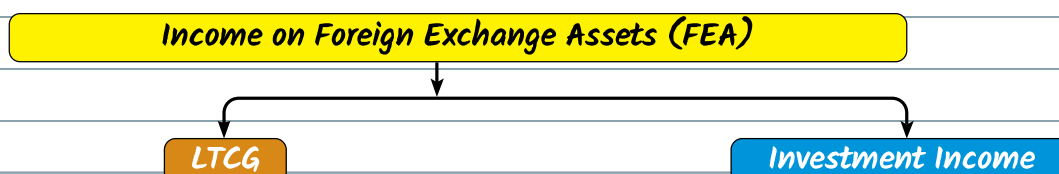


Sec. 115C

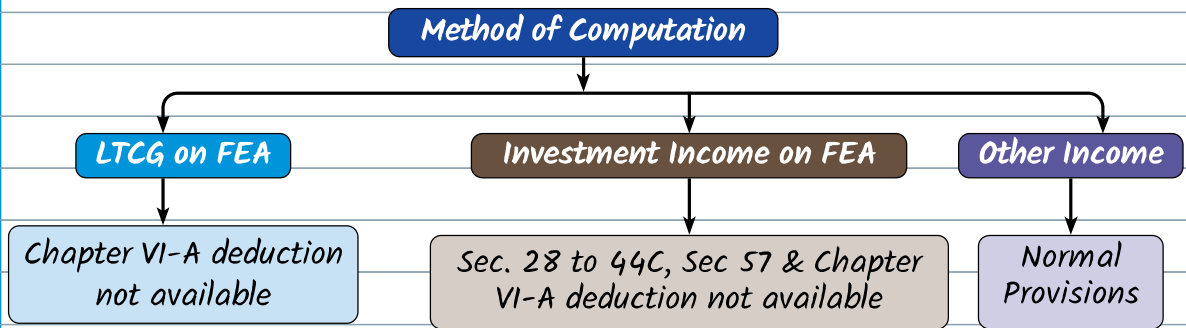
► $NRI = NR + I$
(NON-RESIDENT) (INDIAN CITIZEN OR PERSON OF INDIAN ORIGIN)

FOREIGN EXCHANGE ASSETS-

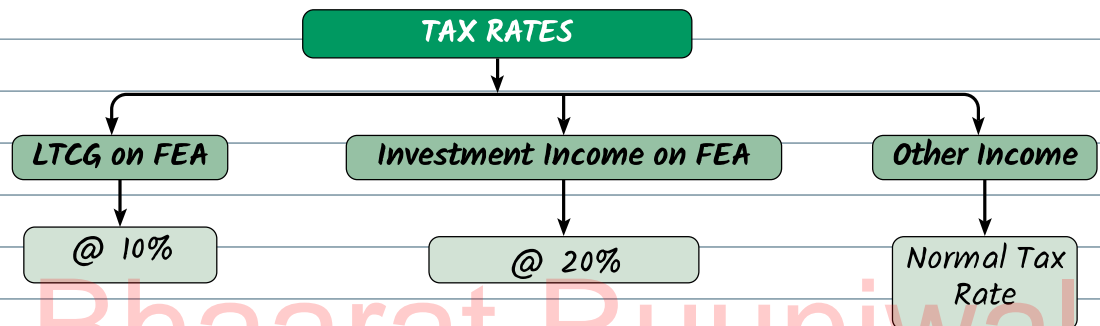
- Shares of Indian Company (Public/ Private)
- Securities of Central Government
- Debentures of Indian company (Public)
- Deposits of Indian Company (Public)
- Any other asset as may be notified by Central Government



Sec 115D - Method of computation



Sec 115E- Tax Rates



Sec 115 F -Exemption on LTCG

If Net Consideration is utilized to acquire

- New Forex Assets
- Saving Certificate u/s 10 (4B)

Within 6 months from the date of Transfer

$$\text{Exemption Calculation} = \frac{\text{LTCG}}{\text{Net Consideration}} \times \text{Cost of New Asset}$$

Note- Such new assets should not be transferred within 3 years from date of acquisition otherwise such exempted capital gain will be taxable in the year when new assets are transferred/ converted into money.

Sec 115 G-Exemption from Filing of Return of Income

Return not required to be filed if-

- Total income includes only investment income / LTCG on FEA &
- TDS already deducted

Sec 115 H- Application of above provisions even if NRI becomes Resident

Where an NRI becomes a resident, he can file a declaration with ROI of AY in which he becomes Resident that he wants to be governed by the provisions of this chapter. further noted that, the provisions of this chapter shall continue to apply to him until the transfer or conversion into money of such FEA.

Section 115 I- Option to assessee to opt above Provisions

Application of above provisions are optional for assessee i.e. if he wants to take benefits of above provisions then he can opt for this chapter, otherwise normal provisions will apply.

C. EXEMPT INCOME FOR NON-RESIDENT		
Section	Income	Available to
10(4)(ii)	Interest on money standing to the credit in a Non-resident (External) account of an Individual in any bank in India as per the FEMA Act, 1999.	Individual resident outside India (under FEMA Act) or an individual who has been permitted to maintain said account by RBI
10(4C)	Interest payable by an Indian company or business trust in respect of moneys borrowed from a source outside India by way of issue of rupee denominated bond during the period from 17.9.2018 to 31.3.2019	A non-corporate non-resident or foreign company
10(4D)	Income accrued or arising to or received by specified fund- Capital gains on transfer of assets referred u/s 47 (viiab) on a recognized stock exchange located in any IFSC and where the consideration for such transfer is paid or payable in convertible foreign exchange; or on transfer of securities (other than shares in a company resident in India); or	

	from securities issued by a non- resident (not being a permanent establishment of a non-resident in India) and where such income otherwise does not accrue or arise in India; or from a securitisation trust which is chargeable under the head "Profits and gains of business or profession", to the extent such income accrued or arisen to, or is received, is attributable to unit held by NR (not being PE of a NR in India) or is attributable to the investment division of off shore banking unit, as the case may be.	A specified fund
10 (23FBC)	Any income by Unit holders from specified fund or on transfer of units of specified fund.	Unit holder of specified fund

Note- Meaning of certain terms

- ① Investment division of offshore banking unit
- ② Specified fund (as explained earlier)

1. Investment Division of offshore banking unit	An investment division of a banking unit of a non-resident located in an IFSC, as referred to in section 80LA(1A) and which has commenced its operations on or before 31.3.2024	
10(4E)	<p>Any income accrued or arisen to, or received by, a non-resident as a result of transfer of non-deliverable forward contracts or offshore derivative instruments or over the counter derivatives entered into with an offshore banking unit of an IFSC as referred to in section 80LA(1A), which fulfils the prescribed conditions.</p> <p>Non-deliverable forward contract- It means a contract for the difference between an exchange rate agreed before and the actual spot rate at maturity, with the spot rate being taken as the domestic rate or a market determined rate and such contract being settled with a single payment in a foreign currency.</p> <p>Offshore derivative instrument- It shall have the same meaning as assigned to it in SEBI foreign Portfolio Investor Regulations, 2019.</p> <p>Over the Counter derivatives- It means a derivative contract that is traded between two parties without going through an exchange or any other intermediaries.</p>	Non-resident

10(4F)	Any income of a non-resident by way of royalty or interest, on account of lease of an aircraft or ship in a previous year, paid by a unit of an IFSC referred to in section 80LA(1A), if the unit has commenced its operation on or before 31.3.2024. “Aircraft”, here, means an aircraft or a helicopter, or an engine of an aircraft or a helicopter, or any part thereof. “ship” means a ship or an ocean vessel, engine of a ship or a ocean vessel, or any part thereof.	Non-resident
10 (4G)	Any income from portfolio of securities or financial products or funds, managed or administered by any portfolio manager on behalf of such NR, in an account maintained with on OBU in any IFSC, as referred to in section 80LA(1A), to the extent such income accrues or arises outside India and is not deemed to accrue or arise in India.	Non-resident
10(6)(ii)	Remuneration received by Foreign Diplomats/ Consulate and their staff (Subject to conditions) Conditions- -The remuneration received by our corresponding Government official's resident in such foreign countries should be exempt. -The above-mentioned officers should be the subjects of the respective countries and should not be engaged in any other business or profession or employment in India.	Individual (not being a citizen of India)
10(6)(vi)	Remuneration received as an employee of a foreign enterprise for services rendered by him during his stay in India, if- -Foreign enterprise is not engaged in any trade or business in India; -His stay in India does not exceed the aggregate period of 90 days in such previous year; and -Such remuneration is not liable to be deducted from the income of employer chargeable under this Act.	Individual Salaried Employee (not being a citizen of India) of a foreign enterprise

10(6)(viii)	Salary received by or due for services rendered in connection with his employment on a foreign ship if his total stay in India does not exceed 90 days in the previous year.	Individual Salaried Employee (Non- resident who is not a citizen of India) of a foreign ship
10(6)(xi)	Remuneration received as an employee of the Government of a foreign state during his stay in India in connection with his training in any Government Office/ Statutory Undertaking/ corporation/ registered society etc.	Individual Salaried Employee (not being a citizen of India) of Government of foreign state
10(6BB)	Tax paid by Indian company, engaged in the business of operation of aircraft, which has acquired an aircraft or an aircraft engine on lease, under an approved (by Central Government) agreement entered into between 1-4- 1997 and 31-3-1999, or after 31-3- 2007, on lease rental/income derived (other than payment for providing spares or services in connection with the operation of leased aircraft) by the Government of a Foreign State or foreign enterprise.	Government of foreign State or foreign enterprise (i.e., a person who is a non-resident)
10(6C)	Royalty income or fees for technical services under an agreement with the Central Government for providing services in or outside India in projects connected with security of India	Foreign company (notified by the Central Government)
10(6D)	Royalty income from or fees from technical services rendered in or outside India to, the National Technical Research Organisation (NTRO)	Non-corporate non-resident or foreign company
10(8)	Foreign income; and Remuneration received by an individual from the Government of a foreign State, in connection with any co-operative technical assistance programme and project under agreement between Central Government and the Government of a foreign State.	Individual who is assigned to duties in India

10(8A)	Foreign income; and Any remuneration or fee received by such person (agreement relating to his engagement must be approved) out of funds made available to an international organization (agency like World Bank or any other multi-lateral agency) under a technical assistance grant agreement between that agency and the Government of a foreign State (such technical assistance should be in accordance with an agreement between the Central Government and the agency).	Consultant, being An individual; not being an Indian citizen; or being an Indian citizen who is not ordinarily resident in India, or any other person, being a non- resident Engaged by the agency for rendering technical services in India in connection with any technical assistance programme or project in accordance with the approved agreement.
10(8B)	Foreign income; and Remuneration received, directly or indirectly, by an individual who is assigned to duties in India in connection with any technical assistance programme and project in accordance with an agreement entered into by the Central Government and the agency from a consultant referred to in section 10(8A)	Employee of a consultant being an individual; not being an Indian citizen; or being an Indian citizen who is not ordinarily resident in India Contract of service must be approved by the prescribed authority before commencement of service.
10(9)	Foreign income	Any family member of individual as referred to in section 10(8)/(8A)/ (8B), accompanying him to India.

Foreign income referred in section 10(8)/(8A)/(8B)/(9) above refers to the other income accruing or arising outside India. Such income would be exempt provided-
it is not deemed to accrue or arise in India; and
the individual is required to pay any income tax or social security tax of such income to the Government of that Foreign State or Country of origin of such member.

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

Section	Income	Eligible Assessee
10(48)	Income received in India in Indian currency on account of sale of Crude oil or any other goods or rendering of services, as may be notified by the CG in this behalf, to any person in India Foreign company and agreement should be notified by the CG in national interest.	Foreign company on account of sale of crude oil, any other goods or rendering of services. It should not be engaged in any other activity in India.
10(48A)	Income accruing or arising on account of storage of crude oil in a facility in India and sale of crude oil therefrom to any person resident in India. Foreign company and agreement should be notified by the CG in national interest.	Foreign company on account of storage of crude oil in a facility in India and sale of crude oil therefrom.
10(48B)	Income from sale of leftover stock of crude oil from facility in India after the expiry of agreement or arrangement referred to in section 10(48A) or on termination of the said agreement or arrangement, in accordance with the terms mentioned therein, as the case may be, subject to such conditions, as may be notified by the CG.	Foreign company from sale of leftover stock of crude oil from the facility in India.
10(48C)	Income from arrangement for replenishment of crude oil stored in its storage facility in pursuance of directions of the CG in this behalf. Provided that nothing contained in this clause shall apply to an arrangement, if the crude oil is not replenished in the storage facility within three years from the end of the financial year in which the crude oil was removed from the storage facility for the first time.	Indian Strategic Petroleum Reserves Limited, being a wholly owned subsidiary of the Oil Industry Development Board under the Ministry of Petroleum and Natural Gas.

10(48D)	Any income accruing or arising for a period of 10 consecutive AY's beginning from the AY relevant to the PY in which such institution is set up.	Institution setup under law for financing the infrastructure, and development, notified by the CG
10(48E)	Any income accruing or arising for a period of five consecutive AY's beginning from the AY relevant to the PY in which the developmental financial institution is set up. Note: - CG may extend the period exemption for max 5 more AY.	Development financing institution. \Licensed by the RBI under law.
10(23FE)	Dividend, interest or long-term capital gains arising to specified person from an investment made by it in India, whether in the form of debt or share capital or unit, if such investment (i) is made between 1.4.2020 and 31.3.2024; (ii) is held for at least 3 years (iii) is in a business trust, a company/ enterprise/ entity in developing/ operating/ maintaining an infrastructure facility or (iv) a SEBI Category I or II AIF having not less than 50% investment in one or more of the company or enterprise or entity referred to in (iii) or in (v) or in (vi) or in an Infrastructure Investment Trust or (v) a domestic company, set up and registered on or after 1.4.2021, having minimum 75% investments in one or more of the companies or	

Section	Income	Eligible Assessee
	<p>enterprises or entities referred to in (iii) or (vi) a NBFC registered as an Infrastructure Finance Company or in an Infrastructure Debt Fund, having minimum 90% lending to one or more of the companies or enterprises or entities referred to in (iii).</p> <p>Refer detailed discussion in pages 2.52 to 2.56</p>	<p>Specified person, being</p> <p>(i) a wholly owned subsidiary of the Abu Dhabi Investment Authority</p> <p>(ii) a sovereign wealth fund satisfying the prescribed conditions.</p>
10(23FF)	<p>Income of the nature of capital gains on account of transfer of share of a company resident in India, by the resultant fund or a specified fund to the extent attributable to units held by nonresident (not being a PE of a nonresident in India) in such manner as may be prescribed, and such shares were transferred from the original fund, or from its wholly owned special purpose vehicle, to the resultant fund in relocation, and where capital gains on such shares were not chargeable to tax if that relocation had not taken place.</p> <p>Note- The original fund, in a case where a capital asset is transferred to a resultant fund being a category III AIF, shall fulfill the condition that the aggregate participation or investment in the original fund, directly or indirectly, by persons resident in India shall not exceed 5% of the corpus of such fund at the time of such transfer.</p>	Non-resident or specified fund

D. Sec 115JG CONVERSION OF INDIAN BRANCH**CONVERSION OF INDIAN BRANCH OF A FOREIGN COMPANY INTO A SUBSIDIARY INDIAN COMPANY**

If a foreign company, who is engaged in banking business (Foreign Bank in India) convert its Indian branch into an Indian subsidiary company with the scheme of RBI. Then capital gain on such conversion will not be taxable (as per notification 85/2018) If-

- a Indian branch amalgamates with the Indian subsidiary company & such amalgamation is approved/ sanction by-
 - i the Share holders of foreign company & Indian subsidiary company.
 - ii & sactional by the RBI
- b All assets and liabilities of branch should be transfered to Indian subsidiary company (should be transferred on book value & revaluation will not be considered)
- c Foreign bank and its nominees holds 100% share of indian subsidiary company (from the beginning of PY to end of the PY, in which conversion took place)

&

Hold at least 51% voting power for next 5 PYs.

- The provisions relating to unabsorbed depreciation, set off or carry forward of losses, MAT credit and the computation of income in case of foreign company and Indian subsidiary shall apply with following modifications, exceptions and adaptation.

Provisions	Modifications/exception/ adaptation
Current year depreciation	In the year of amalgamation, depreciation between Indian branch and Indian subsidiary shall be apportioned based No. of days assets was use by each of them.
Set-off and carry forward of losses	Accumulated PGBP losses (other than speculative loss) and unabsorbed of Indian Branch will be treated as losses and dep of subsidiary company for the year in which conversion took place . Note- Losses can be carried forward for fresh 8 years.
WDV of assets	Cost of block of assets of Indian subsidiary in the year of conversion shall be WDV of Indian branch as per Income Tax Act on the date of conversion.
COA of capital assets	COA of assets acquired by Indian subsidiary in amalgamation = COA of Indian Branch

POH of capital assets	POH of assets acquired by Indian subsidiary in amalgamation shall include POH of Indian Branch
MAT credit	MAT credit of Indian Branch can be carried forward and set-off by Indian subsidiary for a fresh period of 15 years.
VRS Expenditure amortisation	VRS allowed to Indian subsidiary for remaining period as per Sec. 35DDA
Provision for Bad and doubtful debts	Credit balance of provision of bad and doubtful debts in books of Indian Branch as per sec 36(1)(viii) will be deemed to be credit balance in Indian subsidiary.
Non-applicability of Sec 56(2)(x)	Sec 56(2)(x) shall not apply on the receipt shares by foreign bank from Indian subsidiary on conversion.

Note- Where any benefit/exemption/relief has been granted and thereafter there is failure to comply with any the conditions specified in scheme or notification then AO is empowered to re-compute the total income of the assessee for by way of rectification u/s 154. The period of 4 years for rectification shall be considered from the end of the PY in which conditions violated.

PART-III WITHHOLDING TAX PROVISIONS TO NON RESIDENTS

Summary of withholding tax provisions relating to non-residents is given below-

Section	Nature of payment	Rate of TDS
(1)	(2)	(3)
192	Salary	Normal Slab rates
192A	Premature withdrawal from EPF, aggregating to ₹50,000 or more	10%
194B	Income by way of winnings from lotteries, crossword puzzles, card games and other games of any sort, where payment to a person > ₹10,000	30%
194BB	Income by way of winnings from horse races, where payment to a person > ₹10,000	30%

194E	Income referred to under section 115BBA payable to non-resident sportsman/sports association or an entertainer	20%
194G	Commission etc. on the sale of lottery tickets, where amount payable to a person ₹Rs. 15,000	5%
194LB	Interest payable by infrastructure debt fund to a non-corporate non-resident or foreign company	5%
194LBA(2)	Distribution of any interest income, received or receivable by a business trust from a SPV, to its unit holders.	5%
	Distribution of any dividend income, received or receivable by business trust from a SPV exercising option to pay tax at concessional rate under section 115BAA, to its unit holders However, if the SPV is not exercising the option to pay tax at concessional rate under section 115BAA, dividend income would be exempt in the hands of unit holders and tax would not be deductible at source.	10%
194LBA(3)	Distribution of any income received from renting or leasing or letting out any real estate asset directly owned by the business trust, to its unit holders.	At the rates in force
194LBB	Investment fund paying income to a unit holder [other than income which is exempt under section 10(23FBB)].	
194LBC(2)	Income in respect of investment made in a securitisation trust (specified in Explanation to section 115TCA)	
	Interest payable by an Indian Company or a business trust to a non-corporate non-resident or foreign company	5%

194LC	<ul style="list-style-type: none"> - in respect of money borrowed in foreign currency from a source outside India <ul style="list-style-type: none"> • under a loan agreement between 1.7.2012 and 30.6.2023 or • by way of issue of long-term infrastructure bonds during the period between 1.7.2012 and 30.9.2014 • by way of issue of long term bonds (including long term infrastructure bond) between 1.10.2014 and 30.6.2023 as approved by Central Government or - in respect of money borrowed from source outside India by way of rupee denominated bond on or before 30.6.2023 <p>Interest payable by an Indian company or a business trust to a non-corporate non- resident or foreign company, in respect of monies borrowed by it from a source outside India by way of issue of any long- term bond or rupee denominated bond between 1.4.2020 and 30.6.2023, which is listed only on a recognised stock exchange located in any International Financial Services Centre</p>	4%
	<p>Interest payable by an Indian company or a business trust to a non-resident, including a foreign company, in respect of rupee denominated bond issued outside India during the period from 17.9.2018 to 31.3.2019</p>	<p>Nil (Since such interest is exempt u/s 10(4C), no tax is deductible u/s 194LC)</p>
194LD	<p>On interest payable</p> <ul style="list-style-type: none"> - between 1.6.2013 and 30.6.2023 on <ul style="list-style-type: none"> ▪ rupee denominated bond of an Indian Company or ▪ Government securities or - between 1.4.2020 and 30.6.2023 on municipal debt securities <p>to a Foreign Institutional Investor or a Qualified Foreign Investor</p>	5%

194N	On withdrawal of cash in excess of ₹1 crore	2% on amount exceeding ₹1 crore
	In case the recipient has not filed ROI for all the 3 immediately preceding P.Y.s, for which time limit u/s 139(1) has expired, the sum shall be the amt or agg. of amts, in cash > ₹20 lakhs during the P.Y.	- @ 2% of the sum, where cash withdrawal > ₹20 lakhs ≤ ₹1 crore - @ 5% of the sum, where cash withdrawal exceeds ₹1 crore
195	Any other sum payable to a non-resident	At the rates in force
196A	Income on units of a mutual fund specified under section 10(23D) or from the specified company referred to in section 10(35) payable to non-corporate non-resident or foreign company	20%
196B	Income from units of a mutual fund or UTI purchased in foreign currency (including long term capital gain on transfer of such units) payable to an Offshore Fund	10%
196C	Income by way of interest or dividend on bonds of an Indian company or public sector company sold by the Government and purchased by a non-resident in foreign currency or GDRs referred to in section 115AC (including long term capital gain on transfer of such bonds or GDRs) payable to a non-resident	10%
196D	Income of foreign Institutional Investors from securities (not being income by way of interest referred to in section 194LD or capital gain arising from such securities) Income of specified fund from securities [not being income by way of interest referred to in section 194LD or capital gain arising from such securities or income exempt u/s 10(4D)]	20% 10%

Note- In all the above cases, the rate of tax would be increased by surcharge, wherever applicable, and health and education cess @ 4%.

PART-IV SUMMARY OF PRESUMPTIVE PROVISIONS APPLICABLE TO NON RESIDENTS

Particulars	44B	44BBA	44BB	44BBB
Nature of business	Shipping business	Operation of aircraft	Business of Providing services or facilities in connection with, or supplying P&M on hire used, or to be used, in the prospecting for, or extraction or production of, mineral oils	Business of civil construction or the business of erection of P&M or testing or commissioning thereof, in Connection with turnkey power projects approved by the Central Government.
Eligible assessee	Non-resident	Non-resident	Non-resident	Only Foreign Co.
Presumptive income	7.5% of specified sum	5% of specified sum	10% of specified sum	10% of specified sum
Specified sum	Amount paid or payable on account of carriage of passengers, livestock, mail or goods shipped at/ from any port/place in India; and amount received or deemed to be received in India on account of the carriage of passengers, livestock mail or goods shipped at/ from any port/place outside India	Amount paid or payable on account of the provision of such services or facilities for the aforesaid purposes in India; and Amount received or deemed to be received in India on account of the provisions of services or facilities for the aforesaid purpose outside India.	Amount paid or payable on a/c of such civil construction, erection, testing or commissioning	

Option to lower profits	Not available declare	Lower profits may be claimed u/s 44BB and u/s 44BBB provided the assessee maintains books of account u/s 44AA and gets them audited u/s 44AB.
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Deduction In respect of Head office Expenses- Sec 44C

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

5% of adjusted Total Income	Amount of Head Office expenditure incurred by the Non-resident attributable to the business or profession in India
↓	↓
Meaning of Adjusted Total Income	Meaning of Head Office expenditure
Total Income, without giving effect to-	Executive and general administration expenditure incurred by the NR outside India, including-
(i) Head Office expenditure	(a) Rent, rates, taxes, repairs or insurance of any premises outside India used for business or profession
(ii) Unabsorbed depreciation	(b) Salary, wages, perquisites etc. to any employee or other person managing the affairs of any office outside India
(iii) Capital expenditure on family planning	(c) Travelling expenditure by any employee or other person managing the affairs of any office outside India
(iv) Losses carry forward-	(d) Such other executive and general administration expenditure prescribed
- Business loss u/s 72(1)	
- Speculative business Loss u/s 73(2)	
- LTCL/STCL u/s 74(1)	
- Loss from owning and maintaining race horses u/s 74A(3)	
(v) Deductions under Chapter VI-A from GTI	

ILLUSTRATION

The net result of the business carried on by a branch of foreign company in India for the year ended 31.03.2023 was a loss of ₹100 lakhs after charge of head office expenses of ₹200 lakhs allocated to the branch. Explain with reasons the income to be declared by the branch in its return for the assessment year 2023-24.

SOLUTION-

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

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

The amount of income to be declared by the assessee for A.Y. 2023-24 will be as under:

Particulars	₹
Net loss for the year ended on 31.03.2023	(100 lakhs)
Add: Amount of head office expenses to be considered separately as per section 44C	200 lakhs
Adjusted total income	100 lakhs
Less: Head Office expenses allowable under section 44C is the lower of -	
(i) ₹5 lakhs, being 5% of ₹100 lakhs, or	
(ii) ₹200 lakhs.	5 lakhs
Income to be declared in return	95 lakhs

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

- i Eligible assessee-** Section 44DA provides the method of computation of income by way of royalty or fees for technical services arising from the agreement made by the non-resident with the Indian company or Government of India after 31.03.2003 where:
- such non-resident carries business/profession in India through permanent establishment or fixed place of profession; and
 - the right, property, or contract in respect of which the royalty or fees for technical services are paid is effectively connected with such permanent establishment or fixed place of service.

- c** Expenses not allowed as deduction- While computing the income chargeable to tax under this section, the following expenses are not allowed as deduction-
- expenditure or allowance incurred which is not wholly and exclusively for such permanent establishment or fixed place of service in India
 - amount paid (otherwise than reimbursement of actual expenses) by the permanent establishment to head office or to any of its other offices.

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

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

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

Notes

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Double Taxation Avoidance Agreement (DTAA)

Cross border transactions have increased globally and there is a need to-

- ▶ Promote trade
- ▶ Mutual economic relationship
- ▶ Foreign investment
- ▶ Sharing of knowledge and technology etc.



But due to varied taxation base-

- i Residential status basis; and
- ii Source of income basis

Double taxation issue arise for various countries

Example – Mr. Bhaarat is a resident of India and he earns income from the US, then US Govt. will tax such income on source basis and Indian Govt. will tax such income on resident basis. Therefore, there is double taxation of the same income.

It creates a Treaty (DTAA) requirement between different countries to prevent double taxation.

Sec 90 -What is DTAA

The CG may enter into an agreement with Govt. of foreign country or specified territory outside India for –

- 1 Granting relief from double taxation
 - 2 Control tax avoidance in order to control
 - ▶ non-taxation opportunities
 - ▶ reduced taxation through tax evasion or avoidance (including through treaty shopping arrangements aimed at obtaining relief provided in the said agreement for the indirect benefit to residents of any other country/territory).
 - 3 Exchange of information with each other to prevent evasion or avoidance of Income tax or investigate such cases of evasion or avoidance
 - 4 Recovery of Income tax
- The central Government may, by notification in the official Gazette, make such provisions as may be necessary for implementing the agreement.

Sec 90(2) – Option to opt DTAA

If CG enters into an agreement with foreign country/specified territory under DTAA, then assessee can go with the provisions of-

- ▶ the Income Tax Act, 1961 or
- ▶ DTAA

(Whichever is more beneficial to the assessee.)

Note

But provisions of GAAR shall apply even if such provisions are not beneficial to the assessee[90(2)]

The charge of tax in respect of a foreign company at a rate higher than the rate at which domestic company is chargeable, shall not be regarded as less favorable charge or levy of tax in respect of such foreign company

Sec 90(4) – TRC

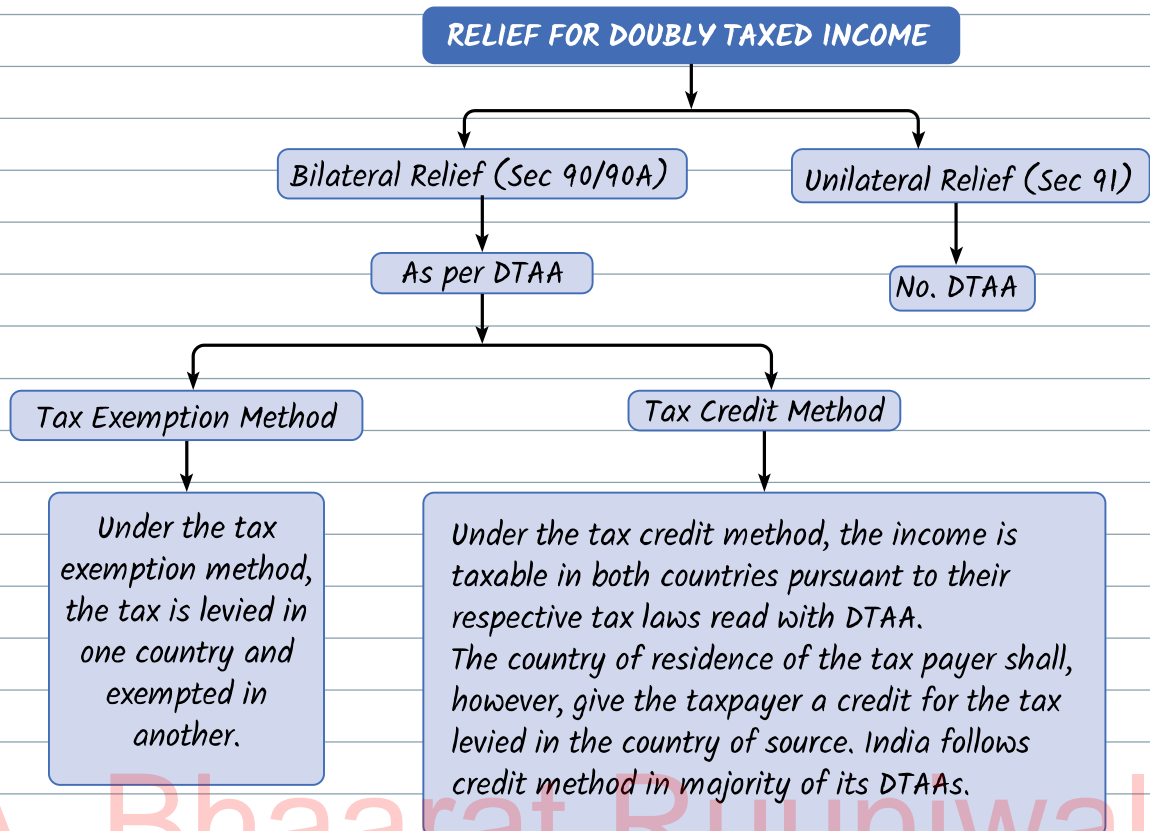
If NR wants to claim DTAA relief and DTAA applies to him then he has to submit TRC (Tax Res. certificate), which shows his residency in a foreign country.

Clarification of CBDT – The TRC produced by a resident of a foreign country will be accepted as evidence that he is resident of that foreign country & the Income Tax authorities in India will not go behind the TRC & question his residential status.

In addition to TRC, the assessee would be required to provide all other prescribed documents and information to claim the treaty benefit (CBDT vide notification no. 57/2013 dated 01.08.2013)

- Status (individual, company, firm, etc.) of the assessee
- Nationality (in case of an individual) or country or specified territory of incorporation or registration (in case of others)
- Assessee's tax identification number in the country or specified territory of residence and in case there is no such number, then a unique number on the basis of which the person is identified by the government of the country or the specified territory of which the assessee claims to be a resident.
- Period for which the residential status, as mentioned in the certificate is applicable.
- Address of the assessee in the country or specified territory outside India, during the period for which the certificate is applicable.

However, the assessee may not be required to provide above information or any part thereof, if such information is already contained in the TRC.



Notes

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Sec. 90A – Double taxation relief to be extended to agreements between specified associations adopted by the Central Government

Section 90A provides that any specified association in India may enter into an agreement with any specified association outside India which may be adopted by the Central Government, for granting tax relief or avoidance of double taxation, as the case may be.

“Specified association” means any institution, association or body, whether incorporated or not, functioning under any law in India or outside India and which may be notified as such by the Central Government.

Meaning of terms used in DTAA-

Term used in the DTAA and not defined in the DTAA or the Income Tax Act, 1961 but assigned a meaning in the notification which is still in effect.	The term shall have the meaning as assigned in the notification and shall be deemed to have effect from the date on which DTAA came into force.
Term used in the DTAA and defined in the DTAA itself.	The term shall have the same meaning as defined in the DTAA.
Term used in the DTAA and not defined in the DTAA but defined in the Income Tax Act, 1961.	The term shall have the same meaning as defined in the act & explanation (if any).

Sec -91 - Unilateral Relief (if no DTAA)

Relief u/s 91 would be granted if all of the following conditions are fulfilled-

- ▶ The assessee is Resident in India
- ▶ Derived income from foreign Country & such income is not deemed to accrue or arise in India
- ▶ Tax charged & paid in foreign country
- ▶ No DTAA exists

Amount of Relief

- Step 1 –** Compute Gross Total Income (after considering foreign income)
- Step 2 –** Reduce deduction u/c VI-A (always deduct from Indian income if not connected with foreign income)
- Step 3 –** Separate NTI in Indian Currency & Foreign Currency
- Step 4 –** Compute tax on NTI as per normal provisions of IT Act.

Step 5 – Compute average tax based on tax calculated in Step 4.

$$\text{Average Tax} = \frac{\text{Total tax}}{\text{NTI / Total Income}} \times 100$$

Step 6 – Compute average foreign tax (Paid in foreign currency)

$$\text{Average Foreign Tax} = \frac{\text{Foreign Tax}}{\text{Foreign Income}} \times 100$$

Step 7 – Relief u/s 91 will be lower of 5 & 6 applicable only in respect to (e.r.t.)
Doubly Taxed Income

Key Note while calculating relief -

- 1 If foreign tax is paid in more than one country then average tax rate shall be calculate separately for each foreign country [Bombay Burmah vs CIT (2003)]
- 2 Deductions and losses are adjusted first with Indian income and then with foreign income, unless and until they are specifically related to foreign income.
- 3 Doubly taxed income includes only that part of income which is included in assessee's total income. No relief shall be allowed in respect of amount deducted under chapter VIA as it is not doubly taxed. [CIT V Dr. R.N. Jhanji (1990) 185 ITR 586 (Raj.)]

Concept of Permanent Establishment (PE) -

Under the Income tax Act, taxability of business profit is determined by existence of business connection in India. Under the DTAA, taxability of business profit is determined by existence of Permanent Establishment (PE) in India.

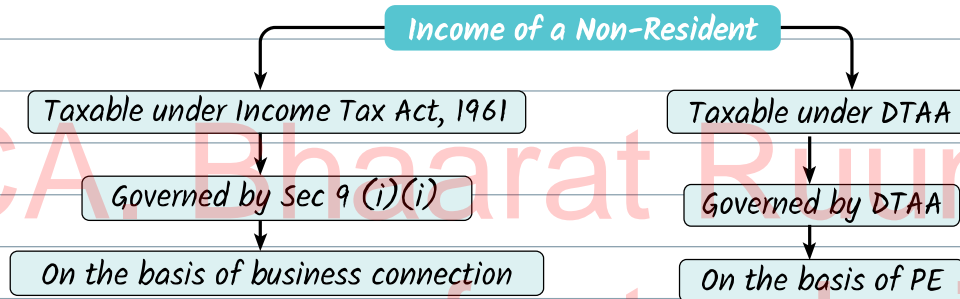
Permanent establishment means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

In terms of Article 5(2) of the convention, the term PE includes

- ▶ A place of management
- ▶ A branch
- ▶ An office
- ▶ A factory
- ▶ A workshop
- ▶ A mine, an oil or gas well, a quarry or any other place of extraction of natural resources (not exploration)

Notes

- 1 Every DTAA has a specific clause, which will deal with an explanation of permanent establishment for the purpose of such DTAA.
- 2 Business Income of a non-resident will not be taxed in India, unless such non-resident has a PE in India.



Sec 228A- Recovery of tax in pursuance of agreement with foreign country

If there is an agreement between Central Government & Government of any foreign country for recovery of tax.

