



National Conference on Direct Tax

Organized by

Direct Tax Committee

of

The Institute of Chartered Accountants of India

Decoding NRI Taxation- Key Issues

Natwar Thakrar

Saturday, 4 October, 2025

Presentation Outline

- 1. Scope of Total Income**
- 2. Determination of Residential Status (Under IT Act, DTAA & FEMA)**
- 3. Dual Tax Residency & its Resolution under DTAA**
- 4. Tax Incidence for Non-Residents under Heads of Income – Act Vs DTAA- Comparative Analysis**
- 5. Importance of Tax Residency Certificate (TRC) for DTAA Benefits**
- 6. Questions??**

Part I – Scope of Total Income

Scope of Total Income

Residential Status

Resident & Ordinarily Resident (ROR)

**Non-resident (NR) and
*Not Ordinarily Resident (NOR)**

Incidence of Tax

Worldwide Income [Sec 5(1)]

- Received or Deemed to be received in India - [Sec 5(1)(a)]
- Accrues or arises or deemed to accrue or arise in India [Sec 5(1)(b)].
- Accrues or arises or deemed to accrue or arise outside India [Sec 5(1)(c)].

Restricted Scope [Sec 5(2)]

- Income received or deemed to be received in India [Sec 5(2)(a)]
- Income accrues or arises in India [Sec 5(2)(b)] or is deemed to accrue or arise in India (Sec 9)

- *For NOR– Scope of total Income includes income accruing/ received outside India from a business controlled in or profession set-up in India

As per section 90(2) of the IT Act, where there is DTAA with India, the provisions of the IT Act shall apply to the extent they are beneficial to the taxpayer.

Income Deemed to Accrue or Arise in India- Meaning

Section	Sources Of Income	Description
9(1)(i)	Business Income	<ul style="list-style-type: none"> 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. Business Connection to include “Significant Economic Presence”. -[Explanation 2A] <i>If all the operations are not carried out in India, Taxable only to the extent income is attributable to the activities/ operations in India- [Explanation 3]</i>
9(1)(ii)	Salaries	Salaries if earned in India – i.e. for services rendered in India .
9(1)(iii)	Salaries	Salaries paid by Govt. of India to Citizen of India for services outside India.
9(1)(iv)	Dividend	Dividend paid by an Indian Company outside India.
9(1)(v)	Interest	Interest by Govt. or by a resident (unless it is for the purpose of a business or source of Income outside India)
9(1)(vi)	Royalty	‘Royalty’ by Govt. or a resident (unless it is for the purpose of a business or source of Income outside India)
9(1)(vii)	FTS	‘Fees for Technical Services (FTS)’ by Govt. or a resident (unless it is for the purpose of a business or source of Income outside India).

Part II – Determination of Residential Status

Importance of Determination of Residential Status

Variations Under IT Act, DTAA and FEMA

- Definition under IT Act and FEMA are different.
- It is possible that a person is a resident under one Act but a non-resident under the another Act. Resident under IT Act may not necessarily mean that the person is also determined as resident under DTAA or under FEMA and vice verse.

Relevance of residential status under IT Act/DTAA

- Determining the scope of taxable income in India
- Availability of special rates of tax & reporting requirements etc.
- For treaty relief, determination of residential status under the treaty is mandatory

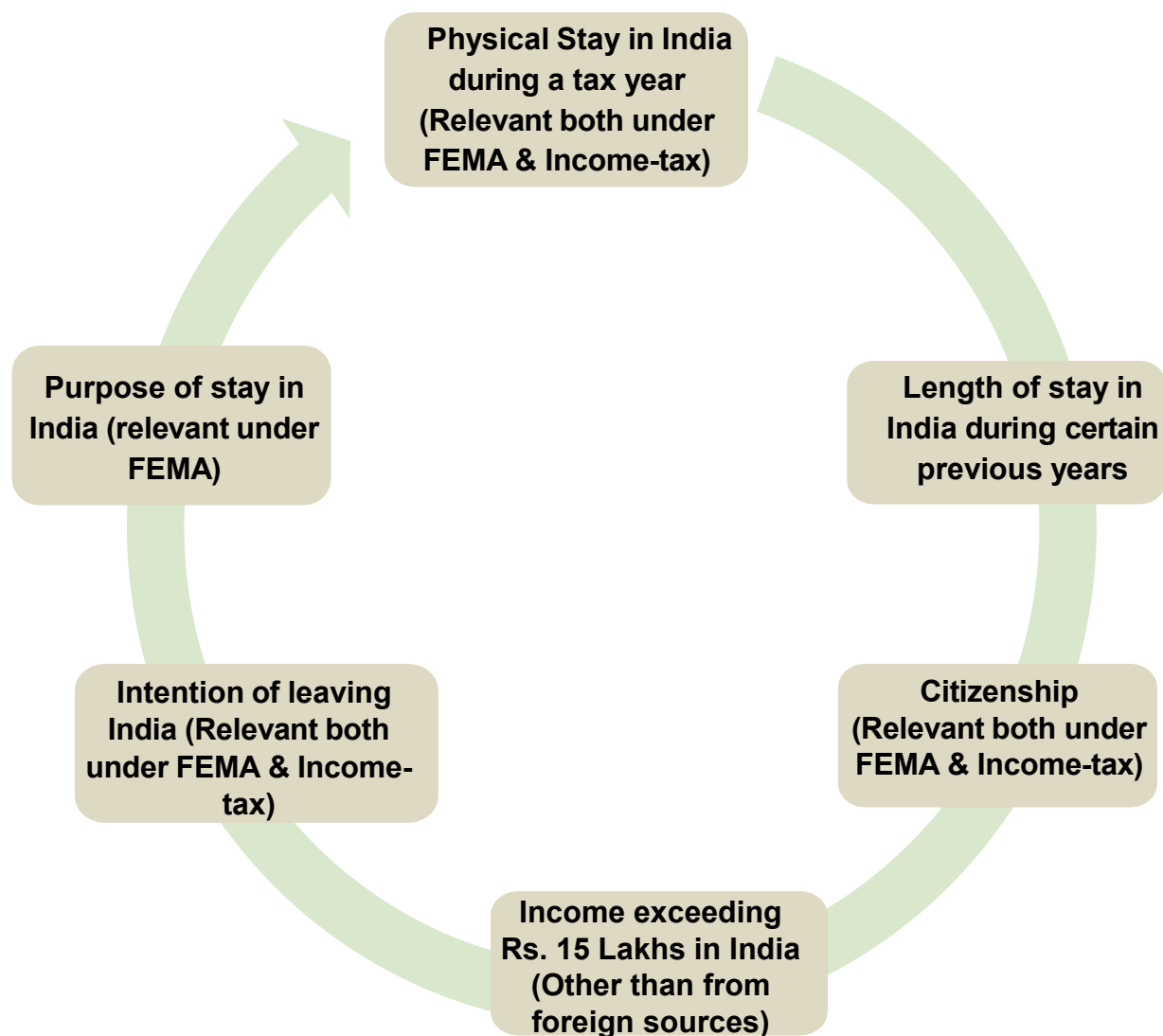
Relevance of residential status under FEMA

- Permissibility of remittance / transaction under FEMA – LRS for Residents Vs USD One Million Scheme for non-residents
- Designation of bank account.
- Availability of tax exemption for NRE/ FCNR deposit account.

Supporting documents

- Documents indicating purpose of travel (E.g. for employment, business, Personal visit etc.)
- No. of days stay, Types of Visa, Passport copies with arrival/ departure stamps.

Residential Status- Relevant Criterion



India introduced citizenship as one of the criterion under S 6(1A) & S.6(6)(c) & (d) from 1.04.2001 to determine residential status of its citizens under certain circumstances

Residential Status

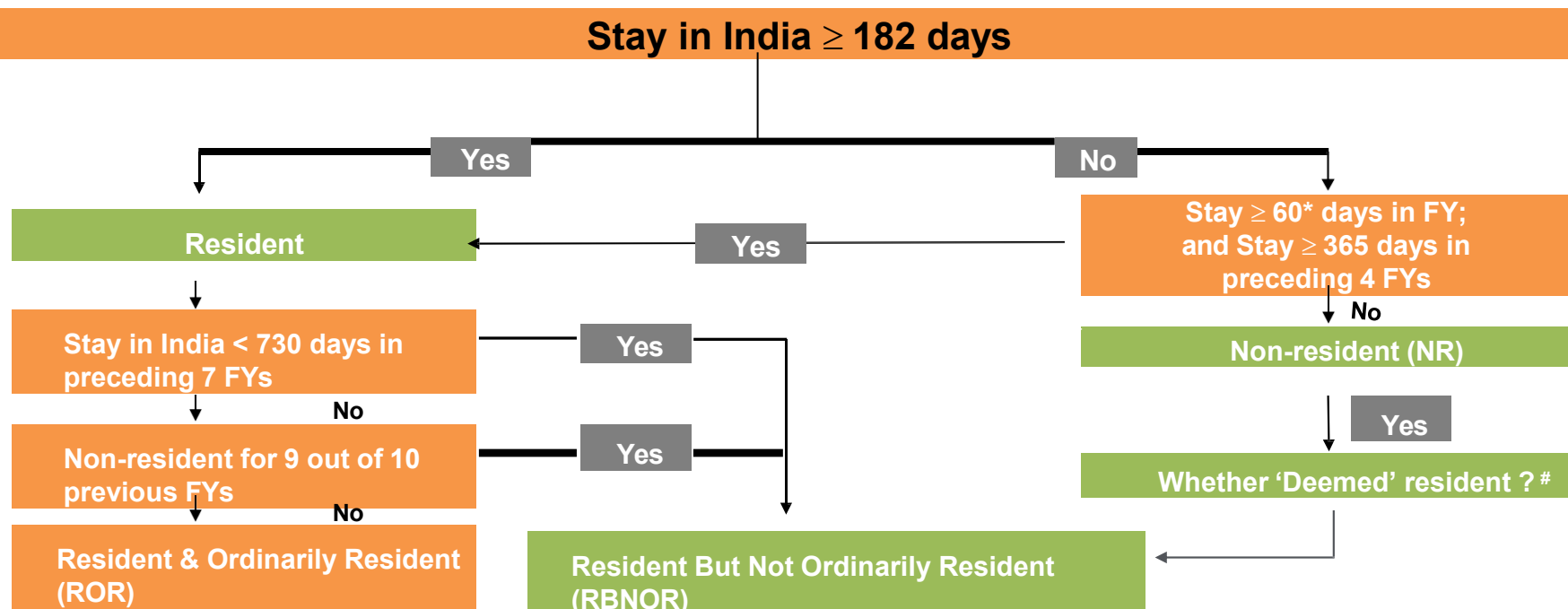
Determining Factors

- Individual
 - Physical Presence , **Citizenship**, Income from sources in India, **Liable to tax in India[S. 2(29A)]**, etc.
- HUF, Firm, AOP
 - Control & Management- Non-Resident where control and management of its affairs is wholly situated outside India [S. 6(2)].
- Company
 - If it is an Indian Company or the Place of effective management, in that year, in India [S. 6(3)].
- Others
 - Control & Management- Non resident, if the control and management of its affairs is wholly situated outside India [S. 6(4)].

Physical Presence Test

- Stay in a country at the same place or at different places does not matter
- Physical presence counted irrespective of the time spent on duty, intention or purpose of stay except in the year of departure from India or return back to India.
- Stay need not be continuous.
- Stay can even be on the territorial waters.
- Previous year for India is from April 1st to 31st March for counting the number of days stay in India
- **Days of arrival into India and day of departure from India**
 - Both the days should be counted – AAR 223 ITR 462 (P No.7 of 1995)
 - Only the day of departure has to be considered in India – Jaipur Tribunal (No. 1230 dt. 22.8.1986) (ITO Vs. Dr. R. K. Sharma) / Manoj Kumar Reddy, 34 SOT 180 (Bang ITAT) – upheld by Karnataka High Court, 245 CTR 350
- Dates stamped on the passport are normally considered as the proof of date of arrival in and the departure from India. In modern, days data from immigration authorities are procured by tax authorities for cross verification of facts.

Test of Residence for Individuals (Sec 6)



- 60 days stands extended to 182 days under following circumstances –
 - An Indian citizen** who leaves India during the previous year as a member of the crew of Indian Ship or for the purposes of employment outside India.
 - An Indian citizen or person of Indian origin (PIO)**, who **being outside**, comes to India on visits and who is having India sourced income not exceeding INR 15 lakh during that financial year.
- From AY 2021-22, If India sourced income of the individual being Citizen of India in the above case (1) exceeds INR 15 lakh, then the 60 days stands extended to 120 days [and not to 182 days as provided in Explanation 1(a) to S 6(1)?] and such individual will be regarded as RBNOR.
- Deemed resident u/s 6(1A) from AY 2021-22 means an **Indian citizen** who is not liable to tax in any other country/territory by reason of domicile or residence or any other criteria of similar nature and have India sourced income exceeding INR 15 lakh during the relevant financial year

Impact of Amendment in S. 6 for a Citizen of India at a glance

Stay in India post amendment	Total Income in India (other than from foreign sources)	Residential status post amendments	Residential Status prior to amendment	Impact of the amendments ?
Less than 120 days	Income Up to INR 15 lakhs/ Income exceeding INR 15 lakhs	Non-resident	Non-Resident	No
120 days or more but less than 182 days	Income up to INR 15 lakhs	Non-resident	Non-Resident	No
120 days or more but less than 182 days	Income exceeding INR 15 lakhs	<u>R But NOR</u>	<u>Non-Resident</u>	<u>Yes</u>
182 days or more	Any Level of Income	Resident	Resident	

Further amendments through insertion of Clause 1A to Section 6 from AY 2021-22:

An individual shall be "Deemed Resident" in India if he meets following criterion -

- He is a **citizen of India**,
- He has total income, other than the income from foreign sources, **exceeding Rs. 15 lakh**,
- He is **not be liable to tax [Refer S. 2(29A)]** in any other country or territory by reason of his domicile or residence or any other criteria of similar nature-

Liable to tax is now defined under S. 2(29A) to mean existence of income-tax liability on the person under the laws of its country for the time being in force and includes a person who has subsequently been exempted from such liability in that country

Further, with insertion of Clause (d) U/s. 6(6), such Citizen of India who is "Deemed Resident" in India is also deemed to be **"Not Ordinary Resident in India" (Deemed RBNOR)**

Deemed Resident – Analysis of S 6(1A)

Non-obstante provision:

- Deemed resident provision under S.6(1A) overrides provisions of Section 6(1).
- Section 6(1A) will be attracted only in case of a **Citizen of India** who is **not liable to tax** in any other country **by reason of domicile or residence or any other criterion of similar nature** and his income, other than income from foreign sources **is exceeding Rs. 15 lakhs during the previous year**.
- Covers Indian citizens who are permanently settled abroad but who are not liable to tax in any country as a resident, e.g. those settled in UAE where there is no personal taxation.
- If a person who is resident in India under the Act is also a resident as per the laws of the other country, he is a dual resident and his residential status under treaty would be determined under Article 4 of the DTAA upon application of the “tie-breaker” test.

Determination of residential status under DTAA:

- If a person is determined to be resident of another country under treaty upon application of tie breaker test, he will be a non- resident in India for tax purposes.

Compliance requirements for the DTAA Relief:

- Need to obtain TRCs valid for the year with Form 10F to claim DTAA benefits
- Mandatory filing of tax return in India even though no tax liability due to DTAA benefits.

Example- Not liable to tax by reason of residence..

- Mr. A , an Indian Citizen, stayed 40 days in India, 130 days in Singapore, 110 days in England and 85 days in Dubai having Income from INDIA exceeding ₹ 15 lacs.
- He was not resident in any of the above three countries as his stay is less than the threshold no of days prescribed under respective domestic tax laws in each of the above mentioned countries to make him a resident.
- He is therefore not liable to tax in any country as a resident.
- Since he is a citizen of India having Indian income exceeding Rs. 15 lakhs, He will become resident of India by virtue of the provisions of S. 6(1A) of the Act. He will also be deemed to Not Ordinary Resident by virtue of S. 6(6)(d).
- Being a “deemed resident” , he will be entitled to claim the benefit of DTAA entered by India with other countries.
- He will not be entitled to special rates of tax provided for non-residents under S. 115A

RNOR – Impact Analysis

Adverse	Positive
<ol style="list-style-type: none">1. To include income from business controlled in or profession set up in India.2. Loss of concessional tax rates [S. 115A & Chapter-XIIA] and exemptions (e.g. Interest on government bonds u/s.10(4) is available only to NR and not to RNOR, subject to DTAA Benefits3. Denial of DTAA benefit for Indian sourced income where under Article -4 tie-breaks in favour of India5. Increase in tax compliance - TDS obligations, tax return filing, etc. Tax officer to have greater jurisdiction6. RNOR still liable for TP compliance and is also subjected to GAAR.7. Benefit of S. 144C- Reference to DRP is available only to Non-residents -NOR is not covered in the definition of “eligible assessee”.	<ol style="list-style-type: none">1. Special slab rates applicable to resident senior citizens, etc., also available to such NORs.2. TDS deduction not u/s. 195 but under normal provisions applicable to the residents which are applicable at lower rates in most cases3. Indian DTAA benefits and foreign tax credit available for foreign sourced Income taxable in India4. No obligation to report Foreign Assets in ITR for RNOR.

Case Study 1: RNOR Status

Ca Ramesh Subramaniam, a citizen of India has set up a proprietary CA firm in Chennai, India since last 4 decades. He is settled in UAE for since more than four years. His office in India is run by his trusted employees and he himself keeps on visiting India for important professional assignments.

His usual stays in in India is between 100 to 115 days, i.e. less than 120 days.

Determine his residential status and his tax liability in India based on following information.

- His Indian income including income from his profession is Rs. 10 lakhs.
- He has earned interest of Rs. 6 Lacs on his NRE Fixed Deposits with SBI, Chennai (NRE Interest is exempt for NR but taxable for RNOR, unless he is permitted to hold NRE Account under FEMA)
- He has earned consultancy fee of Rs. 10 Lakh from a UK based client for services rendered in UK during his visit to UK. The fee was remitted to his UAE bank account.

Person Resident under FEMA- Section 2(v)

A PRI means—

(i) a person residing in India for more than 182 days during the course of the preceding financial year **but does not include -**

General condition of 182 days stay in India

(A) A person who has gone out of India or who stays outside India, in either case—

(a) for or on taking up employment outside India, or

(b) for carrying on outside India a business or vocation outside India, or

(c) for any other purpose, in such circumstances as would indicate his intention to stay outside India for an uncertain period;

but does not include- Such person exempted from general condition of 182 days described in the opening para and becomes non-resident immediately from the date of departure

(B) a person who has come to or stays in India, in either case, otherwise than-

(a) for or on taking up employment in India, or

(b) for carrying on in India a business or vocation in India, or

(c) for any other purpose, in such circumstances as would indicate his intention to stay in India for an uncertain period;

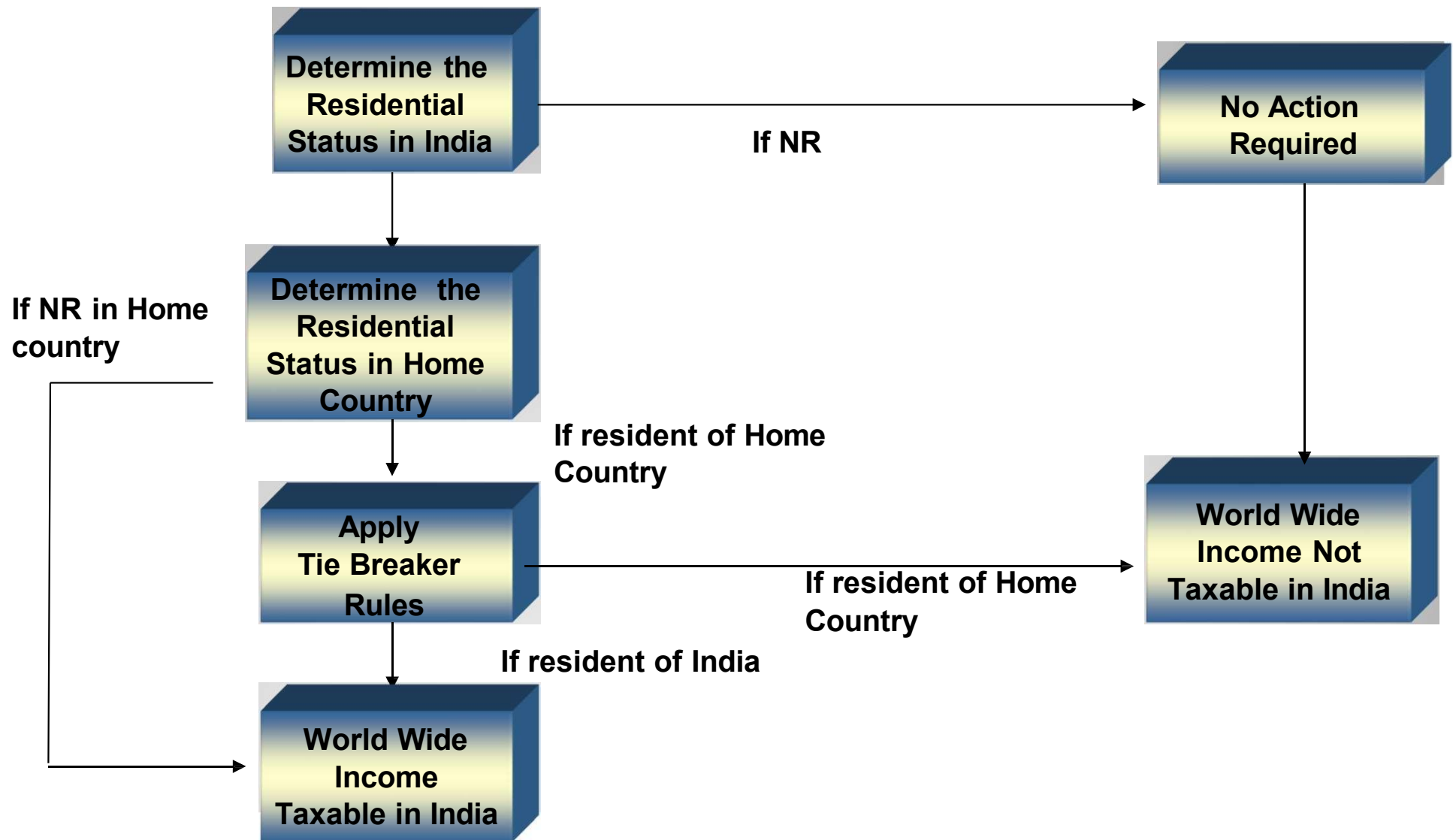
182 days stay in India during the preceding financial year is mandatory. **Otherwise, then,** makes it mandatory to also satisfy purpose test. It also applies to Returning Indians even though they are required by RBI to redesignate their NRE/ NRO accounts as resident accounts under Deposit Regulations – Not. 5(R).

Part- III -Dual Residency & its Resolution under DTAA

Dual Residency

- ❑ Many a times person can be a resident of two or more countries as per their respective domestic tax laws (specially in the year of departure / arrival)
- ❑ In such a scenario, DTAA provide tie breaking rules under Article 4- Para (2) Residence, to allocate residential status to one of the countries under DTAA.
- ❑ DTAA by itself does not prescribe any rules for tax residency but it resolves dual residency issues of two countries by allocating treaty residency to one of the countries..
- ❑ Hierarchy of tie-breaking rules under provided under the model DTAAs are as follows:-
 - **Permanent home**- excludes accommodation available for a short duration/ need not be owned
 - **Centre of vital interests** (family, personal & economic relations)- As a whole to be examined
 - **Habitual abode** – Quantum of stay, purpose irrelevant
 - **Nationality** – Test will fail in case dual nationality
 - **Mutual agreement procedure**- to be decided by competent authorities.
- ❑ **Reference for further studies-** M. A. Rafiq [1995] 213 ITR 317 (AAR) / Dr. Rajnikant Bhatt [1996] 222 ITR 562 (AAR) /Abdul Razak A. Memon {2005} 276 ITR 306. **Also read S. 2(29A) subsequently inserted to define” liable to tax” under income –tax act.**

Determination of Residential Status under Treaty



Example : Determination of Residential Status under India UK DTAA

Article 4 (1) of DTAA – India – UK DTAA

For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation, or any other criterion of a similar nature, provided, however, that:

(a) this term does not include any person who is liable to tax in that State in respect only of income from sources in that State;

Tie – Breaker Test - Article 4(2) of DTAA – If resident under Article 4(1) of both the states, then tie-breaker rule is applied to determine the residency. Below are the criteria to determine residency.

- *Availability of permanent home*
- *Center of vital interests (Social & economic relations)*
- *Habitual abode*
- *Nationality*

CBDT Circular No. 15 of 2015 Dated 3rd September 2015 – Answer to Question No 6 has clarified that once a person is determined as non-resident upon application of tie- breaker rule provided under DTAA, he is not liable to disclose Foreign Income and Assets under Chapter VI of the Black Money (Undisclosed Foreign Income and Assets), Imposition of Tax Act, 2015

Case Study 2- Tie breaker Rule

An outbound individual migrating to UK on 31 October 2024 – Determine taxability after applying tie breaking rule under India – UK DTAA



Period	Status in India	Status in UK	Tie Break	Taxability
April to 31 October 2024	Ordinarily Resident (ROR)	Non-resident (NR)	Not applicable	India – Taxable UK- Not Taxable
1 November 2024 to 31 March 2025	Ordinarily Resident (ROR) as he was in India for > 182 days	Presume that he is also Resident of UK under its own domestic tax law.	Situation 1 - Tie breaks in favour of India	India (FTC)
			Situation 2 -Tie Breaks in favour of UK	India (Exempt) UK – Taxable

Article 4 of India - UAE DTAA

Article 4 (1) of DTAA – India – UAE DTAA

For the purposes of this Convention, the term "resident of a Contracting State" means:

- (a) in the case of India: any person who, under the laws of India, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. This term, however, does not include any person who is liable to tax in India in respect only of income from sources in India; and*
- (b) in the case of the United Arab Emirates: an individual who is present in the UAE for a period or periods totalling in the aggregate at least 183 days in the calendar year concerned, and a company which is incorporated in the UAE and which is managed and controlled wholly in UAE*

Tie – Breaker Test - Article 4(3) of DTAA – If resident under Article 4(1) of both the states, then tie-breaker rule is applied to determine the residency. Below are the criteria to determine treaty residency.

- *Availability of permanent home*
- *Center of vital interests (Social & economic relations)*
- *Habitual abode*
- *Nationality*
- *Competent Authority*

Part IV – Tax Incidence for Non-Residents under Different Heads of Income

Tax Incidence under IT Act & DTAA

Sources Of Income	Description	Taxability under IT Act, 1961	Taxability under DTAA
Business Income attributable to "Business Connection"	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. Business Connection to include "Significant Economic Presence"	S. 9(1)(i)/S 28 to S.44	Article 7 (Business Income) read with Article 5 (Permanent Establishment)
Salaries	Salaries	S. 9(1)(ii) & S. 15 to S. 17	Article- 15- Income from Employment/ Article -18 - Pensions
Income from House Property	Income from property situated in India	S.22 to 26	Article 6- Income from Immovable Property
Capital Gains	Income from transfer or property/ assets located in India	S. 9(1)(i) & S. 45 to S 49	Article- 13- Capital/Article 21- Other Income
Dividend	Dividend.	S. 9(1)(iv)	Article- 10- Dividend
Interest	Interest	S. 9(1)(v)	Article- 11 - Interest
Royalty	Royalty	S. 9(1)(vi)	Article- 12- Royalty & FTS
FTS	Fees for Technical Services	9(1)(vii)	Article- 12- Royalty & FTS

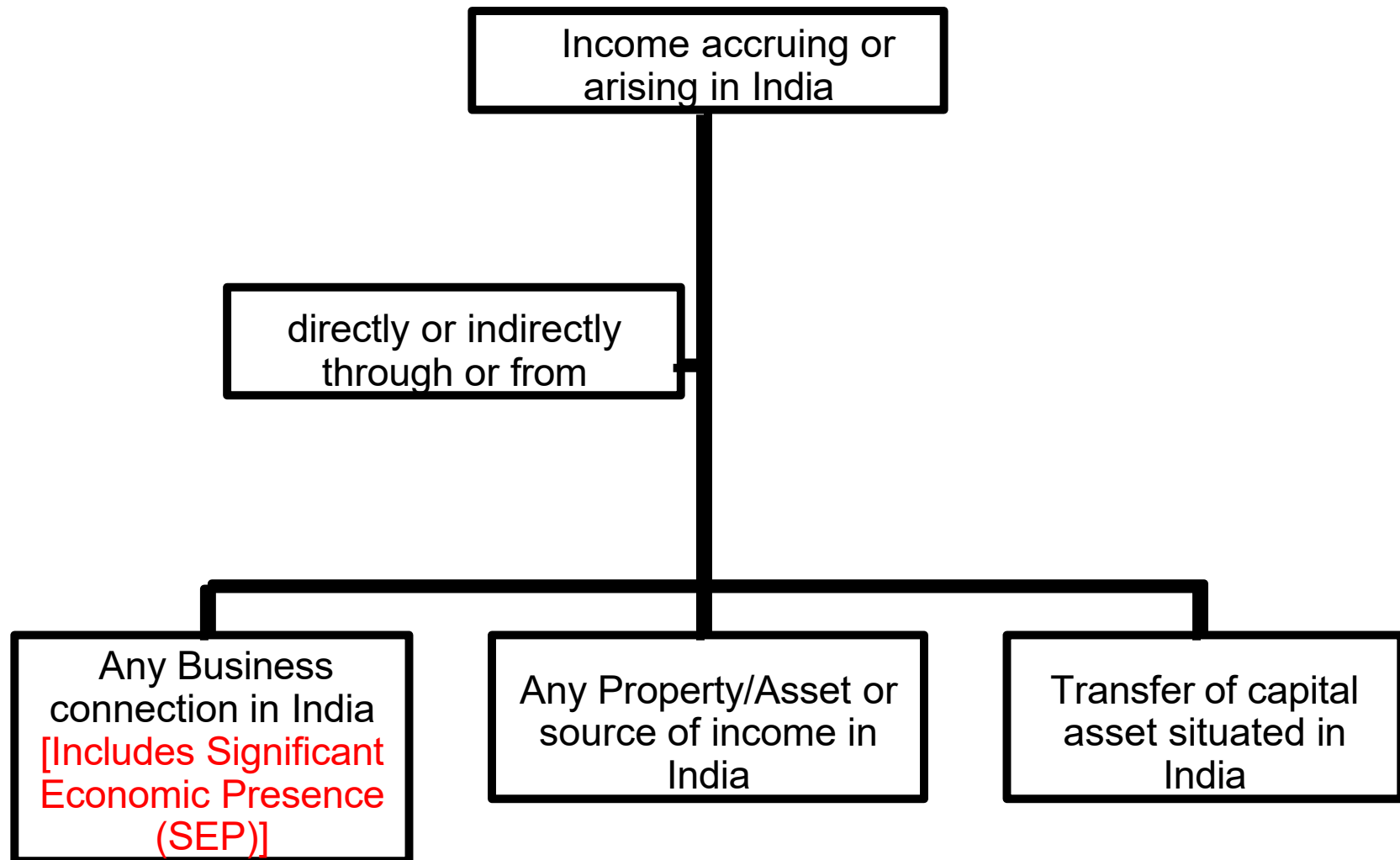
Scope of Total Income of a non-resident under S. 5 includes income which are deemed to have accrued or arisen in India in terms of S. 9 of the Act. Taxable income shall be computed as per the applicable provisions of the Act.

Business Connection Vs. PE

Business Connection	Permanent Establishment (PE)
Domestic law concept	International tax concept under DTAA
No exhaustive definition	Defined exhaustively as well as illustratively
No classification	Classified as fixed place, agency, construction & service PE on the basis of activities performed
Wider concept	Narrower concept

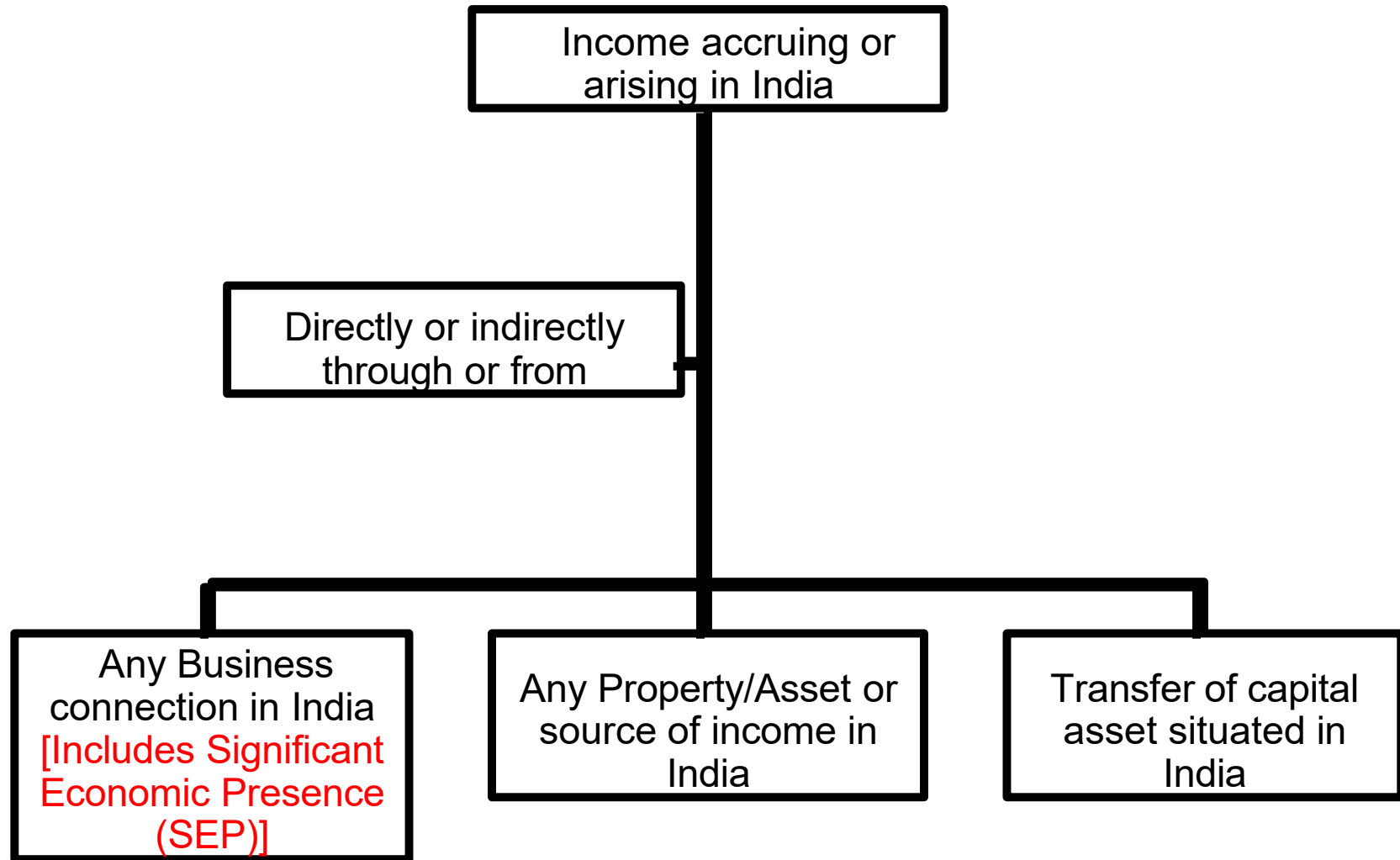
Business Connection

❖ Section 9(1)(i):



Business Connection

❖ Section 9(1)(i):



Business Connection

- In the case a non-resident (NR) who has given an authority to a resident to conclude contracts in India on his behalf or that resident plays principal role leading to the conclusion of contracts in name of the NR, or maintains in India a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the NR, or secures orders in India, mainly or wholly for the NR then such a person will construe a business connection of the NR in India
- Business Connection may include carrying of a part of the main business of NR through an agent or it may merely be a relation between business of the NR and the activity of the agent in India which facilitates or assists carrying on that business – **CIT vs. R.D. Agarwal & Co. (56 ITR 20 SC)**
- A portion of income which actually arises outside India through such business connection shall be ***deemed to accrue or arise in India as is reasonably attributable to the operations carried out in India.***
- Operations in India could include income from targeted advertisements, sale of data collected from resident or from a person who uses protocol address located in India and sale of goods and services using data collected from resident or from a person who uses protocol address located in India
- Business connection does not include:
 - any business carried out by an agent of an independent status acting in ordinary course of his business
 - Occasional Activity
 - Purchase of goods merely for Export

Business Connection

❖ Activities which do not constitute Business Connection in India:

- A broker, a general commission agent or any other agent of the independent status carrying on business acting in the ordinary course of its business. – **First Proviso to Explanation 2 to Section 9(1)(i).**
- Business of which all the operations are not carried out in India, the income of the business deemed to accrue or arise in India shall be limited only to such part of income as is reasonably attributable to the operation carried out in India. **Fifth Proviso to Explanation 2 to Section 9(1)(i).**
- Collection of news and views in India for transmission out of India. E.g. CNN, BBC – **S. 9(1)(i)(c).**
- Shooting of cinematograph films in India if such NR is Individual, who is not a citizen of India or a firm which does not have any partner who is a citizen of India or who is resident in India or a Company which does not have any shareholder who is citizen of India or who is resident in India- **S. 9(1)(i)(d).**
- In case of a foreign company engaged in the business of mining of diamonds, from the activities which are confined to display of uncut and unassorted diamonds in any special zone notified by the central Govt. e.g. Bharat Diamond Bourse – **S. 9(1)(i)(e).**

Property, Asset or Source of Income

- In a case where ***tangible property is situated in India***, income arising through or from such property is ***deemed to be the income arising in India*** – **CIT v. Currimbhoy Ebrahim & Sons Ltd.(3 ITR 395)(PC)**
- Capital gains arising from the transfer of a capital asset situated in India at the time of transfer are deemed to accrue in India, ***irrespective of the place where the agreement for transfer is made or the consideration for the transfer is payable*** – **CIT v. Assam Tea (167 ITR 215), CIT v.Quantas Airways Ltd.(256 ITR 84)(Del), Triniti Corpn (295 ITR 258)(AAR)**
- ***Indirect transfer of assets*** (share/interest in foreign co) outside India having substantial value from assets located in India (Overruled Vodafone SC judgement)
- Capital gains tax will be attracted when NRI sells any capital assets situated in India and accordingly, Section 195 would apply on capital gains – **Meena S. Patil v. ACIT (113 TTJ 863)(Bang)/Syed Aslam Hashmi v. ITO (55 SOT 441)(Bang)**

Significant Economic Presence

❖ Explanation 2A to Section 9(1)(i):

- Significant economic presence (SEP) of a non-resident in India shall also constitute "business connection" in India.
- **Threshold for the purpose of SEP for the purpose of Explanation 2A to S. 9(1)(i) -**
 - transaction in respect of any goods, services or property carried out by a non-resident with any person in India including provision of download of data or software in India, if the aggregate of payments arising from such transaction or transactions during the previous year exceeds prescribed limits [**Presently Rs. 2 crore – Rule 11UD(1)**], or
 - systematic and continuous soliciting of business activities or engaging in interaction with prescribed number of users in India [**Presently 3 lakh users in India- Rule 11UD(2)**].
- Transactions or activities which are confined to the purchase of goods in India for exports shall not constitute SEP
- Only a portion of income attributable to the transactions or activities in India will be liable to tax in India

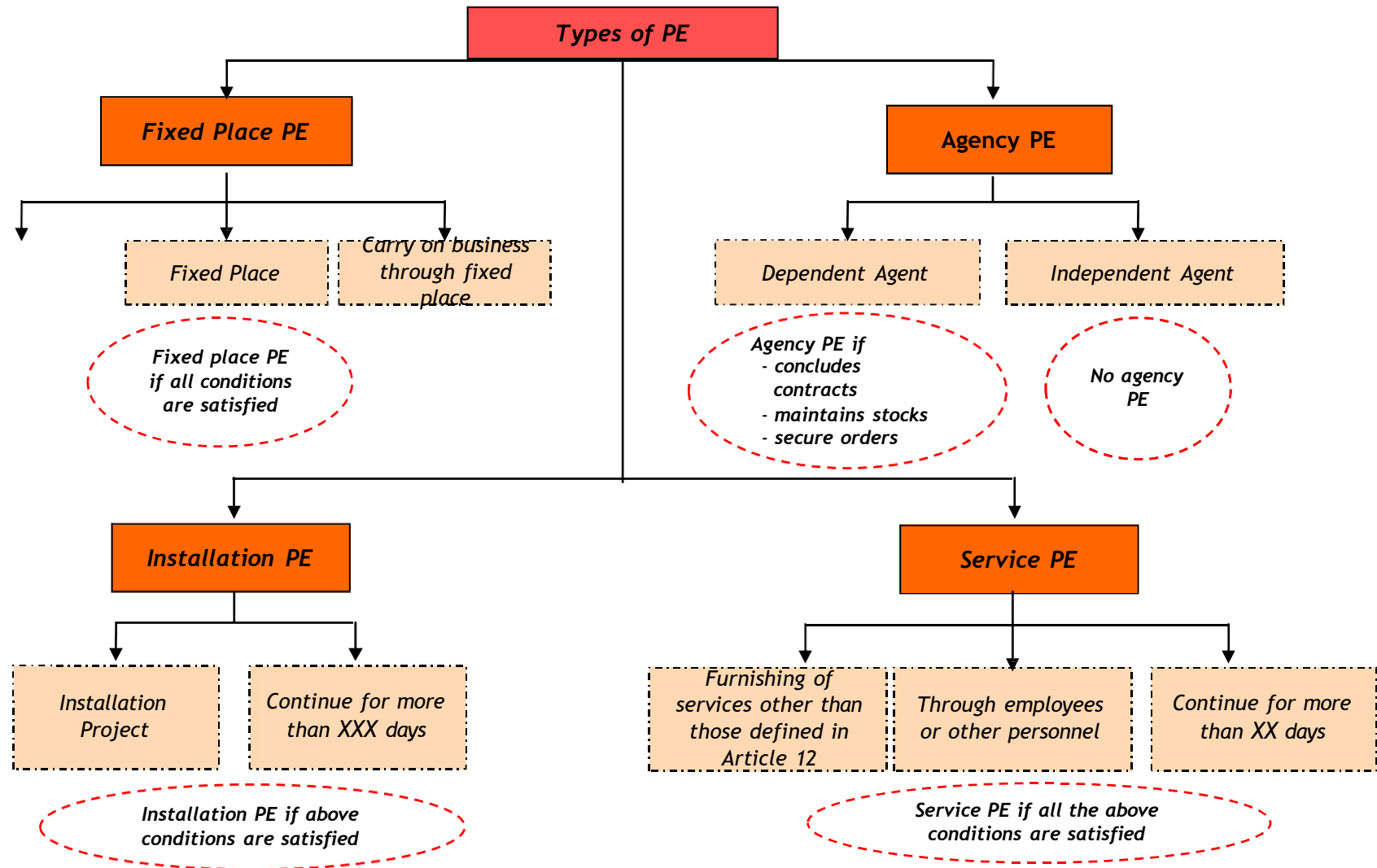
Article 5(2)

The term “permanent establishment” includes especially:

- A place of management
- A branch
- An Office
- A factory
- A workshop
- A mine, an oil or gas well, a quarry or any other place of extraction of natural resources

Rule of Edjusdem Generis not applicable.

Various Types of PE



Genesis of PE

Example- Article 7(1) of India- USA DTAA

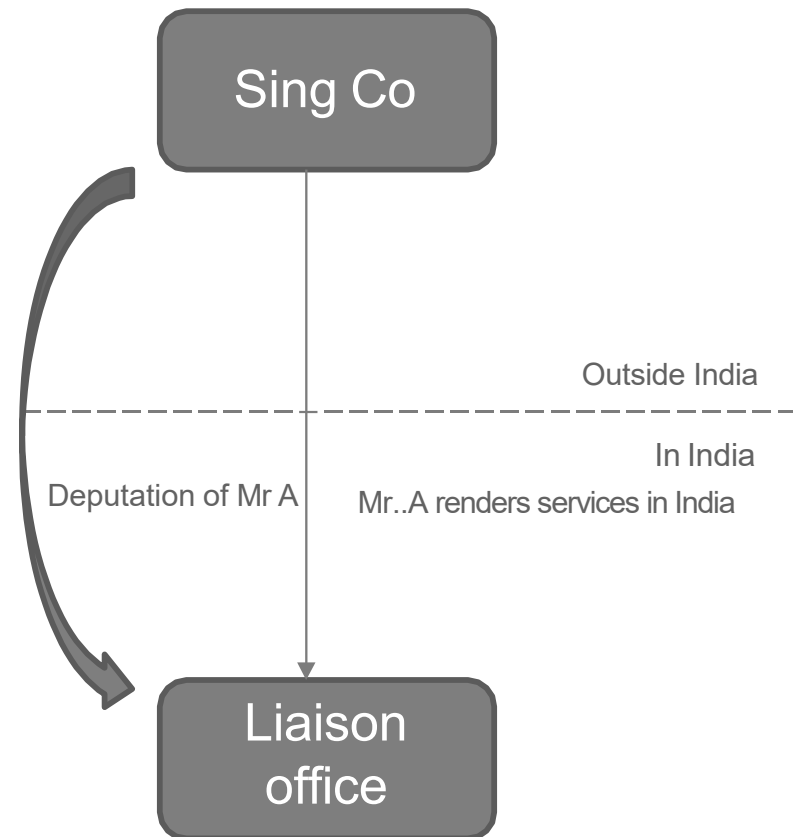
*“the profits of an enterprise of a Contracting State (US) shall be taxable only in that State (US) **unless the enterprise carries on business in the other Contracting State (India) through a permanent establishment situated therein.** If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State (India) but only so much of them as is attributable to that permanent establishment.”*

Implications of PE

- Higher tax rate of 35% (plus applicable surcharge and cess) to apply on profits attributable to the PE in India
- Computation of is subject to the Indian domestic tax provisions -
 - Restrictions relating to disallowance of expenditure for withholding tax default would be applicable, allowance of certain expenses on payment basis, deduction of head office expenditure, etc. to apply
- Compliance with the withholding tax provisions (withholding tax from payments, filing tax withholding returns, etc.) attracted
- Customers will withhold taxes at a higher rate – obtain lower withholding tax order
- Impact on short stay exemption for employees – personal taxation of employees may be impacted
- Maintenance of books of account and having the same audited in accordance with the Indian domestic tax law
- Compliances under indirect tax laws and corporate law to be considered

Salaries- Section 15, 9(1)(ii) & (iii)

- ▶ Earned in India means
 - ▶ Salary Due or Paid for Services rendered in India
 - ▶ Payment for leave period (preceded or succeeded) for services rendered in India and is part of the contract.
- ▶ Actual payment or place of payment is immaterial
- ▶ Salary payable to a citizen of India who is a Government employee, for services outside India is taxable in India
- ▶ Physical presence is a determinative criterion for rendition of service
- ▶ Short stay exemption – s.10(6)(vi) and s.10(6)(viii)
- ▶ Article 15 and Article 19 of tax treaties



Salaries- Section 9(1)(ii) & (iii)

- ▶ Place of Payment
 - ▶ Salary for services rendered in India is taxable in India (includes payment for rest/leave period preceded and succeeded by services rendered in India)
 - ▶ Salary earned by NR for working abroad not accrued/ not deemed to accrue in India – **DIT v. Prahlad Vijendra Rao [2011] 198 taxman 551 (Kar)**
 - ▶ Salary taxable even though paid by a non-resident employer for employment in India / Service rendered in India– **CIT vs. Eli Lilly 297 ITR 300 (Del).**
 - ▶ Salary is taxable on “due” basis from employer or former employer even if unpaid.
 - ▶ Salary received in India in NRE account for the services rendered outside India is not taxable. **CIT v. Avtar Singh Wadhwa – [2001] 115 taxman 536 (Bom) / Arvind Singh Chauhan v. ITO 2014 42 taxmann.com 285 (Agra)**
- ▶ TDS on Salary paid by Non-resident employer
 - ▶ TDS required even though the payer is not an assessee in India
- ▶ Nature of payment
 - ▶ Reimbursement of actual relocation expenses are exempt

Employment Outside India

❖ Employment outside India

- It would mean a case where the employee is posted outside INDIA either temporarily or for a long period and would not include the case of an employee who has gone abroad for few days though continued to be posted in INDIA.
- **Second ITO v. K.Y. Patel (33 ITD 714) (Mum).**
 - Held resident as his traveling abroad for 218 days was in connection with the employment in India and not for the purpose of employment outside india
- **ITO v. Abbott Laboratories Pvt. Ltd. (31 ITD 183)(Mum).**
 - When employee goes abroad for few days, though posted in India can not be considered as employment outside India
- **CIT Vs. Indo Oceanic Shipping Co. Ltd 114 Taxman 722 (Mum)**
 - Place where contracts are entered is not material in determining the place of employment

Taxation of Salary under DTAA

Article 15 - Dependent Personal services:

- Generally, the right to tax salary is given to the country where the individual is resident.
- However, salary received for services rendered in India by a Non-resident will be exempt from tax provided the following three conditions are met-
 - The recipient is present in India for a period or periods not exceeding in the aggregate 183 days in the relevant "previous year"
 - The remuneration is paid by, or on behalf of, an employer who is not a resident of India; and
 - The remuneration is not deductible in computing the profits or income of a permanent establishment or a fixed base which the employer has in the other State.

Income from House Property

❖ *Income from immovable property*

- *Where NRI owns a house property in India, the right to tax under DTAA is given to the Country where the property is located.*
- *The income is subject to tax in India under normal computation provisions under Indian Income-Tax Act.*
- *However, the same may also be taxable in the country of residence as per the computation mechanism of the domestic tax laws of the foreign resident country. Relief from double taxation may be explored in that foreign home country.*
- *Computation mechanism under domestic law may differ from country to country.*

❖ *India – Australia DTAA*

Article 6 -Income from Real property (Immovable property)

*1) Income from real property may be taxed in the Contracting state in which the **property is situated**. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated.*

Dividend, Interest, Royalty and FTS

The following table provides tax rates applicable on various types of incomes of a non-resident under S.115A which is a mandatory provision, unless NR opted for Chapter XIIA benefits.

Type of Income	Rate of Tax
<i>Interest on monies borrowed by an Indian Company or Govt. of India in foreign currency</i>	20% +SC+Cess
<i>From a notified infra debt fund as specified u/s 10(47)</i>	5% +SC+Cess
<i>Dividend income received by a Non-Resident (not being a company) or a Foreign Company Other than that specified under section 115- O which is exempt</i>	20% +SC+Cess
<i>Royalty income received by a Non-Resident (not being a company) or a Foreign Company - From Government or an Indian Concern for the agreements made after 31st March 1976.</i>	10% +SC+Cess
<i>Technical services fees received by a Non-Resident (not being a company) or a Foreign Company - From Government or an Indian Concern for the agreements made after 31st March 1976.</i>	10% +SC+Cess
<i>Other income received by a Non-Resident (not being a company) or a Foreign Company - In respect of units, purchased in foreign currency of a mutual fund specified u/s 10(23D) or of the UTI.</i>	20%+SC+Cess

Taxation of Dividend and Interest

❖ **Under Income-tax Act:**

▪ **Dividend Income**

- *Dividend paid by a Domestic company in India to a NR is taxable in India.*
- *The dividend from domestic companies received by a NR is taxed at a rate of 20% (plus applicable surcharge and cess) - S.195 read with s 115A(1)A.*

▪ **Interest Income**

- *Interest earned by a NR from savings/ Non-Resident Ordinary 'NRO'/fixed deposit/ RD account is taxable in India.*
- *Interest is taxed at a rate of 20% (plus applicable surcharge and cess) - S.195 read with s 115A(1)B.*
- *In case of interest earned by a PROI from Non-Resident External 'NRE' account maintained in accordance with FEMA is exempt from tax u/s 10(4)(ii) of the Act.*

❖ **Dividend & Interest Under DTAA:**

- *No general rule providing exclusive taxing rights to COS or COR.*
- *DTAA imposes a limitation on the maximum rate to be charged by the source country*
- *Surcharge & Cess are not levied separately on the concessional tax rate provided under the DTAA.*

Dividend under DTAA

Article 10 : India – Australia DTAA

Dividends paid by a company which is a resident of one of the Contracting States for the purposes of its tax, being dividends to which a resident of the other Contracting State is beneficially entitled, may be taxed in that other State.

*Resident state
has the right
to tax*

Such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident for the purposes of its tax, and according to the law of that State, but the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

*Source state
also has the
right to tax
but tax
@15%*

The term "dividends" in this Article means income from shares and other income which is subjected to the same taxation treatment as income from shares by the laws of the Contracting State of which the company making the distribution is a resident for the purposes of its tax.

Case Study 3: Dividend under DTAA

India – Australia DTAA

Case:

XYZ Ltd, an Indian company distributed dividends to Mr. B on shares held by him in the company.

He is a resident of Australia and a Non-resident in India.

Can he claim beneficial rate of taxation as per Article 10 of India-Australia DTAA?

Answer:

Mr. B is a non-resident in India and resident of Australia.

As per Article 10 of India-Australia DTAA, the tax rate applicable is 15% on Dividend income.

Being a non-resident, he is taxable @ 20% in India on dividend income as per section 115A of the Act.

He can claim beneficial rate of taxation as per the treaty, subject to providing tax residency certificate and filing e-form 10F

Interest Income under DTAA

Article 11: India – Singapore DTAA

Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

*Resident
state has the
right to tax*

However, such interest may also be taxed in the Contracting State in which it arises, and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed:

*Source state
also has the
right to tax
but tax
@10%/ 15%*

10 percent of the gross amount of the interest if such interest is paid on a loan granted by a bank carrying on a bona fide banking business or by a similar financial institution (including an insurance company) ; and

15 percent of the gross amount of the interest in all other cases.

Case Study 4: Intertest Income under DTAA

Article 11: India – Singapore DTAA

Case:

Mr. A is a non-resident in India and a resident of Singapore.

His taxable income in India is INR 60,00,000.

His income from savings interest in India is INR 1,00,000.

Can he claim beneficial rate as per Article 11 of India-Singapore DTAA.

Answer:

Since Mr. A is non – resident and a tax resident of Singapore, he can claim beneficial rate of taxation @ 15% under India- Singapore DTAA.

Surcharge on the interest income is not applicable on the treaty beneficial rate of 15%.

The above beneficial rate of tax is subject to obtaining tax residency certificate from Singapore authorities and filing e-form 10F

Capital gains for Non-Residents

- **Short-term capital gains being equity shares/ unit of an equity-oriented fund**
 - **Section 111A (STT Paid):**
 - Where the transaction is subject to securities transaction tax to be taxed @ 20% on capital gains after 23rd July 2024
 - No minimum threshold exemption
 - **Others**
 - Taxed at “rates in force”
- **Long-term gains (Other than equity shares/ equity oriented units)**
 - **Section 112**
 - Taxed at rate of 12.5% on capital gains after 23rd July 2024 without indexation benefits
- **Long-term capital gains from transfer of equity shares/ unit of an equity-oriented fund**
 - **Section 112A (STT Paid):**
 - Exempt Up to Rs. 1.25 Lac
 - 12.50% tax on gains computed without indexation benefit on capital gains after 23rd July 2024
 - First and second provisos of Sec 48 (Indexation & foreign Currency fluctuation adjustment) shall not apply to the capital gains referred to in section 112A

Part V – DTAA Vs. Income-tax & Importance of Tax Residency Certificate (TRC)

Section 90(4)- Tax Residency Certificate

- **Section 90 (4)** - *Non residents not entitled to claim relief under DTAA unless a valid Tax Residency Certificate (TRC) obtained from tax authorities of home jurisdiction is provided*
- **Section 90 (5) / Rule 21AB** - *Form 10F certified by the non-resident beneficiary is to be furnished under Section 90(5) if TRC does not contain the following details -*
 - ✓ *Status (individual, company, firm etc.) of the assessee;*
 - ✓ *Nationality (in case of an individual) or country or specified territory of incorporation or registration (in case of others);*
 - ✓ *Assessee's tax identification number*
 - ✓ *Period for which the residential status, as mentioned in the TRC; and*
 - ✓ *Address of the assessee*
- **Procedure for obtaining TRC by an assessee resident in India**
 - *Sub-rule (3) - An assessee, being a resident in India may make an application in Form No. 10FA to the Assessing Officer.*
 - *Sub-rule (4) - The Assessing Officer shall issue a certificate of residence in respect of the assessee in Form No. 10FB*

Section 206AA read with Rule 37BC

Rule 37BC

- In case of a non-resident, not being a company, or a foreign company and not having permanent account number, the provisions of section 206AA shall not apply in respect of the following payments if the deductee furnishes specified documents/ particulars-
 - interest,
 - royalty,
 - fees for technical services and
 - payments on transfer of any capital asset,

Specified Documents/ Particulars required in absence of PAN –

- (i) name, e-mail id, contact number;
- (ii) address in the country of residence;
- (iii) Tax Residency Certificate issued by Tax Authority of the home country;
- (iv) Tax Identification Number.

Dividend is not covered under Rule 37BC relaxations

Tax Residency Certificate- Is it must?

**Skaps Industries
India (P.) Ltd.
[2018] 94
taxmann.com 448
(Ahmedabad - Trib.)**

- ✓ *Provisions in Section 90(4) do not start with a obstante clause vis-à-vis Section 90(2)*
- ✓ *Cannot be construed as limitation to, or rider to, somewhat unqualified treaty override stipulated in Section 90(2) and superiority of treaty over the domestic law.*
- ✓ *The manner in which it can be construed as a beneficial provision to the assessee is that once this provision is complied with and that the assessee furnishes the TRC in the prescribed format, the Assessing Officer is denuded of the powers to requisition further details in support of the claim of the assessee for the related treaty benefits.*

**Sreenivasa Reddy
Cheemalamarri vs
ITO (Hyd ITAT)
(TS-158-ITAT-2020)**

- ✓ *If the assessee provides sufficient circumstantial evidence the requirement of section 90(4) ought to be relaxed.*
- ✓ *Though the Act mandates Tax Residency Certificate of Austria, non-production of the same shall not lead to non grant of treaty benefits*

QUESTIONS???



THANK YOU

N. G. Thakrar & Co
Chartered Accountants

**803, Atrium- II, Behind Courtyard Marriot Hotel, Opp. Divine
Child High School, Andheri – Kurla Road, Andheri (East),
Mumbai- 400 093**

Email: natwar@ngthakrar.in; Mobile: 9821021841

URL: www.ngthakrar.in