



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

CPE Seminar on International Taxation

Navi Mumbai Branch of WIRC

CA SIDDHARTH BANWAT

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BRIEF OVERVIEW

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

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- Allocation of taxing right to the country of source and country of residence
 - Elimination of double taxation
 - Promotion of economic relations between contracting states
 - Determination of residential status of taxpayers in case when difficulties arise in determining the same residential status of the taxpayer.
 - Forming anti avoidance measures (Ex:-Transfer pricing regulations)
-

SOURCE & RESIDENCE RULE

BOOK

SOURCE & RESIDENCE RULE

SOURCE & RESIDENCE RULE

- **The state of source** or situs is the state where a certain income has its **origin**.
 - **The state of residence** is the state where person earning such income **resides**.
 - In any cross-border movement of income and capital, two or more States seek to exercise taxing rights in accordance with their respective domestic laws.
 - If they decide to tax such income on unilateral basis without co-ordination or agreement with the corresponding state, the same income may get taxed more than once and therefore, states around the world have accepted as a general principle that international juridical double taxation should be avoided or minimized to extent possible.
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THREE LIMBS OF INTERNATIONAL TAXATION

**Domestic Tax Law
Provision**

**Treaty Provisions
(DTAA)**

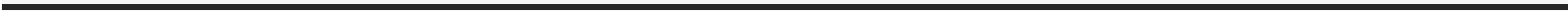
**Foreign Country's
Tax Law Provisions**

International Taxation primarily Involves the following provisions:

REFERENCE UNDER INCOM TAX ACT, 1961	PROVISION
Section 2(31)	Definition of a Person
Section 4	Charging Section
Section 5	Scope of Total Income
Section 6	Residence in India
Section 9	Income deemed to accrue or arise in India
Section 44B to 44BBB & 44C to 44DA	Presumptive Tax
Section 90	Agreement with foreign countries or specified territories
Section 90A	Adoption by Central Government of agreement between specified associations for Double Taxation Relief
Section 91	Countries with which no agreement exists
Section 115A to 115BBA & 115C to 115F	Provisions relating to Non - Residents
Section 195	WHT obligation for payment to Non Resident
Section 195A	Income payable 'Net of Tax'

SECTION 4

SECTION 4

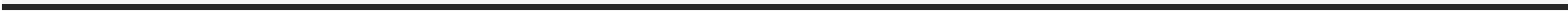


SECTION 4 – BASIS OF CHARGE

- Definition of income is not exclusive but inclusive based on its general and natural meaning (includes illegal income)
 - Tax law and rates are determined on April 1 of a financial year for the assessment year; subsequent changes generally do not apply
 - Each year is separately assessed – any shortfall cannot be taxed in another tax year
 - Tax is generally deducted at source or paid in advance during previous year with any balance remaining is payable under self assessment with tax return (sec.4(2))
 - Tax is assessed for the assessment year on the total income of the previous year of every person
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SECTION 5

SECTION 2



SECTION 5 – SCOPE OF INCOME

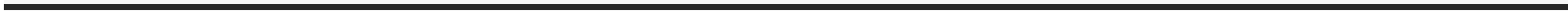
Income is classified as

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

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

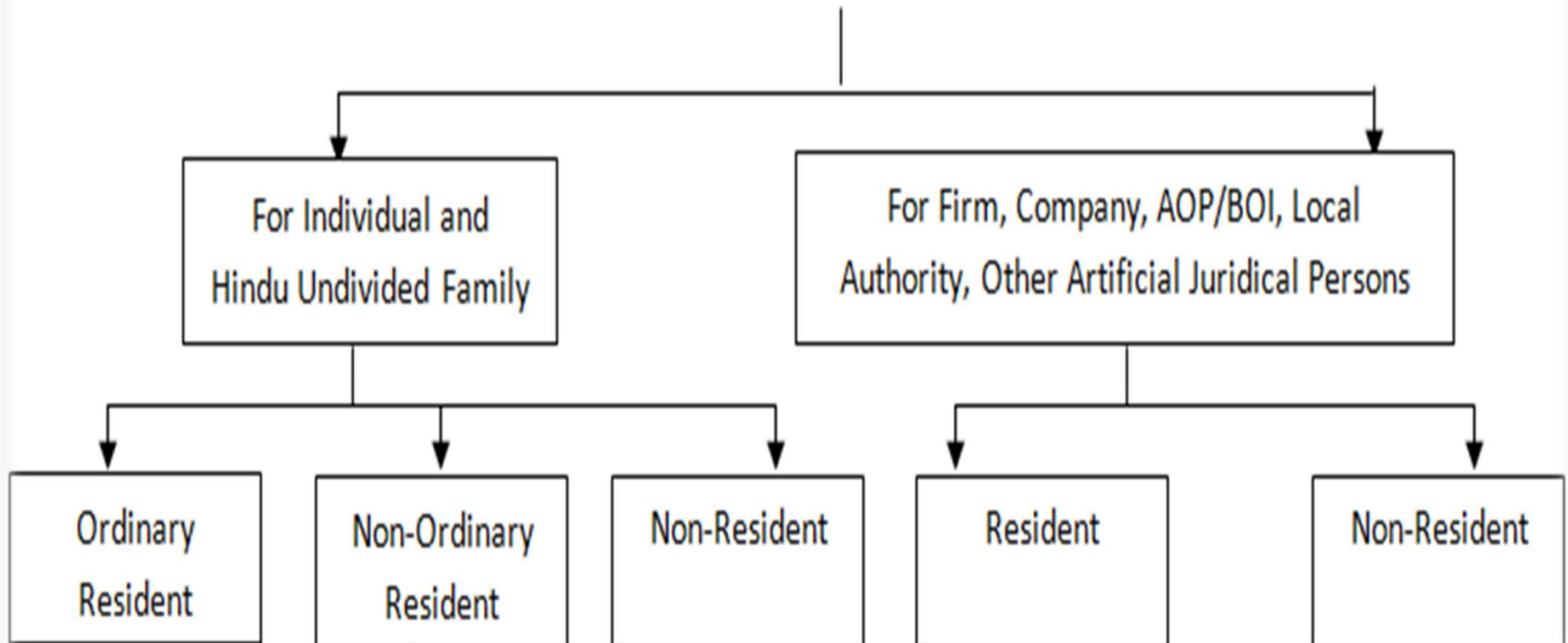
SECTION 6

SECTION 6



SECTION 6 – RESIDENCE IN INDIA

TYPES OF RESIDENTIAL STATUS



SECTION 6 – RESIDENCE IN INDIA

➤ Residence (Individuals)

▪ Resident

- Stay of at least 182 days in a previous year, or
- Stay of at least 60 days in previous year (substituted as 182 days for (a) Indian citizens leaving India for employment abroad or as a crew member on an Indian ship or (b) Indian citizen or person of Indian origin visiting India) **and** 365 or more days in the preceding four years in India

▪ Resident and ordinarily resident (ROR)

- Resident in at least 2 out of the 10 preceding previous years, and
- Aggregate stay in India of at least 730 days in the 7 preceding previous years

▪ Resident but not ordinarily resident (RNOR)

- Non-Resident for at least 9 out of 10 preceding previous years or
 - Aggregate stay in India less than 730 days in the 7 preceding previous years
-

SECTION 6 – RESIDENCE IN INDIA

Basic conditions for Resident:

An individual who stays in India for:

- 182 days or more; or
- 60 days or more in a year and 365 days or more during preceding 4 years

Additional Conditions for Ordinarily Resident:

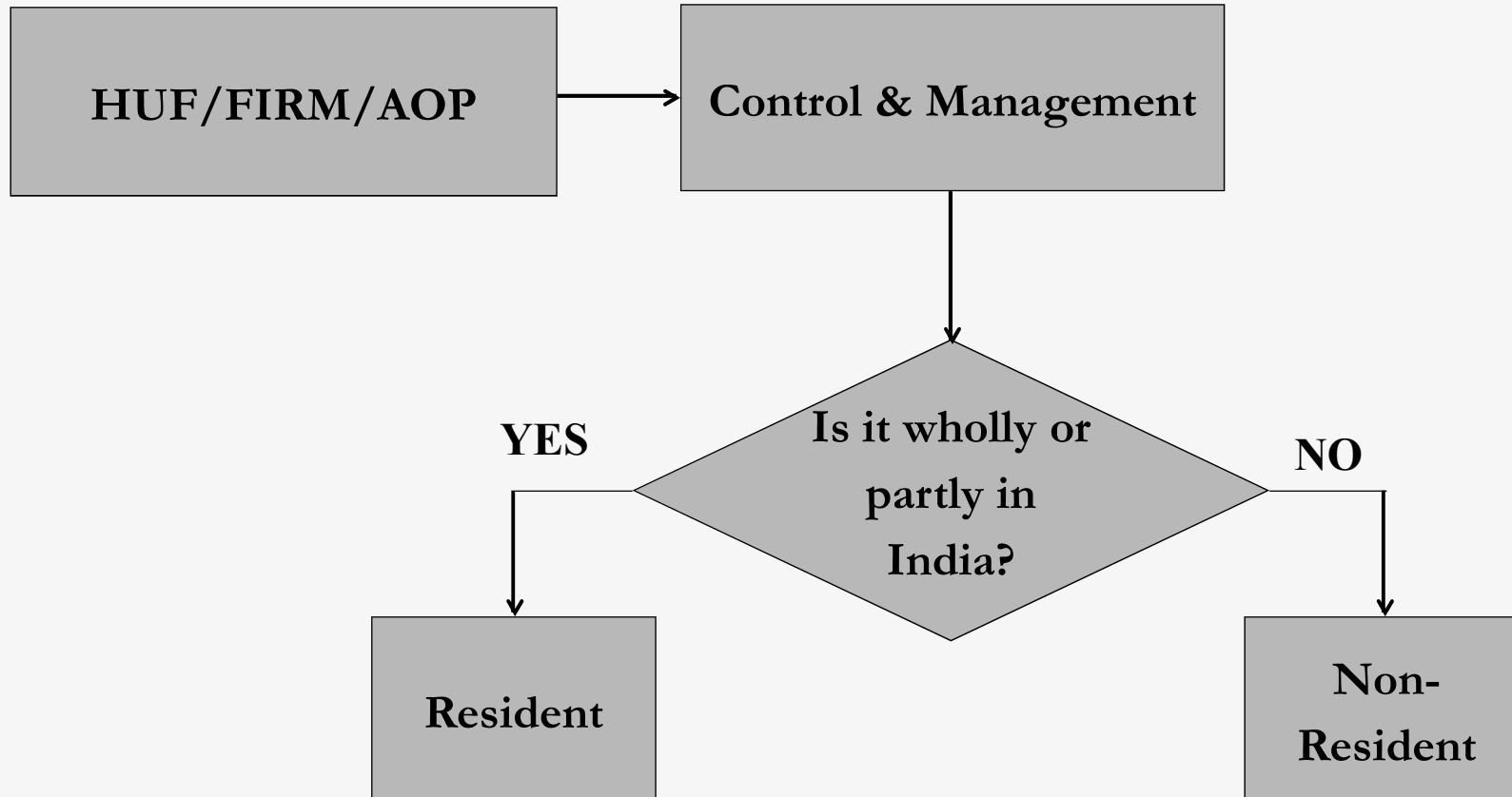
- Resident in India for at least 2 out of preceding 10 years or
- Stays in India for an aggregate period of 730 days or more in the preceding 7 years

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

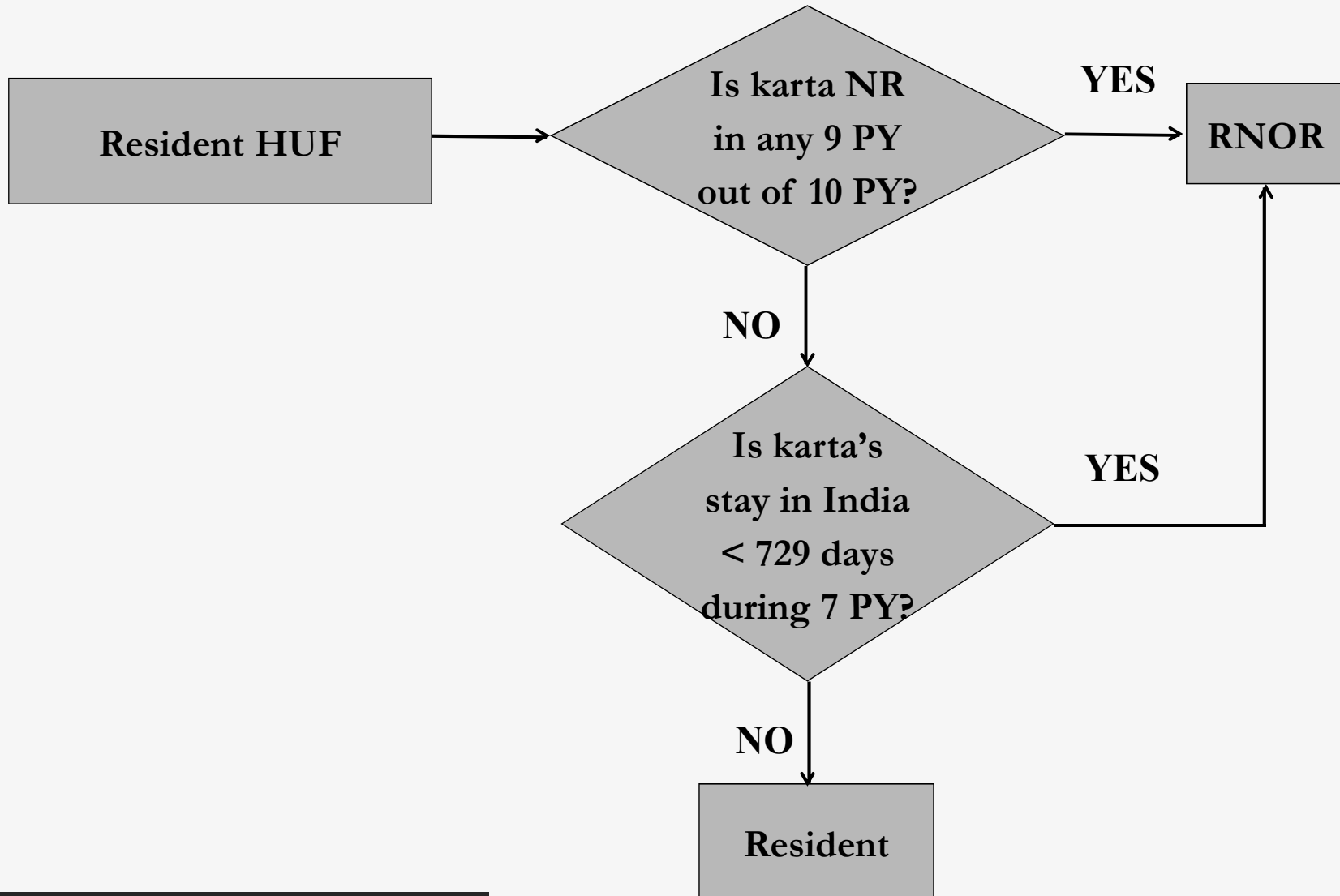
SECTION 6 – RESIDENCE IN INDIA

- Stay in India
 - Not necessarily continuous
 - Need not be in one place
 - Includes day of arrival and departure
 - Indian origin: person or either of the parents or grandparents born in undivided India
 - For an individual, being a citizen of India and a member of a crew of a foreign bound ship leaving India, the period of stay in India for determining his residence for income-tax purposes shall be determined in the manner and subject to such conditions as prescribed (*inserted vide Finance Act, 2015*).
 - “India” includes its territorial waters and air above it (Sec. 2(25A))
 - Tax residence differs from residence under exchange controls (Foreign Exchange Management Act, 1999 - FEMA)
 - Type of tax residence determines the scope of taxation of total income
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RESIDENTIAL STATUS OF HUF/FIRM/AOP



RESIDENT HUF – ROR & RNOR



SECTION 6 – RESIDENCE IN INDIA

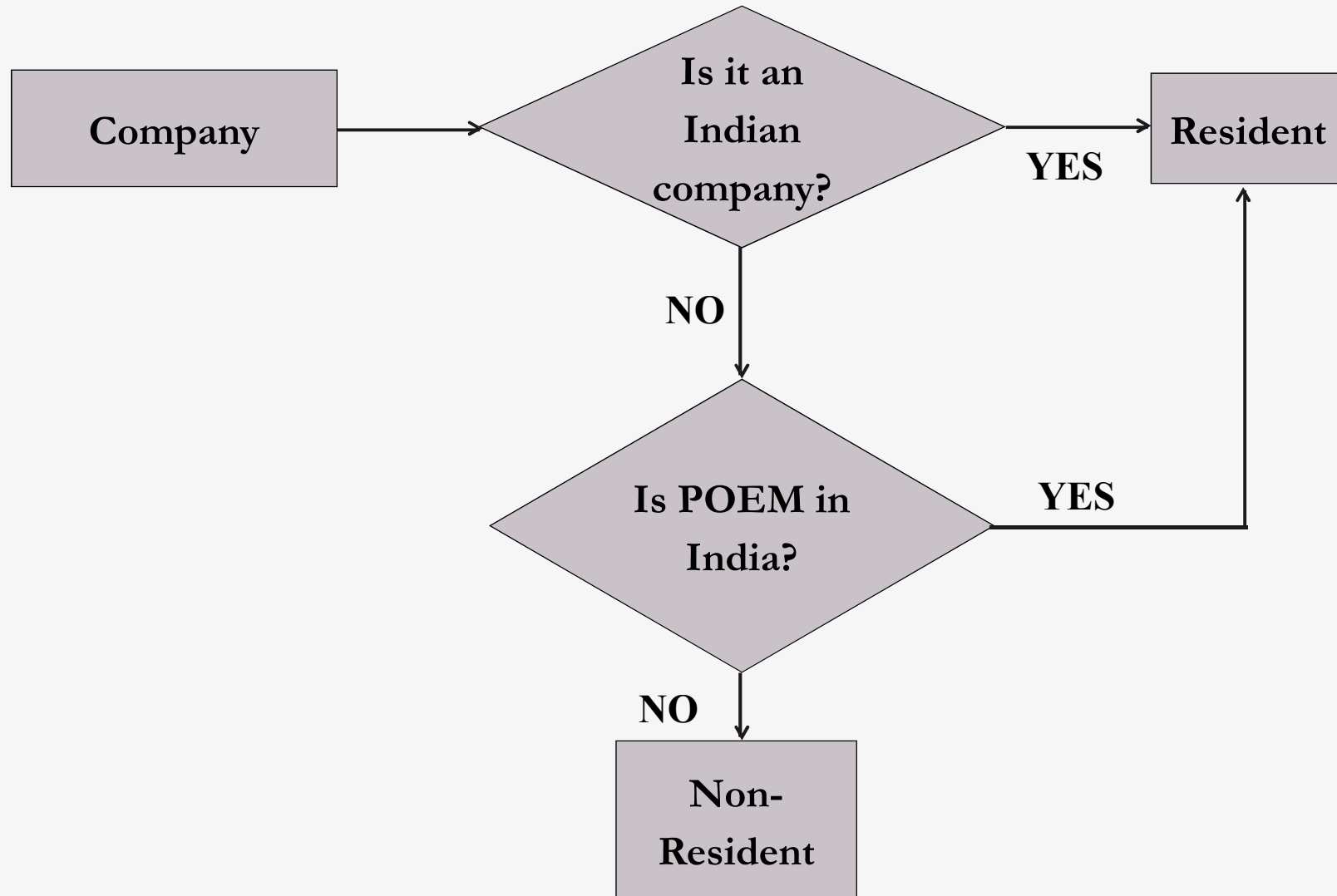
➤ Residence (Companies)

With effect from Assessment year 2017-18, a company would be resident in India in any previous year, if

- (i) it is an Indian company; or
- (ii) its place of effective management, in that year, is in India.

➤ “Place of effective management” (introduced by the Finance Act, 2015 with effect from AY 2017-18) means a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole are, in substance made [Explanation to section 6(3)].

RESIDENTIAL STATUS - COMPANY



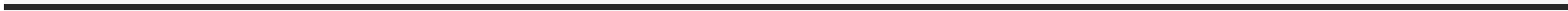
TAXATION OF NON - RESIDENTS

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

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

SECTION 9

SECTION 9



INCOME DEEMED TO ACCRUE OR ARISE IN INDIA

Section

Description

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

SECTION 9 (1) (i)

- Income is deemed to accrue or arise in India if it accrues, **directly or indirectly**
- through or *from any business connection* in India or
 - through or *from any property* in India or
 - through or *from any asset or source of income* in India or
 - through the *transfer of a capital asset* situated in India
-

EXPLANATION 1 TO SECTION 9 (1) (i)

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

- Business where all operations are not carried out in India, only that income reasonably **attributable to Indian operations** would deem to accrue or arise in India.

No income shall be taxable in India if,

- operations of NR is confined to purchase of goods in India for the purpose of export.
 - NR runs a news agency/ publishes newspapers/magazines/journals, activities confined to collection of news & views in India for transmission out of India.
 - Foreign Company engaged in business of mining of diamonds from activities confined to display of uncut and unsorted diamonds in special zone notified by GOI
 - operations are limited to shooting of film in India provided that NR is either,
 - An individual who is not a citizen of India
 - A firm which doesn't have any partner who is Indian citizen or resident in India, or
 - A company which doesn't have any shareholder who is a citizen or resident of India
-

EXPLANATION 2 TO SECTION 9 (1) (i)

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

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

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

➤ What is Business Connection

- There is no definition in the Indian tax law
- Meaning largely based on Indian case laws

➤ “Force of attraction” rule OR “effectively connected” rule?

➤ Significance of Business Connection

- Relevant for transactions with “NOR”/“NR” on income that accrues or arises outside & not received/ deemed to be received in India
 - It is overruled by tax treaties e.g. if no PE exists
-

GUIDELINES TO DETERMINE BUSINESS CONNECTION

➤ A business connection in section 9 involves a relation between a business carried on by a non-resident which yields profits or gains and some activity in the taxable territories which contributes directly or indirectly to the earning of those profits or gains. It predicates an element of continuity between the business of the non resident and the activity in the taxable territories. An isolated transaction is normally not to be regarded as a business connection.

[CIT v. R.D. Aggarwal & co. (1965) 56 ITR 20(SC)]

➤ The expression 'Business' is a much wider than trade or manufacture and includes professions and vocations and callings for a fairly long time. It means an activity carried on continuously and systematically by a person applying his labour and skill with a view to earn income.

[Barendra Prasad Ray v. Income tax Officer (1981) 129 ITR 0295 (SC)]

GUIDELINES TO DETERMINE BUSINESS CONNECTION

- Mere purchase of plant and machinery from a non resident wherein certain technical personnel are deputed to supervise and impart training in India is not sufficient to establish business connection in India. [**CIT v. Hindustan Shipyard Ltd. (1977) 109 ITR 158 (AP)**]
 - However, in each case the question whether there is a business connection from or through which income arises or accrues must be determined upon the facts and circumstances of that case. [**Blue Star Engg. Co. (Bom.) P. Ltd. v CIT 73 ITR 283 (Bom.)**]
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EXPLANATION 3, 4 & 5 TO SECTION 9 (1) (i)

- **Explanation 3:** In case of a business connection, only that income which is attributable to activities in India shall be deemed to accrue or arise in India. If no operations are carried out in India, no income can be deemed to accrue or arise in India even though there may be a "business connection" in India [**CIT v Toshoku Ltd. 125 ITR 525 (SC)**]
 - **Explanation 4:** It is clarified that the expression "through" shall mean and include and shall be deemed to have always meant and included "by means of", "in consequence of" or "by reason of".
 - **Explanation 5:** It is clarified that an asset or a capital asset being any share or interest in a company or entity registered or incorporated outside India shall be deemed to be and shall always be deemed to have been situated in India, if the share or interest derives, directly or indirectly, its value substantially from the assets located in India; [Provided that nothing contained in this Explanation shall apply to an asset or capital asset, which is held by a non-resident by way of investment, directly or indirectly, in a Foreign Institutional Investor as referred to in clause (a) of the Explanation to section 115AD for an assessment year commencing on or after the 1st day of April, 2012 but before the 1st day of April, 2015:]
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EXPLANATION 6 TO SECTION 9 (1) (i)

➤ **Explanation 6:** It is declared that

a) the share or interest shall be deemed to derive its value substantially from the assets (whether tangible or intangible) located in India, if, on the specified date, the value of such assets—

(i) exceeds the amount of **ten crore rupees**; and

(ii) represents **at least fifty per cent** of the value of all the assets owned by the company or entity, as the case may be

b) the value of an asset shall be the fair market value as on the specified date, of such asset without reduction of liabilities, if any, in respect of the asset, *determined in such manner as may be prescribed* (**the CBDT has issued rules vide Notification No. 55/2016 dated 28th June, 2016 for determining the fair market value (FMV) of assets and the income attributable to assets in India in relation to the indirect transfer of assets**)

EXPLANATION 7 TO SECTION 9 (1) (i)

➤ **Explanation 7:** It is clarified that

- a) No income shall be deemed to accrue or arise to a non-resident, from transfer outside India, of any share of, or interest in, a company or an entity, registered or incorporated outside India, if the transferor (whether individually or along with its associated enterprises), at any time in the 12 months preceding the date of transfer, neither holds the right of management or control in relation to such company or entity, nor holds voting power or share capital or interest exceeding 5% of the total voting power or total share capital or total interest, as the case may be, of such company or entity.
- b) In a case where all the assets owned, by a company or, as the case may be, an entity, are not located in India, the income of the non-resident transferor, from transfer outside India of a share of, or interest in, such company or entity, deemed to accrue or arise in India under this clause, shall be only such part of the income as is reasonably attributable to assets located in India and determined *in such manner as may be prescribed*

SECTION 9 (1) (ii)

- Salaries will be deemed to accrue or arise in India only if "**earned in India**".
 - Further, it has been clarified by way of Explanation that salary payable for "**service rendered in India**" & rest period/leave period preceding & succeeding such service in India & forms part of the service contract of employment shall be regarded as income earned in India.
 - Salaries payable for services rendered in India shall be regarded as income earned in India, though it may be paid in India or outside. i.e. the payment or receipt of salary is immaterial. *What is important is the place of rendering of services.*
 - Section 9(2) makes an exception to the aforesaid rule in the case of certain retired civil servants and judges permanently residing outside India.
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Section 9 (1) (iii)

- Salary payable by GoI to Indian citizen is taxable if :
 - Income is chargeable under the head "Salaries"
 - Recipient should be an Indian Citizen, irrespective of their residential status
 - The services should be rendered outside India
 - It is important to note that all allowances or perquisites paid outside India by the GoI to the Indian Citizens for rendering services outside India are exempt under section 10(7).
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SECTION 9 (1) (iv)

- Dividend paid by an Indian Company outside India is deemed to accrue or arise in India
 - Any dividend paid by Indian Co. shall be taxed in India irrespective residential status
 - Similarly, dividend from Foreign Co. paid in India shall be taxable on receipt basis as income is received in India.
 - The place of accrual of dividend should be decided on the basis of the place of registered office of the company.
 - The place of declaration or payment of such dividend is immaterial.
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SECTION 9 (1) (v)

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

SECTION 9 (1) (v)

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

SECTION 9 (1) (vi)

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

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

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

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

SECTION 9 (1) (vi)

- **Explanation 2:** Consideration (incl. lump sum consideration excl. CG) for:
- Transfer of all or any rights (including license) in:
 - patent/invention/model/design/secret formula/process/trademark
 - Copyright, literary/artistic/scientific work etc.
 - Imparting of any information concerning:
 - working of or use of patent, model, design, secret formula or process
 - technical, commercial or scientific knowledge, experience or skill.
 - Use of:
 - patents, model, design, secret formula or process etc;
 - industrial, commercial or scientific equipment
 - Rendering of services in respect of the above
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SECTION 9 (1) (vi)

- ❑ **Explanation 3:** “Computer software” means any computer programme recorded on disc, tape, perforated media/ other information storage device and includes any such programme or any customized electronic data.
 - ❑ **Explanation 4** clarifies that transfer of all/ any rights w.r.t. any right, property or information includes and has always included right to use computer software (including granting license) irrespective of the medium of transfer.
 - ❑ **Explanation 5:** Royalty includes & has always included consideration in respect of any right, property or information, whether or not—
 - (a) possession/ control is with the payer;
 - (b) such right, property or information is used directly by the payer;
 - (c) the location of such right, property or information is in India.
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SECTION 9 (1) (vi)

- ❑ **Explanation 6** clarifies that the expression "process" includes and deems to always have included transmission by satellite (including up-linking, amplification, conversion for down-linking of any signal), cable, optic fibre or by any other similar technology, whether or not such process is secret.
 - ❑ This amendment has tax implications of wide amplitude for telecom industry, cable operators, broad band service providers, etc.
 - ❑ Royalty doesn't include payment to satellite companies for broadcasting by use of transponder capacity – Asia Satellite Co. Ltd. Vs DIT [2011] (Delhi)
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SECTION 9 (1) (vii)

Payable by	When deemed to accrue or arise in India
Government	Always
Resident	Always, except where FTS payable in respect of services utilised in business or profession/ earning any income outside India
NR	Only when FTS payable in respect of services utilised in a business or profession/ for earning any income in India
Exception	Any income by way of FTS payable in pursuance to an agreement made before 1 April 1976 and approved by CG

For this purpose, an agreement made on/after 1 April, 1976 will be deemed to have been made before that date: If the agreement is in accordance with proposal approved by CG before 1 April, 1976

SECTION 9 (1) (vii)

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

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

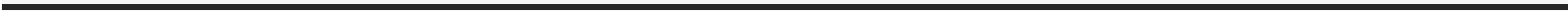
WITHOLDING TAXES

KEY PROVISIONS OF THE INCOME TAX ACT, 1961

REFERENCE UNDER IT ACT	PROVISION
Section 195	Payment of any other sum to non-resident
Section 195(1)	Scope and conditions of applicability
Section 195(2)	Application by payer to A.O. to determine sum chargeable to tax
Section 195(3)	Application by payee to A.O. for grant of certificate for NIL/lower deduction of tax
Section 195(4)	Validity of certificate issued by AO u/s 195(3)
Section 195(5)	CBDT power to make Rules in respect of Section 195(3)
Section 195(6)	Furnishing of prescribed information – CBDT empowered to prescribe rules/ forms
Section 195(7)	CBDT empowered to specify class of persons or cases who shall make mandatorily application to AO for determination of sum chargeable
Section 195A	Income payable 'Net of Tax'
Section 197	Certificate for deduction at lower rates
Section 206AA	Tax Rates in absence of PAN

SECTION 195

SECTION 195



SECTION 195

Payment of any other sum to non-resident:

- **Any person** responsible for paying **interest** (other than interest referred to in section 194LB or section 194LC or section 194LD) or **any other sum chargeable to tax** (other than salaries) to a **non-corporate non-resident or to a foreign company** is liable to deduct tax at source at the rates prescribed by the relevant Finance Act. Such persons are also required to furnish the information relating to payment of any sum in such form and manner as may be prescribed by the CBDT
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SECTION 195

- **PAYER** – Any person (includes both residents and non-residents)
 - **PAYEE** – Non-corporate non-resident or foreign company
 - **PAYMENT** – Interest (other than interest referred to in section 194LB/194LC/194LD) or any other sum chargeable to tax (other than salaries)
 - **RATE** – Rate prescribed by relevant Finance Act
 - **TIME OF DEDUCTION** – Credit of income to account of payee or payment thereof in cash/cheque/draft/any other mode (whichever is earlier)
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SECTION 195

EXCLUSIONS:

- Interest referred to in Section **194LB**, **194LC** or Section **194LD**
- Income chargeable under the head “salaries”
- **Dividends** referred to in **Section 115-O**
- Sums not chargeable to tax in India
 - I. Non-chargeability due to Act or DTAA
 - II. Due to scope of total income or exemption
 - III. No TDS on amounts exempt u/s 10 – **Hyderabad Industries Ltd vs. ITO 188 ITR 749 (Kar)**
 - IV. Income from specified services such as online advertisement, digital advertising space – **Equalization Levy – Exempt u/s 10(50)**
 - V. DTAA benefit subject to TRC and Form 10F

SECTION 195

EXCLUSIONS (contd.):

- Where a certificate has been obtained by payee u/s 197 for non-deduction of TDS and certificate is in force then the payer cannot be treated as an assessee in default for non-deduction of TDS – **CIT v/s Bovis Lend Lease (I) Ltd 241 Taxman 312 (SC)**

- Section 172 – Profits of NRs from Occasional Shipping Business
 - I. **CBDT circular No 723** dated 19.09.1995 – Payments to shipping agents of NR ship owners – Provisions of Section 172 will apply and Section 194C or Section 195 will not apply.

 - II. **CIT v/s V. S. Dempo & Co (P) Ltd 381 ITR 303 (Bom)** – Section 195 not applicable to shipping profits governed by Section 172 and Section 44B.

SECTION 195

Amount on which tax is to be deducted:

- The Honourable Supreme Court in *Transmission Corporation of A.P. Ltd. vs. CIT* held that the provisions of section 195 shall apply not only to the amounts which wholly bear the character of income but also to gross sums, the whole of which may not be income or profit, but have income element embedded therein.
 - The above led to misinterpretation that tax withholding was required on the **gross sums** paid to non-residents even when only a portion of the remittance was chargeable to tax unless an application was made to AO u/s 195(2)
-

SECTION 195

Amount on which tax is to be deducted (contd.):

- After considerable controversies and divergent views, the Honorable Supreme Court in *GE India Technology Centre P. Limited vs CIT & Others* clarified that tax has to be deducted on the income element embedded in the payment and not on the whole sum, except where income is taxable on gross basis
 - The Honourable Supreme Court pointed out that words used under section 195 were “*any other sums chargeable under the provisions of the Act*” as against “*any sum*” used in provisions falling in Chapter XVII of the Income Tax Act, 1961.
-

INCOME CHARGEABLE AT CONCESSIONAL RATES

- Under Chapter XII of the Act, certain types of income of non-residents such as **dividend, interest, royalty, fees for technical services** are taxed on gross basis at concessional rate of tax subject to fulfillment of prescribed conditions.
 - The question arises – **At what rate is tax required to be deducted at source?**
 - When special provisions are invoked, TDS is required at rates prescribed under such special provisions (For example – 10% of gross receipt in case of royalty and FTS)
-

SECTION 195A

Where, under an agreement or other arrangement, the **tax chargeable on any income** referred to in the foregoing provisions of this Chapter is to be **borne** by the **person by whom the income is payable**, then, for the purposes of deduction of tax under those provisions such income shall be increased to such amount as would, after deduction of tax thereon, be equal to the **net amount payable** under such agreement or arrangement.

However, no grossing up is required in the case of tax paid [under section 192(1A)] by an employer on the non-monetary perquisites provided to the employee.

CERTIFICATE BY A CA FOR REMITTANCE

- CA certificate to be obtained in **Form 15CB**
 - Form 15CB to be furnished electronically as against earlier practice of issuing physically.
 - **Digital signature is mandatory**
 - **Form 15CA** to be furnished electronically by the assessee on e-filing portal
 - No requirement to furnish certificate if:
 - I. The payments are not chargeable to tax **AND**
 - II. Payment is included in list of 33 payments specified under **Rule 37BB(3) OR**
 - III. Payment by individuals for a remittance which does not require RBI approval (**Example – LRS**)
-

FLOW OF FORM 15CB

Static information containing details of beneficiary of remittance, bank details of payer and nature of remittance as per agreement/document



Taxability under the provisions of the Income Tax Act (without considering DTAA)



If income is chargeable to tax in India and any relief is claimed under DTAA – details of relevant DTAA, article of DTAA, taxability and tax liability



Whether the remittance is on account of royalties, FTS, dividend (sub-item A), business income (sub-item B), capital gains (sub-item C) or any other remittance (sub-item D)



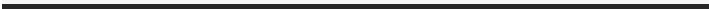
Details of TDS – Amount of TDS, rate, amount of remittance after TDS, date of deduction of TDS (if any)

FORM 15CA

PART	DESCRIPTION
Part A	If remittance is taxable and the total value of such remittance or remittances during the Financial Year is less than Rs. 5 lakh.
Part B	If remittance is taxable and the total value of such remittance or remittances during the Financial Year is more than Rs. 5 lakh and an order/ certificate u/s 195(2)/ 195(3)/ 197 of Income-tax Act has been obtained from the Assessing Officer.
Part C	If remittance is taxable and the total value of such remittance or remittances during the Financial Year is more than Rs. 5 lakh and a certificate in Form No. 15CB from an accountant as defined in the explanation below sub-section (2) of section 288 has been obtained.
Part D	To be filled up if the remittance is not taxable other than payments referred to in rule 37BB(3) by the person referred to in rule 37BB(2).

APPLYING RATES OF DTAA

APPLYING RATES OF DTAA



APPLYING RATES OF DTAA

- Section 195(1) provides for TDS at the 'rates in force' i.e., rates specified in Part II of First Schedule to the Finance Act of the relevant year or the rates specified in DTAA, as may be beneficial to the assessee
 - For applying the rates prescribed under DTAA, the following points may be noted:
 - TRC of the payee
 - PAN of the payee
 - Surcharge and education cess should not be added to the DTAA rates
 - Grossing up of tax
-

TAX RESIDENCY CERTIFICATE (TRC)

- Section 90(4) of the Act requires every non-resident who intends to claim DTAA benefit to furnish a TRC issued by the Government of his country of residence
- Section 90(5), read with Rule 21AB requires the payee to furnish the following information in Form 10F, to the extent such information is not covered in the TRC:
 - Status of the assessee
 - PAN of the assessee, if allotted
 - Nationality/ country of incorporation or registration
 - Tax Identification number
 - Period for which residential status, as mentioned in the TRC is applicable
 - Address of the assessee in the country of residence

PAN OF THE PAYEE

- As per section 206AA, (post amendment vide Finance Act, 2016) provides that tax shall not be deducted at a higher rate in case of *specified payments* to non-residents not having PAN subject to providing information specified in Rule 37BC:
 - Basic information i.e., name, e-mail ID, contact number and address in the country of tax residence
 - TRC, if the law of the country of tax residence provides for issuance of such certificate
 - Tax Identification Number
-

WHETHER SURCHARGE & CESS SHOULD BE ADDED TO DTAA RATES?

- Article 2 of most of the DTAA provides that income-tax shall also include surcharge thereon
 - Thus, the tax rate under the DTAA is all inclusive and need not be added separately
 - Judicial decisions:
 - [2013] Sunil V. Motiani (59 SOT 37) (ITAT Mumbai)
 - [2015] BOC Group Ltd. (156 ITD 402) (ITAT Kolkata)
 - [2016] Capgemini SA (72 taxmann.com 58) (ITAT Mumbai)
-

GROSSING UP OF TAX

- Section 195A of the Act relates to 'net of tax' arrangements under which TDS liability is to be borne by the payer of the income. It provides for the grossing up of tax i.e., for increase in income to such an amount as would, after TDS at the rates in force, be equal to the net amount payable under the arrangement.
 - An illustration is mentioned on the succeeding slide to explain the grossing up mechanism under section 195A
-

GROSSING UP OF TAX

➤ Illustration:

Suppose a foreign company agrees to provide FTS to a resident company for Rs.100. Under the arrangement, tax has to be borne by the resident company. The tax rate as per Indian law provisions after adding surcharge and cess is 10.92% and tax rate under DTAA is 10%. The grossed up tax and the increased income under 195A will be:

$$100 * 100 / (100 - (\text{lower of Income tax or DTAA rates, i.e., } 10))$$

$$= 100 * 100 / 90$$


$$= \text{Rs. } 111.11$$

Therefore, the grossed up TDS amount under 195 will be:

$$111.11 - 100$$

$$= \text{Rs. } 11.11$$

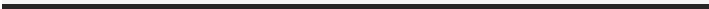
SECTION 197

- Section 197 provides for no deduction of tax or lower rate of tax. To avail of this benefit, the assessee whose TDS is likely to be deducted on certain receipts should make an application before the TDS Assessing Officer who has a jurisdiction over his/ her/ its case. The deductee concerned may apply for a certificate for Nil or lower deduction of TDS on their receipts in Form No 13.
-
- 

PRACTICAL ASPECTS & CHALLENGES

CHALLENGES

CHALLENGES



TAX RESIDENCY CERTIFICATE

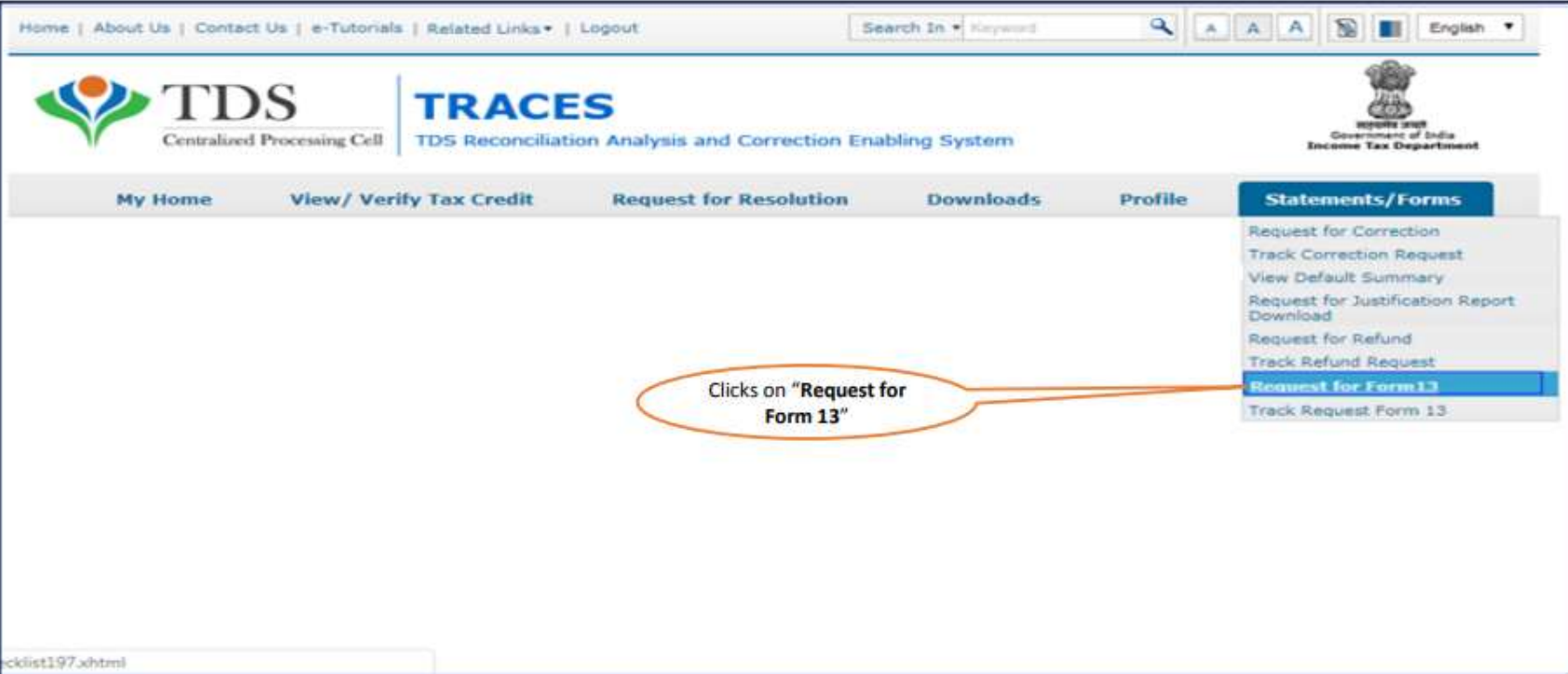
- Suppose, X Co. of USA agrees to provide consultancy services to Y Co. of India. The USA company follows calendar year (January to December) while Indian company follows financial year (April to March). X Co. has produced a TRC for the calendar year 2018 to Y Co. Accordingly, Y Co. deducts tax as per provisions of the DTAA, i.e., 10 percent on the payable amount (it has been agreed that the tax will be borne by the payee). Y Co. records the services received in its books of accounts on 28th December, 2018. The payment however was made on 6th January 2019.
 - X Co is yet to apply for TRC for calendar year 2019. Since the payment was made in the next calendar year, although the financial year for Y Co is the same, whether TRC for 2018 will be valid to deduct tax prescribed in the DTAA or Y Co is required to provide the TRC for 2019?
-

ONLINE APPLICATION OF FORM 13 (SECTION 197)

- Notification No. 74/2018 dated 25.10.2018 provides for electronic application (Form 13) for grant of certificate for deduction of Income-tax at any lower rate or no deduction of Income-tax under sub-section (1) of Section 197/collection of the tax at any lower rate under sub-section (9) of Section 206C
 - Further, vide Notification No. 08/2018 dated 31.12.2018, CBDT prescribed the procedure, formats and standards for filing an application for grant of certificate under section 197/ 206C through TRACES-reg. The procedure for electronic filing of Form 13 is prescribed as under:
 - Login to TRACES or register in case of first time users
 - Submission of Form 13 with supporting documents under DSC or through EVC
-

ONLINE APPLICATION OF FORM 13 (SECTION 197)

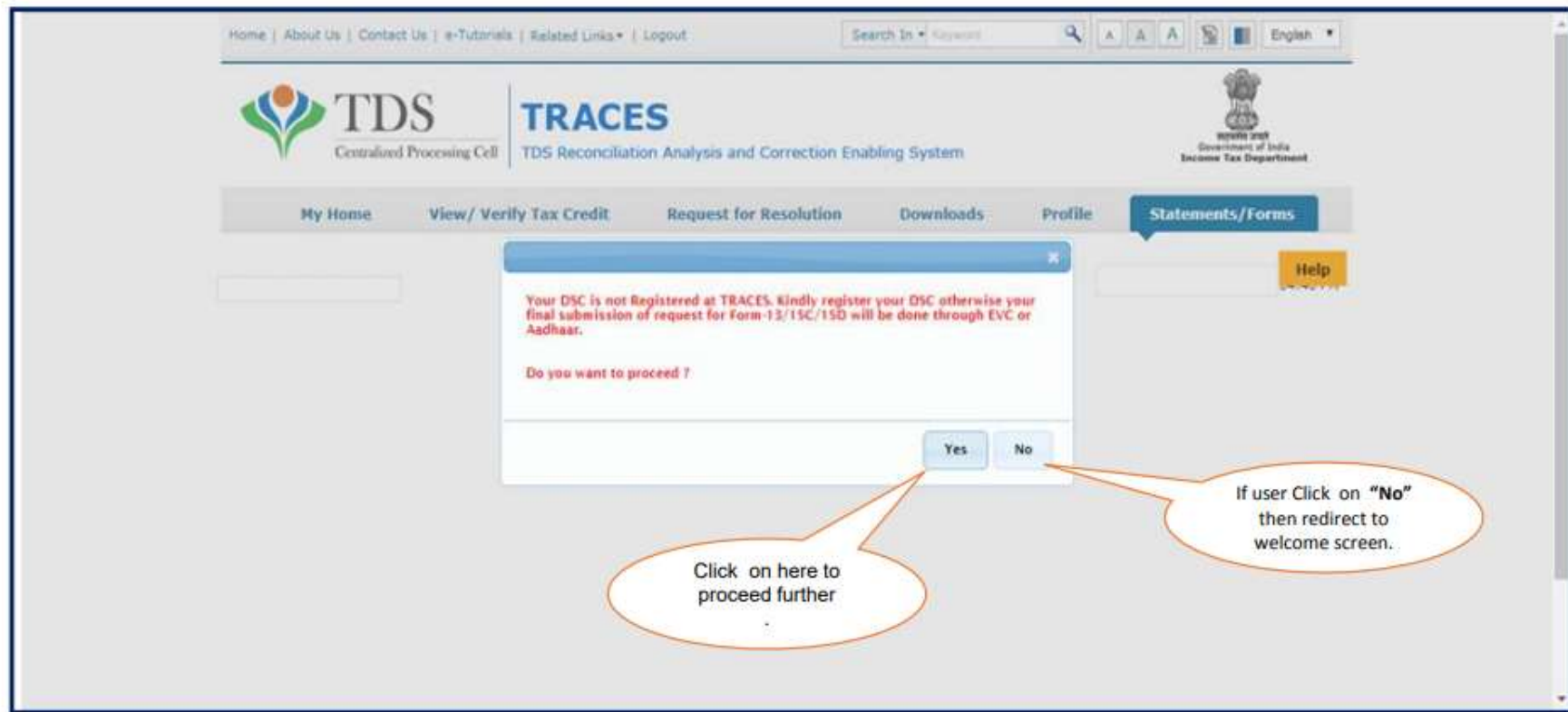
After logging in, select Statement/Forms > Request for Form 13



The screenshot displays the TDS TRACES portal interface. At the top, there is a navigation bar with links for Home, About Us, Contact Us, e-Tutorials, Related Links, and Logout. A search bar is also present. The main header features the TDS logo (Centralized Processing Cell) and the TRACES logo (TDS Reconciliation Analysis and Correction Enabling System). On the right, the Government of India Income Tax Department logo is visible. Below the header, a horizontal menu contains several options: My Home, View/ Verify Tax Credit, Request for Resolution, Downloads, Profile, and Statements/Forms. The 'Statements/Forms' menu is expanded, showing a list of options: Request for Correction, Track Correction Request, View Default Summary, Request for Justification Report Download, Request for Refund, Track Refund Request, Request for Form 13 (highlighted in blue), and Track Request Form 13. An orange callout bubble points to the 'Request for Form 13' option with the text 'Clicks on "Request for Form 13"'. The URL 'tcklist197.xhtml' is visible in the bottom left corner.

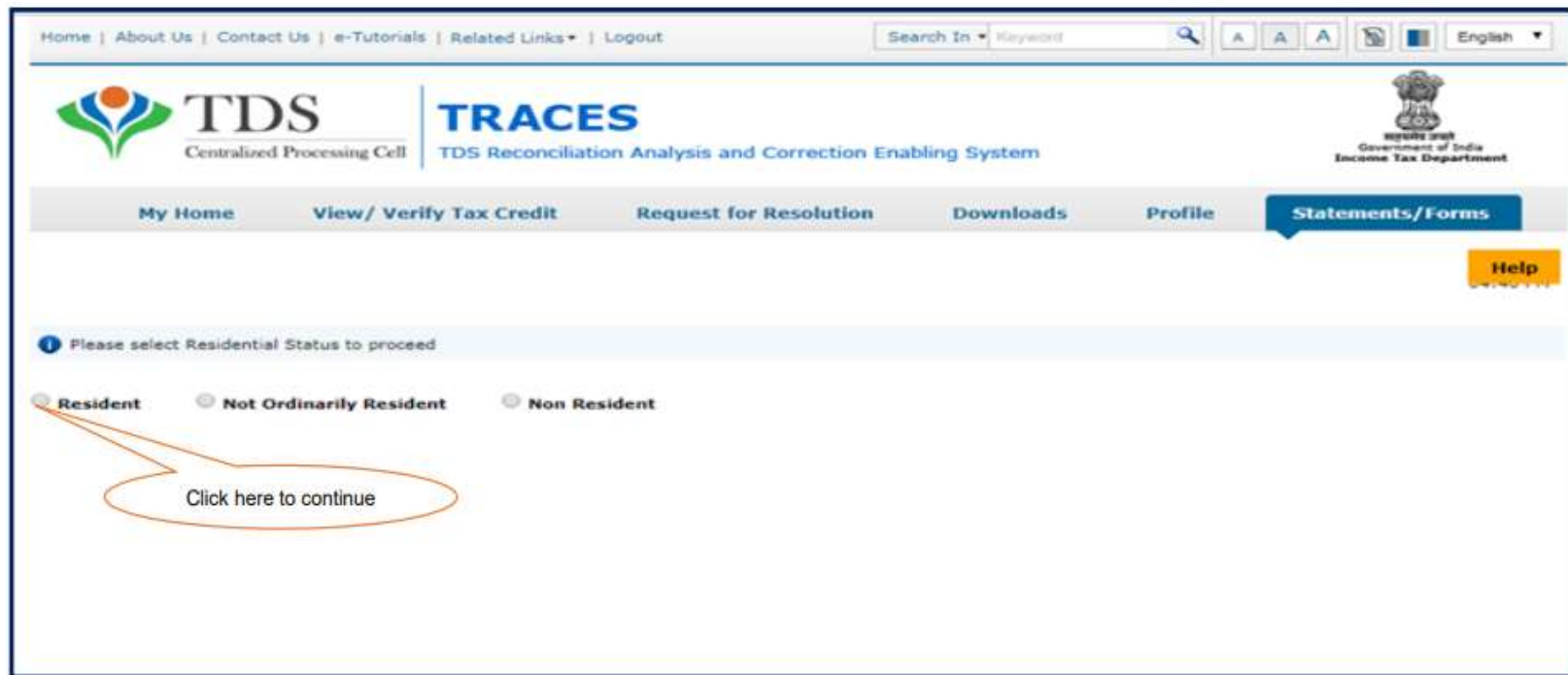
ONLINE APPLICATION OF FORM 13 (SECTION 197)

A window will pop-up, displaying whether DSC is registered or not



ONLINE APPLICATION OF FORM 13 (SECTION 197)

Select residential status:



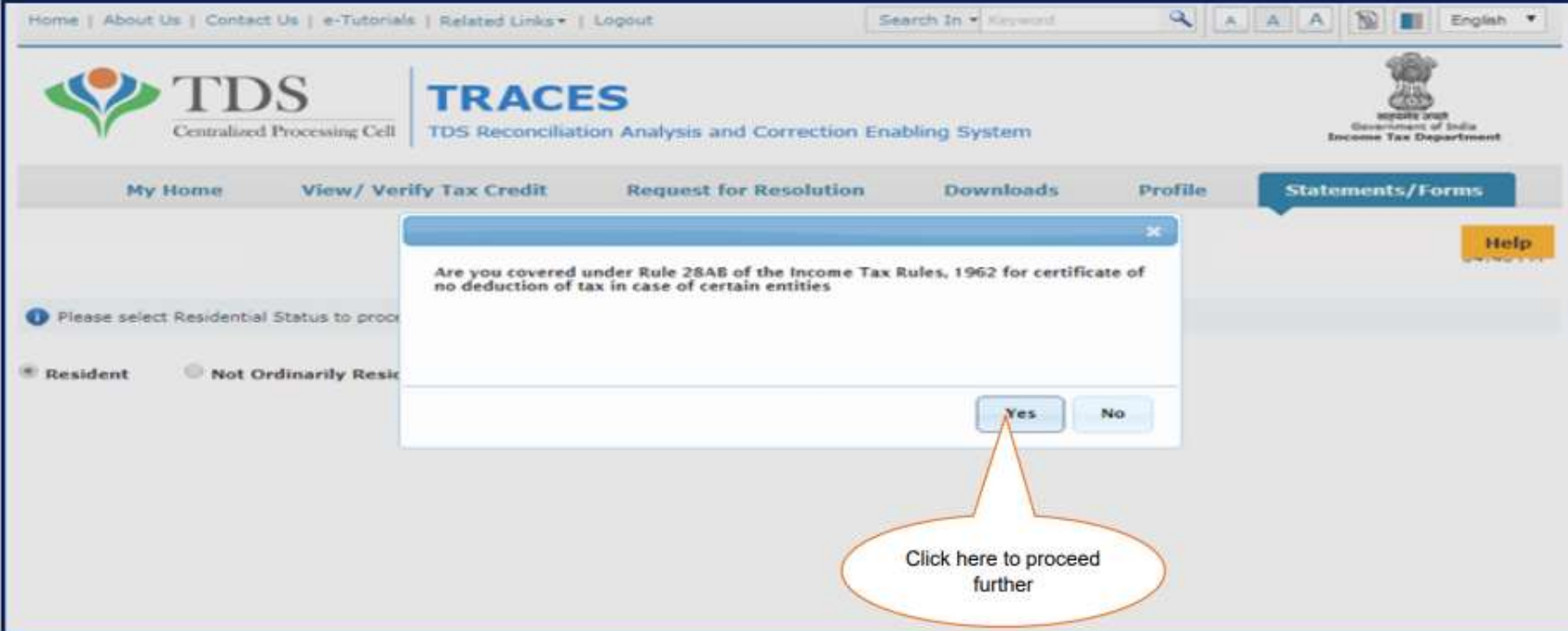
The screenshot displays the TDS TRACES portal interface. At the top, there is a navigation bar with links for Home, About Us, Contact Us, e-Tutorials, Related Links, and Logout. A search bar is also present. The main header features the TDS logo (Centralized Processing Cell) and the TRACES logo (TDS Reconciliation Analysis and Correction Enabling System). The Government of India Income Tax Department logo is visible in the top right corner. A horizontal menu contains options: My Home, View/ Verify Tax Credit, Request for Resolution, Downloads, Profile, and Statements/Forms (which is highlighted). A Help button is located in the top right corner.

The main content area shows a message: "Please select Residential Status to proceed". Below this, there are three radio button options: Resident, Not Ordinarily Resident, and Non Resident. The "Resident" option is selected. A callout bubble with the text "Click here to continue" points to the "Resident" radio button.

ONLINE APPLICATION OF FORM 13 (SECTION 197)

Rule 28AB covers the following:

A person in receipt of income or deemed income derived from property held under trust wholly for charitable or religious purposes and who claims exemption under section 11 or section 12 or required to file a return in respect of a scientific research association, news agency, association or institution, fund or trust or university or other educational institution or any hospital or other medical institution or trade union referred to in sub-section (4C) of section 139



The screenshot displays the TDS TRACES portal interface. At the top, there is a navigation bar with links for Home, About Us, Contact Us, e-Tutorials, Related Links, and Logout. A search bar and language selector (English) are also present. The main header features the TDS logo (Centralized Processing Cell) and the TRACES logo (TDS Reconciliation Analysis and Correction Enabling System). The Government of India Income Tax Department logo is visible in the top right corner. The main menu includes options for My Home, View/Verify Tax Credit, Request for Resolution, Downloads, Profile, and Statements/Forms. A yellow Help button is located on the right side. A central dialog box asks, "Are you covered under Rule 28AB of the Income Tax Rules, 1962 for certificate of no deduction of tax in case of certain entities". Below the question, there are two radio button options: "Resident" (selected) and "Not Ordinarily Residing". At the bottom of the dialog box, there are "Yes" and "No" buttons. A callout bubble points to the "Yes" button with the text "Click here to proceed further".

ONLINE APPLICATION OF FORM 13 (SECTION 197)

Checklist for 197:

Home | About Us | Contact Us | e-Tutorials | Related Links | Logout

Search In Keyword

TDS Centralized Processing Cell | TRACES TDS Reconciliation Analysis and Correction Enabling System

Government of India Income Tax Department

My Home View/ Verify Tax Credit Request for Resolution Downloads Profile Statements/Forms

Help

SL. No.	Checklist for 197
1	Form-13 application can be submit through TRACES from F.Y 2018-19 onwards.
2	DSC or E-Verification (Through Internet Banking) or Aadhaar validation is required for submission of Form. If DSC is not registered at TRACES kindly register your DSC.
3	Jurisdictional AO will be decided on the basis of State & District provided by the applicant in original application of Form-13.
4	Offline mode will be applicable for uploading annexure in case number of entries are more than 50.
5	Please upload Self/Authorized person certified Estimated income computation for which F.Y Certificate is sought for Form-13 in case of original application.
6	Please upload details of income claimed to be exempt and not included in the total income.
7	Please upload Self /Authorized person certified computation of Estimated Income for any of the four previous year preceding to the previous year in case return has not been filed for Form-13 in case of original application.
8	Please upload Assessment Orders if assessed, for the last four assessment years in case of original application of Form-13.
9	Please upload return of Income for any of the four previous year has been filed in Paper Form in case of Form-13 if any, where application is original.

Proceed Download

Clicks on here to proceed further

Click here to download the checklist
Downloaded file will be available in PDF format.

ONLINE APPLICATION OF FORM 13 (SECTION 197)

Choose the financial year:

The screenshot displays the TDS TRACES portal interface. At the top, there is a navigation bar with links for Home, About Us, Contact Us, e-Tutorials, Related Links, and Logout. A search bar is also present. The main header includes the TDS logo (Centralized Processing Cell) and the TRACES logo (TDS Reconciliation Analysis and Correction Enabling System). The Government of India Income Tax Department logo is visible on the right. A menu bar contains options: My Home, View/ Verify Tax Credit, Request for Resolution, Downloads, Profile, and Statements/Forms (highlighted). A yellow Help button is located on the right. The main content area is titled 'Request for certificate u/s 197'. It features a form with the following fields: 'Form No.' (pre-filled with 'Form-13'), 'Request Type' (pre-filled with 'Original'), and 'Financial Year' (a dropdown menu with '2018-19' selected). A 'Proceed' button is located below the form. Three callouts are present: 'Auto populate' pointing to the Form No. and Request Type fields, 'Select Financial from drop down' pointing to the Financial Year dropdown, and 'Click on Proceed' pointing to the Proceed button.

Home | About Us | Contact Us | e-Tutorials | Related Links | Logout

Search In Keyword

English

TDS Centralized Processing Cell | **TRACES** TDS Reconciliation Analysis and Correction Enabling System

Government of India
Income Tax Department

My Home View/ Verify Tax Credit Request for Resolution Downloads Profile **Statements/Forms**

Help

Request for certificate u/s 197

Form No.* Form-13 Request Type* Original Financial Year* --Select--
--Select--
2018-19

Proceed

Auto populate

Auto populate

Select Financial from drop down

Click on Proceed

ONLINE APPLICATION OF FORM 13 (SECTION 197)

The screenshot shows the TRACES (TDS Reconciliation Analysis and Correction Enabling System) interface. At the top left is the TDS Centralized Processing Cell logo. At the top right is the Government of India Income Tax Department logo. A navigation bar contains the following tabs: My Home, View/ Verify Tax Credit, Request for Resolution, Downloads, Profile, and Statements/Forms (which is highlighted). A yellow Help button is located on the right side of the page.

Informational messages:

- Status of the Request No. can be tracked through **Track Request Form 13** under tab 'Statement/Forms'.
- Request No.
- Kindly choose below option to proceed further

Options for proceeding further:

- With (TAN & Amount) - Deductor TAN(s) & amount both are available**

An orange callout bubble points to the selected radio button with the text: "Select here to continue".

Note: Application of Form-13 without TAN in case of Annexure-II will be available subsequently

ONLINE APPLICATION OF FORM 13 (SECTION 197)

The screenshot displays the TDS TRACES portal interface. At the top left is the TDS Centralized Processing Cell logo, and at the top right is the Government of India Income Tax Department logo. The navigation menu includes: My Home, View/ Verify Tax Credit, Request for Resolution, Downloads, Profile, and Statements/Forms (highlighted). A search bar and a Help button are also visible.

The main content area shows a status message: "Status of the Request No. can be tracked through 'Track Request Form 13' under tab 'Statement/Forms'." Below this is a "Request No." field with the value "17905".

A modal dialog box is open, titled "Kindly select number of entries which you wants to mention in Annexure". It contains two radio button options: "Less than or equal to 50 (Online)" (which is selected) and "More than 50 (Offline upload of Annexure(s))".

An orange callout bubble points to the selected radio button with the text: "Selects here to proceed further".

At the bottom of the page, a note states: "Note: Application of Form-13 without TAN in case of Annexure-II will be available subsequently".

ONLINE APPLICATION OF FORM 13 (SECTION 197)

Details will be populated as per profile on TRACES:

Aggregated TDS Compliance **Statements/Forms** **Help**

1 Details are populated as per your profile information. User can update details in profile section.

1 Maximum limit to enter the amount in amount column is 18 digit (e.g., 999999999999999999)

1 Status of the Request No. can be tracked through **Track Request Form 13** under tab 'Statement/Forms'.

Request No.

Please fill up the following details to be furnished in Form-13

The particulars of my income and other relevant details are as under :

(i) Status (State whether individual, Hindu undivided family, firm, body of individuals, etc.)

(ii) Residential status (Whether resident during the year which is sought)

(iii) Permanent Account No.

(iv) Email Id
Alternate Email Id

(v) Mobile Number
Alternate Mobile Number

Company
Resident
AARCS4276N
+91
+91

Details will Auto populated as per profile information

ONLINE APPLICATION OF FORM 13 (SECTION 197)

Details will be populated as per profile on TRACES (contd.):

(v) Mobile Number
 Alternate Mobile Number
 State (Please enter State as per current address of Taxpayer) *
 District *

Note: Jurisdictional A.O will be assigned on the basis of State & District given by taxpayer in Original application of Form-13

(vi) Details of existing liability under Income-tax Act, 1961 and Wealth-tax Act, 1957:

Assessment Year (1)	Liability under the Income-tax Act, 1961				Amount payable under the Wealth-tax Act, 1957(₹) (6)
	Amount payable in respect of advance-tax(₹) (2)	Amount payable for self assessment tax(₹) (3)	Amount for which notice of demand under section 156 has been served but not paid(₹) (4)	Amount payable as deductor or collector which had become due but not paid(₹) (5)	
2019-20	0	0	0	0	0

(vii) Previous year to which the payments relate.

(viii) Estimated total income of the previous year referred to in (vii) *
 (Please upload computation of estimated total income of the previous year in upload section)

(ix) Total tax including interest payable for the total income referred to in (viii)

(x) Details of income claimed to be exempt and not included in the total income in (viii)
 (Please upload a note giving reason for claiming such exemption)

(xi) Details of payment of advance-tax and tax already deducted/collected, if any, for the previous year referred to in (vii) till date
 (If the date of Application is on or after 1st April for which Financial year certificate is sought)

Nature of prepaid tax	Amount of Tax Paid (₹)
Advance Tax	0
TDS	0
TCS	0

(xii) Declaration for exemption under section 10, section 11 or section 12 for certain entities covered under Income Tax Rule 28AB * Not Applicable

Auto populate on the basis of F.Y selected by the user

Estimated total income of the previous year relevant to the assessment year will be filled by user.

If amount is provided in this column then upload will be enabled for this & will be mandatorily

Amount of Tax paid column will be filled by user.

ONLINE APPLICATION OF FORM 13 (SECTION 197)

Click on 'Save' button and then click on 'Next' button to proceed further:

(vii) Previous year to which the payments relate.

(viii) Estimated total income of the previous year referred to in (vii)*
(Please upload computation of estimated total income of the previous year in upload section)

(ix) Total tax including interest payable for the total income referred to in (viii)

(x) Details of income claimed to be exempt and not included in the total income in (viii)
(Please upload a note giving reason for claiming such exemption)

(xi) Details of payment of advance-tax and tax already deducted/collected, if any, for the previous year referred to in (vii) till date
(If the date of Application is on or after 1st April for which Financial year certificate is sought)

Nature of prepaid tax	
Advance Tax	Please save the changes before proceeding
TDS	
TCS	

OK Rule 28AB*

(xii) Declaration for exemption under section 11 or section 12 of Income Tax Act 1961
Kindly select any one of the below

- It is the income of the applicant is exempt under section 11 or section 12 of Income Tax Act 1961
(Please upload computation of estimated total income of the previous year for which return of income has not been filed in upload section.)
- It is the income of the applicant furnishes return of income as referred to in sub section (4C) of section 139 of Income Tax Act 1961
(Please upload a computation of estimated total income of the previous year for which return of income has not been filed in upload section.)

(xiii) Where return of income for any of the four previous year preceding to the previous year referred to in (vii) has not been filed,
(Please upload a computation of estimated total income of the previous year for which return of income has not been filed in upload section.)

(xiv) Where return of income for any of the four previous year has been filed in paper form,
(Please upload the copy of such returns in upload section.)

Save Next

Click here to save details

Click here to go to the next page

ONLINE APPLICATION OF FORM 13 (SECTION 197)

Declaration page: User needs to enter details like TAN, section code and estimate amount of income

Request No.

With (TAN & Amount) - Deductor TAN(s) & amount both are available

- 1 Click on 'Add Row' to add more rows and click on 'Remove Row' to Remove Rows.
- 1 Click on Edit to update the details and click on 'Save' to Save the updates.
- 1 Click on 'Save & Proceed' Button to proceed the Form details.

Amount in amount column is 18 digit (e.g., 999999999999999999)

Annexure-I - No Deduction
[For the purpose of tax deduction at source]
(See Sections - 193, 194A, 194D, 194, 192, 194I (194IA / 194IB), 194H, 194C, 194G, 194J, 194LA, 194LB & 194LBC)

Sl. No	Tax deduction and collection Account No. (TAN) (1)	Tax deduction and collection Account Name (2)	Section under which tax at source is to be deducted (3)	Estimated amount of income/sum to be received (₹) (4)	Requested rate of Deduction (5)
1	AGRC10809T	CENTRAL	192	1212	0

[Go to Basic Details](#) [Edit](#) [Save](#) [Add Row](#) [Remove Row](#) [Save & Proceed](#)

Click here to save details. Details saved Successfully message will display on Screen

Click here to go to basic details screen

Click here to add transaction details

Click here to remove transaction details which is added

Click here to save details and proceed further.

ONLINE APPLICATION OF FORM 13 (SECTION 197)

Declaration page: User needs to enter details like TAN, section code and estimate amount of income

Request No. 17905

With (TAN & Amount) - Deductor TAN(s) & amount both are available

- Click on 'Add Row' to add more rows and click on 'Remove Row' to Remove Rows
- Click on Edit to update the details and click on 'Save' to Save the updates
- Click on 'Save & Proceed' Button to proceed the Form details
- Maximum length to enter the amount in amount column is 18 digit (e.g., 999999999999999999)

Your details have been successfully saved

Success message will be appear

Annexure-I - No Deduction
[For the purpose of tax deduction at source]

(See Sections - 193, 194A, 194D, 194, 192, 194I (194IA / 194IB), 194H, 194C, 194G, 194J, 194LA, 194LB & 194LBC)

Sl. No	Tax deduction and collection Account No. (TAN)	Tax deduction and collection Account Name	Section under which tax at source is to be deducted	Estimated amount of income/sum to be received (₹)	Requested rate of Deduction
(1)	(2)	(3)	(4)	(5)	
1	AGRC10809T	CENTRAL	192	1212	0

Go to Basic Details Edit Save Add Row Remove Row **Save & Proceed**

After save, Click on "Save & Proceed" to proceed further.

ONLINE APPLICATION OF FORM 13 (SECTION 197)

Uploading mandatory documents:

The screenshot shows a web application interface for uploading documents. At the top, a message states: "Password protected file cannot be uploaded at TRACES. Kindly upload password free file". Below this, there is a "Verification Code" field with a CAPTCHA image showing "216Y" and a text input field containing "a123b". A list of eight document categories is provided, each with a "Browse" button and a "Files Uploaded" status. A "Template" button is also visible. An "Upload" button is located at the bottom left. Callouts provide the following instructions:

- Callout 1: "It is enable when section 11 or 12 declaration given on basic details & will be mandatory to upload" (points to the first item in the list).
- Callout 2: "Click here to browse selected file" (points to a "Browse" button).
- Callout 3: "Click here to view uploaded files" (points to a "Files Uploaded" button).
- Callout 4: "Click on Template Button then pop-up screen will be displayed" (points to the "Template" button).
- Callout 5: "It is enable when section 139(4C) declaration given on basic details & will be non mandatory to upload" (points to the fourth item in the list).
- Callout 6: "Click here to upload the document" (points to the "Upload" button).

Note :

- Upload Button enables only when users browse all the files successfully. After that user need to click on 'Upload' button to upload all the browse files ,once all the files have been uploaded, Success Message will be displayed "Files uploaded successfully "and "Upload" button will be disabled again.
- If user wants to change/remove attachment/s then user need to click on 'Files Uploaded' button then select the required file and click on 'Remove upload'. User can browse new files again. Upload the document in tiff, .pdf, .zip, .JPEG formats only.
- Size of file should not be larger than 5MB. Kindly upload password free file.

ONLINE APPLICATION OF FORM 13 (SECTION 197)

Successful upload:

The screenshot displays a web application interface with a navigation menu at the top: My Home, View/ Verify Tax Credit, Request for Resolution, Downloads, Profile, and Statements/Forms. A Help button is visible in the top right corner. The main content area is titled "Upload File" and contains instructions: "Click on 'Browse' to select a file and the file size not being larger than 5MB can be uploaded" and "Password protected file cannot be uploaded". A modal dialog box titled "Successfully Uploaded Files" is open, showing a table with one row: "26QC-Screen Shot.JPG". Below the table is a "Remove Upload" button. A callout bubble points to this button with the text "Click here to remove the uploaded file". Below the dialog, there is a "Verification Code" field with a CAPTCHA image and a text input field labeled "Enter text as in above image *".

Sl. No	Files Uploaded
1	26QC-Screen Shot.JPG

Remove Upload

Verification Code *

Enter text as in above image *

ONLINE APPLICATION OF FORM 13 (SECTION 197)

Computation of estimated income of financial year:

My Home View/ Verify Tax Credit Request for Resolution Downloads Profile

Aggregated TDS Compliance Statements/Forms Help

Login Date: 05-Nov-2018, 05:05 PM

Computation of Estimated Income Year 2018-19

1. Click on "Browse" not being large
2. Password protection

1. Upload & Fill Estimated Income
2. Upload & Fill computation to the previous year
3. Upload Assessment
4. Upload return of
5. Upload Details of
6. Upload any other

Upload

Computation of Income Details	Amount(₹)
1. Gross Receipt/ Turnover (GR/TO)*	20000
2. Income from Salary	
3. Income/Loss from House Property	
4. Income/Loss from Business or Profession (After Adjustment of B/F Losses and Unabsorbed Depreciation)	
5. Income chargeable to tax at special rate under section 111A, 112 etc.	
6. Income/Loss from Capital Gains	
7. Income from Other Sources	
8. Presumptive Income U/S 44AD, 44ADA, 44AE	
9. Gross Total Income	
10. Less: Deduction u/s 80	
11. Less: Deduction u/s 10/10A	
12. Taxable Income (After Rebate u/s 87A including Surcharge and Cess)	
13. Tax payable	
14. Tax Payable u/s 115JB	
15. Less: MAT Credit u/s 115JAA	
16. Gross Tax Payable	
17. Less: Rebate u/s 89	
18. Add: Interest u/s 234A, 234B, 234C	
19. Total tax Payable*	20000
20. Less: - TDS/TCS, Self Assessment Tax, Advance Tax	
21. Net Tax Payable/Refund	

Notes : (Maximum 500 characters) :

Submit Close

This Field will be mandatory to fill. Either positive or negative will be allowed

Numeric Values will be allowed.

This Field will be mandatory to fill. Either positive or Zero value will be allowed

Click here to submit details. Details saved successfully message will display

Note: Total Tax Payable should not be greater than Gross Receipt/ Turnover/ (GR/TO)

ONLINE APPLICATION OF FORM 13 (SECTION 197)

'Preview and Submit'

The screenshot shows the 'Preview and Submit' stage of the online application for Form 13 (Section 197). The form is divided into two main sections: document uploads and a declaration section.

Document Uploads: A list of eight items to be uploaded, each with a 'Browse' button, 'Files Uploaded' status, and a 'Template' link.

1. Upload & Fill Estimated Income Computation for which F.Y certificate is sought**
2. Upload & Fill computation of estimated total income any of the four previous year preceding to the previous year for which return of income has not been filed
3. Upload registration/exemption Certificate in case of certain entities covered under section 11 or 12**
4. Upload registration/exemption Certificate in case of certain entities covered under section 139(4C)
5. Upload Assessment Orders if assessed, for the last four assessment years
6. Upload return of income for any of the four previous year has been filed in paper form
7. Upload Details of income claimed to be exempt and not included in the total income**
8. Upload any other document

Declaration Section: A text area for a declaration, followed by 'Place*' and 'Date*' fields. The date is pre-filled as '5-Nov-2018'. An 'Upload' button is located above the declaration text.

Navigation Buttons: 'Go to Basic Details', 'Back', and 'Preview & Submit'.

Callouts: Several callouts provide instructions: 'Auto populate as per traces profile' points to the declaration text; 'Click here to go to basic details screen' points to the 'Go to Basic Details' button; 'Click here to go to previous screen' points to the 'Back' button; 'Click here to review the details of Form-13' points to the 'Preview & Submit' button; and 'd to fill the place' points to the 'Place*' field.

ONLINE APPLICATION OF FORM 13 (SECTION 197)

Review of Form 13 details:

Form 13
[See rules 28 and 37G]

Application by a person for a certificate under sections 197 and/or 206C(9) of the Income-tax Act, 1961, for no deduction/collection of tax or deduction/collection of tax at a lower rate

To
The Assessing Officer
Sir,

1. I, ANKUSH SINGH do, hereby, request that a certificate may be issued to the person responsible for paying me the incomes/sum, authorizing him not to deduct/deduct income-tax at lower rate, at the time of payment of such income/sum to me. The details are specified in Annexure-I.

2. The particulars of my income and other relevant details are as under :

(i) Status	Individual
(ii) Residential status	Resident
(iii) Permanent Account No.	FYBPS3731Q
(iv) Email Id	ANS_USER@TDSCPCCTD.NET
(v) Mobile Number	+919090909099
State	Kerala
District	Ernakulam

Note: Jurisdictional A.O will be assigned on the basis of State & District given by taxpayer in Original application of Form-13

(vi) Details of existing liability under Income-tax Act, 1961 and Wealth-tax Act, 1957:

ONLINE APPLICATION OF FORM 13 (SECTION 197)

Form 13 details will appear:

(vi) Details of existing liability under Income-tax Act, 1961 and Wealth-tax Act, 1957:

Assessment Year (1)	Liability under the Income-tax Act, 1961				Amount payable under the Wealth-tax Act, 1957(₹) (6)
	Amount payable in respect of advance-tax(₹) (2)	Amount payable for self assessment tax(₹) (3)	Amount for which notice of demand under section 156 has been served but not paid(₹) (4)	Amount payable as deductor or collector which had become due but not paid(₹) (5)	
2019-20	0	0	0	0	0

(vii) Previous year to which the payments relate. 2018-19

(viii) Estimated total income of the previous year referred to in (vii) 900000

(ix) Total tax including interest payable for the total income referred to in(viii) 850000

(x) Details of income claimed to be exempt and not included in the total income in (viii)

(xi) Details of payment of advance-tax and tax already deducted/collected, if any, for the previous year referred to in (vii) till date. (If the date of Application is on or after 1st April for which Financial year certificate is sought)

Nature of prepaid tax	Amount of Tax Paid (₹)
Advance Tax	0
TDS	0
TCS	0

(xii) **Declaration for exemption under section 10, section 11 or section 12 for certain entities covered under Income Tax Rule 28AB**
It is hereby declared that the applicant furnishes return of income as referred to in sub section (4C) of section 139 of Income Tax Act 1961

(xiii) Where return of income for any of the four previous year preceding to the previous year referred to in (vii) has not been filed,

(xiv) Where return of income for any of the four previous year has been filed in paper form

ONLINE APPLICATION OF FORM 13 (SECTION 197)

Page for final submission:

Annexure-I-No Deduction
For the purpose of tax deduction at source

(See Section-193,194A,194D,194,192,194IA,194IB,194H,194C,194G,194J,194LA,194LB & 194LBC)

Sl. No	Tax deduction and collection Account No. (TAN) (1)	Tax deduction and collection Account Name (2)	Section under which tax at source is to be deducted (3)	Estimated amount of income/sum to be received (₹) (4)	Requested rate of Deduction (5)
1		CENTRAL	192	1212	0

I, _____ do hereby declare that to the best of my knowledge and belief what is stated above is correct,complete and truly stated, I declare that the incomes/sum referred to in this form are not includible in the total income of any other person under sections 60 to 64 of the Income-tax Act, 1961. I further declare that what is stated in this application is correct. I further declare that I am making application in my capacity as Self and I am also competent to make this application and verify it. I am holding permanent account number

Date: 5-Nov-2018
Place: Delhi

If you want to edit the details please click on back button & this will redirect to previous screen

[Back](#) [Submit](#)

Click Back Button redirect to upload screen

Click here to Submit Form-13

ONLINE APPLICATION OF FORM 13 (SECTION 197)

Validation pop up will appear for request submission:

(xii) Declaration for exemption under section 10, section 11 or section 12 for certain entities covered under Income Tax Rule 28AB
It is hereby declared that the applicant furnishes return of income as referred to in sub section (4C) of section 139 of Income Tax Act 1961

(xiii) Where return of income for any of the four previous year preceding to the previous year referred to in (vii) has not been filed,

(xiv) Where return of income for any of the four previous year has been filed in paper form

Annexure-I-No Deduction
For the purpose of tax deduction at source

SL No	Tax deduction and collection No. (TAN)	Income/sum (₹)	Requested rate of Deduction
1	AGRC10003	1212	0

Do you want to validate the form request through:

e-verify (Net Banking) DSC

[Proceed](#) Click here to proceed further

I, _____ do hereby declare that the details stated above is correct, complete and truly stated, I declare that the incomes/sum referred to in this form are not includible in the total income of any other person under sections 60 to 64 of the Income-tax Act, 1961. I further declare that what is stated in this application is correct. I further declare that I am making application in my capacity as Self and I am also competent to make this application and verify it. I am holding permanent account number _____

Date: 5-Nov-2018
Place: Delhi

i If you want to edit the details please click on back button & this will redirect to previous screen

[Back](#) [Submit](#)

ONLINE APPLICATION OF FORM 13 (SECTION 197)

Click on DSC option if user wants to validate the request with DSC:

Annexure -I (No Deduction)

(See Section-193,194A,194D,194,194IA,194IB,194IH,194I,194C,194G,194J,194LA,194LB & 194LBC)

Sl. No	Tax deduction and collection No. (TAN)	Tax deduction and collection Account Name	Section under which tax at source is to be deducted	Estimated amount of income/sum to be received (₹)	Requested rate of Deduction
(1)	(2)	(3)	(4)	(5)	(6)
1	AGRC10809T	CANARA BANK	193	10000	2

Do you want to validate the form request through:

DSC (2) e-verify (Net Banking) (2)

[Proceed](#)

User need to click on "DSC(Digital Signature Certificate)" option

I, _____ do hereby declare to the best of my knowledge and belief what is stated above is correct, complete and truly stated. I declare that the incomes/sum referred to in this form are not included in the total income of any other person under sections 60 to 64 of the Income-tax Act, 1961. I further declare that what is stated in this application is correct. I further declare that I am making application in my capacity as Principal Officer of _____ and I am also competent to make this application and _____, I am holding permanent account number _____

Date: 5-Nov-2018
Place: Ghaziabad

[Back](#) [Submit](#)

If you want to edit the details please click on back button & this will redirect to previous screen

ONLINE APPLICATION OF FORM 13 (SECTION 197)

After validating DSC, Click on 'Submit'

(xii) Declaration for exemption under section 10, section 11 or section 12 for certain entities covered under Income Tax Rule 28AB (Not Applicable)

(xiii) Where return of income for any of the four previous year preceding to the previous year referred to in (vii) has not been filed.

(xiv) Where return of income for any of the four previous year has been filed in paper form

Annexure-I (No/Lower Deduction)

(See Section-193,194A,194D,194E)

Sl. No	Tax deduction and collection Account No. (TAN)	Tax deduction and Account Name
1	AGRC10809T	CANARA BA

(See Section-206CA,206CB,206CC)

Sl. No	Tax deduction and collection Account No. (TAN)	Tax deduction and Account Name
1	AGRC10809T	CANARA BA


I, _____ do hereby declare that to the best of my knowledge and belief the incomes/sum referred to in this form are not includible in the total income stated in this application is correct. I further declare that I am making application and I am also competent to make this application and verify it. I am holding

Date: 5-Nov-2018
Place: Ghaziabad

If you want to edit the details please click on back button & this will refresh the details.

[Back](#) [Submit](#)

emSigner



Content to Sign:
00000000000002083034

Certificate Store

Common Name	Issuer Name	Serial No	Expiry Date
test12	e-Mudhra Sub CA for Cl...	773598d8	30-06-2018
test14	e-Mudhra Sub CA for Cl...	1748778a37	02-07-2020
test13	e-Mudhra Sub CA for Cl...	1748778a35	02-07-2020
test12	e-Mudhra Sub CA for Cl...	1748778a33	02-07-2020
test11	e-Mudhra Sub CA for Cl...	1748778a31	02-07-2020

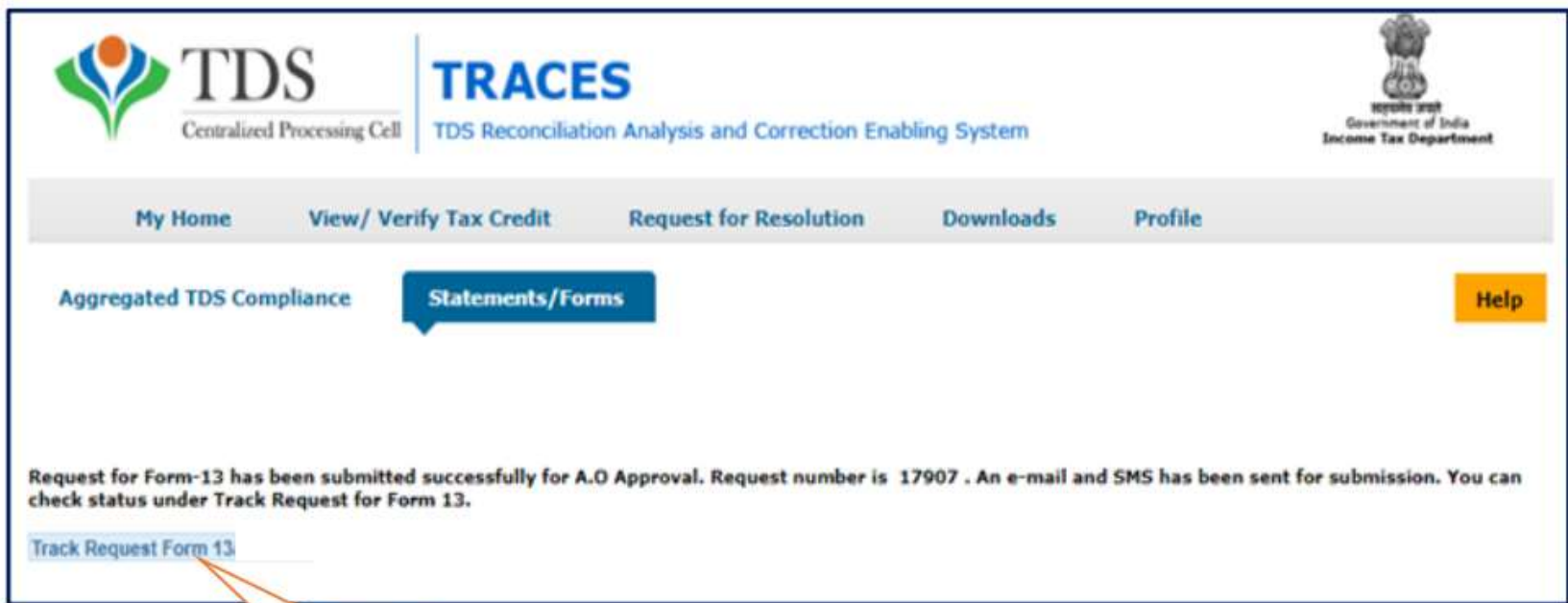
[View Certificate](#) [Sign](#) [Cancel](#)

Select required Digital Signature Certificate.

Click on "Sign" button

ONLINE APPLICATION OF FORM 13 (SECTION 197)

Request for Form 13 will be submitted successfully message will display on screen:



The screenshot displays the TDS TRACES portal interface. At the top left, the TDS logo (Centralized Processing Cell) and the TRACES logo (TDS Reconciliation Analysis and Correction Enabling System) are visible. On the top right, the Government of India Income Tax Department logo is present. A navigation bar contains links for My Home, View/ Verify Tax Credit, Request for Resolution, Downloads, and Profile. Below this, there are buttons for Aggregated TDS Compliance, Statements/Forms, and Help. The main content area shows a message: "Request for Form-13 has been submitted successfully for A.O Approval. Request number is 17907 . An e-mail and SMS has been sent for submission. You can check status under Track Request for Form 13." A blue button labeled "Track Request Form 13" is positioned below the message.

Click here to track request status.

TDS ON PRESUMPTIVE INCOME

- Suppose, X Co. of USA (not having valid PAN) earned equipment rentals income from India which is falling under the presumptive provision of section 44BB. As per section 44BB, 10 percent on the amounts received/receivable by X Co shall be presumed to be business income. The corporate tax rate for a foreign company is 40% plus applicable surcharge and cess. Therefore, the effective rate at which the resident payer has to deduct tax is 4% (being 40 percent of 10% income offered to tax u/s 44BB)
 - While filing TDS returns, tax was deductible and payable at the rate of 20% since X Co was not having a PAN. The TDS utility computes tax deducted on the gross payments i.e., it gives a false conclusion that tax has been deducted at less than 20% while in effect, tax was deducted at 40%. Due to this, disallowance u/s 40(i) would also get attracted.
-

UNIQUE DOCUMENTATION IDENTIFICATION NUMBER (UDIN)

- The Institute of Chartered Accountants of India introduced the concept of UDIN w.e.f. 01.02.2019
 - UDIN is a 18 digit system generated number for every document/certificate attested by a whole time practising CA having COP
 - It is to be generated at the time of signing the certificate (manual as well as digital). However, the same can be generated within 15 days of the signing of the same
 - No document is required to be uploaded to generate UDIN
 - UDIN is not required for certified true copies
 - UDIN once generated cannot be edited. It may be revoked by mentioning the reason in narration. There is no time limit for allowing revocation
-

UNIQUE DOCUMENTATION IDENTIFICATION NUMBER (UDIN)

➤ UDIN is not required in the following:

- Auditor's opinion/ reports issued by the practising CA under any stature w.r.t. any entity or any person
 - Valuation reports
 - Quarterly review reports
 - Limited review report
 - Information systems audit
 - Forensic audit
 - Revenue/ credit/ stock audit
 - Borrower monitoring assignments
 - Concurrent/ internal audit and like
 - Any report of what so ever nature issued including TPSR, Viability study report, diligence report, DD report, management report etc
-

UNIQUE DOCUMENTATION IDENTIFICATION NUMBER (UDIN)

➤ Procedure to generate UDIN:

Step 1: Go to udin.icaai.org, login by entering Username and Password.

Step 2: Click "Generate UDIN" from the menu bar.

Please Select Document type from the drop down menu.

Enter Date of Signing Document i.e. the date of signing/ certifying the document.

Then Enter 2 Financial Figures i.e. any Financial Figures from the document such as Turnover/Net Worth etc.

Then Enter the Description of the Figure i.e. Turnover/ Net Worth etc. to be filled in 10 to 50 characters.

Two Financial Figures are mandatory out of 3 (three) given fields. In case, there is no Financial Figure in the Certificate, Zero (0) is to be mentioned in Financial Figure and in its Particulars mention "There is no Financial Figure in Certificate".

Then please Select Document Description and enter the description/ details about the Certificate in 15 to 50 characters.

Then Click the button "Send OTP".

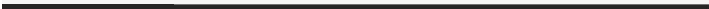
After this an OTP will be received on Registered Mobile and Email of the Member.

Then Enter OTP as received and click "Preview". In Preview details entered for generating the UDIN will be displayed. If there is any change/error in the content, click "Back" button, or else, click "Submit".

Thereafter, 18 Digit UDIN will be generated and that UDIN can be used for mentioning on the Certificate for which it has been generated either by printing (watermarked) the same or by handwritten or printed. If it is being handwritten or printed, it can be mentioned after Signatures and Membership Number of the Member.

***INTERNATIONAL TAXATION -
RECENT DEVELOPMENTS AND
UPDATES***

***UPDATES
RECENT DEVELOPMENTS AND***



***SIGNIFICANT ECONOMIC
PRESENCE ('SEP')***

ПРЕСЕНС (СЕП)

SIGNIFICANT ECONOMIC PRESENCE ('SEP')



SIGNIFICANT ECONOMIC PRESENCE

- The concept of SEP was introduced in the Income Tax Act, 1961 from April 01st, 2018 i.e., A.Y. 2019-20 to tax income of non-residents arising from transactions relating to goods, services or property in India, including allowing download of data or software or carrying on business activities in India through digital means.
 - The Finance Act, 2018 expanded the meaning of “business connection in India” by including SEP as a manner of forming a business connection (applicable from 1st April, 2019).
-

SIGNIFICANT ECONOMIC PRESENCE

- It provides that the income earned by a non-resident through a business connection in India is deemed to accrue and arise in India, and is therefore subject to tax in India.
 - “Business connection” is a concept under Indian tax law that is similar to PE (though wider in scope).
-

Text of the provision relating to SEP- Explanation 2A to section 9(i)(1)

For the removal of doubts, it is hereby clarified that the significant economic presence of a non-resident in India shall constitute “business connection” in India and “significant economic presence” for this purpose, shall mean—

(a) transaction in respect of any goods, services or property carried out by a non-resident in India including provision of download of data or software in India, if the aggregate of payments arising from such transaction or transactions during the previous year exceeds such amount as may be prescribed; or

(b) systematic and continuous soliciting of business activities or engaging in interaction with such number of users as may be prescribed, in India through **digital means**:

Provided that the 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; or
 - (ii) the non-resident has a residence or place of business in India; or
 - (iii) the non-resident renders services in India:”
-

SIGNIFICANT ECONOMIC PRESENCE

- Therefore, if a non-resident has SEP in India, the same would amount to a business connection in India and accordingly, such income earned from or through the SEP would be taxable in India.

- SEP is said to be established if a non-resident:
 - undertakes transactions concerning any goods, services or property, including provision of download of data or software in India, above specified threshold,

OR

- through digital means, systematically and continuously solicits business or interacts with users greater than a specified threshold.

***CBDT'S PAPER ON PROFIT
ATTRIBUTION TO 'PE'***

ATTRIBUTION TO PE

PROFIT ATTRIBUTION TO PE

- On 18th April, 2019 the Central Board of Direct Taxes (CBDT) released a Public Consultation Paper on Attribution of Profits to Permanent Establishments (PE), calling for comments on the amendment to the rules under the Income-tax Act, 1961 (ITA) for attributing profits to PEs of Non-Residents in India.
 - The paper seeks to address the uncertainty and unpredictability resulting from present PE attribution rules (Rule 10 of Income Tax Rules, 1962) which gives wide powers to tax officers without providing specific guidance.
-

PROFIT ATTRIBUTION TO PE

- India has already rejected OECD's "pure supply side" approach to attribution based on Functions, Assets and Risk (FAR) analysis since this approach is detrimental to the interest of countries that are net exporters of capital and technology, especially the developing economies like India, which are primarily importers of capital and technology.
 - India's suggested approach is based on the premise that business profits are generated by both demand side factors and supply side factors and every jurisdiction that contributes to demand as well as one that contributes to the production and supply have a right to tax such profits.
-

PROFIT ATTRIBUTION TO PE

- The Paper proposes the adoption of a “mixed” or “balanced” approach to profit attribution which gives due weightage to sales (i.e. demand function) and to FAR factors (supply side) – a three-factor approach based on sales, assets, and employees.
 - Since India has recently introduced the concept of business connection through Significant Economic Presence (SEP) and the same is likely to become a mainstay in tax treaties and laws across the globe, the Paper recommends a four-factor approach in case of PE created through SEP based on sales, assets, employees and users.
-

PROFIT ATTRIBUTION TO PE

- The Paper provides that “profits from India operations” will be determined by the revenue from India multiplied by the global operational profit margin. However, to protect India’s interest, the “total profits from India operations” shall be a minimum of 2% of revenue from India, relevant for scenarios where global operations overall have low margins or are loss making.
-

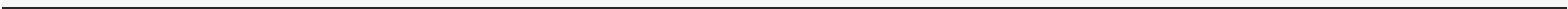
PROPOSED WEIGHTS FOR EACH FACTOR FOR PROFIT ATTRIBUTION

PE or Business Connection	User Role	Weight of Factors				
		Demand Side (Sales)	Supply Side			Users
			No. of employees	Wages	Assets	
Without SEP	-	1/3	1/6	1/6	1/3	-
Through SEP	Low/Med	30%	15%	15%	30%	10%
	High	30%	12.5%	12.5%	25%	20%

***UN'S DRAFT GUIDANCE
ON FINANCIAL
TRANSACTIONS (FT)***

TRANSACTIONS (FT)

ON FINANCIAL



DRAFT GUIDANCE ON FT

- The draft discusses the importance of corporate financing decisions within multinational groups (non-financial) and how those decisions could lead to tax base erosion.
 - The Report focusses on a Three Step approach for the assessment of the ALP of an intra-group FT essentially, follows the same approach that applies for other intercompany transactions:-
 1. Analysis of the economically significant characteristics;
 2. Accurate delineation of the entire transaction undertaken;
 3. Selection of the most appropriate transfer pricing method; and
 4. Application of the method
-

DRAFT GUIDANCE ON FT

- The draft discusses the importance of corporate financing decisions within multinational groups (non-financial) and how those decisions could lead to tax base erosion.
- The draft identifies four steps to determine the arm's length nature of intra- group loans:
 1. Analysis of the economically significant characteristics;
 2. Accurate delineation of the entire transaction undertaken;
 3. Selection of the most appropriate transfer pricing method;
 4. Application of the method

DRAFT GUIDANCE ON FT

Analysis of economically significant characteristics:

- Contractual Terms: Unlike financial transactions with unrelated parties, the contractual arrangements between AEs of an MNE may be much less explicit. In such case, certain aspects are to be considered such as:
 - Interest to be paid for obtaining the financing
 - Repayment obligations and consequences on failure to repay
 - Tenure for which financing is provided
 - Security- collateral, guarantee or unsecured
 - Currency in which loan is denominated
 - Convertibility of the funding
-

DRAFT GUIDANCE ON FT

Analysis of economically significant characteristics (contd.):

➤ Functional Analysis:

- Purpose of the financial transaction
- Whether funding can be obtained from other sources
- Credit and other risk of the lender
- Regulatory body who monitors compliance with terms of financing agreement
- Intended/actual use of funds

The above analysis should consider “how those functions relate to the wider generation of value by the MNE Group to which the parties belong, the circumstances surrounding the transaction, and industry practices”

DRAFT GUIDANCE ON FT

Analysis of economically significant characteristics (contd.):

- Characteristics of financial products or services
 - Economic circumstances:
 - Currency of the financial transaction
 - Geographic jurisdictions of the parties
 - Specific business sector/industry in which parties operate
 - Timing of the transaction
 - Macro-economic trends
 - Business Strategies
-

DRAFT GUIDANCE ON FT

Accurate delineation of the transaction

- The characteristics of the specific financial transactions (or financial services) under review are clearly defined and supported by the conduct of the parties and other facts.
- Even though the interest rate is at an arm's length rate, whether a prima facie loan can be instead regarded as contribution to capital.

Application and selection of the most appropriate transfer pricing method:

- Consider creditworthiness and credit rating (standalone or group rating) of the AEs and creditworthiness of the financial instrument
 - CUP (internal or external comparable) is most commonly used method
-

***BEPS – ‘PROGRAMME OF
WORK’***

MOBK,

BEPS – PROGRAMME OF WORK

PROGRAMME OF WORK

- To resolve the tax challenges arising from digitalization, the Inclusive Framework on BEPS releases 44-pager 'Programme of Work' to develop a consensus-based long-term solution by the end of 2020
 - The proposals are grouped into two pillars which could form the basis for consensus:
 - Pillar One focuses on the allocation of taxing rights, and seeks to undertake a coherent and concurrent review of the profit allocation and nexus rules;
 - Pillar Two focuses on the remaining BEPS issues and seeks to develop rules that would provide jurisdictions with a right to “tax back” where other jurisdictions have not exercised their primary taxing rights or the payment is otherwise subject to low levels of effective taxation
-

PROGRAMME OF WORK

- The paper is divided into five chapters:
 - Chapter One – Introduction
 - Chapter II - Allocation of taxing rights, resolution of different technical issues and undertake a coherent and concurrent revision of the profit allocation and nexus rules.
 - Chapter III - Remaining BEPS issues (Pillar Two), and global anti-base erosion (GloBE) proposal, provide jurisdictions with a right to “tax back” where other jurisdictions have not exercised their primary taxing rights or the payment is otherwise subject to low levels of effective taxation
 - Chapter IV – Impact assessment and economic analysis of the proposals
 - Chapter V - Organization of the work to deliver the Programme of Work and next steps
-

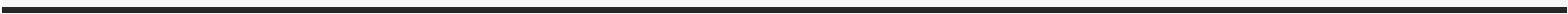
CASE SIGNIFICANT LAWS

CASE SIGNIFICANT LAWS

***AVAILABILITY OF FOREIGN
TAX CREDIT (FTC) TO RNOR***

TAX CREDIT (FTC) TO RNOR

AVAILABILITY OF FOREIGN



FTC TO RNOR

➤ Facts of the case:

- Assessee, an individual, having residential status of 'not ordinarily resident in India' stayed in India for 224 days for AY 2011-12. He declared salary income for the proportionate period for which he was employed with the USA employer.
- During the course of assessment proceedings, the AO observed that assessee claimed pro rata tax credit of the federal and state taxes paid in USA (taxes in USA are levied at two levels- federal and state)
- AO took a view that since Indo-USA treaty allows credit of federal taxes paid, assessee was only entitled to proportionate credit of federal taxes paid in United States of America against the Indian income tax liability. Upon further appeal, CIT(A) also rejected the assessee's claim

FTC TO RNOR

➤ The ITAT was posed with two questions for adjudication:

1. **Whether assessee is eligible to claim relief u/s 91 of the Income Tax Act, 1961 for the federal and state income tax paid in USA;**
 2. **Whether assessee who is an RNOR is eligible to claim relief u/s 91 of the Act**
-

FTC TO RNOR

➤ Observations of the ITAT:

- that the provisions of a tax treaty, based on which tax credits are said to be inadmissible, cannot be pressed into service to decline a benefit to the assessee which is otherwise available to him, even in the absence of such a tax treaty, under the provisions of the Income Tax Act;
 - Circular 621 dated 19-12-1991 issued by CBDT observes that:
“Since the tax treaties are intended to grant relief and not put residents of a Contracting State at a disadvantage vis-a-vis other taxpayers, section 90 of the Income-tax Act has been amended to clarify any beneficial provision in the law will not be denied to a resident of a contracting country merely because corresponding provision in a tax treaty is less beneficial”
-

FTC TO RNOR

➤ Observations of the ITAT (contd.)

- Section 90(2) makes it clear that the provisions of Act shall apply only to the extent they are more beneficial to the taxpayer. This means that treaty override is only restricted to the extent it is beneficial to a taxpayer
 - Section 91 does not discriminate with federal and state taxes and in effect provides for both these types of income taxes to be taken into account for the purpose of tax credits against Indian income tax liability
 - Provisions of section 91(1) and 91(2) deals with the person who is a “resident” in India.
-

FTC TO RNOR

➤ Observations of the ITAT (contd.)

- Section 6 provides that for qualification of the persons who are residents in India. The provisions of section 6(6) carves out another category of persons in ‘residents’ who are said to be ‘non ordinarily resident’ in India. The category is also called a “resident but not ordinarily resident” in India. Therefore persons who are “resident but not ordinarily resident” in India are forming larger group of the persons who are “resident” in India.
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FTC TO RNOR

- In view of the aforesaid observations, the ITAT held that:
1. The assessee is entitled for tax credit of federal as well as state taxes paid by him u/s 91(1) of the Act;
 2. The contention of the Revenue that benefit of section 91 (1) of the Act does not apply to a person who is not ordinarily resident in India stands rejected.
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INDOSTAR CAPITAL vs. ACIT

INDOSTAR CAPITAL vs. ACIT

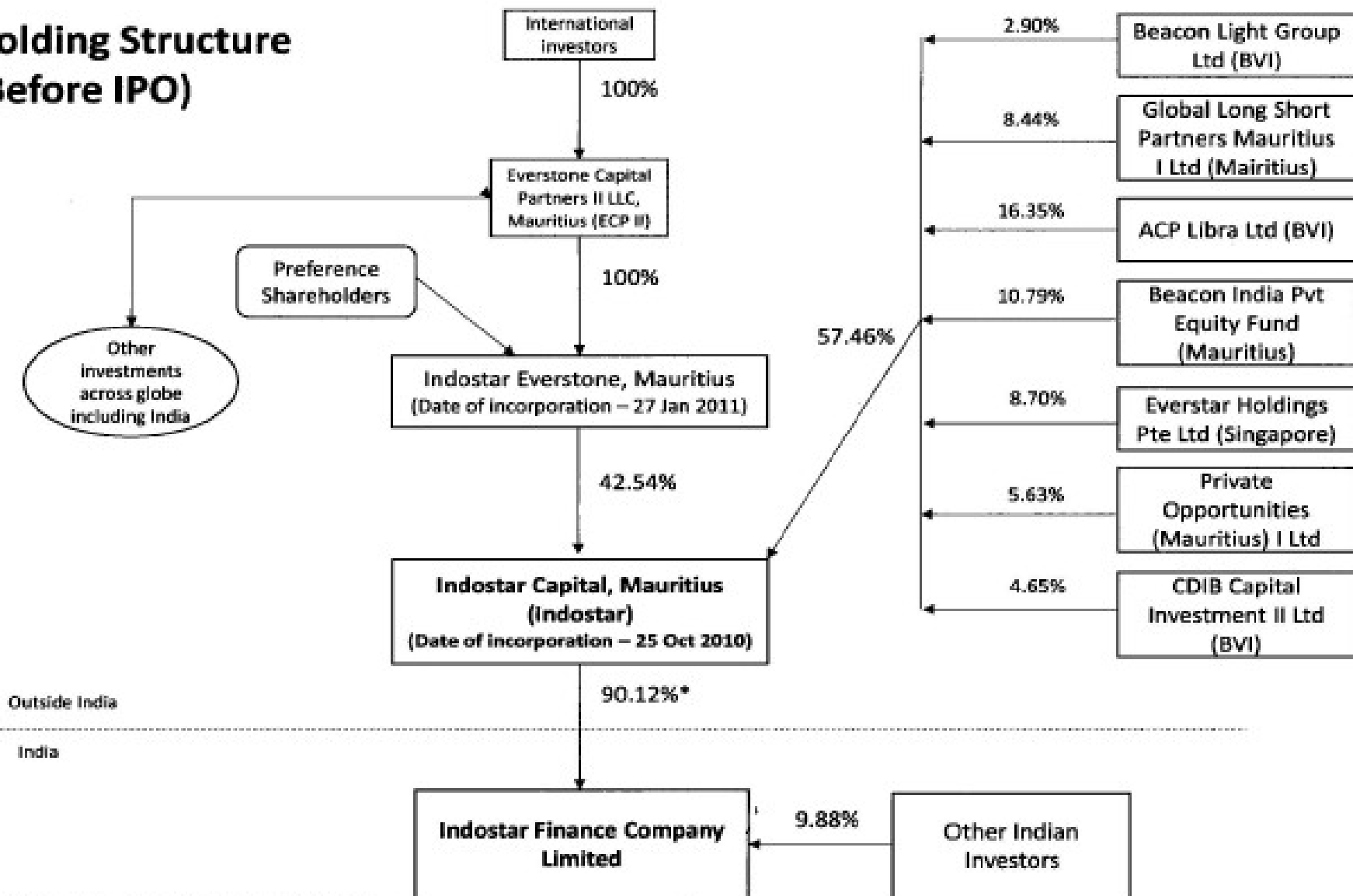
INDOSTAR CAPITAL vs. ACIT

➤ Facts of the case:

- Indostar Capital (**M Co.**) was incorporated as a private limited company in Mauritius. It held a Category 1 Global Business License to act as an investment holding company. M Co. was also issued a tax residency certificate (TRC) by the Mauritius Revenue Authority.
 - M Co. was formed to promote an Indian non-banking financial company called Indostar Capital Finance Limited (**I Co.**) and M Co.'s entire share investment in I Co. had been made prior to 01-04-2017. M Co. sought to sell 1.85 crore shares of I Co. through an IPO for a total consideration of Rs. 1058.68 crores.
 - It applied to the ACIT for the grant of a nil withholding certificate under Section 197 of the Act. It contended that in absence of any tax liability in India, deduction of tax at source would not be permissible and therefore, the certificate as required may be granted. In the application, M Co. placed before the ACIT its corporate structure, the source of funds for acquisition of the shares and several documents including a copy of its TRC.
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CORPORATE STRUCTURE

Holding Structure (Before IPO)



* Post IPO, holding reduced to approximately 57%

INDOSTAR CAPITAL vs. ACIT

➤ ACIT's order:

- The ACIT, after carrying out a detailed inquiry, rejected M Co.'s application on the basis that:
 1. The company has not undertaken any business transaction or commercial activities,
 2. It did not maintain an establishment or incur any administrative expenses in Mauritius
 3. It was a majority shareholder in I Co. The ACIT questioned the genuineness of the transaction and contended that the entire structure was crested with the purpose of avoiding taxes.
-

INDOSTAR CAPITAL vs. ACIT

➤ Bombay HC's ruling:

- The HC held that certificate under Section 197 of the Act provides immunity to the payer but does not decide the taxability of the receipts in the hands of the payee.
 - Placing reliance on Supreme Court's rulings in the case of GE India (mere remittances to nonresident does not give rise to the duty to deduct tax at source under Section 195) and Vodafone, it observed that question of deducting tax at source arises only if the income is taxable in the hands of the payee
 - Circular 789 of 2000 states that wherever a TRC is issued by the Mauritian authorities, such TRC will constitute sufficient evidence for accepting the status of residence as well as beneficial ownership for applying the treaty
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INDOSTAR CAPITAL vs. ACIT

➤ Bombay HC's ruling:

- As per the provisions of the Indo- Mauritius treaty, the gain arising the sale of shares acquired on or before 31.3.2017, in a company which is resident of India, could not be taxed in Indian territory
 - The mere fact that M Co had not transacted any other business is not conclusive to prove that the transaction is bogus.
 - Therefore, the HC quashed the order passed under Section 197 of the Act and directed that the tax already deducted by the payer had to be released in favour of Indostar along with the applicable interest.
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THANK YOU

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