CHAPTER 21

NON-RESIDENT TAXATION



LEARNING OUTCOMES

After studying this Chapter, you will be able to –

- **determine** the residential status of Individuals, HUF, AOPs/ BOIs, Firms & Companies etc;
- **examine** the scope of income chargeable to tax in respect of different persons, after ascertaining their residential status;
- **examine** when income arising in the hands of non-resident from a transaction is deemed to accrue or arise in India;
- **appreciate** the circumstances when the presence of eligible fund manager in India would not constitute business connection in India for an eligible investment fund;
- **identify** whether a particular income is exempt in the hands of a non-resident based on the provisions of the Income-tax Act, 2025;
- **compute** the profits and gains for non-resident assessees from shipping business, business of operation of cruise ships, business of operation of aircraft, business of civil construction etc. in certain turnkey power projects applying the presumptive tax provisions under the Income-tax Act, 2025;
- **determine** the quantum of head office expenditure allowable as deduction to non-residents;
- **determine** the tax payable by non-residents applying the special provisions relating to certain incomes of non-residents prescribed under Chapter XIII-E;
- **examine** the withholding tax provisions to determine the tax, if any, required to be deducted at source on certain payments made to non-residents;
- **compute** the total income of non-residents and tax payable thereon, applying the general provisions and special provisions applicable to non-residents under the Income-tax Act, 2025.

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CHAPTER OVERVIEW



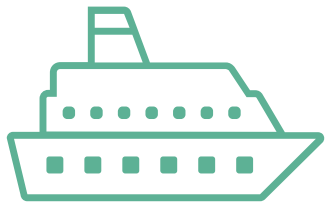
Residential Status and Scope of Total Income



Income deemed to accrue or arise in India



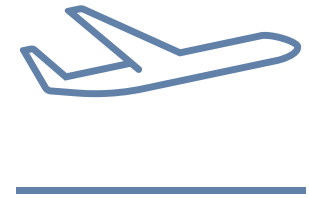
Exempted income of non-residents



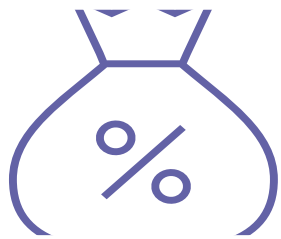
Presumptive taxation for non- residents



Capital Gains taxation for non-residents



Special provisions relating to Non-residents and Foreign Companies



Withholding tax provisions for non-residents



Miscellaneous provisions

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21.1 INTRODUCTION

Taxation of cross-border transactions are generally based on the two concepts:

1. Residence based taxation
2. Source based taxation

Residence based taxation: The concept of residence-based taxation asserts that natural persons or individuals are taxable in the country or tax jurisdiction in which they establish their residence or domicile, regardless of the source of income. In case of companies, the place of incorporation or the place of effective management is generally considered as its place of residence.



Source based taxation: According to this concept, a country considers certain income as taxable income, if such income arises within its jurisdiction. Such income is taxed in the country of source regardless of the residence of the taxpayer.



Accordingly, section 5 of the Income-tax Act, 2025 provide for the scope of total income considering the following three key factors –

(i) the residential status of the assessee;

(ii) the place of accrual or receipt of income, whether actual or deemed; and

(iii) the point of time at which the income had accrued to or was received by or on behalf of the assessee.

In the subsequent discussion, we will be knowing what all income are to be included in the hands of a person depending upon its residential status, how to determine the residential status of a person, when income deemed to be received in India and when income deemed to accrue or arise in India.

Before moving to section 5, it is essential to know the categories of person on the basis of their residential status. Let's understand how to determine the residential status of different persons.

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21.2 RESIDENTIAL STATUS [SECTION 6]

The incidence of tax on any assessee depends upon his residential status under the Act. For all purposes of income-tax, taxpayers (individuals and HUF) are classified into three broad categories on the basis of their residential status viz.

(1) Resident and ordinarily resident

(2) Resident but not ordinarily resident

(3) Non-resident

Taxpayers (other than individuals and HUF) are classified into two broad categories on the basis of their residential status viz.

(1) Resident

(2) Non-resident

The residential status of an assessee must be ascertained with reference to each tax year. A person who is resident and ordinarily resident in one year may become non-resident or resident but not ordinarily resident in another year or *vice versa*.

The provisions for determining the residential status of different persons are as follows:

(I) Residential Status of Individuals

Section 6(1) to (8), (13)/(14) contain the provisions with respect to residence in India of an individual. Section 6(12) provides that where a person is resident in India for any source of income, he shall be deemed to be resident in India in respect of each of his other sources of income.

Basic Conditions

Under section 6(2), an individual would be resident in India in a tax year, if he satisfies **any one** of the following conditions:



(i) He is in India for a total period of 182 days or more during such tax year or

(ii) He is in India cumulatively for 60 days or more during that tax year and has been in India cumulatively for 365 days or more in the 4 years preceding such tax year.

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If both the above conditions are not satisfied, the individual is a non-resident.



(a) The term "stay in India" includes stay in the territorial waters of India (i.e., 12 nautical miles into the sea from the Indian coastline). Even the stay in a ship or boat moored in the territorial waters of India would be sufficient to make the individual resident in India.

(b) It is not necessary that the period of stay must be continuous or active nor is it essential that the stay should be at the usual place of residence, business or employment of the individual.

(c) For the purpose of counting the number of days stayed in India, both the date of departure as well as the date of arrival are considered to be in India.

(d) The residence of an individual for income-tax purpose has nothing to do with citizenship, place of birth or domicile. An individual can, therefore, be resident in more countries than one even though he can have only one domicile.

Exceptions to the Basic Conditions

The following categories of individuals will be treated as resident in India only if the period of their stay during the relevant tax year amounts to 182 days or more. The condition of presence in India for 60 days or more in the relevant tax year is not applicable for such individuals.



(i) **Indian citizen,** who leaves India during the relevant tax year as a **member of the crew** of an Indian ship or for purposes of employment outside India [Section 6(3)], or

(ii) **Indian citizen or person of Indian origin** who, being outside India comes on a visit to India during the relevant tax year [Section 6(4)].

Section 2(78)	*Meaning of Person of Indian origin*
An individual who or either of his parents or any of his grandparents, was born in undivided India.	

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However, an **Indian citizen or person of Indian origin,** who being outside India comes on a visit to India during the relevant tax year having total income, other than the income from foreign sources exceeding ₹ 15 lakhs during the tax year will be treated as resident in India if -

- the period of his stay during the relevant tax year amounts to 182 days or more, or
- he has been in India during the 4 years immediately preceding the tax year for a total period of 365 days or more and has been in India for at least 120 days in the tax year [Section 6(5)].

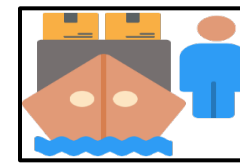
Income from foreign sources means income which accrues or arises outside India (except income from a business controlled from or profession set up in India) and which is not deemed to accrue or arise in India.



Stay in India for 120 days in the relevant tax year is not a standalone condition. This condition requires stay in India for 120 days in the relevant tax year + 365 days in the 4 years immediately preceding the tax year.

How to determine period of stay in India for an Indian citizen, being a crew member?

In case of foreign bound ships where the destination of the voyage is outside India, there is uncertainty regarding the manner and the basis of determining the period of stay in India for an Indian citizen, being a crew member.



To remove this uncertainty, section 6(6) provides that in the case of an individual, being a citizen of India and a member of the crew of a foreign bound ship leaving India, the period or periods of stay in India shall, in respect of such voyage, be determined in the prescribed manner and subject to the prescribed conditions.

As per Rule 8(1), in case of an individual, being a citizen of India and a member of the crew of a ship, the period or periods of stay in India shall, in respect of an eligible voyage, not include the following period:

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Period to be excluded

Period beginning on		Period ending on
the date entered into the Continuous Discharge Certificate in respect of joining the ship by the said individual for the eligible voyage	**And**	the date entered into the Continuous Discharge Certificate in respect of signing off by that individual from the ship in respect of such voyage.

Meaning of certain terms

Term		Meaning
(a)	Continuous Discharge Certificate	This term have the meaning assigned to it in the Merchant Shipping (Continuous Discharge Certificate-cum Seafarer's Identity Document) Rules, 2001 made under the Merchant Shipping Act, 1958.
(b)	Eligible voyage	A voyage undertaken by a ship engaged in the carriage of passengers or freight in international traffic where – (i) for the voyage having originated from any port in India, has as its destination any port outside India; and (ii) for the voyage having originated from any port outside India, has as its destination any port in India.

Deemed resident [Section 6(7)]



An individual, being

- an Indian citizen,
- having total income, other than the income from foreign sources, **exceeding ₹ 15 lakhs** during the tax year
- **if he is not liable to tax** in any other country or territory by reason of his domicile or residence or any other criteria of similar nature

would be deemed to be resident in India in that tax year.

However, this provision will not apply in case of an individual who is a resident of India in the tax year as per section 6(2) to 6(6).

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Section 2(66)	Meaning of Liable to tax
Liable to tax in relation to a person and with reference to a country, means that there is an income-tax liability on such person under the law of that country for the time being in force and shall include a person who has subsequently been exempted from such liability under the law of that country.	
Section 6(14)	**Meaning of income from foreign sources**
Income from foreign source means income which accrues or arises outside India (except income from a business controlled from or profession set up in India) and which is not deemed to accrue or arise in India.	



(1) Only Indian citizen can be deemed resident. An individual who is not an Indian citizen, but a person of Indian Origin cannot be deemed resident u/s 6(7).

(2) Stay in India is not necessary for being a deemed resident u/s 6 (7)

Resident and ordinarily resident/ Resident but not ordinarily resident

(1) Only individuals and HUF can be resident but not ordinarily resident in India. All other classes of assessees can be either a resident or non-resident. An individual would be not-ordinarily resident if such individual satisfies any one of the following conditions specified under section 6(13):

(i) he has been non-resident in India in 9 out of the 10 tax years preceding that year, or

(ii) he has been in India cumulatively for 729 days or less in 7 tax years preceding that year

Alternatively, it can also said that an Individual would be resident and ordinarily resident if he

- is resident in India in 2 years or more out of 10 years preceding the relevant tax year

AND

- stayed in India for 730 days or more during the 7 years preceding the relevant tax year

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(2) **An Indian citizen or person of Indian origin** (who, being outside India, comes on a visit to India in any tax year) having total income, other than the income from foreign sources, exceeding ₹ 15 lakhs during the tax year, who has been in India cumulatively for **120 days or more but less than 182 days** during the tax year, or

(3) An **Indian citizen** who is **deemed to be resident** in India under section 6(7).



A deemed resident will always be a resident but not ordinarily resident.

ILLUSTRATION 1

Keshav Maharaj (KM), a South African cricket player visits India for 102 days in every financial year. This has been his practice for the past 10 tax years.

(a) Find out his residential status for the tax year 2026-27.

(b) Would your answer change if the above facts relate to Dinesh Karthik (DK), an Indian citizen who resides in South Africa (SA) and represents the South African cricket team?

(c) What would be your answer if Dinesh Karthik had visited India for 120 days instead of 102 days every year, including tax year 2026-27?

SOLUTION

(a) Determination of Residential Status of Mr. KM for the tax year 2026-27:

Period of stay during the tax year 2026-27 = 102 days

Calculation of period of stay during 4 preceding years (102 days x 4 = 408 days)

2025-26	102 days
2024-25	102 days
2023-24	102 days
2022-23	102 days
Total	**408 days**

Mr. KM has been in India for a period of more than 60 days during tax year 2026-27 and for a period of more than 365 days during the 4 immediately

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preceding years. Therefore, since he satisfies one of the basic conditions under section 6(2), he is a resident for the tax year 2026-27.

Computation of period of stay during 7 preceding tax years = 102 days x 7=714 days

2025-26	102 days
2024-25	102 days
2023-24	102 days
2022-23	102 days
2021-22	102 days
2020-21	102 days
2019-20	102 days
Total	**714 days**

Since his period of stay in India during the past 7 years is less than 730 days, he is a not-ordinarily resident during the tax year 2026-27. **(See Note below)**

Therefore, Mr. KM is a resident but not ordinarily resident during the tax year 2026-27.

Note: *An individual, not being an Indian citizen, would be not-ordinarily resident person if he satisfies any one of the conditions specified under section 6(13), i.e.,*

(i) If such individual has been non-resident in India in 9 out of the 10 tax years preceding the relevant tax year, or

(ii) If such individual has during the 7 years preceding the relevant tax year been in India for a period of 729 days or less.

In this case, since Mr. KM satisfies condition (ii), he is a not-ordinary resident for the tax year 2026-27.

(b) If the above facts relate to Mr. DK, an Indian citizen, who residing in SA, comes on a visit to India, he would be treated as non-resident in India for tax year 2026-27, irrespective of his total income (excluding income from foreign sources), since his stay in India in the tax year 2026-27 is, in any case, less than 120 days.

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(c) In this case, if Mr. DK's total income (excluding income from foreign sources) exceeds ₹ 15 lakh, he would be treated as resident but not ordinarily resident in India for tax year 2026-27, since his stay in India is 120 days in the tax year 2026-27 and 480 days (i.e., 120 days x 4 years) in the immediately four preceding tax years.

If his total income (excluding income from foreign sources) does not exceed ₹ 15 lakh, he would be treated as non-resident in India for the tax year 2026-27, since his stay in India is less than 182 days in the tax year 2026-27.

(II) Residential Status of HUF [Section 6(9)]

HUF Would be	
Resident	**Non-resident**
If the **control and management** of its affairs is situated **wholly or partly in India**.	If the **control and management** of the affairs is situated **wholly outside India**

Meaning of the term "control and management"



The expression 'control and management' referred to under section 6 refers to the central control and management and not to the carrying on of day-to-day business by servants, employees or agents.

Control and management mean *de facto* control and management and not merely having the right to control or manage.



The business may be done from outside India and yet its control and management may be wholly within India. Therefore, control and management of a business is said to be situated at a place where the head and brain of the adventure is situated. Merely because the family has a house in India, where some of the members reside in the tax year, does not constitute that place as the seat of control and management of the affairs of the HUF unless important decisions concerning the affairs of the HUF are taken at that place.

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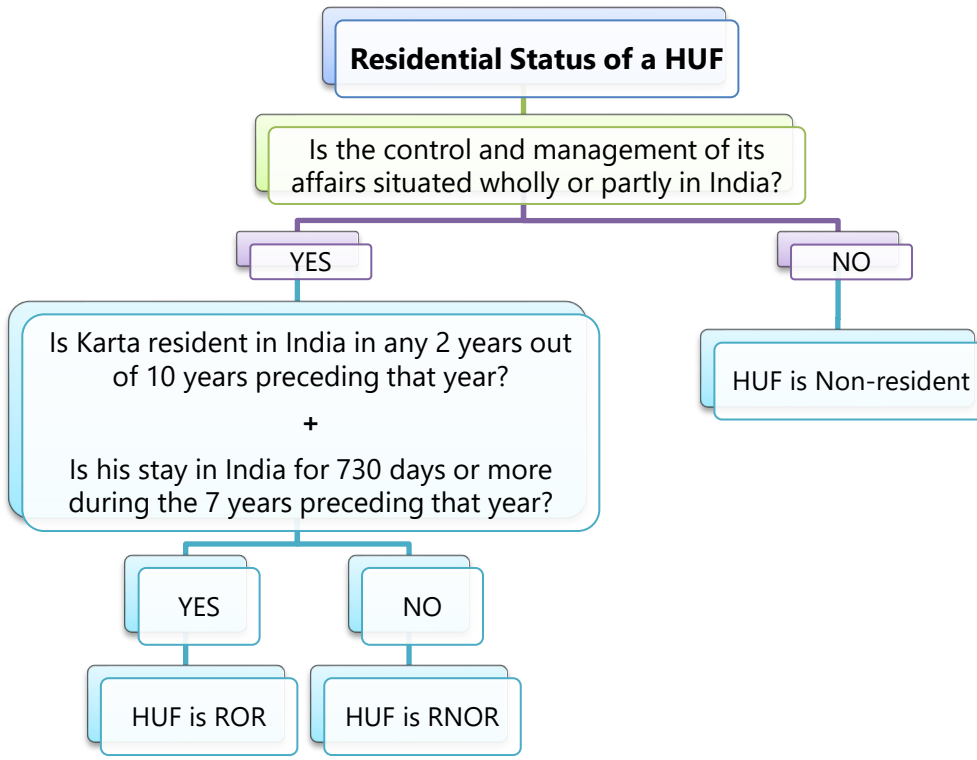
Resident and ordinarily resident/ Resident but not ordinarily resident

For determining whether the HUF is RNOR, the residential status of its Manager (Karta) must be examined by applying the provisions of section 6(13)(a). This requirement applies regardless of whether the Manager is a resident or a non-resident during the tax year.

A HUF would be Resident and ordinarily resident (ROR) in India in any tax year, whose manager i.e., Karta of HUF satisfies both the following additional conditions (as applicable in case of individual) otherwise it will be "Resident but not ordinarily resident" (RNOR). The diagram below explains the process of determining the residential status of an HUF.

Additional conditions [Section 6(13)(a)]:

1. Karta of resident HUF is resident in India in any 2 tax years or more out of 10 years immediately preceding the relevant tax year. And
2. Karta stayed in India cumulatively for 730 days or more in 7 years immediately preceding the relevant tax year.



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(III) Residential status of firms, AoPs, BoIs, local authorities and artificial juridical persons

AoPs, BoIs, local authorities and artificial juridical persons would be	
Resident	**Non-resident**
If the control and management of its affairs is situated wholly or partly in India	If control and management of the affairs is situated wholly outside India



The residential status of the partners/ members is immaterial while determining the residential status of a Firm/AOP/BOI. The residential status of HUF, firm and association of persons are governed by section 6(9). Whereas residential status of residual persons not expressly covered, including a BOI, a local authority, and an artificial juridical person, are governed by section 6(11).

Meaning of Non-resident [Section 2(72)]

A person who is not a "resident", and for the purposes of sections 161, 174 and 312, includes a person who is not ordinarily resident as per section 6(13).

(IV) Residential status of a Company [Section 6(10)]

A company would be **resident in India** in any tax year, if-

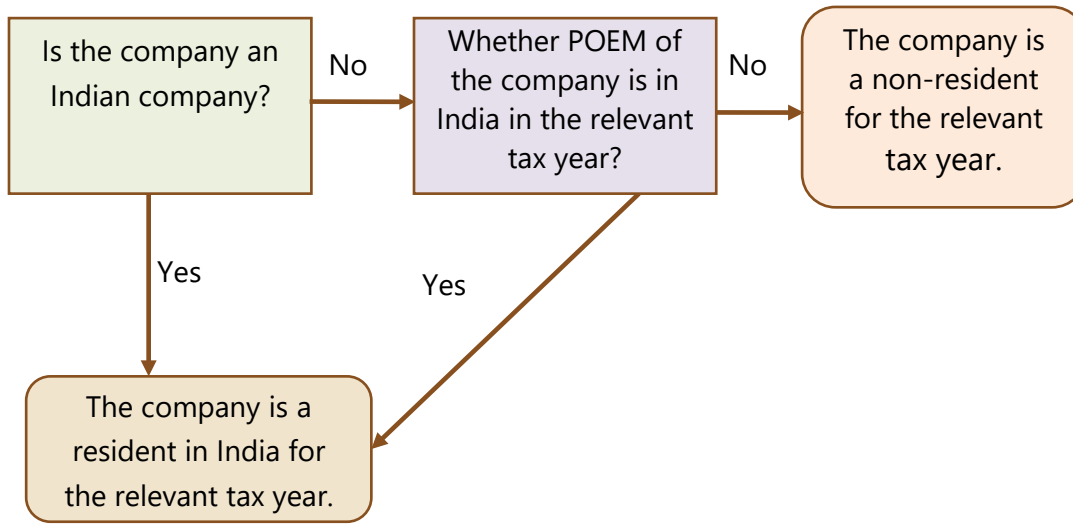
(i) it is an **Indian company**; or

(ii) its place of effective management **(POEM)**, in that year, is in India.

"Place of effective management *"means a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole are, in substance made.*

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DETERMINATION OF RESIDENTIAL STATUS OF A COMPANY



Guiding principles for determination of Place of Effective Management ('POEM') of a Company, other than an Indian Company – [Circular No. 6/2017, dated 24.01.2017 & Circular No. 8/2017, dated 23-02-2017]:



Place of effective management' (POEM) is an internationally recognised test for determination of residence of a company incorporated in a foreign jurisdiction. Most of the tax treaties entered into by India recognises the concept of 'place of effective management' for determination of residence of a company as a tie-breaker rule for avoidance of double taxation.

The CBDT has laid down the following guiding principles to be followed for determination of POEM.

Concept of Substance over form

The determination of the POEM will depend upon the facts and circumstances of a given case. The POEM concept is one of substance over form. It may be noted that an entity may have more than one place of management, but it can have only one

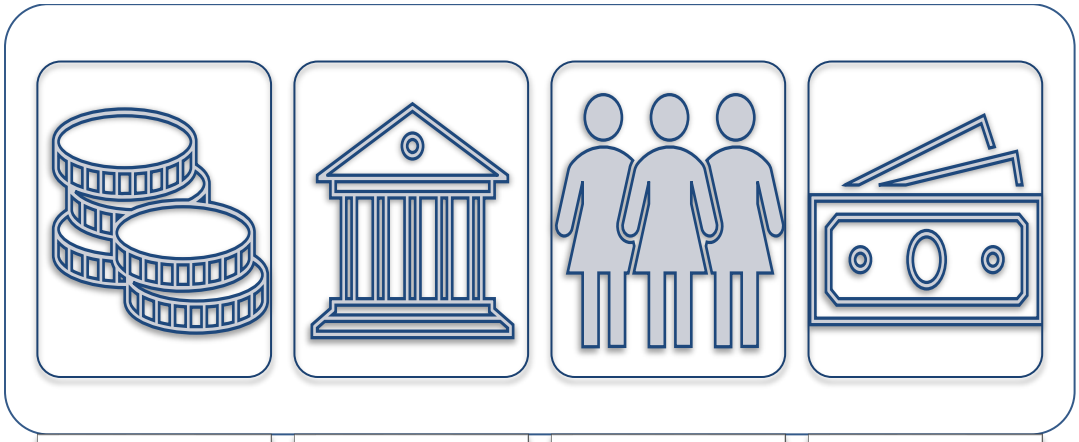
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place of effective management at any point of time. Since "residence" is to be determined for each year, POEM will also be required to be determined on year-to-year basis.

Whether the company is engaged in active business outside India? - An important criterion for determination of POEM

The process of determination of POEM would be primarily based on the fact as to **whether or not the company is engaged in active business outside India.**

A company shall be said to be engaged in 'active business outside India'.



Passive Income	Total Assets	Total Employees	Payroll Expenses
if passive income is not more than 50% of its total income, and	less than 50% of its total asset are situated in India; and	less than 50% of total number of employees are situated in India or are resident in India; and	the payroll expenses incurred on such employees is less than 50% of its total payroll expenditure.

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Meaning of certain terms

Term	Meaning	
Income	(a) As computed for tax purpose in accordance with the laws of the country of incorporation; or (b) As per books of account, where the laws of the country of incorporation does not require such a computation.	
Value of assets	**(a) In case of an individually depreciable asset**	The average of its value for tax purposes in the country of incorporation of the company at the beginning and at end of the tax year; and
	(b) In case of pool of fixed asset, being treated as a block for depreciation	The average of its value for tax purposes in the country of incorporation of the company at the beginning and at end of the year;
	(c) In case of any other asset	Value as per books of account
Number of employees	The average of the number of employees as at the beginning and at the end of the year and shall include persons, who though not employed directly by the company, perform tasks similar to those performed by the employees.	
Payroll	This term includes the cost of salaries, wages, bonus, and all other employee compensation including related pension and social costs borne by the employer.	
Passive income	It is the aggregate of, - (i) income from the transactions where both the purchase and sale of goods is from/to its associated enterprises; and (ii) income by way of royalty, dividend, capital gains, interest, or rental income; However, any income by way of interest shall not be considered to be passive income in case of a company which is engaged in the business of banking or is a public financial institution, and its activities are regulated as such under the applicable laws of the country of incorporation	

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Place of Effective Management

(i) In case of Companies engaged in Active Business outside India

POEM of a company engaged in active business shall be presumed to be outside India if the majority of the board meeting are held outside India.

However, in case the Board is not exercising its powers of management and such powers are being exercised by either the holding company or any other person, resident in India, then POEM shall be considered to be in India.

For this purpose, merely because the Board of Directors (BOD) follows general and objective principles of global policy of the group laid down by the parent entity which may be in the field of Payroll functions, Accounting, Human resource (HR) functions, IT infrastructure and network platforms, Supply chain functions, Routine banking operational procedures, and not being specific to any entity or group of entities per se; would not constitute a case of BoD of companies standing aside.

CBDT Circular No. 25/2017, dated 23.10.2017 clarifies that so long as the Regional Headquarter operates for subsidiaries/ group companies in a region within the general and objective principles of global policy of the group laid down by the parent entity in the field of Payroll functions, Accounting, HR functions, IT infrastructure and network platforms, Supply chain functions, Routine banking operational procedures, and not being specific to any entity or group of entities per se; it would, in itself, not constitute a case of BoD of companies standing aside and such activities of Regional Headquarter in India alone will not be a basis for establishment of POEM for such subsidiaries/ group companies.

It is further mentioned in the said Circular that the provisions of General Anti-Avoidance Rule contained in Chapter XI of the Income-tax Act, 2025 may get triggered in such cases where the above clarification is found to be used for abusive/ aggressive tax planning.

For the purpose of determining whether the company is engaged in active business outside India, the average of the data of the tax year and two years prior to that shall be considered. In case the company has been in existence for a shorter period, then data of such period shall be considered. Where the accounting year for tax purposes, in accordance with laws of country of incorporation of the company, is different from the tax year, then, data of the accounting year that ends during the relevant tax year and two accounting years preceding it shall be considered.

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It has been clarified that mere following of global policies laid down by the Indian holding company would not constitute that Board is standing aside.

(ii) In case of Companies not engaged in active business outside India

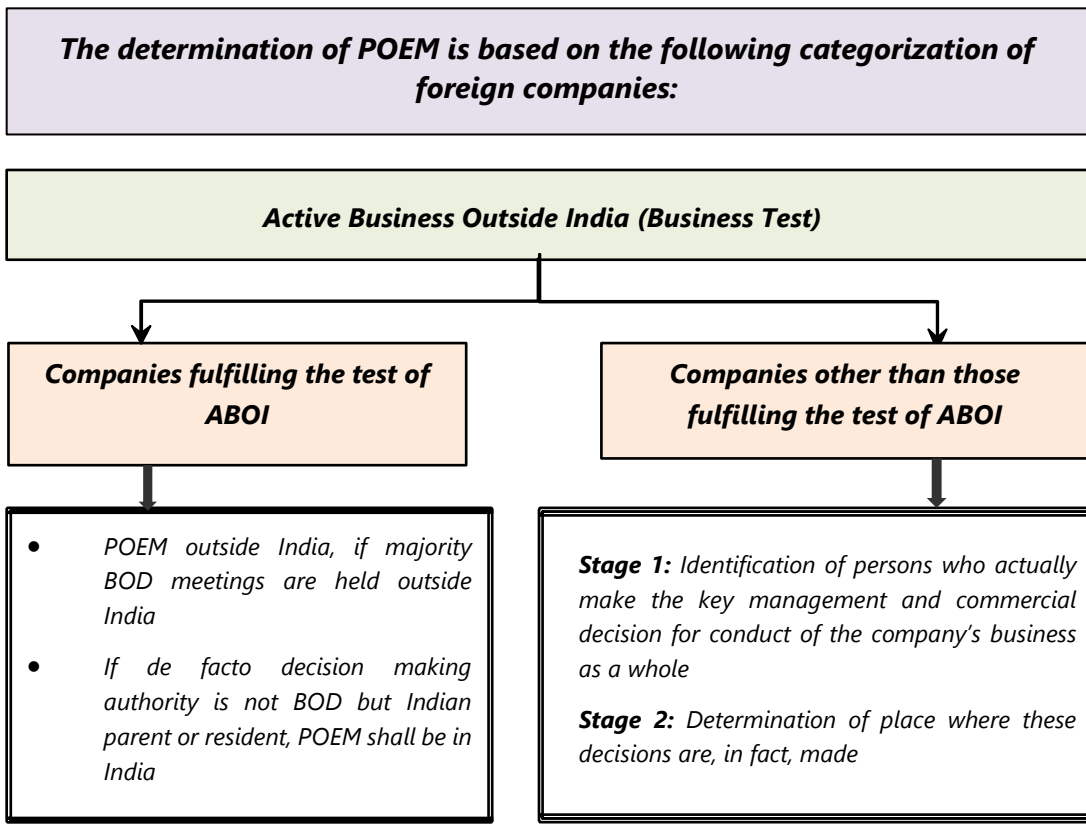
The guidelines provide a two-stage process for determination of POEM in case of companies not engaged in active business.

(a) **First stage**: Identifying the person(s) who actually make the key management and commercial decisions for the conduct of the company as a whole.

(b) **Second stage**: Determine the place where these decisions are, in fact, being made.

The place where these management decisions are taken would be more important than the place where such decisions are implemented. For the purpose of determination of POEM, it is the substance which would be conclusive rather than the form.

The conditions specified in the circular are depicted in the flow charts below:



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What is ABOI test?

A company is said to be engaged in ABOI, if it fulfills the cumulative conditions of:

- Its passive income* (wherever earned) is 50% or less of its total income
- Less than 50% of its total assets situated in India.
- Less than 50% of the total number of employees are situated in India or are residents in India.
- Payroll expenses incurred on such employees are less than 50% of its total payroll expenditure.

** Passive income of a company shall be aggregate of:*

(i) Income from the transactions where both the purchase and sale of goods is from/ to its associated enterprises; and

(ii) income by way of royalty, dividend, capital gains, interest (except for banking companies and public financial institutions) or rental income whether or not involving associated enterprises.

Some of the guiding principles which may be taken into account for determining the POEM are as follows:

(a) Location where the Board of Directors meet and makes decisions

This location may be the place of effective management of a company provided, the Board –

(i) retains and exercises its authority to govern the company; and

(ii) does, in substance, make the key management and commercial decisions necessary for the conduct of the company's 'business as a whole'.

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It may be mentioned that mere formal holding of board meetings at a place would by itself not be conclusive for determination of POEM being located at that place. If the key decisions by the directors are in fact being taken in a place other than the place where the formal meetings are held then such other place would be relevant for POEM.

As an example this may be the case where the board meetings are held in a location distinct from the place where head office of the company is located or such location is unconnected with the place where the predominant activity of the company is being carried out.

If a Board has *de facto* delegated the authority to make the key management and commercial decisions for the company to the senior management or any other person including a shareholder, promoter, strategic or legal or financial advisor etc. and does nothing more than routinely ratifying the decisions that have been made, the company's place of effective management will ordinarily be the place where these senior managers or the other person make those decisions.

"Senior Management" in respect of a company means the person or persons who are generally responsible for developing and formulating key strategies and policies for the company and for ensuring or overseeing the execution and implementation of those strategies on a regular and on-going basis. While designation may vary, these persons may include:

(i) Managing Director or Chief Executive Officer;

(ii) Financial Director or Chief Financial Officer;

(iii) Chief Operating Officer; and

(iv) The heads of various divisions or departments (for example, Chief Information or Technology Officer, Director for Sales or Marketing).

(b) Location of Executive Committee in case powers are delegated by the Board

A company's board may delegate some or all of its authority to one or more committees such as an executive committee consisting of key members of senior management. In these situations, the location where the members of the executive committee are based and where that committee develops and formulates the key

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strategies and policies for mere formal approval by the full board will often be considered to be the company's place of effective management.

The delegation of authority may be either *de jure* (by means of a formal resolution or Shareholder Agreement) or *de facto* (based upon the actual conduct of the board and the executive committee).

(c) Location of Head Office

The location of a company's head office will be a very important factor in the determination of the company's place of effective management because it often represents the place where key company decisions are made. The following points need to be considered for determining the location of the head office of the company: -

If the company's senior management and their support staff are based in a single location and that location is held out to the public as the company's principal place of business or headquarters then that location is the place where head office is located.

If the company is more decentralized (for example where various members of senior management may operate, from time to time, at offices located in the various countries) then the company's head office would be the location where these senior managers,-

(i) are primarily or predominantly based; or

(ii) normally return to following travel to other locations; or

(iii) meet when formulating or deciding key strategies and policies for the company as a whole.

Members of the senior management may operate from different locations on a more or less permanent basis and the members may participate in various meetings via telephone or video conferencing rather than by being physically present at meetings in a particular location. In such situation the head office would normally be the location, if any, where the highest level of management (for example, the Managing Director and Financial Director) and their direct support staff are located.

In situations where the senior management is so decentralized that it is not possible to determine the company's head office with a reasonable degree of certainty, the

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location of a company's head office would not be of much relevance in determining that company's place of effective management.

"Head Office" of a company would be the place where the company's senior management and their direct support staff are located or

if they are located at more than one location

the place where they are primarily or predominantly located. A company's head office is not necessarily the same as the place where the majority of its employees work or where its board typically meets.

(d) Use of modern technology

The use of modern technology impacts the place of effective management in many ways. It is no longer necessary for the persons taking decision to be physically present at a particular location. Therefore, physical location of board meeting or executive committee meeting or meeting of senior management may not be where the key decisions are in substance being made. In such cases the place where the directors or the persons taking the decisions or majority of them usually reside may also be a relevant factor.

(e) Decision via circular resolution or round robin voting

In case of circular resolution or round robin voting the factors like, the frequency with which it is used, the type of decisions made in that manner and where the parties involved in those decisions are located etc. are to be considered. It cannot be said that proposer of decision alone would be relevant but based on past practices and general conduct; it would be required to determine the person who has the authority and who exercises the authority to take decisions. The place of location of such person would be more important.

(f) Decisions made by shareholders are not relevant factor in determination of POEM

The decisions made by shareholder on matters which are reserved for shareholder decision under the company laws are not relevant for determination of a company's place of effective management. Such decisions may include sale of all or substantially all of the company's assets, the dissolution, liquidation or deregistration of the company, the modification of the rights attaching to various

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classes of shares or the issue of a new class of shares etc. These decisions typically affect the existence of the company itself or the rights of the shareholders as such, rather than the conduct of the company's business from a management or commercial perspective and are therefore, generally not relevant for the determination of a company's place of effective management.

However, the shareholder's involvement can, in certain situations, turn into that of effective management. This may happen through a formal arrangement by way of shareholder agreement etc. or may also happen by way of actual conduct. As an example, if the shareholders limit the authority of board and senior managers of a company and thereby remove the company's real authority to make decision then the shareholder guidance transforms into usurpation and such undue influence may result in effective management being exercised by the shareholder.

Therefore, whether the shareholder involvement is crossing the line into that of effective management is one of fact and has to be determined on case-to-case basis only.

(g) Day to day routine operational decisions are not relevant for determination of POEM

It may be clarified that day to day routine operational decisions undertaken by junior and middle management shall not be relevant for the purpose of determination of POEM. The operational decisions relate to the oversight of the day-to-day business operations and activities of a company whereas the key management and commercial decision are concerned with broader strategic and policy decision. For example, a decision to open a major new manufacturing facility or to discontinue a major product line would be examples of key commercial decisions affecting the company's business as a whole. By contrast, decisions by the plant manager appointed by senior management to run that facility, concerning repairs and maintenance, the implementation of company-wide quality controls and human resources policies, would be examples of routine operational decisions. In certain situations, it may happen that person responsible for operational decision is the same person who is responsible for the key management and commercial decision. In such cases it will be necessary to distinguish the two type of decisions and thereafter assess the location where the key management and commercial decisions are taken.

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If the above factors do not lead to clear identification of POEM, then the final guidelines provide that following secondary factors may be considered:

- Place where main and substantial activity of the company is carried out; or
- Place where the accounting records of the company are kept.

It needs to be emphasized that the determination of POEM is to be based on all relevant facts related to the management and control of the company, and is not to be determined on the basis of isolated facts that by itself do not establish effective management, as illustrated by the following examples:

(i) The fact that a foreign company is completely owned by an Indian company will not be conclusive evidence that the conditions for establishing POEM in India have been satisfied.

(ii) The fact that there exists a Permanent Establishment of a foreign entity in India would itself not be conclusive evidence that the conditions for establishing POEM in India have been satisfied.

(iii) The fact that one or some of the Directors of a foreign company reside in India will not be conclusive evidence that the conditions for establishing POEM in India have been satisfied.

(iv) The fact of local management being situated in India in respect of activities carried out by a foreign company in India will not, by itself, be conclusive evidence that the conditions for establishing POEM have been satisfied.

(v) The existence in India of support functions that are preparatory and auxiliary in character will not be conclusive evidence that the conditions for establishing POEM in India have been satisfied.

It is reiterated that the above principles for determining the POEM are for guidance only. No single principle will be decisive in itself. The above principles are not to be seen with reference to any particular moment in time rather activities performed over a period of time, during the tax year, need to be considered.

In other words, a "snapshot" approach is not to be adopted. Further, based on the facts and circumstances if it is determined that during the tax year the POEM is in India and also outside India then POEM shall be presumed to be in India if it has been mainly /predominantly in India.

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The CBDT also clarified that the Assessing Officer (AO) shall, before initiating any proceedings for holding a company incorporated outside India, on the basis of its POEM, as being resident in India, seek prior approval of the Principal Commissioner or the Commissioner, as the case may be.

Further, in case the AO proposes to hold a company incorporated outside India, on the basis of its POEM, as being resident in India then any such finding shall be given by the AO after seeking prior approval of the collegium of three members consisting of the Principal Commissioners or the Commissioners, as the case may be, to be constituted by the Principal Chief Commissioner of the region concerned, in this regard. The collegium so constituted shall provide an opportunity of being heard to the company before issuing any directions in the matter.



Company A Co. is a sourcing entity, for an Indian multinational group, incorporated in country UAE and is 100% subsidiary of Indian company (B Co.). The warehouses and stock in them are the only assets of the company and are located in country UAE. All the employees of the company are also in country UAE. The average income wise breakup of the company's total income for three years is, -

(i) 30% of income is from transaction where purchases are made from parties which are non-associated enterprises and sold to associated enterprises.

(ii) 30% of income is from transaction where purchases are made from associated enterprises and sold to associated enterprises.

(iii) 30% of income is from transaction where purchases are made from associated enterprises and sold to non-associated enterprises. and

(iv) 10% of the income is by way of interest.

Interpretation: In this case, passive income is 40% of the total income of the company. The passive income consists of, -

(i) 30% income from the transaction where both purchase and sale is from/to associated enterprises; and

(ii) 10% income from interest.

The A Co. satisfies the first requirement of the test of active business outside India. Since no assets or employees of A Co. are in India the other requirement of the test is also satisfied. Therefore, company is engaged in active business outside India.

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The other facts remain same as that in Example 1 with the variation that A Co. has a total of 50 employees. 47 employees, managing the warehouse, storekeeping, and accounts of the company, are in country UAE. The Managing Director (MD), Chief Executive Officer (CEO) and sales head are resident in India. The total annual payroll expenditure on these 50 employees is of ₹ 5 crore. The annual payroll expenditure in respect of MD, CEO and sales head is of ₹ 3 crore.

Interpretation: Although the first limb of active business test is satisfied by A Co. as only 40% of its total income is passive in nature. Further, more than 50% of the employees are also situated outside India. All the assets are situated outside India. However, the payroll expenditure in respect of the MD, the CEO and the sales head being employee's resident in India exceeds 50% of the total payroll expenditure. Therefore, A Co. is not engaged in active business outside India.



The basic facts are same as in Example 1. Further facts are that all the directors of the A Co. are Indian residents. During the relevant tax year 5 meetings of the Board of Directors is held of which two were held in India and 3 outside India with two in country UAE and one in country Oman.

Interpretation: The A Co. is engaged in active business outside India as the facts indicated in Example 1 establish. The majority of board meetings have been held outside India. Therefore, the POEM of A Co. shall be presumed to be outside India.



The facts are same as in Example 3 but it is established by the Assessing Officer that although A Co.'s senior management team signs all the contracts, for all the contracts above ₹ 10 lakh the A Co. must submit its recommendation to B Co. and B Co. makes the decision whether or not the contract may be accepted. It is also seen that during the tax year more than 99% of the contracts are above ₹ 10 lakh and over past years also the same trend in respect of value contribution of contracts above ₹ 10 lakh is seen.

Interpretation: These facts suggest that the effective management of the A Co. may have been usurped by the parent company B Co. Therefore, POEM of A Co. may in such cases be not presumed to be outside India even though A Co. is engaged in active business outside India and majority of board meeting are held outside India.

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An Indian multinational group has a local holding company A Co. in country X. The A Co. also has 100% downstream subsidiaries B Co. and C Co. in country X and D Co. in country Y. The A Co. has income only by way of dividend and interest from investments made in its subsidiaries. The Place of Effective Management of A Co. is in India and is exercised by ultimate parent company of the group. The subsidiaries B, C and D are engaged in active business outside India. The meetings of Board of Director of B Co., C Co. and D Co. are held in country X and Y respectively.

Interpretation: Merely because the POEM of an intermediate holding company is in India, the POEM of its subsidiaries shall not be taken to be in India. Each subsidiary has to be examined separately. As indicated in the facts since B Co., C Co., and D Co. are independently engaged in active business outside India and majority of Board meetings of these companies are also held outside India. The POEM of B Co., C Co., and D Co. shall be presumed to be outside India.



*Further the **CBDT vide Circular no. 8/2017 dated 23.02.2017** also clarified that POEM guidelines shall not apply to a company having turnover or gross receipts of ₹ 50 crores or less in a financial year.*

ILLUSTRATION 2

ABC Inc., a Swedish company headquartered at Stockholm, not having a permanent establishment in India, has set up a liaison office in Mumbai in April, 2026 in compliance with RBI guidelines to look after its day to day business operations in India, spread awareness about the company's products and explore further opportunities. The liaison office takes decisions relating to day-to-day routine operations and performs support functions that are preparatory and auxiliary in nature. The significant management and commercial decisions are, however, in substance made by the Board of Directors at Sweden. Determine the residential status of ABC Inc. for tax year 2026-27.

SOLUTION

Section 6(10) provides that a company would be resident in India in any tax year, if-

(i) it is an Indian company; or

(ii) its place of effective management, in that year, is in India.

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In this case, ABC Inc. is a foreign company. Therefore, it would be resident in India for tax year 2026-27 only if its place of effective management, in that year, is in India.

Section 6(10)(b) defines "place of effective management" to mean 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.

In the case of ABC Inc., its place of effective management for Tax Year 2026-27 is not in India, since the significant management and commercial decisions are, in substance, made by the Board of Directors outside India in Sweden.

ABC Inc. has only a liaison office in India through which it looks after its routine day to day business operations in India. The place where decisions relating to day-to-day routine operations are taken and support functions that are preparatory or auxiliary in nature are performed are not relevant in determining the place of effective management.

Hence, ABC Inc., being a foreign company is a non-resident for the tax year 2026-27, since its place of effective management is outside India in the tax year 2026-27.

Transition Mechanism for a company incorporated outside India and has not been assessed to tax earlier [Section 220]

A transition mechanism has been provided in section 220 for a company which is incorporated outside India, which has not been assessed to tax in India earlier tax years and has become resident in India for the first time due to application of POEM.

(a) Section 220 empowers the Central Government to notify exception, modification and adaptation subject to which, the provisions of the Act relating to

- computation of income,
- treatment of unabsorbed depreciation
- set-off or carry forward and set off of losses
- collection and recovery of taxes
- special provision relating to avoidance of tax,

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shall apply in a case where a foreign company is said to be resident in India due to its POEM being in India for the first time and the said company has never been resident in India before.

(b) In a case where the determination regarding foreign company to be resident in India has been made in the assessment proceedings relevant to any tax year, then, these transition provisions would also cover any subsequent tax year, which ends on or before the date on which such assessment proceeding is completed. In effect, the transition provisions would also cover any subsequent tax year ending upto the date of an assessment proceeding. However, once the transition is complete, then, normal provisions of the Act would apply.

(c) In the notification issued by the Central Government, certain conditions including procedural conditions subject to which these adaptations shall apply can be provided for and in case of failure to comply with the conditions, the benefit of such notification would not be available to the foreign company.

Accordingly, where in a tax year, any benefit, exemption or relief has been claimed and granted to the foreign company in accordance with the notification, and subsequently, there is failure to comply with any of the conditions specified therein, then –

(i) the benefit, exemption or relief shall be deemed to have been wrongly allowed.

(ii) the Assessing Officer may re-compute the total income of the assessee for the said tax year and make the necessary amendment as if the exceptions, modifications, and adaptations as per the notification does not apply; and

(iii) the provisions of section 287 shall, so far as may be, apply thereto and the period of four years for rectification of mistake apparent from the record has to be reckoned from the end of the tax year in which the failure to comply with the condition stipulated in the notification takes place.

(d) Every notification issued in exercise of this power by the Central Government shall be laid before each house of the Parliament.

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Notification No. 29/2018, dated 22nd June, 2018



Accordingly, the Central Government has, *vide* Notification No. 29/2018, dated 22nd June, 2018, specified the exceptions, modifications and adaptions subject to which, the provisions of the Act relating to computation of income, treatment of unabsorbed depreciation, set-off or carry forward and set off of losses, special provision relating to avoidance of tax and the collection and recovery of taxes shall apply in a case where a foreign company is said to be resident in India in any tax year on account of its POEM being in India and the such foreign company has not been resident in India before the said tax year.

Particulars	Provisions
Determination of opening WDV	**<u>If the foreign company is assessed to tax in the foreign jurisdiction</u>** **Where depreciation is required to be taken into account for the purpose of computation of its taxable income**, the WDV of the depreciable asset as per the tax record in the foreign country on the 1st day of the tax year shall be adopted as the opening WDV for the said tax year. **Where WDV is not available as per tax records,** the WDV shall be calculated assuming that the asset was installed, utilised and the depreciation was actually allowed as per the provisions of the laws of that foreign jurisdiction. The WDV so arrived at as on the 1st day of the tax year shall be adopted to be the opening WDV for the said tax year. **<u>If the foreign company is not assessed to tax in the foreign jurisdiction</u>** WDV of the depreciable asset as appearing in the books of account as on the 1st day of the tax year maintained in accordance with the laws of that foreign jurisdiction shall be adopted as the opening WDV for the said tax year.
Brought forward loss and unabsorbed depreciation	**<u>If the foreign company is assessed to tax in the foreign jurisdiction</u>** Brought forward loss and unabsorbed depreciation as per the tax record shall be determined year wise on the 1st day of the said tax year.

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	<u>If the foreign company is not assessed to tax in the foreign jurisdiction</u> Brought forward loss and unabsorbed depreciation as per the books of account prepared in accordance with the laws of that country shall be determined year wise on the 1st day of the said tax year.
	<u>Other provisions</u> Such brought forward loss and unabsorbed depreciation shall be deemed as loss and unabsorbed depreciation brought forward as on the 1st day of the said tax year and shall be allowed to be set off and carried forward in accordance with the provisions of the Act for the remaining period calculated from the year in which they occurred for the first time taking that year as the first year. However, the losses and unabsorbed depreciation of the foreign company shall be allowed to be set off only against such income of the foreign company which has become chargeable to tax in India on account of it becoming resident in India due to application of POEM. In cases where the brought forward loss and unabsorbed depreciation originally adopted in India are revised or modified in the foreign jurisdiction due to any action of the tax or legal authority, the amount of the loss and unabsorbed depreciation shall be revised or modified for the purposes of set off and carry forward in India.
Period of profit and loss account and balance sheet in cases where accounting year of foreign company does not end on 31st March	The foreign company is required to prepare profit and loss account and balance sheet for the period starting from the date on which the accounting year immediately following said accounting year begins, upto 31st March of the year immediately preceding the period beginning with 1st April and ending on 31st March during which the foreign company has become resident. The foreign company is also required to prepare profit and loss account and balance sheet for succeeding periods of twelve months, beginning from 1st April and ending on 31st March, till the year the foreign company remains resident in India on account of its POEM.

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	 *If the accounting year of the foreign company is a calendar year and the company becomes resident in India during tax year 2026-27 for the first time due to its POEM being in India, then, the company is required to prepare profit and loss account and balance sheet for the period 1st January, 2026 to 31st March, 2026. It is also required to prepare profit and loss account and balance sheet for the period 1st April, 2026 to 31st March, 2027.* *For the purpose of carry forward of loss and unabsorbed depreciation in this case, since the period 1st January, 2026 to 31st March, 2026 is less than 6 months, it is to be included in the accounting year immediately preceding the accounting year in which the foreign company is held to be resident in India for the first time. Accordingly, the profit and loss and balance sheet of the Fifteen (15) month period from 1st January, 2026 to 31st March, 2027 is to be prepared.*  *If the accounting year of the foreign company is from 1st July to 30th June and the company becomes resident in India during tax year 2026-27 for the first time due to its POEM being in India, then, the company is required to prepare profit and loss account and balance sheet for the period 1st July, 2025 to 31st March, 2026. It is also required to prepare profit and loss account and balance sheet for the period 1st April 2026 to 31st March 2027.* For the purpose of carry forward of loss and unabsorbed depreciation in this case, since the period is more than 6 months, it is to be treated as a separate accounting year. The loss and unabsorbed depreciation as per tax record or books of account, as the case may be, of the foreign company shall, be allocated on proportionate basis.
Applicability of provisions of Chapter XIX (TDS provisions)	Where more than one provision of Chapter XIX of the Act applies to the foreign company as resident as well as foreign company, the provision applicable to the foreign company alone shall apply. Compliance to those provisions of Chapter XIX of the Act as are applicable to the foreign company prior to it

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	becoming Indian resident shall be considered sufficient compliance to the provisions of said Chapter. The provisions of section 400(3) relating to application to Assessing Officer to determine the appropriate proportion of sum chargeable to tax shall apply in such manner so as to include payment to the foreign company.
Availability of deduction under section 159 or 160 (Foreign tax credit)	The foreign company shall be entitled to relief or deduction of taxes paid in accordance with the provisions of section 159 or section 160 of the Act.
Non applicability of the notification	The above exceptions, modifications and adaptations shall not apply in respect of such income of the foreign company which otherwise would have been chargeable to tax in India, even if the foreign company had not become Indian resident.
Applicability of the notification where foreign company becomes resident in the subsequent tax year also	In a case where the foreign company is said to be resident in India during a tax year, immediately succeeding a tax year during which it is said to be resident in India; the exceptions, modifications and adaptations shall apply to the said tax year subject to the condition that the WDV, the brought forward loss and the unabsorbed depreciation to be adopted on the 1st day of the tax year shall be those which have been arrived at on the last day of the preceding tax year in accordance with the provisions of this notification.
No effect on other transactions	Any transaction of the foreign company with any other person or entity under the Act shall not be altered only on the ground that the foreign company has become Indian resident.
Applicability of other provisions relating to foreign company	Subject to the above exceptions, modifications and adaptions specifically provided vide this notification, the foreign company shall continue to be treated as a foreign company even if it is said to be resident in India and all the provisions of the Act shall apply accordingly. Consequently, the provisions specifically applicable to— (i) a foreign company, shall continue to apply to it; (ii) non-resident persons, shall not apply to it; and

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	(iii) the provisions specifically applicable to resident, shall apply to it.
Applicability of tax rate on foreign company	In case of conflict between the provision applicable to the foreign company as resident and the provision applicable to it as foreign company, the later shall generally prevail. Therefore, the rate of tax in case of foreign company i.e., 35% shall remain the same, i.e., rate of income-tax applicable to the foreign company even though residency status of the foreign company changes from non-resident to resident on the basis of POEM.
Applicability of notification	This notification shall be deemed to have come into force from 1st April 2017.
Meaning of foreign jurisdiction	The place of incorporation of the foreign company.
Applicability of rule 206 of the Income-tax Rules, 2026.	The rate of exchange for conversion into rupees of value expressed in foreign currency, wherever applicable, shall be in accordance with provision of Rule 206 of the Income-tax Rules, 2026. [Rule 206 is given as Annexure 1 at the end of this module]

21.3 SCOPE OF TOTAL INCOME [SECTION 5]

As per section 5, all persons, whether resident or not, are chargeable to tax in respect of their income accrued, arisen, received or deemed to accrue, arise or to be received in India whereas a resident alone (resident and ordinarily resident in the case of individuals and HUF) is chargeable to tax in respect of income which accrues or arises outside India.

The ambit of total income of the three classes of assessees would be as follows:

(i) Resident and ordinarily resident (ROR)

As per section 5(1), the total income of any tax year of an ROR would consist of:

(i) income received or deemed to be received in India in that year by or on behalf of such person;

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(ii) income which accrues or arises or is deemed to accrue or arise in India to such person in that year; and

(iii) income which accrues or arises outside India even if it is not received or brought into India during the tax year.

In simpler words, the global income of a ROR is chargeable to tax in India.

(ii) Resident but not ordinarily resident (RNOR)

Under section 5(1), the total income of any tax year of an RNOR would consist of –

(i) income received or deemed to be received in India in that year by or on behalf of such person;

(ii) income which accrues or arises or is deemed to accrue or arise in India in that year; and

(iii) income derived from a business controlled in or profession set up in India, even though it accrues or arises outside India.



All other income accruing or arising outside India which is not received or deemed to be received or deemed to accrue or arise in India would not be included in his total income.

(iii) Non-resident

As per section 5(2) total income of a tax year of a non-resident include all income from whatever source derived which:

(i) is received or deemed to be received in India in that year by or on behalf of such person; and

(ii) accrues or arises or is deemed to accrue or arise to such person in India in that year.

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Clarification regarding liability to income-tax in India of a non-resident seafarer receiving remuneration in NRE (Non-Resident External) account maintained with an Indian Bank [Circular No.13/2017, dated 11.04.2017 and Circular No.17/2017, dated 26.04.2017]

Income by way of salary, received by non-resident seafarers, for services rendered outside India on foreign ships, is being subjected to tax in India for the reason that the salary has been received by the seafarer into the NRE bank account maintained in India by the seafarer. On receiving representations in this regard, the CBDT examined the matter and noted that section 5(2)(a) of the Income-tax Act, 2025 provides that only such income of a non-resident shall be subjected to tax in India that is either received or is deemed to be received in India.

Accordingly, the CBDT has, vide this circular, clarified that salary accrued to a non-resident seafarer for services rendered outside India on a foreign going ship (with Indian flag or foreign flag) shall not be included in the total income merely because the said salary has been credited in the NRE account maintained with an Indian bank by the seafarer.

Meaning of income 'accruing' and 'due'

Accrue refers to the right to receive income, whereas due refers to the right to enforce payment of the same. For e.g. salary for work done in December will accrue throughout the month, day to day, but will become due on the salary bill being passed on 31st December or 1st January.

Similarly, on Government securities, interest payable on specified dates arise during the period of holding, day to day, but will become due for payment on the specified dates.



Interest on Government securities is usually payable on specified dates, say on 1st January and 1st July. In all such cases, the interest would be said to accrue from 1st July to 31st December and on 1st January, it will fall due for payment.

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Important Note - It must be noted that income which has been taxed on accrual basis cannot be assessed again on receipt basis, as it will amount to double taxation.

Accordingly, sub-section (3) clarifies that Income accruing or arising outside India is not treated as received in India merely because it is recorded in a balance sheet prepared in India.

Additionally, sub-section 4 clarifies that if an income has already been included in a person's total income because:

(a) it has accrued or arisen, or

(b) it is deemed to have accrued or arisen,

then the same income cannot again be included on the basis that it is received or deemed to be received in India.

The above provisions would be clearer with the help of the following table:

Summary of scope of Total Income

Particulars	Resident and Ordinarily Resident	Not ordinarily Resident	Non-Resident
Income received or deemed to be received in India whether earned in India or elsewhere	Yes	Yes	Yes
Income which accrues or arises or is deemed to accrue or arise in India during the tax year whether received in India or elsewhere	Yes	Yes	Yes
Income which accrues or arises outside India and is derived from a business controlled in or profession set up in India	Yes	Yes	No

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Income which accrues or arises outside India and received outside India in the tax year from any other source	Yes	No	No
Income which accrues or arises outside India and received outside India during the year(s) preceding the relevant tax year and remitted to India during the relevant tax year	No	No	No

21.4 INCOME DEEMED TO BE RECEIVED AND DIVIDEND DEEMED TO BE INCOME IN A TAX YEAR [SECTION 7]

All assessees are liable to tax in respect of the income received or deemed to be received by them in India during the tax year irrespective of -

(i) their residential status, and

(ii) the place of its accrual.

Income is to be included in the total income of the assessee immediately on its actual or deemed receipt. The receipt of income refers to only the first occasion when the recipient gets the money under his control. Therefore, when once an amount is received as income, remittance or transmission of that amount from one place or person to another does not constitute receipt of income in the hands of the subsequent recipient or at the place of subsequent receipt.

Section 7 is divided into two parts. **Sub-section (1)** specifies the situations in which income is **deemed to be received in a tax year**, even if it is not actually received during that year. **Sub-section (2)** deals with dividend referred to in section 2(40)(a) to (e) **and interim dividends** and sets out the point in time when such dividends are **deemed to be received** for tax purposes.

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Income Deemed to be Received in tax year

Annual increase in an employee's recognised provident fund consisting of interest credited in excess of 9.5% p.a

Transferred balance from unrecognised provident fund brought into a recognised provident fund (being the employer's contribution and interest thereon).

Employer's contribution (including Central Government) to an employee's pension scheme under Section 124.



Dividend deemed to be income in a tax year

Final Dividend: Considered income of the **year in which it is declared, distributed, or paid**.

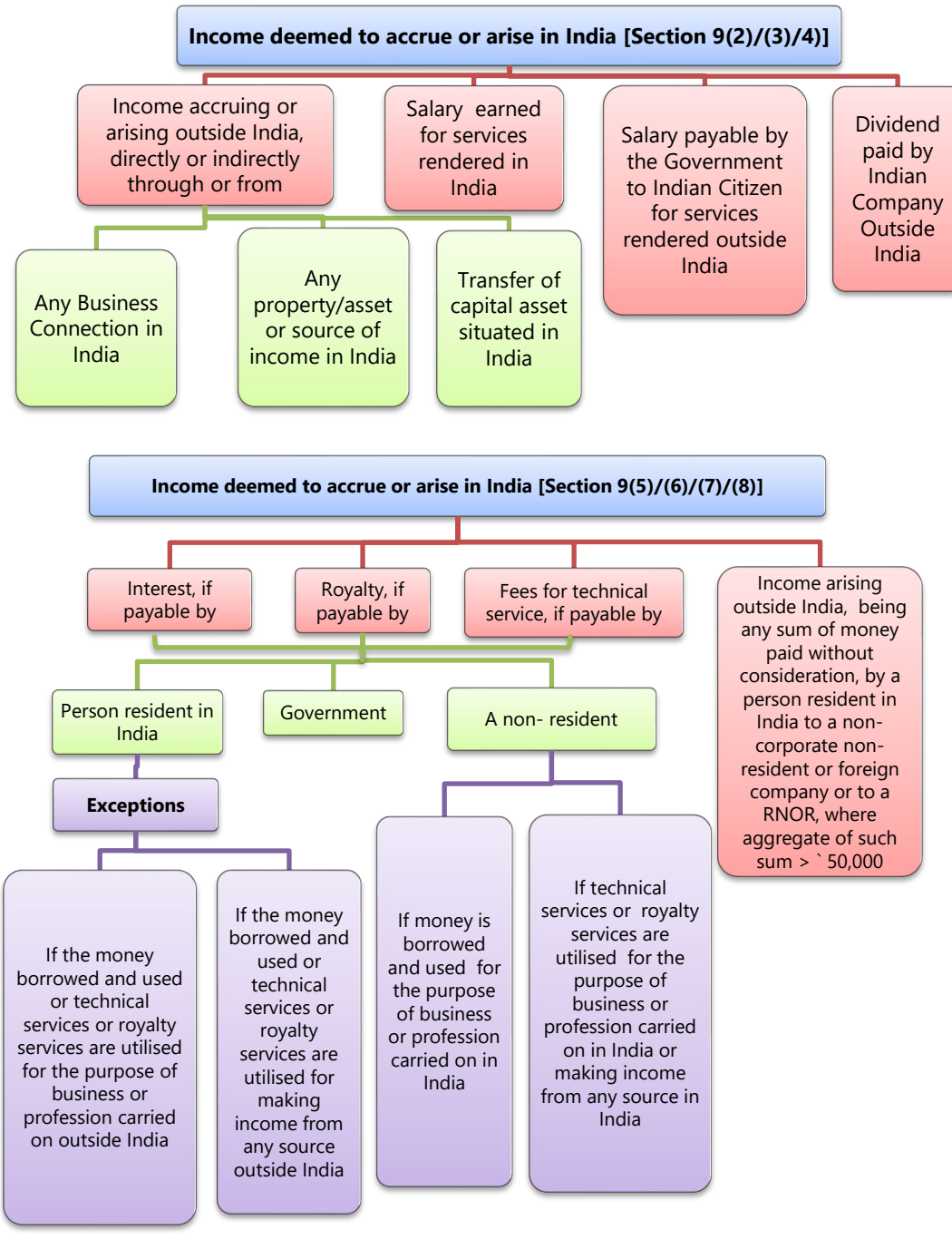
Interim Dividend: Considered income of the tax **year in which it is unconditionally made available** to the shareholder

21.5 INCOME DEEMED TO ACCRUE OR ARISE IN INDIA [SECTION 9]

Under section 9, certain types of income are deemed to accrue or arise in India even though they may actually accrue or arise outside India. It lays down the provisions relating to income deemed to accrue or arise in India, including income arising through a business connection in India, and the source rules for income such as interest, dividend, royalty, fees for technical services, and income from the transfer of a capital asset situated in India, among others.

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Overview of Section 9



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We will begin by examining what constitutes a business connection. Thereafter, we will analyse the circumstances in which income is deemed to accrue or arise directly or indirectly from the transfer of a capital asset situated in India. Following this, we will discuss the remaining sub-sections of section 9. The categories of income which are deemed to accrue or arise in India are:

(I) Income accruing or arising outside India [Section 9(2)]

Section 9(2) cover situations where any income accruing or arising to an assessee in any place outside India whether directly or indirectly

(i) through or from any business connection in India,

(ii) through or from any property in India,

(iii) through or from any asset or source of income in India or

(iv) through the transfer of a capital asset situated in India

would be deemed to accrue or arise in India**.**

Section 9(9) deals with the provisions relating to business connection and section 9(10) and (13) deals with the provisions of indirect transfers.

(i) Business Connection [Section 9(9)(a)]

Business connection in India include

- Any business carried out in India in the case of which all or part of operation are carried out in India; or
- Significant Economic Presence in India [SEP]

A business carried out in India

I. Business activity carried out through a person acting on behalf of the non-resident -

(A) Authority to Conclude contracts: Business activity carried out through a person acting on behalf of the non-resident

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- ❖ has habitually exercised in India authority to conclude contracts on behalf of the non-resident or
- ❖ habitually concludes contracts or
- ❖ habitually plays the principal role leading to conclusion of contracts by that non-resident and such contracts are
  - ➢ in the name of the non-resident; or
  - ➢ for the transfer of the ownership of, or for the granting of the right to use, property owned by that non-resident or that non-resident has the right to use; or
  - ➢ for the provision of services by that non-resident, or

(B) **Maintains in India a stock of goods:** In a case, where he has **no such authority**, but habitually maintains in India a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the non-resident, or

(C) **Secures orders in India:** Habitually secures orders in India, mainly or wholly for the non-resident.

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

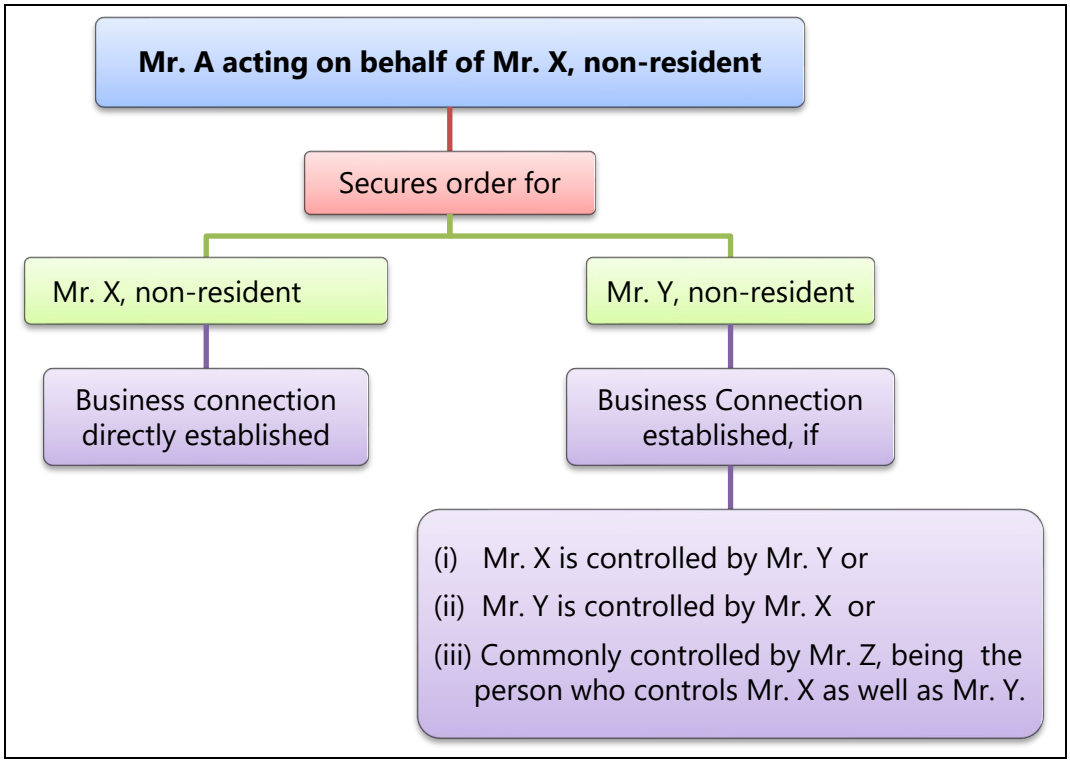
i. such other non-resident controls the non-resident or

ii. such other non-resident is controlled by the non-resident or

iii. such other non-resident is subject to same control as that of non-resident.

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

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II. **Business activity carried out through a person who is a broker, general commission agent or any other agent:**

Business activity carried out through a person who is a broker, general commission agent or any other agent, through whom such activity is carried out, and who is working mainly or wholly on behalf of

A principal non-resident or

Such principal non-resident and other non-residents who—

(I) are controlled by the principal non-resident or

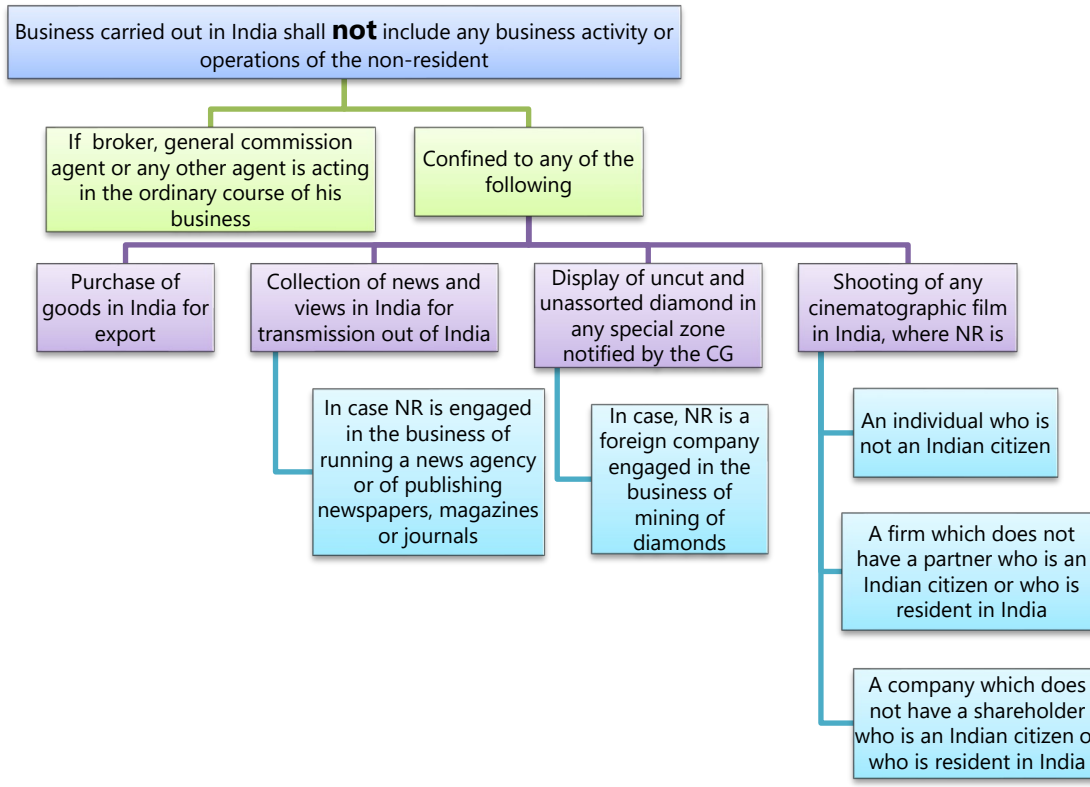
(II) have a controlling interest in the principal non-resident or

(III) are subject to the same common control as the principal non-resident

and such person shall not be deemed as having an independent status.

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Business activity or operations not considered as carried out in India



Significant Economic Presence [SEP]

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

A non-resident shall have a significant economic presence in India, where there is -

	Nature of transaction	Condition
(a)	transaction in respect of any goods, services or property carried out by such 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 tax year exceed **₹ 2 crores** [Rule 13(1)]**.**
(b)	systematic and continuous soliciting of business activities or engaging in interaction with users in India	The number of users should be atleast **3 lakhs** [Rule 13(2)].

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The above transactions or activities shall constitute significant economic presence in India, whether or not, -

(i) the agreement for such transactions or activities is entered in India;

(ii) the non-resident has a residence or place of business in India; or

(iii) the non-resident renders any services in India:

However, transactions or activities of a non-resident in India which are confined to the purchase of goods in India **for the purpose of export shall not constitute significant economic presence** of such non-resident in India.

Income reasonably attributable to operations in India

Only the income which is reasonably attributable to	
Operations carried out in India, when all operations of the business are not carried out in India	Transactions or activities constituting SEP
shall be deemed to accrue or arise in India	

Income attributable to the operations of any business or SEP also include

- Income from advertisement targetting customers residing in India or accessing advt. thro IPA located in India
- Income from sale of data collected from persons residing in India or from persons using IPA located in India
- Income from sale of goods or services using data collected from a person residing in India or from a person using IPA located in India

IPA – Internet Protocol Address

(ii) Income from property, asset or source of income in India

Any income which arises from any property in India (movable, immovable, tangible and intangible property) would be deemed to accrue or arise in India.



- *Hire charges or rent paid outside India for the use of the machinery or buildings situated in India.*
- *Deposits with an Indian company for which interest is received outside India etc.*

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(iii) Income through transfer of a capital asset situated in India

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



- The capital asset is movable or immovable, tangible or intangible;



- The place of registration of the document of transfer etc., is in India or outside; and
- The place of payment of the consideration for the transfer is within India or outside.

Accordingly, the expression "through" shall mean and include "by means of", "in consequence of" or "by reason of" [Section 9(13)].

Share or interest derives its value substantially from the assets located in India

An asset or a capital asset being any share of or interest in a company or entity registered or incorporated outside India

- shall be deemed to be situated in India,
- if the share or interest derives, directly or indirectly, its value substantially from the assets (whether tangible or intangible) located in India [Section 9(10)(a)].

Accordingly, the capital gain on transfer of such share or interest shall always be deemed to accrue or arise in India.

When a share or interest deemed to derive its value substantially from Indian assets?

Section 9(10)(b) provides that the share or interest in a company or entity registered or incorporated outside India, 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 Indian assets, -**

Exceed the amount of ₹ 10 crores	**AND**	represents at least 50% of the value of all the assets owned by the company or entity

Now, let's understand what the specified date is, Value of asset and other related terms.

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Meaning of Certain Terms

Term	Meaning
Value of an asset [Section 9(10)(c)]	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 prescribed manner**.**
Specified date [Section 9(10)(d)]	❖ The date on which the **accounting period** of the company or, as the case may be, the entity **ends preceding the date of transfer** of a share or an interest. ❖ However, the **date of transfer** shall be the specified date, if the **book value of the assets** of the company or entity on the date of transfer **exceeds** the book value of the assets as on the date on which the **accounting period end preceding the date of transfer by 15%**.
Accounting period [Section 9(10)(e)]	**Existing Company or an entity** ❖ Each period of **12 months ending with 31st March.** ❖ Each period of **12 months ending with a date other than 31st March,** where a company or an entity, regularly adopts a period of 12 months ending on a day other than 31st March for - (a) complying with the provisions of the tax laws of the territory, of which it is a resident, for tax purposes; or (b) reporting to persons holding the share or interest, **Company or an entity comes into existence:** ❖ Period **beginning with the date of registration or incorporation** and **ending with the 31st March or such other day as referred above.** ❖ Later accounting period shall be the **successive periods of twelve months.** **Company or entity ceases to exist:** ❖ Period beginning with the 1st April or such other day as referred above and ending with the date immediately preceding the date on which the company or entity ceases to exist before the end of the accounting period.

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Income reasonably attributable to assets located in India [Section 9(10)(f)]

There is a **transfer outside India** of any share of, or interest in, a company or an entity registered or incorporated outside India by a non-resident transferor	AND	all the assets owned, directly or indirectly, by that company or entity **are not located in India.**
Only such part of the income as is reasonably attributable to assets located in India shall be deemed to accrue or arise in India and determined in the manner, as may be prescribed.		

Note - *The manner of determination of fair market value of the assets of the foreign company is given in Rule 10 and 11. Determination of income attributable to assets in India is given in Rule 12.*[1]

Cases where an asset or capital asset held by a non-resident is not deemed to be situated in India [Section 9(10)(g)]

No income shall be deemed to accrue or arise in India to a non-resident from transfer outside India, of any share of, or interest in, a foreign company or an outside entity, in the following cases:

(I) If such share or interest held by a non-resident by way of Investment directly or indirectly:

- In Category-I or Category-II Foreign Portfolio Investor[2]
- In Category-I Foreign Portfolio Investor[3]

(II) If foreign company or entity **directly** owns the assets situated in India and **the transferor** (whether individually or along with its associated enterprises), at any time in the **twelve months preceding the date of transfer**, does not hold -

- the right of management or control in relation to foreign company or entity; and

[1] *For detailed reading of Rule 10, 11 and 12 of the Income-tax Rules, 2026, students may visit https://www.incometaxindia.gov.in/income-tax-rule-2026*

[2] *under the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014 prior to their repeal, made under the Securities and Exchange Board of India Act, 1992*

[3] *under the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019*

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- the 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 the foreign company or entity; or

The meaning of **"Associated Enterprise" (AE)** shall be same as provided in section 162[4].

(III) If foreign company or entity **indirectly** owns the assets situated in India and the transferor (whether individually or along with its associated enterprises), at any time in the twelve months preceding the date of transfer, **does not hold -**

- the right of management or control in relation to foreign company or entity;
- any right in, or in relation to, such foreign company or entity which would entitle him to the right of management or control in the company or entity that directly owns the assets situated in India; and
- such percentage of voting power or share capital or interest in foreign company or entity which results in holding of (either individually or along with associated enterprises) a voting power or share capital or interest exceeding 5% of the total voting power or total share capital or total interest.

Circular No. 28/2017, dated 07.11.2017



The CBDT has, vide this Circular clarified that no income shall be deemed to accrue or arise in India to a non-resident in respect of income accruing or arising on account of redemption or buyback of its share or interest held indirectly (i.e. through upstream entities registered or incorporated outside India) in the specified funds (namely, investment funds, venture capital company and venture capital funds) if such income accrues or arises from or in consequence of transfer of shares or securities held in India by the specified funds and such income is chargeable to tax in India.

However, the above benefit shall be applicable only in those cases where the proceeds of redemption or buyback arising to the non-resident do not exceed the pro-rata share of the non-resident in the total consideration realized by the specified funds from the said transfer of shares or securities in India. It is further clarified that a non-resident investing directly in the specified funds shall continue to be taxed as per the extant provisions of the Act.

[4] *Please refer Chapter 24: Transfer Pricing for understanding the term AE.*

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Declaration of dividend by a foreign company [Circular No. 4/2015, dated 26.03.2015]

The CBDT has vide this Circular, clarifies that, the dividends declared and paid by a foreign company outside India in respect of shares which derive their value substantially from assets situated in India would **NOT** be deemed to be income accruing or arising in India by virtue of the provisions of section 9(2).

(II) Salaries [Section 9(3)]



As per section 9(3), any income falling under the head "Salaries", shall be deemed to accrue or arise in India, if it is

- earned in India and payable for
  - services rendered in India and
  - rest period or leave period which is preceded and succeeded by services rendered in India and forms part of the service contract of employment,

  shall be regarded as income earned in India.
- payable by the Government to an Indian citizen for services rendered outside India.



However, allowances and perquisites paid or allowed outside India by the Government to an Indian citizen for services rendered outside India **is exempt**, by virtue of Schedules III [Table: Sl. No. 9].



Exemption specified in Schedules III [Table: Sl. No. 9] would be available to an assessee irrespective of the regime under which he pays tax.

ILLUSTRATION 3

J, a citizen of India, employed in the Indian Embassy at Tokyo, Japan. He received salary and allowances at Tokyo from the Government of India for the year ended 31.3.2027 for services rendered by him in Tokyo. Besides, he was allowed perquisites by the

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Government. He is a non-resident for the tax year 2026-27. Examine the taxability of salary, allowances and perquisites in the hands of J for the tax year 2026-27.

SOLUTION

As per section 9(3), salaries payable by the Government to a citizen of India for services rendered outside India shall be deemed to accrue or arise in India. As such, salary received by J is chargeable to tax, even though he was a non-resident for tax year 2026-27.

As per Schedules III Table Sl. No 9, all allowances or perquisites paid or allowed as such outside India by the Government to a citizen of India for rendering services outside India is exempt from tax. Therefore, the allowances and perquisites received by J are exempt.

(III) Dividend [Section 9(4)]

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



(IV) Interest [Section 9(5)]

Under section 9(5), interest is deemed to accrue or arise in India if it is payable by -

(i) the Government

(ii) a resident in India

Interest payable by a resident in India in respect of any **debt incurred or money borrowed and used**, for the purposes of	
A business or profession **carried on by him outside India**	Making or **earning** any income by such resident from any source **outside India**
will **NOT,** however, be deemed to accrue or arise in India	

(iii) **a non-resident**, if it is in respect of any debt incurred or moneys borrowed and used, **for the purposes of a business or profession carried on by such non-resident in India**.

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If a non-resident 'A' borrows money from a non-resident 'B' and invests the same in shares of an Indian company, interest payable by 'A' to 'B' will not be deemed to accrue or arise in India. However, if the same is in a business carried by him in India, the interest paid by "A" to "B" will be deemed to accrue or arise in India.

Meaning of Interest [Section 2(59)]

Interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) and includes any service fee or other charge for the moneys borrowed or debt incurred or for any credit facility which has not been utilized.

Interest payable by the Permanent Establishment

Interest payable by the PE in India of a non-resident, being a person engaged in the business of banking, to the head office or any PE or any other part of such non-resident outside India, shall be deemed to accrue or arise in India and would be chargeable to tax in addition to any income attributable to the PE in India.

Such PE in India would be

- deemed to be a person separate from, and independent of, the non-resident person of which it is a PE and
- the provisions of the Act relating to computation of total income, determination of tax and collection and recovery would apply accordingly.

Permanent establishment includes a fixed place of business through which the business of the enterprise is wholly or partly carried on **[Section 173(c)]**.



PE in India has to deduct tax at source on any interest payable to either the head office or any other branch or PE, etc. of the non-resident outside India. Non-deduction would result in disallowance of interest claimed as expenditure by the PE and may also attract levy of interest and penalty in accordance with relevant provisions of the Act.

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(V) Royalty [Section 9(6)]

As per section 9(6), royalty will be deemed to accrue or arise in India when it is payable by -

(i) the Government

(ii) a resident in India

Royalty payable by a **resident in India** in respect of any right, property or information used or services utilized for the purposes of -	
a business or profession **carried on by him outside India**	Making or **earning** any income by such resident from any source **outside India**
will **NOT,** however, be deemed to accrue or arise in India	

(iii) **a non-resident,** if royalty is payable in respect of any right, property or information used or services utilised for purposes of

- ❖ a business or profession carried on by such non-resident in India or
- ❖ making or earning any income by such non-resident from any source in India.

Meaning of Royalty

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

(i) the transfer or grant of all or any rights (including the granting of a license) in respect of a patent, invention, model, design, secret formula or process or trade mark or similar property;

(ii) the imparting of any information concerning the working of, or the use of, a patent, invention, model, design, secret formula or process or trademark or similar property;

(iii) the use of any patent, invention, model, design, secret formula or process or trademark or similar property;

(iv) the imparting of any information concerning technical, industrial, commercial or scientific knowledge, experience or skill;

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(v) the use or right to use any industrial, commercial or scientific equipment except the amounts referred to in section 61(2) [Table: Sl. No. 5] i.e., business of providing services or facilities for prospecting, extraction or production of mineral oils;

(vi) the transfer or grant of all or any rights (including the granting of a license) in respect of any copyright, literary, artistic or scientific work including

- ❖ films or video tapes for use in connection with television or
- ❖ tapes for use in connection with radio broadcasting.

(vii) the rendering of services in connection with the activities listed above.



The definition of 'royalty' for this purpose is wide enough to cover both industrial royalties as well as copyright royalties. The definition specially excludes income which should be chargeable to tax under the head 'capital gains'.

Consideration for use or right to use of computer software is royalty

Transfer or grant of all or any rights in respect of any right, property or information includes transfer or grant of all or any right for use or right to use a computer software (including granting of a license) irrespective of the medium through which such right is transferred. Accordingly, the consideration for use or right to use of computer software is royalty.

The provisions of tax deduction at source under section 393 for payment to resident or non-resident would be attracted in respect of consideration for use or right to use computer software since the same falls within the definition of royalty.

Meaning of Computer software

"Computer software" means any computer programme recorded on any disc, tape, perforated media or other information storage device and includes any such programme or any customised electronic data.

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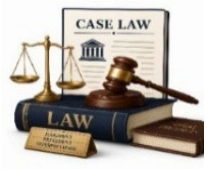
Notification No. 21/2012 dated 13.6.2012

The Central Government has, vide this notification to be effective from 1st July, 2012, exempted certain software payments from the applicability of tax deduction at source under section 393(1) [Table: Sl. No. 6(iii)] for payments to resident. Accordingly, where payment is made by the transferee for acquisition of software from a resident-transferor, the TDS provisions would not be attracted if –

(1) the software is acquired in a subsequent transfer without any modification by the transferor;

(2) tax has been deducted either for payments to resident or for payments to non-resident for any previous transfer of such software; and

(3) the transferee obtains a declaration from the transferor that tax has been so deducted along with the PAN of the transferor.



Engineering Analysis Centre of Excellence P. Ltd v. CIT (2021) 432 ITR 471(SC)

Issue: *Whether the amounts paid by resident Indian end-users/ distributors to non-resident computer software manufacturers/ suppliers, as consideration for the use/resale of the computer software through End-User Licence Agreement (EULAs) /distribution agreements, be considered as payment of royalty for the use of copyright in the computer software.*

Analysis and Decision: *The Apex Court observed that as per the definition given in Section 9(6)(b) of the Income-tax Act, 2025, "royalty" means consideration for, inter alia, the transfer of all or any rights (including the granting of a licence), in respect of any copyright, literary, artistic or scientific work. As per Section 9(6)(c)(i), such transfer of all or any rights includes transfer of all or any right for use or right to use a computer software (including the granting of a licence). As per the meaning of royalties as assigned in the DTAA with Singapore, "royalty" means payment of any kind received as consideration for "the use of, or the right to use, any copyright" of a literary, artistic or scientific work. The meaning of royalty in India's DTAA with other countries like Australia, Canada, France, Italy, USA, Netherlands, Sweden, Taiwan, Japan, China etc. is also similar if not identical. The*

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definition of the royalties under the DTAA does not include transfer of right for use or right to use a computer software.

The scope of definition of royalties under the Act is wider as compared to the definition of royalties under India's DTAA with these countries.

The Apex Court observed the following four categories of cases, in which the distribution agreements and end-user licence agreements did not create any interest or right to such distributors or end-users, which could amount to the use of or right to use any copyright:

(i) where computer software is purchased directly by an end-user, resident in India, from a foreign, non-resident supplier or manufacturer.

(ii) where resident Indian companies acting as distributors or resellers, purchase computer software from foreign, non-resident suppliers or manufacturers and then, resell the same to resident Indian end-users.

(iii) where the distributor happens to be a foreign, non-resident vendor, who, after purchasing software from a foreign, non-resident seller, resells the same to resident Indian distributors or end-users.

(iv) where computer software is affixed onto hardware and is sold as an integrated unit/equipment by foreign, non-resident suppliers to resident Indian distributors or end-users.

Therefore, in the specified cases mentioned above, the Apex Court held that the amount paid by resident Indian end-users or distributors to non-resident computer software manufacturers or suppliers, as consideration for the resale or use of the computer software through end-user licence agreements or distribution agreements, is not royalty. Consequently, the consideration paid to the non-resident computer software manufacturers or suppliers would not be chargeable to tax India. Hence, no tax is required to be deducted at source u/s 393(2) [Table Sl. No. 17] for payments to non-resident.

Consideration in respect of any right, property or information – Is it royalty?

Royalty includes consideration in respect of any right, property or information, whether or not,

(a) the possession or control of such right, property or information is with the payer.

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(b) such right, property or information is used directly by the payer.

(c) the location of such right, property or information is in India.

Meaning of Process

The term "process" includes 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.

(VI) Fees for Technical Services

As per section 9(7), any fees for technical services will be deemed to accrue or arise in India if payable by -

(i) **the Government**

(ii) a **resident in India**

Fees for technical services payable by a **resident in India** in respect of services utilized for	
A business or profession **carried on by him outside India**	Making or **earning** any income by him from any source **outside India**
will **NOT,** however, be deemed to accrue or arise in India	

(iii) **a non-resident**, if payable in respect of services utilised for

- ❖ a business or profession carried on by such non-resident in India or
- ❖ making or earning any income by him from any source in India.

Meaning of Fees for technical services

Fees for technical services mean any consideration (including any lumpsum consideration) for the rendering of any **managerial, technical or consultancy** services (including provision of services of technical or other personnel).

However, it does not include consideration -

- ❖ for any construction, assembly, mining or like project undertaken by the recipient or
- ❖ which would be income of the recipient chargeable under the head 'Salaries'.

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Income deemed to accrue or arise in India to a non-resident by way of interest, royalty and fee for technical services to be taxed irrespective of territorial nexus [Section 9(11)]

Income by way of interest, royalty or fee for technical services which is deemed to accrue or arise in India by virtue of Section 9(5)/(6)/(7), shall be included in the total income of the non-resident, whether or not –

(i) the non-resident has a residence or place of business or business connection in India; or

(ii) the non-resident has rendered services in India.

In effect, interest, royalty or fees for technical services is deemed to accrue or arise in India under section 9(5), 9(6) or 9(7), respectively, irrespective of the non-resident having a residence, place of business or business connection in India and irrespective of services being rendered in India.

ILLUSTRATION 4

Miss Vivitha, resident in India, paid a sum of 5000 USD to Mr. Kulasekhara, a management consultant practising in Colombo, specializing in project financing. The payment was made in Colombo. Mr. Kulasekhara is a non-resident. The consultancy is related to a project in India with possible Ceylonese collaboration. Is this payment chargeable to tax in India in the hands of Mr. Kulasekhara?

SOLUTION

A non-resident is chargeable to tax in respect of income received outside India only if such income accrues or arises or is deemed to accrue or arise to him in India.

The income deemed to accrue or arise in India under section 9 comprises, *inter alia*, income by way of fees for technical services, which includes any consideration for rendering of any managerial, technical or consultancy services. Therefore, payment to a management consultant relating to project financing is covered within the scope of "fees for technical services".

Section 9(11) provides that income by way of, *inter alia*, fees for technical services, would be deemed to accrue or arise in India in case of a non-resident and be included in his total income, whether or not such services were rendered in India or whether or not the non-resident has a residence or place of business or business connection in India.

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In the instant case, since the services were utilized in India, the payment received by Mr. Kulasekhara, a non-resident, in Colombo is chargeable to tax in his hands in India, as it is deemed to accrue or arise in India.

(VII) Monetary Gifts [Section 9(8)]

As per section 9(8), income arising outside India, being any sum of money referred to in section 2(29(u) paid by a person resident in India -

- ❖ to a non-corporate non-resident or foreign company or
- ❖ to a RNOR

would be deemed to accrue or arise in India, if the same is chargeable to tax under section 92(2)(m) i.e., if the aggregate of such sum received by a non-corporate non-resident or foreign company exceeds ₹ 50,000.

ILLUSTRATION 5

Compute the total income in the hands of an individual, aged 55 years, being a resident and ordinarily resident, resident but not ordinarily resident, and non-resident for the tax year 2026-27 if he has shifted out of the default tax regime and pays tax under normal provisions of the Act:

Particulars	*Amount (₹)*
Interest on UK Development Bonds, 50% of interest received in India	*10,000*
Income from a business in Chennai (50% is received in India)	*20,000*
Short term capital gains on sale of shares of an Indian company received in London	*20,000*
Dividend from British company received in London	*5,000*
Long term capital gains on sale of plant at Germany, 50% of profits are received in India	*40,000*
Income earned from business in Germany which is controlled from Delhi (₹ 40,000 is received in India)	*70,000*
Profits from a business in Delhi but managed entirely from London	*15,000*

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Income from house property in London deposited in an Indian Bank at London, brought to India (Computed)	*50,000*
Interest on debentures in an Indian company received in London	*12,000*
Fees for technical services rendered in India but received in London	*8,000*
Profits from a business in Bombay managed from London	*26,000*
Pension for services rendered in India but received in London (Computed)	*4,000*
Income from property situated in Pakistan, received there (Computed)	*16,000*
Past foreign untaxed income brought to India during the tax year	*5,000*
Income from agricultural land in Nepal received there and then brought to India	*18,000*
Income from profession in Kenya which was set up in India, received there but spent in India	*5,000*
Gift received on the occasion of his wedding	*20,000*
Interest on savings bank deposit in State Bank of India	*12,000*
Income from a business in Russia, controlled from Russia	*20,000*
Dividend from Reliance Petroleum Limited, an Indian Company	*5,000*
Agricultural income from a land in Rajasthan	*15,000*

SOLUTION

Computation of total income for the tax year 2026-27

Particulars	Resident and ordinarily resident ₹	Resident but not ordinarily resident ₹	Non-resident ₹
Interest on UK Development Bonds, 50% of interest received in India	10,000	5,000	5,000
Income from a business in Chennai (50% is received in India)	20,000	20,000	20,000
Short term capital gains on sale of shares of an Indian company received in London	20,000	20,000	20,000

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Dividend from British company received in London	5,000	-	-
Long term capital gain on sale of plant at Germany, 50% of profits are received in India	40,000	20,000	20,000
Income earned from business in Germany which is controlled from Delhi, out of which ₹ 40,000 is received in India	70,000	70,000	40,000
Profits from a business in Delhi but managed entirely from London	15,000	15,000	15,000
Income from property in London deposited in a Bank at London, later on remitted to India	50,000	-	-
Interest on debentures in an Indian company received in London	12,000	12,000	12,000
Fees for technical services rendered in India but received in London	8,000	8,000	8,000
Profits from a business in Bombay managed from London	26,000	26,000	26,000
Pension for services rendered in India but received in London	4,000	4,000	4,000
Income from property situated in Pakistan, received there	16,000	-	-
Past foreign untaxed income brought to India during the tax year	-	-	-
Income from agricultural land in Nepal received there and then brought to India	18,000	-	-
Income from profession in Kenya, which was set up in India, received there but spent in India	5,000	5,000	-
Gift received on the occasion of his wedding **[not taxable]**	-	-	-
Interest on savings bank deposit in SBI	12,000	12,000	12,000

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Income from a business in Russia, controlled from Russia	20,000	-	-
Dividend from Reliance Petroleum Limited, an Indian Company	5,000	5,000	5,000
Agricultural income from a land in Rajasthan **[Exempt under Schedule II (Table Sl. No. 1)]**	-	-	-
Gross Total Income	**3,56,000**	**2,22,000**	**1,87,000**
Less: Deduction u/s 153			
[Interest on savings bank account subject to a maximum of ₹ 10,000]	10,000	10,000	10,000
Total Income	**3,46,000**	**2,12,000**	**1,77,000**

21.6 EXEMPTED INCOME OF NON-RESIDENTS

Section 11 of the Income-tax Act, 2025 exempts from tax various incomes enumerated in Schedules II, III, IV, V, VI and VII. Schedule IV covers the exemptions which are specifically available to a non-resident. Further, Schedule VI also enumerate certain exemptions in relation to International Financial Services Centre. Let's discuss these exemptions available to non-residents.

As per Schedule IV, in computing the total income of a tax year of any eligible person shall not include the specified income, subject to the following conditions:

Interest in NRE A/c [Schedule IV (Table Sl. No.1)]

Sl. No.	Income not to be included in total income	Eligible persons	Conditions
1.	**Interest on moneys standing to the credit of individual in his NRE A/c**		
	Any income by way of interest.	(a) An individual, who is a resident outside India[5] or (b) An individual who has been permitted by	Such interest is on moneys standing to the credit of such person in a Non-Resident (External) Account in any bank in India as per

[5] *As defined in section 2(w) of the Foreign Exchange Management Act, 1999*

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		the Reserve Bank of India to maintain the said account.	the said Act and the rules made thereunder.

📌 The benefit of this exemption will be available to joint account holders, subject to fulfilment of above condition by each of the individual joint account holders.

EXAMPLE *Mrs. Neena Kansal, is resident of Singapore since year 2000. She holds an NRE account with Bank of Baroda, New Delhi Branch. Interest of ₹ 10,000 was credited to such account during tax year 2026-27. Such interest income earned by her shall be exempt from income-tax while she files her tax return for tax year 2026-27.*

Remuneration received by individuals, who are not citizens of India [Schedule IV (Table Sl. No. 2 to 5)]

Sl. No.	Income not to be included in total income	Eligible persons	Conditions
2.	**Remuneration received by officials of Embassies etc. of Foreign States**		
	Any remuneration received for service in the capacity as an official, not being a citizen of India.	An official, by whatever name called, of an - embassy, - high commission, - legation, - commission, - consulate or the trade representation of a foreign State, or - as a member of the staff of any of these officials.	(a) The **remuneration received** as a trade commissioner or other official representative **in India of the government of a foreign State** (not holding office as such in an honorary capacity), or as members of the staff, if any, of the government, resident for similar purposes in the country concerned **enjoy a similar exemption in that country**; and (b) the **members of the staff** are subjects of the country represented and **are not engaged in any business or profession or employment in India** otherwise than as members of such staff.

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Examples:

- *Mr. A, a citizen of India but resident of USA since year 2012, was appointed as a senior official of the US embassy in India. He earned a remuneration of ₹ 10 lakhs during tax year. 2026-27. Being an Individual who is a citizen of India, though fulfilling other conditions of the section, such remuneration shall not be exempt in his hands for tax year 2026-27.*
- *Mr. Vikram Kohli, an Indian born person but currently a resident and Citizen of USA, was appointed as a senior official of the US embassy in India. He earned a remuneration of ₹ 10 lakhs during tax year 2026-27. Being an Individual who is not a citizen of India and also fulfilling other conditions of the Schedule, such remuneration shall be exempt in his hands for tax year 2026-27, subject to fulfilment of conditions.*
- *Mr. Frank D'Souza, an Irish Citizen but currently the resident of USA, was appointed as a senior official of the US embassy in India. He earned a remuneration of ₹ 10 lakhs during tax year 2026-27. Being an Individual who is not a citizen of India, such remuneration shall be exempt in his hands for tax year 2026-27, subject to fulfilment of the conditions.*

3.	**Remuneration received for services rendered in India by a Foreign National employed by foreign enterprise**		
	Any remuneration received as an employee for services rendered by him during his stay in India.	A person who is an employee of a foreign enterprise, not being a citizen of India.	(a) The foreign enterprise is not engaged in any trade or business in India; (b) employee's stay in India does not exceed in the aggregate a period of 90 days in such tax year; and (c) such remuneration is not liable to be deducted from the income of the employer chargeable under this Act.

Examples:

- *Mr. A, citizen of India but resident of USA since year 2012, was appointed in India in October, 2026 as an employee of a US enterprise. Such US enterprise is not engaged in any business in India. His stay in India in aggregate was 85 days.*

  During tax year 2026-27, Mr. A earned a remuneration of ₹ 10 lakhs for his India related assignment and his stay in India in aggregate was 85 days.

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	Further, such US enterprise has not claimed any deduction of such remuneration under Act. *Being an Individual who is a citizen of India, such remuneration shall not be exempt in his hands for tax year 2026-27, though he may get exemption under any other provision of the Income-tax Act, 2025, subject to fulfilment of conditions stipulated thereunder.* • *In the above case, let's consider that Mr. A is a citizen of USA. All other facts remaining same, his remuneration shall be exempt from tax in his hands for tax year 2026-27 under this Schedule.* • *Let's take another variation, Mr. A is a citizen of USA but the remuneration paid to him is borne by the permanent establishment of such US enterprise in India. ₹ 10 lakhs paid to A is cross charged by the US enterprise to its Indian permanent establishment (PE).* *In this case, the remuneration shall not be exempt from taxation in the hands of Mr. A as the same is getting deducted from the income of the Indian PE of such foreign enterprise.*		
4.	**Salary received by a non-citizen for services rendered in connection with employment on foreign ship**		
	Any income chargeable under the head "Salaries", received or due as remuneration for services rendered in connection with his employment on a foreign ship.	Any individual being a non-resident, not being a citizen of India.	The total stay of such individual in India does not exceed in the aggregate a period of 90 days in the tax year.
5.	**Remuneration received by Foreign Government employees during their stay in India for specified training**		
	Any remuneration received as an employee of the Government of a foreign State.	An employee of the Government of a foreign State, not being a citizen of India.	Such remuneration is received during his stay in India in connection with his training in any establishment or office of, or in any undertaking owned by - (a) the Government; or (b) any company in which the **entire paid-up share capital** is held by the Central Government or

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			any State Government or State Governments, or partly by the Central Government and partly by one or more State Governments; or (c) any company which is a subsidiary of a company referred to in clause (b); or (d) any corporation established by or under a Central Act or State Act or Provincial Act; or (e) any society registered under the Societies Registration Act, 1860 or under any other law and wholly financed by the Central Government, or any State Government or State Governments, or partly by the Central Government and partly by one or more State Governments.

Royalty income or fees for technical services
[Schedule IV (Table Sl. No. 6 & 7)]

Sl. No.	Income not to be included in total income	Eligible persons	Conditions
6.	Any income arising by way of royalty or fees for technical services.	Any foreign company	(a) Such company is notified by the Central Government; and (b) such income is received in pursuance of an agreement entered into with the Central Government for providing services in or outside India in projects connected with security of India.

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7.	Any income arising by way of royalty from, or fees for technical services rendered in or outside India.	A non-resident, not being a company, or a foreign company.	(a) Such royalty is received from the National Technical Research Organisation; or (b) such fees is for technical services rendered to the National Technical Research Organisation.

Interest on a deposit with an Offshore Banking Unit [Schedule IV (Table Sl. No. 8)]

Sl. No.	Income not to be included in total income	Eligible persons	Conditions
8.	Interest received	Non-resident or a person who is not ordinarily resident.	Such interest is received in India on a deposit made on or after the 1st April, 2005 in an Offshore Banking Unit[6].

Income from lease rentals [Schedule IV (Table Sl. No. 9)]

Sl. No.	Income not to be included in total income	Eligible persons	Conditions
9.	Income from lease rentals, by whatever name called, **of cruise ship.**	Foreign company	(a) Such income is received from a specified company which operates such ship or ships in India; (b) such foreign company and the specified company are subsidiaries of the same holding company; and (c) such income is received or accrues or arises in India for any relevant tax year beginning on or before the 1st April, 2029.

[6] *referred to in section 2(u) of the Special Economic Zones Act, 2005*

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Any income with respect to crude oil [Schedule IV (Table Sl. No. 11 to 13)]

Sl. No.	Income not to be included in total income	Eligible persons	Conditions
11.	Any income received in India in Indian currency	A foreign company	(a) Such income is on account of sale of crude oil or any other goods or rendering of services, as may be notified by the Central Government in this behalf, to any person in India; (b) receipt of such income in India by the foreign company is pursuant to an agreement or an arrangement entered into by the Central Government or approved by the Central Government; (c) such foreign company and the agreement or arrangement is notified by the Central Government, having regard to the national interest; and (d) such foreign company is not engaged in any activity in India, other than activity resulting in such income.
12.	Any income accruing or arising on account of storage of crude oil in a facility in India and sale of such crude oil to any person resident in India.	A foreign company.	(a) Such storage and sale by the foreign company is pursuant to an agreement or an arrangement entered into by the Central Government or approved by the Central Government; and (b) such foreign company and the agreement or arrangement is notified by the Central Government, having regard to the national interest.

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13.	Any income accruing or arising on account of sale of leftover stock of crude oil, if any, from the facility in India after the expiry of the agreement or arrangement referred to against serial number 12 or on termination of the said agreement or arrangement.	A foreign company.	Such sale shall be as per the terms mentioned in the said agreement or arrangement, subject to such conditions as may be notified by the Central Government in this behalf.

Income arising for providing capital goods, equipment or tooling to a contract manufacturer [Schedule IV (Table Sl. No. 13A)]

Sl. No.	Income not to be included in total income	Eligible persons	Conditions
13A	Any income arising on account of providing capital goods, equipment or tooling to a contract manufacturer, being a company. resident in India.	A foreign company, who is providing capital goods, equipment or tooling to the contract manufacturer for use in electronic manufacturing in India.	(a) Ownership of such capital goods, equipment or tooling remains with the foreign company; (b) such capital goods, equipment or tooling is under the control and direction of the contract manufacturer. (c) the contract manufacturer is located in a custom bonded area, that is, a warehouse referred to in section 65 of the Customs Act, 1962. (d) the contract manufacturer produces **specified electronic goods** on behalf of the

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			foreign company for a consideration; and (e) such exemption shall be available up to the tax year 2040-2041.

Specified electronic goods means

(a) mobile phones; or

(b) laptops, all-in-one personal computers and tablets; or

(c) servers and ultra small form factor (USFF); or

(d) sub-assemblies to the finished goods mentioned in clauses (a) to (c); or

(e) hearables and wearables and accessories related to the finished goods mentioned in clauses (a) to (c).';

Any income which accrues or arises outside India, and is not deemed to accrue or arise in India [Schedule IV (Table Sl. No. 13B)]

Sl. No.	Income not to be included in total income	Eligible persons	Conditions
13B	Any income which accrues or arises outside India, and is not deemed to accrue or arise in India.	An individual, being a non-resident for a period of five consecutive tax years immediately preceding the tax year during which he visits India for the first time for rendering services in India in connection with any scheme as may be notified by the Central Government.	(a) the individual renders service in India during the relevant tax year in connection with a scheme notified by the Central Government; (b) the exemption shall not be available beyond five consecutive tax years commencing from the first tax year of such visit; and (c) such other conditions as may be prescribed.

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Income by way of procuring data centre services from a specified data centre [Schedule IV (Table Sl. No. 13C)]

Sl. No.	Income not to be included in total income	Eligible persons	Conditions
13C	Any income accruing or arising in India or deemed to accrue or arise in India by way of procuring data centre services from a specified data centre.	A foreign company.	(a) such foreign company does not own or operate any of the physical infrastructure or any resources of the specified data centre; (b) all sales by such foreign company to users located in India are made through a reseller entity being an Indian company; (c) such foreign company maintains and furnishes such information in such form and manner, as may be prescribed; and (d) such exemption shall be available up to tax year ending on the 31st March, 2047.

(a) "data centre" means a dedicated secure space within a building or centralised location where computing and networking equipment is concentrated for the purpose of collecting, storing, processing, distributing or allowing access to large amounts of data;

(b) "data centre services" means the services provided by a data centre through the use of physical infrastructure including land, buildings, mechanical electrical power equipments, cooling system, security and information technology infrastructure including servers, computers, storage systems, operating systems, security solutions, network and associated software platforms, networking and other equipment, human resource in India;

(c) **"specified data centre"** means a data centre which -

(i) is operated by an Indian company, whether by way of owning or leasing; and

(ii) satisfies such other conditions as may be prescribed.

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Interest on Government security or capital gains on transfer of such security [Schedule IV (Table Sl. No. 13D & 13E)]

Sl. No.	Income not to be included in total income	Eligible persons	Conditions
13D	Any interest on Government security, and any capital gains arising from the sale, exchange or transfer of such Government security.	A Foreign Institutional Investor	Such exemption shall be subject to furnishing of information in such form and manner, as may be prescribed.
13E	Any interest on Government security, and any capital gains arising from the sale, exchange or transfer of such Government security.	Bank for International Settlements	Such exemption shall be subject to furnishing of information in such form and manner, as may be prescribed.

Meaning of Certain Terms

(a) "Bank for International Settlements" means the Bank for International Settlements established at the Hague Conference in 1930 and headquartered at Basel, Switzerland.

(b) "Foreign Institutional Investor" shall have the meaning assigned to it in section 210(6)(a).

(c) "Government security" shall have the same meaning as assigned to it in section 2(f) of the Government Securities Act, 2006.

Income on sale of rough diamonds [Schedule IV (Table Sl. No. 13F)]

Sl. No.	Income not to be included in total income	Eligible persons	Conditions
13F	Any income on sale of rough diamonds.	A foreign company – (a) engaged in the business of diamond mining; or	(a) The sale of rough diamonds is carried out in any notified special zone as referred to in section 9(9)(c)(ii)(C).

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		(b) being a sight holder of the company referred to in clause (a); or (c) being a broker, aggregator or a tender and auction entity connected with sale of rough diamonds.	(b) such foreign company maintains and furnishes such information in such form and manner, as may be prescribed; and (c) such exemption shall be available up to the tax year ending on the 31st March, 2041.

Note – *This exemption is effective from 1st October 2026 vide the Taxation and Other Laws (Amendment) Act, 2026.*

Meaning of Rough Diamond

Rough diamond means any diamond that is unworked or simply sawn, cleaved or bruted and falling under the Tariff Heading 7102 10, 7102 21, or 7102 31 of the First Schedule to the Customs Tariff Act, 1975 and accompanied by the Kimberley Process Certificate.

Income on account of storage of components in a warehouse in a custom bonded area [Schedule IV (Table Sl. No. 13G)]

Sl. No.	Income not to be included in total income	Eligible persons	Conditions
13G	Any income accruing or arising on account of storage of components in a warehouse in a custom bonded area.	A foreign company, which stores components in a warehouse in a custom bonded area for providing them to a contract manufacturer to be used for manufacturing of specified electronic goods.	(a) Such exemption shall be available on sale of components by such foreign company; (b) such contract manufacturer produces electronic goods on behalf of any foreign company (c) such exemption shall be subject to furnishing of information in such form and manner, as

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			may be prescribed; and (d) such exemption shall be available up to the tax year ending on the 31st March, 2041.

Note – *This exemption is effective from 1st October 2026 vide the Taxation and Other Laws (Amendment) Act, 2026.*

Meaning of Certain Terms

(a) "contract manufacturer" means an Indian company which produces specified electronic goods on behalf of any foreign company in a custom bonded area;

(b) "custom bonded area" means a warehouse as referred to in section 65 of the Customs Act, 1962; and

(c) "specified electronic goods" as discussed above in Schedule IV (Table Sl. No. 13A)].'

Other Exemptions

Sl. No.	Provision
Schedule IV (Table Sl. No. 14) [Section 10(15)(iiia) of 1961 Act]	Interest on deposits made by a foreign bank with a scheduled bank with approval of RBI would be exempt in the hands of a Bank incorporated outside India and authorised to perform Central Banking functions in that country.
Schedule IV (Table Sl. No. 14) [Section 10(15)(iv)(fa) of 1961 Act]	Interest payable by scheduled bank on deposits in foreign currency where acceptance of such deposits is duly approved by RBI would be exempt in the hands of a) Non-resident b) Individual or HUF being a resident but not ordinary resident [Scheduled bank does not include co-operative bank]

Schedule VI also provides for the following exemptions to non-residents:

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Income from transfer of NDFs / ODIs / OTC derivatives with an IFSC Offshore Banking Unit [Schedule VI (Table Sl. No. 5)]

S. No.	Income not to be included in total income	Eligible persons	Conditions
5.	Any income accrued or arisen to, or received as a result of - (a) transfer of non-deliverable forward (NDF) contracts or offshore derivative instruments (ODI) or over-the-counter (OTC) derivatives; or (b) distribution of income on ODI or OTC derivatives.	Non-resident.	(a) Such contract, instrument or derivative is entered into with an offshore banking unit of an International Financial Services Centre as referred to in section 147 or any Foreign Portfolio Investor being a unit of an International Financial Services Centre; and (b) it fulfils such conditions, as may be prescribed.

Accordingly, Rule 284 specifies the following conditions to be fulfilled for claiming such exemption –

- the non-deliverable forward contract or offshore derivative instruments or over-the counter derivatives is entered into by the non-resident with an offshore banking unit of an IFSC which holds a valid certificate of registration granted under IFSC Authority (Banking) Regulations, 2020 by the IFSC Authority or any Foreign Portfolio Investor being a unit of an IFSC; and
- such contract or instrument or derivative is not entered into by the non-resident through or on behalf of its permanent establishment in India.

The offshore banking unit (i.e., a banking branch unit located in an IFSC) or the Foreign Portfolio Investor has to ensure that this condition is complied with.

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Meaning of Certain terms

Term	Meaning
Non-deliverable forward contract	A contract for the difference between an exchange rate agreed before and the actual spot rate at maturity, with the spot rate being taken as the domestic rate or a market determined rate and such contract being settled with a single payment in a foreign currency.
Offshore banking unit	A banking branch Unit located in an IFSC.
Offshore derivative instrument	Any instrument, by whatever name called, which is issued overseas by a foreign portfolio investor against securities held by it in India, as its underlying[7].
Over-the-counter derivatives	A derivative contract that is not traded on an exchange but instead is privately negotiated between a purchaser and a seller.
Foreign Portfolio Investor	A person registered under the SEBI (Foreign Portfolio Investors) Regulations, 2019 made under the SEBI Act, 1992.

Royalty or interest, on account of lease of an aircraft or a ship a unit of an IFSC [Schedule VI (Table Sl. No. 6)]

S. No.	Income not to be included in total income	Eligible persons	Conditions
6.	Any income by way of royalty or interest on account of lease of an aircraft or a ship in a tax year.	Non-resident.	(a) Such royalty or interest is paid by a unit of an International Financial Services Centre as referred to in section 147; and (b) such unit has commenced its operations on or before the 31st March, 2030.
"Aircraft", here, means an aircraft or a helicopter, or an engine of an aircraft or a helicopter, or any part thereof [Schedule VI, Note 3(a)]. "Ship" means a ship or an ocean vessel, engine of a ship or ocean vessel, or any part thereof [Schedule VI, Note 3(b)].			

[7] *Regulation 2(1)(o) of the SEBI Foreign Portfolio Investor Regulations, 2019*

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Income received by a non-resident in an account maintained with an offshore banking unit in any IFSC [Schedule VI (Table Sl. No. 7)]

S. No.	Income not to be included in total income	Eligible persons	Conditions
7.	Any income received from – (a) portfolio of securities or financial products or funds, managed or administered by any portfolio manager on behalf of the non-resident; or (b) such activity carried out by such person, as may be notified by the Central Government.	Non-resident	(a) Such income is received in an account maintained with an Offshore Banking Unit in any International Financial Services Centre as referred to in section 147; and (b) the income not to be included in the total income shall be to the extent such income accrues or arises outside India and is not deemed to accrue or arise in India.

Capital gains from transfer equity shares of Domestic Co., being a Unit of an IFSC [Schedule VI (Table Sl. No. 8)]

S. No.	Income not to be included in total income	Eligible persons	Conditions
8.	Any income by way of Capital gains arising from the transfer of equity shares of domestic company where such domestic company is a Unit of an International Financial Services	A non- resident, or a Unit of an International Financial Services Centre as referred to in section 147, engaged primarily in the business of	(a) The domestic company - (i) is engaged primarily in the business of leasing of an aircraft or a ship; (ii) has commenced operations on or before the 31st March, 2030; and

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	Centre as referred to in section 147.	leasing of aircraft or a ship.	(b) exclusion from total income shall be available for capital gains arising from the transfer of equity shares of such domestic company in a tax year falling within - (i) ten tax years beginning with the tax year in which the domestic company has commenced operations; or (ii) ten tax years beginning with the tax year commencing on the 1st April, 2023, where the period referred to in sub-clause (i) ends before the 1st April, 2033.
Meaning of "Aircraft" and Ship is same as discussed above.			

Income from a specified fund or on transfer of units in a specified fund [Schedule VI (Table Sl. No. 9)]

S. No.	Income not to be included in total income	Eligible persons	Conditions
9.	Any income accruing or arising to or received from a specified fund or on transfer of units in a specified fund.	A unit holder of a specified fund.	Nil.

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Meaning of specified fund

Specified fund means

(i) a fund established or incorporated in India in the form of a trust or a company or a limited liability partnership or a body corporate and located in International Financial Services Centres, -

(A) which has been granted a certificate of registration as a Category III Alternative Investment Fund and is regulated –

(I) under the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012 made under the Securities and Exchange Board of India Act, 1992;

(II) under the International Financial Services Centres Authority (Fund Management) Regulations, 2022 made under the International Financial Services Centres Authority Act, 2019 or

(B) which has been granted a certificate as a retail scheme or an Exchange Traded Fund, and satisfies the conditions laid down for such schemes or funds under the International Financial Services Centres Authority (Fund Management) Regulations, 2022 made under the International Financial Services Centres Authority Act, 2019.

(C) of which all the units other than the unit held by a sponsor or manager are held by non-residents except, -

(I) where such non-resident becomes resident under section 6(2) or (3) or (4) or (5) or (6) or (7) in any tax year subsequent to that tax year; and

(II) the number of units held by such resident unit holder or holders do not exceed 5% of the total units issued and shall fulfil such other conditions as may be prescribed; or

(ii) investment division of an offshore banking unit, which has been—

(A) granted a certificate of registration as a Category-I foreign portfolio investor under the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019 made under the Securities and

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Exchange Board of India Act, 1992 and which has commenced its operations on or before the 31st March, 2030; and

(B) fulfils such conditions including maintenance of separate accounts for its investment division, as may be prescribed.

Meaning of Units

It means beneficial interest of an investor in the fund and shall include shares or partnership interests.

Dividends from a Unit of an IFSC in the business of leasing of an aircraft or a ship [Schedule VI (Table Sl. No. 11)]

S. No.	Income not to be included in total income	Eligible persons	Conditions
11.	Any income by way of dividends from a company being a Unit of an International Financial Services Centre primarily engaged in the business of leasing of an aircraft or a ship.	A Unit of any International Financial Services Centre.	Such Unit is primarily engaged in the business of leasing of an aircraft or a ship.

Interest payable by an IFSC [Schedule VI (Table Sl. No. 12)]

S. No.	Income not to be included in total income	Eligible persons	Conditions
12.	Any income by way of interest payable	Non-resident.	Such interest is payable by a Unit of an International Financial Services Centre in respect of moneys borrowed by it on or after the 1st September, 2019.

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21.7 SPECIAL PROVISION FOR COMPUTING INCOME BY WAY OF ROYALTIES ETC. IN CASE OF NON-RESIDENTS [SECTION 59]

(i) Specified Assessee: Income in the nature of royalty or fees for technical services received by a specified assessee, being a non-resident (not being a company) or a foreign company during a tax year, shall be computed under the head "Profits and gains of business or profession" under this Act, if the following conditions are satisfied:

(a) income is received from the Government or an Indian concern;

(b) income is in pursuance to an agreement made by the specified assessee with the Government or the Indian concern;

(c) such non-resident carries on business in India through a permanent establishment or performs professional services from a fixed place of profession situated in India; and

(d) the right, property, or contract in respect of which the royalty or fees for technical services are paid is effectively connected with such permanent establishment or fixed place of profession.

(ii) Expenses not allowed as deduction: While computing the income chargeable to tax under this section, the following expenses are not allowed as deduction:

- expenditure or allowance which is not wholly and exclusively incurred for the business of such permanent establishment or fixed place of profession in India; or
- amounts, if any paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to its head office or to any of its other offices.

(iii) Non-applicability of section 61(2) (Table: Sl. No. 5) [Section 59(3)]: The provisions of section 61(2) (Table: Sl. No. 5) do not apply in respect of income covered by this section.

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(iv) Mandatory requirement to maintain books of account and get them audited: Under this section, the specified assessee is mandatorily required to keep and maintain the books of account under section 62 and get them audited before the date one month prior to the due date for furnishing the return of income under section 263 and furnish such audit report in the prescribed form, duly signed and verified by the accountant.

	Assessee	Due date of filing return of income u/s 263	Specified date u/s 63
(i)	In case of an assessee who is required to furnish report referred to in section 172 i.e., transfer pricing audit report	30th November of the F.Y. subsequent to tax year	31st October of the F.Y. subsequent to tax year
(ii)	In case of other assessees	31st October of the F.Y. subsequent to tax year	30th September of the F.Y. subsequent to tax year

21.8 DEDUCTION IN RESPECT OF HEAD OFFICE EXPENDITURE IN CASE OF NON-RESIDENTS [SECTION 60]

As per section 60(1), irrespective of anything to the contrary contained in section 26 to 54, in case of a non-resident assesseee, head office expenditure incurred by a non-resident assessee as is attributable to his business or profession in India is allowed as deduction while computing business income in accordance with the provisions of section 60(2).

Section 60(2) provides that the deduction in respect of head office expenditure shall be restricted -

(a) if the adjusted total income of the assessee is a loss, to an upper monetary limit of 5% of the average adjusted total income of the assessee; or

(b) in any other case, to an upper monetary limit of 5% of the adjusted total income of the assessee.

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Meaning of certain terms [Section 60(3)]

Term	Meaning
Adjusted total income	It means the total income computed under this Act without giving effect to the following :- ▪ Allowance under this section ▪ Unabsorbed depreciation allowance under section 33(11). ▪ Expenditure incurred by a company for the purpose of promoting family planning amongst its employees under section 32(i)(A). ▪ Loss under the head Capital Gain under section 111(1). ▪ Business loss brought forward under section 112(1). ▪ Speculation loss brought forward under section 113(2). ▪ Loss from the specified activity of owning and maintaining race horses, carried forward under section 115(2). ▪ Deduction under Chapter VIII
Average adjusted total income	It means (a) If the assessee is assessable for each of the **three tax years** immediately preceding the relevant tax year, the arithmetic mean of his adjusted total income over those three tax years; (b) If the assessee is assessable only for **two of the aforesaid three tax years**, the arithmetic mean of his adjusted total income over those two tax years; (c) If the assessee is assessable only for **one of the aforesaid three tax years, his adjusted total income for that tax year**
Head office expenditure	It means executive and general administration expenditure incurred by the assessee outside India, including expenditure incurred in respect of: a. rent, rates, taxes, repairs or insurance of any premises outside India used for the purpose of the business or profession. b. salary, wages, annuity, pension, fees, bonus, commission, gratuity, perquisites or profit in lieu of or in addition to salary, whether paid or allowed to any employee or other person employed in, or managing the affairs of, any office outside India;

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	c. travelling by any employee or other person employed in, or managing the affairs, of any office outside India; and d. such other matters connected with executive and general administration, as may be prescribed.

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

Lower of

5% of adjusted Total Income	Amount of Head Office expenditure incurred by the Non-resident attributable to the business or profession in India
Meaning of Adjusted Total Income	**Meaning of Head Office expenditure**
Total Income, without giving effect to: (i) Head Office expenditure (ii) Unabsorbed depreciation u/s 33 (11) (iii) Capital expenditure on family planning 32(i)(A) (iv) Losses carry forward: - LTCL/STCL u/s 111(1) - Speculative business Loss u/s 113(2) - Loss from owning and maintaining race horses u/s 115(2) (v) Deductions under Chapter VIII from GTI	Executive and general administration expenditure incurred by the NR outside India, including: (a) Rent, rates, taxes, repairs or insurance of any premises outside India used for business or profession (b) salary, wages, annuity, pension, fees, bonus, commission, gratuity, perquisites or profits in lieu of, or in addition to, salary, whether paid or allowed to any employee or other person employed in, or managing the affairs of, any office outside India (c) Travelling expenditure by any employee or other person employed in or managing the affairs of any office outside India and (d) Such other prescribed executive and general administration expenditure

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Director of Income Tax (IT)-I, Mumbai v. M/s. American Express Bank Ltd. (2026) 484 ITR 137 (SC)

Issue: Whether expenditure incurred by the head office of a non-resident assessee exclusively for its Indian branches is subject to the limitation prescribed under section 60 of the Income-tax Act, 2025, or is fully deductible under section 34(1)?

Facts of the Case: M/s American Express Bank Ltd., a non-resident banking company engaged in the business of providing banking-related services, filed its return of income for the relevant tax year declaring income of ₹ 79,45,07,110. In the said return, the assessee claimed deductions under section 34(1) for

(i) ₹ 6,39,13,217 incurred for solicitation of deposits from Non-Resident Indians, and

(ii) ₹ 13,50,87,275 incurred at the head office directly in relation to the Indian branches.

The Assessing Officer invoked section 60 and restricted the deduction by applying the statutory ceiling prescribed therein. The Tribunal and the Bombay High Court held in favour of the assessee, permitting full deduction of the exclusive head office expenditure under section 34(1) on the view that section 60 applies only to common expenditure and not to expenditure incurred exclusively for the Indian branches.

Analysis and Decision: The Apex Court noted that the section 60 is a special provision governing the quantum of deduction for head office expenditure of non-residents. It provides that in the case of a non-resident, deduction in respect of head office expenditure as is attributable to the business or profession of the assessee in India shall be restricted to the upper monetary limit of 5% of the adjusted total income. The non-obstante clause gives section 60 overriding effect over sections 26 to 54.

Section 60(3)(c) lays down a tripartite test. For an expenditure to qualify as "head office expenditure", it must:

(i) be incurred outside India;

(ii) be in the nature of executive and general administration expenditure; and

(iii) fall within one of the categories specifically enumerated in section 60(3)(c)(i), (ii) or (iii) *or* be of a kind prescribed under sub-clause (iv) thereof.

The language of section 60 is clear, plain and unambiguous. It does not create any distinction between "common" expenditure and "exclusive" expenditure. Once the

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expenditure qualifies as head office expenditure under the statutory definition, section 60 is attracted and the deduction is restricted to the statutory ceiling.

Thus, once the assessee is a non-resident and the expenditure satisfies the statutory definition of "head office expenditure" under section 60, the general deduction provisions stand displaced to the extent of the quantum limitation prescribed by section 60.

Accordingly, the Supreme Court held that section 60 applies to qualifying head office expenditure irrespective of whether it is common expenditure or expenditure incurred exclusively for the Indian branches.

ILLUSTRATION 6

The net result of the business carried on by a branch of foreign company in India for the year ended 31.03.2027 was a loss of ₹ 100 lakhs after charge of head office expenses of ₹ 200 lakhs allocated to the branch. Explain with reasons the income to be declared by the branch in its return for the tax year 2026-27.

SOLUTION

Section 60 restricts the allowability of the head office expenses to the extent of lower of an amount equal to 5% of the adjusted total income or the amount actually incurred as is attributable to the business of the assessee in India.

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

The amount of income to be declared by the assessee for tax year 2026-27 will be as under:

Particulars	₹
Net loss for the year ended on 31.03.2027	(100 lakhs)
Add: Amount of head office expenses to be considered separately as per section 60	200 lakhs
Adjusted total income	100 lakhs
Less: Head Office expenses allowable would be lower of -	
(i) ₹ 5 lakhs, being 5% of ₹ 100 lakhs, or	
(ii) ₹ 200 lakhs.	5 lakhs
Income to be declared in return	**95 lakhs**

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21.9 PRESUMPTIVE TAXATION FOR NON-RESIDENTS

Section 26 details the income chargeable to tax under the head "Profits and Gains of Business or Profession". Certain provisions have been incorporated in the Income-tax Act, 2025, whereby the "Profits and gains of business or profession" of certain non-resident assessee is computed on the basis of certain percentage of the amount accrued or arisen and received in India.

Section 61 has a non-obstante clause. Accordingly, the provisions of sections 26 to 54, to the extent contrary to this section, shall not apply to the manner of computation of profits and gains of the specified business.

As per section 61(2), the profits and gains of any specified business as mentioned in column B of the Table below, carried on by a specified assessee as mentioned in column C of the said Table during a tax year, shall be computed in the manner specified in column D thereof, and shall be deemed to be the profits and gains of such business of such assessee chargeable to tax for the said tax year under the head "Profits and gains of business or profession".

Profits and gains of shipping business other than cruise shipping [Section 61(2) (Table: Sl. No.1)]

S. No.	Specified business	Specified assessee	Profits and gains of business or profession
A	B	C	D
1.	Business of operation of ships, other than cruise ships referred to in Serial number 2. 	Non-resident	**7.5% of (A+B)** A = sum on account of carriage of passengers, livestock, mail or goods shipped - **at any port in India**, - whether paid or payable, in or outside India, - to the assessee or any other person on his behalf **(including demurrage, handling or other similar charges)**

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			B = sum on account of carriage of passengers, livestock, mail or goods shipped • **at any port outside India,** • whether received or deemed to be received in India, • by the assessee or any other person on his behalf (**including demurrage, handling or other similar charges**).

Analysis of presumptive provisions and section 316 with respect to Shipping Business

Section 61(2) (Table: Sl. No.1)	Section 316
Contains presumptive tax provisions for non-residents engaged in shipping business (other than cruise ships. It does not, however, contain any procedure for assessment and collection of tax.	Complete code for taxation of occasional shipping business of non-residents, including assessment and collection of tax. Irrespective of anything contained in the other provisions of the Act, the provisions of section 316 would apply.
Manner of computation of presumptive Income:	
Profits and gains from business or profession would be 7.5% of (A) + (B) - A = sum on account of carriage of passengers, livestock, mail or goods shipped • **at any port in India**, • whether paid or payable, in or outside India, • to the assessee or any other person on his behalf **(including demurrage, handling or other similar charges)** B = sum on account of carriage of passengers, livestock, mail or goods shipped	Where a ship carries passengers, livestock, mail, or goods shipped **at a port in India**, a sum equal to **7.5%** of the amount paid or payable on account of such carriage to the owner or the charterer or to any person on his behalf, whether that amount is paid or payable in or out of India, **shall be deemed to be income accruing in India** to the owner or charterer on account of such carriage.

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• **at any port outside India,** • whether received or deemed to be received in India, by the assessee or any other person on his behalf (**including demurrage, handling or other similar charges**)	Such amount paid or payable would include **demurrage, handling or other similar charges.**

Other provisions of section 316

(i) Furnish a return of the amount paid to the owner: Section 316(3) imposes an obligation on the master of the ship to prepare and furnish to the Assessing Officer a return of the full amount paid or payable to the owner or charterer or any person on his behalf, on account of the carriage of passengers, livestock, mail or goods shipped at any port in India since the last arrival of the ship thereat. Such return is, ordinarily, to be furnished by the master of the ship before the departure, from that port in India, of the ship.

A return may, however, be filed by the person authorized by the master of the ship within 30 days of the departure of the ship from the port, if:

(a) the Assessing Officer is satisfied that it is not possible for the master of the ship to furnish the return required by section 316(3) before the departure of the ship from the port; and

(b) the master of the ship has made satisfactory arrangement for the filing of the return and payment of tax by any other person on his behalf.

(ii) Assessment [Section 316(5)]: This section provides for a summary procedure of assessment. On receipt of the return filed by the master of the ship or by any person on his behalf, the Assessing Officer has to determine the tax payable on the taxable income. By virtue of the provisions of section 316(2), the taxable income is a sum equal to 7.5% of the amount paid or payable on account of carriage of passengers etc. to the owner or charterer or to any person on his behalf, whether that amount is paid or payable in or out of India and include the amount paid or payable by way of demurrage charge or handling charge or any other amount of similar nature.

The tax payable on such taxable income is to be calculated at the **rate or rates in force applicable to the total income of a foreign company** i.e.,

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35% *plus* surcharge, if any, and *plus* health and education cess @4%. The master of the ship is liable for payment of such tax.

The Supreme Court, in *A.S. Glittre v CIT (1997) 225 ITR 739 (SC)*, held that the assessment made under section 316(5) shall be an 'adhoc' assessment and it will be superseded if a regular assessment is opted as per the provisions of the Act.

(iii) Time limit for passing the assessment order [Section 316(6)/(7)]: It is incumbent on the Assessing Officer to pass the order of assessment within 9 months from the end of the tax year in which the return of income under section 316(3) is filed.

For the purpose of determining the tax payable, Assessing Officer is empowered to call for such accounts and documents as he may require.

(iv) Grant of port clearance to the ship [Section 316(8)]: A port clearance shall not be granted to the ship until the Commissioner of Customs, or other officer duly authorised to grant the same , is satisfied that the tax assessable has been duly paid or that satisfactory arrangements have been made for the payment thereof.

(v) Option to pay tax as per normal provisions of the Income-tax Act, 2025 on the income chargeable to tax under section 316 [Section 316(9)]: The owner or charterer has the option to claim before the end of the year following the tax year in which the date of departure of the ship from the Indian port falls, that an assessment in respect of his total income for the tax year and the tax payable on the basis thereof be determined in accordance with the other provisions of this Act and tax payable be determined on the basis of such assessment.

In such a case, any payment made under section 316 is to be treated as

- a payment in advance of the tax leviable for that year and adjusted against tax payable by such person; and
- the difference between the sum so paid and the amount of tax found payable by him on such assessment is to be paid by him or refunded to him.

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The non-resident assessee is liable to pay interest under sections 424 and 425 and also entitled to receive interest under section 437 of the Income-tax Act, 2025 as the case may be. **[Circular No. 9/2001, dated 9-7-2001]**

Note *–Refund may arise in case of non-corporate non-residents, since they are liable to pay tax at a rate lower than the rate of 35% (plus surcharge, if any, and cess@4%) applicable to a foreign company.*

ILLUSTRATION 7

Sea Port Shipping Line, a non-resident foreign company, is engaged in the business of carriage of goods shipped at Mumbai port. During the tax year ended on 31.3.2027, it had collected freight of ₹ 100 lakhs, demurrages of ₹ 20 lakhs and handling charges of ₹ 10 lakhs. The expenses of operating its fleet during the year for the Indian Ports were ₹ 110 lakhs. Compute its income applying the presumptive provisions under section 61(2) (Table: Sl. No. 1).

SOLUTION

Section 61(2) (Table: Sl. No. 1) provides that in the case of an assessee, being a non-resident, engaged in the business of operation of ships, income taxable under the head "Profits and gains of business or profession" would be 7.5% of (A) + (B).

A = sum on account of carriage of passengers, livestock, mail or goods shipped at any port in India, whether paid or payable, in or outside India, to the assessee or any other person on his behalf (including demurrage, handling or other similar charges)

B = sum on account of carriage of passengers, livestock, mail or goods shipped at any port outside India, whether received or deemed to be received in India, by the assessee or any other person on his behalf (including demurrage, handling or other similar charges).

Therefore, in this case, M/s. Sea Port Shipping Line is required to pay tax in India on the basis of presumptive scheme as per the provisions of Section *61 (2)* Table: Sl. No. 1. No deduction is allowed for expenses incurred for earning of such income. Therefore, the Shipping Line is required to pay tax on deemed profit of ₹ 9.75 lakhs (7.50% on the total receipts of ₹ 130 lakhs). Where the owner or charterer exercises the option under section 316(9) to be assessed under the other provisions of the Act, any payment made under section 316 during the tax year is, by virtue of section 316(10), treated as tax paid in advance and adjusted against the tax payable on that assessment.

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Business of operation of cruise ships [Section 61(2) (Table: Sl. No. 2)]

S. No.	Specified business	Specified assessee	Profits and gains of business or profession
A	B	C	D
2.	Business of operation of cruise ships (subject to the conditions as may be prescribed). 	Non-resident	20% of (A+B), A = sum on account of carriage of passengers, **paid or payable to the assessee** or any other person on his behalf; B = sum on account of carriage of passengers **received or deemed to be received by the assessee** or any other person on his behalf.

Conditions to be fulfilled by a non-resident, engaged in the business of operation of cruise ships (Rule 44)

A non-resident assessee, engaged in the business of operation of cruise ships are required to fulfill the following conditions:

(a) operate a passenger ship having a carrying capacity of more than 200 passengers or length of 75 meters or more, for leisure and recreational purposes and having appropriate dining and cabin facilities for passengers;

(b) operate such ship on scheduled voyage or shore excursion touching at least two sea ports of India or same sea ports of India twice;

(c) operate such ship primarily for carrying passengers and not for carrying cargo; and

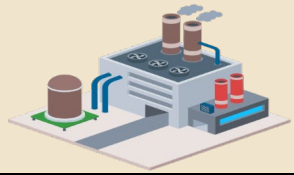
(d) operate such ship as per the procedure and guidelines if any, issued by the Ministry of Tourism or Ministry of Ports, Shipping and Waterways.

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Business of operation of aircraft [Section 61(2) (Table: Sl. No. 3)]

S. No.	Specified business	Specified assessee	Profits and gains of business or profession
A	B	C	D
3.	Business of operation of aircraft. 	Non-resident	5% of (A+B), A = sum on account of carriage of passengers, livestock, mail or goods • from any place in India, • paid or payable (in or outside India) • to the assessee or any other person on his behalf; B = sum on account of carriage of passengers, livestock, mail or goods • from any place outside India, • received or deemed to be received in India, • by the assessee or any other person on his behalf.

Civil construction or erection or testing or commissioning, of plant or machinery, in connection with a turnkey power project [Section 61(2) (Table: Sl. No. 4)]

S. No.	Specified business	Specified assessee	Profits and gains of business or profession
A	B	C	D
4.	Business of civil construction or erection or testing or commissioning, of plant or machinery, in connection with a turnkey power project, approved by the Central Government. 	Foreign company.	10% of the amount towards • civil construction, erection, testing, or commissioning, • paid or payable, to the assessee or to any other person on his behalf, • whether in or outside India.

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Option to claim lower profits [Section 61(3)]

Foreign company may claim that the profits actually earned are lower than the business profits computed applying the presumptive rate of 10%, if -

- ❖ he keeps and maintains such books of account and other documents as required under section 62; and
- ❖ gets his accounts audited and furnish a report of such audit as required under section 63.

Services or facilities for prospecting, extraction or production of mineral oils [Section 61(2) (Table: Sl. No. 5)]

S. No.	Specified business	Specified assessee	Profits and gains of business or profession
A	B	C	D
5.	Business of providing services or facilities (including supply of plant and machinery on hire) for prospecting, extraction or production of mineral oils. 	Non-resident	10% of (A+B), A = sum on account of business of providing services and facilities in connection with, or supply of • plant and machinery on hire • used, or to be used, in the prospecting for, or extraction or production of mineral oils **in India**, • paid or payable (in or outside India), • to the assessee or any other person on his behalf; B = sum on account of business of providing services and facilities in connection with, or supply of • plant and machinery on hire • used, or to be used, in the prospecting for, or extraction or production of mineral oils **outside India**, • received or deemed to be received in India, • by the assessee or any other person on his behalf.

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Option to claim lower profits [Section 61(3)]

Non-resident assessee may claim that the profits actually earned from the Services or facilities for prospecting, extraction or production of mineral oils are lower than the business profits computed applying the presumptive rate, if -

- he keeps and maintains such books of account and other documents as required under section 62; and
- gets his accounts audited and furnish a report of such audit as required under section 63.

Non-applicability of presumptive taxation [Section 61(6)]

The presumptive provisions of this Table: Sl. No. 5 shall not apply to any income to which the provisions of section 54 or section 59, 207 or 527 apply for the purpose of computing profit or gains or any other income referred to in these sections.

Section	Provision
54	Business for prospecting for mineral oils
59	Computation of royalty and fees for technical services in the hands of NR
207	Tax on royalty and fees for technical services
527	Power to make exemption, etc., in relation to participation in the business of prospecting for, extraction, etc., of mineral oils.

"Plant" includes ships, aircrafts, vehicles, drilling units, scientific apparatuses and equipment's used for the purposes of the specified business.

Technology & Services for Electronic Goods Manufacturing [Section 62(2) (Table: Sl. No. 5)]

S. No.	Specified business	Specified assessee	Profits and gains of business or profession
A	B	C	D
6.	Business of providing services or technology in India, for the purposes of setting up an electronics manufacturing facility or in connection with manufacturing or producing electronic goods, article or thing in India to a resident company.	Non-resident	**25% of (A+B),** A = amount paid or payable to the non-resident assessee or to any person on his behalf on account of providing services or technology. B = amount received or deemed to be received by the non-resident assessee or on

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			behalf of non-resident assessee on account of providing services or technology.

Conditions to be satisfied by the resident company [Section 61(8) read with Rule 45]: The resident company need to satisfy the following condition -

(a) it is establishing or operating electronics manufacturing facility or a connected facility for manufacturing or producing electronic goods, article or thing in India, under a scheme notified by the Central Government in the Ministry of Electronics and Information Technology; and

(b) it does not become ineligible for such scheme at any time of the tax year for which tax is to be calculated for the income of the non-resident.

'Electronics goods' shall mean goods covered under any scheme referred above, including their supply chain ecosystem [Rule 45].

Non-applicability of section 59 or section 207: The provisions of section 59 or section 207 do not apply in respect of income covered by this section.

Other conditions with respect to specified business under section 61(2) [Section 61(4) & (5)]

- In all the specified businesses referred to in section 61(2), where income is computed at the presumptive rates, no loss, allowance or deduction allowable under the provisions of this Act shall be allowed against the presumptive income computed under sub-section (2).
- Further, the written down value of any asset used for the purposes of specified business or profession would be computed, as if the specified assessee had claimed and was actually allowed depreciation thereon for each of the relevant tax years.

ILLUSTRATION 8

Mr. Q, a non-resident, operates an aircraft between Singapore and Chennai. He received the following amounts while carrying on the business of operation of aircraft for the year ended 31.3.2027:

(i) ₹ 2 crores in India on account of carriage of passengers from Chennai.

(ii) ₹ 1 crore in India on account of carriage of goods from Chennai.

(iii) ₹ 3 crores in India on account of carriage of passengers from Singapore.

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(iv) ₹ 1 crore in Singapore on account of carriage of passengers from Chennai.

The total expenditure incurred by Mr. Q for the purposes of the business during the year ending 31.3.2027 was ₹ 6.75 crores.

Compute the income of Mr. Q chargeable to tax in India under the head "Profits and gains of business or profession" for the tax year 2026-27.

What would be your answer in case the business was carried on by a foreign company, Q Airlines (P) Ltd?

SOLUTION

As per section 61(2) [Table: Sl. No. 3] profits and gains of the business of operation of aircraft in the case of non-residents would be **5% of (A+B),**

A = sum on account of carriage of passengers, livestock, mail or goods from any place in India, paid or payable (in or outside India) to the assessee or any other person on his behalf

B = sum on account of carriage of passengers, livestock, mail or goods from any place outside India, received or deemed to be received in India, by the assessee or any other person on his behalf

Accordingly, the income of Mr. Q chargeable to tax in India under the head "Profits and gains of business or profession" is worked out hereunder -

Particulars	₹
Amount received in India on account of carriage of passengers from Chennai	2,00,00,000
Amount received in India on account of carriage of goods from Chennai	1,00,00,000
Amount received in India on account of carriage of passengers from Singapore	3,00,00,000
Amount received in Singapore on account of carriage of passengers from Chennai	1,00,00,000
	7,00,00,000

Income from business would be 5% of ₹ 7,00,00,000 is ₹ 35,00,000, chargeable to tax in India under the head "Profits and gains of business or profession" for the tax year 2026-27 in the hands of Mr. Q.

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In case the assessee is a foreign company, say, Q Airlines (P) Ltd, the answer would be the same since section 61(2) [Table: Sl. No 3] does not distinguish corporate and non-corporate taxpayers who operate aircraft provided their residential status is that of non-resident.

21.10 SPECIAL PROVISIONS RELATING TO NON-RESIDENTS AND FOREIGN COMPANIES UNDER CHAPTER XIII-E

(I) Tax on dividend, royalty, fees for technical service, interest etc. [Section 207]

(i) Tax on specified income such as dividends, interest etc. in the hands of non-resident [Section 207(1)]

The income-tax payable on the total income of a non-resident (not being a company) or of a foreign company, which includes any income specified in the Table below, shall be the aggregate of income-tax computed at the rate specified therein applied on the corresponding income specified in column B.

Sl. No.	Income	Rate of Income-tax payable
1.	Dividend [other than dividends specified against serial number 2].	20%
2.	Dividend received from a unit in an International Financial Services Centre.	10%
3.	Interest received from Government or an Indian concern on moneys borrowed, or debt incurred by Government or the Indian concern in foreign currency not being interest referred to against serial numbers 4 and 5.	20%
4.	Interest received from an infrastructure debt fund referred to in Schedule VII (Table: Sl. No. 46)	5%

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5.	Interest of the nature and extent referred to in section 393(*2*) (Table: Sl. Nos. 2, 3 and 4), received from an Indian company or business trust in respect of monies borrowed – - in foreign currency from sources outside India • Under a loan agreement or issue of long-term infrastructure bond on or after 1.7.2012 but before 1.7.2023 or • by way of issue of any long-term bond on or after 1.10.2014 but before 1.7.2023 as approved by the Central Government - from a source outside India by way of rupee denominated bond before 1.7.2023 - from a source outside India by way of issue of any long-term bond or rupee denominated bond which is listed only on a recognised stock exchange located in any IFSC • on or after 1.4.2020 but before 1.7.2023 taxable @ 4% • on or after 1.7.2023 taxable @9% to the extent to which such interest does not exceed the interest calculated at the rate approved by the Central Government	Rates specified in section 393(2) (Table: Sl. Nos. 2, 3 and 4). 5%
6.	Distributed income being interest referred to in section 393(2) (Table: Sl. No. 6) of a business trust from a SPV, distributed by business trust to its non-resident unit holders	5%
7.	Income received in respect of units, purchased in foreign currency, of a Mutual Fund specified in Schedule VII (Table: Sl. No. 20 or 21) or of the Unit Trust of India.	20%
8.	Total income as reduced by income referred to against serial numbers 1 to 7.	Rates in force.

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(ii) Tax on royalty or fees for technical services in case of non-residents [Section 207(2) to (4)]

Where the total income of a foreign company or a non-corporate non-resident includes any income by way of royalty or fees for technical services (FTS) received from Government or an Indian concern in pursuance of an agreement made with Government or an Indian concern after the 31st March, 1976 other than the income referred to in section 59(1) and

a) the agreement is approved by the Central Government where such agreement is with an Indian concern.

b) where the agreement relates to a matter included in the industrial policy, for the time being in force, of the Government of India, it is as per that policy.

In such case, royalty and FTS other than referred to in section 59(1) would be taxable @20%. However, if DTAA provides for a rate lower than 20%, then, the provisions of DTAA would apply.

Where the royalty is in consideration for the transfer or grant of all or any rights (including the granting of a licence) in respect of -

- copyright in any book to an Indian concern; or
- any computer software to a person resident in India,

then the same would also be taxable @20% even if agreement is not approved by the Central Government or does not relate to a matter included in the industrial policy.

Meaning of Certain Terms

"Computer software" means any computer programme recorded on any disc, tape, perforated media or other information storage device; or any customised electronic data or any product or service of similar nature as may be notified by the Board, which is transmitted or exported from India to a place outside India by any means.

"Fees for technical services" and "royalty" shall have the meaning assigned to it in section 9.

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(iii) Restriction on Deduction of Expenditure and other allowance from income taxable under section 207(1) & (2)

1. No deduction in respect of any expenditure or allowance shall be allowed to the assessee under sections 28 to 58, 60 and 61 and section 93 in computing the above income referred in (i) and (ii) above. [Section 207(5)]

2. Deduction under Chapter VIII is also not available in respect of income i.e., dividend and interest referred to in (i) above. However, this condition would not be applicable to deduction allowed to a unit of an International Financial Services Centre (IFSC) under section 147 i.e. a unit of an IFSC can claim deduction under section 147 against dividend and interest referred to in (i) above.

3. It shall not be necessary for the assessee to furnish a return of income u/s 263(1) if the following conditions are satisfied:

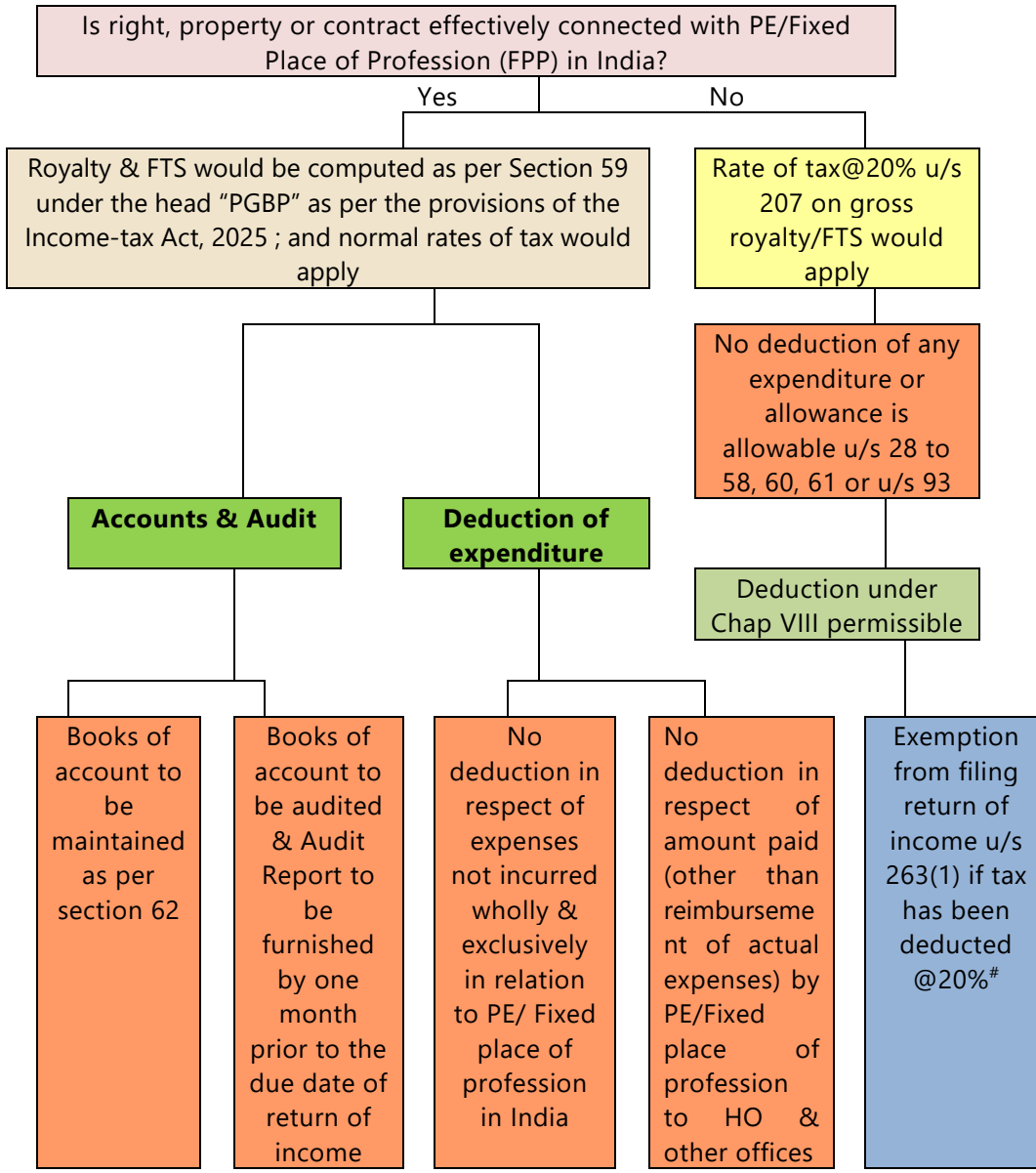
   (a) The total income consists of only the interest or dividend income referred to in (i) above and royalty or fees for technical services referred to in (ii) above; and

   (b) Tax deductible at source has been deducted from such income and the rate of such deduction is not less than the rate specified in (i) or the rate of 20% specified in (ii).

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A Quick Recap

Tax treatment of Royalty & Fees for technical service received from Government/Indian concern in pursuance of approved agreement



If tax has been deducted at a rate lower than 20% by availing the beneficial provisions of DTAA, then, no exemption would be available from filing return of income.

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(II) Tax on income from units purchased in foreign currency or capital gains arising from their transfer in case of offshore fund [Section 208]

(i) Tax on income from units purchased in foreign currency for offshore fund [Section 208(1)]

Where the total income of an overseas financial organisation (Offshore Fund) includes the incomes specified in the table below, the income-tax payable shall be aggregate of the income-tax computed the below rates:

Sl. No.	Income	Rate of tax
(1)	Income received in respect of units purchased in foreign currency	10%
(2)	Long-term capital gain units arising from transfer of units purchased in foreign currency	12.5%
(3)	Total income as reduced by the income referred to against Sl. Nos. 1 and 2	Rates in force

(ii) Deductions not allowable [Section 208(2)]

No deduction shall be allowed to the assessee under sections 28 to 58, 60, 61 or section 93(1)(a) or 93(1)(e) or under Chapter VIII in computing the above income referred in (1) and (2) above.

(iii) Meaning of certain terms

"Overseas Financial Organisation'' means any fund, institution, association or body, whether incorporated or not, established under the laws of a country outside India,

- which has entered into an arrangement for investment in India with any public sector bank or public financial institution or a mutual fund and
- Such arrangement should be approved by the Securities and Exchange Board of India.

"Unit" means unit of a Mutual Fund or the Unit Trust of India.

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(III) Tax on income from bonds or Global Depository Receipts purchased in foreign currency or capital gains from their transfer [Section 209]

(i) Tax on income from bonds or Global Depository Receipts [Section 209(1)]

The income-tax payable, on the total income of an assessee, being a non-resident, which includes income specified in the Table below, shall be the aggregate of income-tax computed at the rate specified therein:

Sl. No.	Income	Tax Rate
1.	From interest on - ❖ bonds of an Indian company issued as per such notified scheme by the Central Government; or ❖ bonds of a public sector company sold by the Government, and purchased in foreign currency.	10%
2.	From dividends on Global Depository Receipts (GDRs)- ❖ issued as per scheme notified by the Central Government against the initial issue of shares of an Indian company and purchased in foreign currency through an approved intermediary; or ❖ issued against the shares of a public sector company sold by the Government and purchased by him in foreign currency through an approved intermediary; or ❖ issued or re-issued as per a scheme notified by the Central Government, against the existing shares of an Indian company purchased in foreign currency through an approved intermediary.	10%
3.	Long-term capital gains arising from the transfer of bonds or Global Depository Receipts referred above in (1) or (2), respectively.	12.5%
4.	Total income as reduced by income referred to against serial numbers 1 to 3.	Rates in force

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(ii) Deductions not allowable [Section 209(2)]

Where the gross total income of the non-resident -

- consists only of income by way of interest or dividends from bonds GDRs no deduction shall be allowed under sections 28 to 58, 60 and 61 or section 93(1)(a) or (e) or under Chapter VIII;
- the gross total income shall be reduced by such income and the deduction under Chapter VIII shall be allowed as if the gross total income so reduced, were the gross total income of the assessee.

(iii) Non-availability of foreign currency fluctuations [Section 209(3)]

Benefit of foreign currency fluctuation would not be applicable for computation of long-term capital gains arising out of the transfer of long-term capital asset being bonds or Global Depository Receipts referred above.

(iv) Filing of Return of Income not required [Section 209(4)]

It shall not be necessary for a non-resident to furnish a return of his income under section 263(1), if -

(a) his total income during the tax year consisted only of interest on bonds and dividend on GDRs; and

(b) the tax deductible at source has been deducted from such income.

(v) Concessional tax treatment for GDR/Bonds acquired in course of Amalgamation [Section 209(5)]

The provisions of section 209 would apply even if the assessee acquired GDRs or bonds in an amalgamated or resulting company by virtue of his holding GDRs or bonds in the amalgamating or demerged company.

(vi) Meaning of certain terms [Section 209(6)]

"Approved intermediary" means an intermediary which is approved as per a scheme notified by the Central Government.

"Global Depository Receipts" means any instrument in the form of a depository receipt or certificate (by whatever name called) created by the Overseas Depository

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Bank outside India or in an International Financial Services Centre and issued to investors against the issue of -

(i) ordinary shares of issuing company, being a company listed on a recognised stock exchange in India; or

(ii) foreign currency convertible bonds of issuing company; or

(iii) ordinary shares of issuing company, being a company incorporated outside India, if such depository receipt or certificate is listed and traded on any International Financial Services Centre.

(IV) Tax on income of Foreign Institutional Investors from securities or capital gains arising from their transfer [Section 210]

(i) Tax on income from securities or capital gains arising from their transfer [Section 210(1)]

Where the total income of a Specified Fund[1] or Foreign Institutional Investor includes the income specified in the below table, the same would be subject to tax at the rate mentioned therein:

S. No.	Income	Rate of Tax
(a)	Income in respect of securities **other than** units referred to in section 208	20% in case of FII, 10% in case of specified fund
(b)	Short-term capital gains arising from the transfer of securities (other than short-term capital gains u/s 196)	30%
(c)	Short-term capital gains arising from the transfer of securities u/s 196	20%
(d)	Long-term capital gains arising from the transfer of securities (other than long-term capital gains u/s 198)	12.5%
(e)	Income by way of long-term capital gains u/s 198 exceeding ₹ 1.25 lakh	12.5%
(f)	Total income other than the above	Rates in force

[1] *Excluded by way of study guidelines.*

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(ii) No deduction is allowed [Section 210(4)]

Where the gross total income of the Foreign Institutional Investor comprises only of the aforesaid income from securities, no deduction shall be allowed to it under sections 28 to 58, 60, 61 or section 93(1)(a) or 93(1)(e) or under Chapter VIII.

Deduction under Chapter VIII is also not allowable in case of short-term capital gain or long-term capital gain arising from transfer of securities.

Where the gross total income of the Foreign Institutional Investor consists of incomes other than income referred to in (a) to (e) of table in (i) above, then, the deduction under Chapter VIII will be available in respect of other incomes.

(iii) Non-availability of foreign currency fluctuations [Section 210(5)]

Benefit of foreign currency fluctuation would not be applicable for computation of short-term or long-term capital gains arising out of the transfer of securities referred above.

(V) Tax on non-resident sportsmen or sports associations [Section 211]

(i) Eligible assessee and special rate of tax [Section 211(1)]

Where the total income of an assessee, referred to table below includes the following income, such income would be chargeable to tax@20%.

Sl. No.	Assessee	Income
(a)	A sportsman (including an athlete), who is not a citizen of India and is a non-resident	Any income received or receivable by way of - (i) participation in India in any game [other than a game the winnings from which are taxable as specified in section 194(1) (Table: Sl. No. 1), being winning from lottery, crossword puzzle, race including horse race, card games and other games of any sort, gambling or betting) or sport; or

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		(ii) advertisement; or (iii) contribution of articles relating to any game or sport in India in newspapers, magazines or journals;
(b)	A non-resident sports association or institution	Any amount guaranteed to be paid or payable to such association or institution in relation to any game [other than a game the winnings wherefrom are taxable under section 194(1) (Table: Sl. No. 1)] or sport played in India
(c)	An entertainer who is not a citizen of India and is a non-resident.	Any income received or receivable from his performance in India

(ii) Deduction of expenditure not permissible [Section 211(2)]

No deduction in respect of any expenditure or allowance shall be allowed under any provision of this Act in computing the income referred to in (*a*) or (b) or (c) in the table given above.

(iii) Filing of return of income not required [Section 211(3)]

The assessee is **not** required to furnish a return of his income under section 263(1) if -

(a) his total income in respect of which he is assessable under this Act during the tax year consisted **only** of income referred to in (a) or (b) or (c) above; and

(b) the tax deductible at source under the provisions of Chapter XIX-B has been deducted from such income.

(iv) Rate of TDS

Deduction of tax at source **@20%** (*plus* surcharge, if applicable, and health and education cess@4%) should be made by the person responsible for making the payment at the time of credit of such income or at the time of payment, whichever is earlier. Health and education cess @4% on TDS rate of 20% would be leviable, since payment is made to a non-resident.

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Indcom v. CIT (TDS) (2011) 335 ITR 485(Calcutta HC)

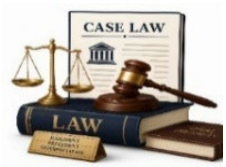
Issue: Whether the non-resident match referees and umpires in the games played in India fall within the meaning of "sportsmen" to attract taxability under the provisions of section 211, and consequently attract the TDS provisions under section 393(2) [Table: Sl. No. 1] in the hands of the payer.

Analysis and Decision: In order to attract the provisions of the section 393(2) [Table: Sl. No. 1], the person should be a non-resident sportsperson or non-resident sports association or institution whose income is taxable as per the provisions of section 211.

Umpires and match referees can be described as professionals or technical persons who render professional or technical services, but they cannot be said to be either non-resident sportsmen (including an athlete) or non-resident sports association or institution so as to attract the provisions of section 211 and consequently, the provisions of tax deduction at source under section 393(2) [Table: Sl. No. 1] cannot be attracted.

The Calcutta High Court held that although the payments made to non-resident umpires and the match referees are "income" which has accrued and arisen in India, the same are not taxable under the provisions of section 211 and thus, the assessee is not liable to deduct tax under section 393(2) Table: Sl. No. 1.

It may be noted that since income has accrued and arisen in India to the non-resident umpires and match referees, the TDS provisions under section 393(2) [Table: Sl. No. 17] would be attracted, and tax would be deductible at the rates in force.



Board of Control for Cricket in Sri Lanka v. DIT (International Taxation) & Pilcom v. CIT (2020) 425 ITR 312 (SC)

The International Cricket Council (ICC), having its headquarters in London, is the organisation which makes and alters the rules of the game of cricket, sets the different levels and minimum standards at which the game is to be played in each country to get its recognition, the different formats of the game, e. g. test cricket, first class cricket, limited overs competition and so on. It has affiliates from similar organisations in countries, all over the world. It controls, supervises and regulates the game of cricket in every respect.

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At a special meeting of the ICC held in London in the year 1993, India, Pakistan and Sri Lanka were chosen to co-host the world cup. A joint management committee of these three countries, [(Pak-Indo-Lanka) joint management committee (PILCOM)] was formed to conduct this world cup cricket tournament. Bank accounts were opened by PILCOM in London to be operated jointly by the India and Pakistan Cricket Boards. In this account were deposited moneys from sponsorships, TV rights, etc. The Board of Control for Cricket in India (BCCI) appointed its own committee, INDCOM, for discharge of its functions. INDCOM had its bank account at Calcutta. From the bank account of PILCOM at London certain amounts were transferred to the bank accounts of the host countries for the purpose of payment of fees to umpires and referees, defraying administrative expenses and payment of prize money. PILCOM paid £ 43,50,000 which included £ 19,55,000 as guarantee money to eleven cricket associations.

The payments of £ 8,85,000 representing guarantee money paid to the Boards of Australia, England, New Zealand, Sri Lanka and Kenya with whom Double Taxation Avoidance Agreements exist, and of £ 7,10,000 representing guarantee money paid to the Boards of Pakistan, West Indies, Zimbabwe and Holland were in the nature of guarantee money paid to non-resident sports associations. The payments were not made by the assessee in India but through its bank accounts at London or elsewhere. The non-resident sports associations had participated in the event, where cricket teams of these associations had played various matches in the country. Though the payments were described as guarantee money, they were intricately connected with the event where various cricket teams were scheduled to play and did participate in the event. The source of income was in the playing of the matches in India.

The mandate under section 211(1) is that if the total income of a non-resident sports association includes the amount guaranteed to be paid or payable to it in relation to any game or sports played in India, the amount of Income-tax calculated in terms of the section shall become payable. The expression "in relation to" emphasises the connection between the game or sport played in India on the one hand and the guarantee money paid or payable to the non-resident sports association on the other. Once the connection is established, the liability under the provision must arise. To the extent the payments represented

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amounts which could not be subject matter of charge under the provisions of the Act, appropriate benefit had already been extended to the assessee.

The payments made to the non-resident sports associations represented their income which accrued or arose or was deemed to have accrued or arisen in India. Consequently, the assessee was liable to deduct tax at source in terms of section 393(2) [Table: Sl. No. 1].

ILLUSTRATION 9

During the tax year 2026-27, Nadal, a tennis professional and a Spanish citizen participated in India in a Tennis Tournament and won prize money of ₹ 15 lakhs. He contributed articles on the tournament in a local newspaper for which amount of ₹ 1 lakh is payable to him. He also earned ₹ 5 lakhs from a Soft Drink company for appearance in a T.V. advertisement. Although his expenses in India were met by the sponsors, he had to incur ₹ 3 lakhs towards his travel costs to India. He was a non-resident for tax purposes in India.

What would be his tax liability in India for tax year 2026-27? Is he required to file his return of income?

SOLUTION

Under section 211, all the three items of receipts in India viz. prize money of ₹ 15 lakhs, amount received from newspaper of ₹ 1 lakh and amount received towards TV advertisement of ₹ 5 lakhs are chargeable to tax. No expenditure is allowable as deduction against such receipts. The rate of tax chargeable under section 211 is 20%, *plus* health and education cess @4%. The total tax liability works out to ₹ 4,36,800 being 20.8% of ₹ 21 lakhs. Thus, Nadal will be liable to tax on the income earned in India.

He is not required to file his return of income if -

(a) his total income during the tax year consists only of income arising under section 211; **and**

(b) the tax deductible at source under the provisions of Chapter XIX-B have been deducted from such incomes.

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ILLUSTRATION 10

Smith, a foreign national and a cricketer came to India as a member of Australian cricket team in the year ended 31st March, 2027. He earned ₹ 5 lakhs for participation in matches in India. He also earned ₹ 1 lakh for an advertisement of a product on TV. He contributed articles in a newspaper for which he earned ₹ 10,000. When he stayed in India, he also won a prize of ₹ 20,000 from horse racing in Mumbai. He has no other income in India during the year.

(i) Compute tax liability of Smith for tax Year 2026-27.

(ii) Are the income specified above subject to deduction of tax at source?

(iii) Is he liable to file his return of income for tax Year 2026-27?

(iv) What would have been his tax liability, had he been a match referee instead of a cricketer and pays tax under the default tax regime under section 202?

SOLUTION

(i) Computation of tax liability of Smith for the tax year 2026-27

Particulars	₹	₹
Income taxable under section 211		
Income from participation in matches in India	5,00,000	
Advertisement of product on TV	1,00,000	
Contribution of articles in newspaper	10,000	
Income taxable under section 194(1) [Table: Sl. No. 1]		
Income from horse races	20,000	
Total income	**6,30,000**	
Tax@ 20% under section 211 on ₹ 6,10,000		1,22,000
Tax@ 30% under section 194(1) [Table: Sl. No. 1] on income of ₹ 20,000 from horse races		6,000
		1,28,000
Add: Health and Education cess@4%		5,120
Total tax liability of Smith for the tax year 2026-27		**1,33,120**

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(ii) Yes, the above income is subject to tax deduction at source.

Income referred to in section 211 (i.e., ₹ 6,10,000, in this case) is subject to tax deduction at source@ 20% under section 393(2) [Table: Sl. No. 1].

Income referred to in section 194(1) [Table: Sl. No. 1] (i.e., ₹ 20,000, in this case) is subject to tax deduction at source@30% under section 393(3) [Table: Sl. No. 3].

Since Smith is a non-resident, the amount of tax to be deducted calculated at the prescribed rates mentioned above, would be increased by health and education cess@4%.

(iii) Section 211 provides that if the total income of the non-resident sportsman comprises of only income referred to in that section and tax deductible at source has been fully deducted, it shall not be necessary for him to file his return of income. However, in this case, Mr. Smith has income from horse races as well. Therefore, he cannot avail the benefit of exemption from filing of return of income as contained in section 211. Hence, he would be liable to file his return of income for tax year 2026-27.

(iv) The Calcutta High Court in *Indcom v. CIT (TDS)(2011) 335 ITR 485* has held that 'match referee' would not fall within the meaning of "sportsmen" to attract the provisions of section 211. Therefore, although the payments made to non-resident 'match referee' are "income" which has accrued and arisen in India, the same are not taxable under the provisions of section 211. They are subject to the normal rates of tax.

Particulars		₹
Tax@30% under section 194(1)[Table: Sl. No. 1] on winnings of ₹ 20,000 from horse races		6,000
Tax on ₹ 6,10,000 at normal rate of tax		
Upto ₹ 4,00,000	Nil	
4,00,000 – 6,10,000 @5%	10,500	10,500
		16,500
Add: Health and Education cess@4%		660
Total tax liability		**17,160**

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21.11 CAPITAL GAINS TAXATION FOR NON-RESIDENTS

Any person including a foreign company or non-corporate non-resident is liable to capital gains tax in India, if there is a transfer of a property (capital asset) in India which results in profit or gain. The provisions in respect of capital gains taxation are discussed in detail in Chapter 4: Capital Gains in Module 1.

Foreign Currency Fluctuation benefit [Section 72(6)]

In case of non-residents who invest foreign exchange to acquire capital assets, exchange rate fluctuation benefit is allowed while computing the capital gains arising from the transfer of shares or debentures of an Indian company (other than equity shares referred u/s 198). The same is computed in the following manner:

- The cost of acquisition, the expenditure incurred wholly and exclusively in connection with the transfer and the full value of the consideration are to be converted into the same foreign currency as was initially utilized in purchase of shares or debentures and
- The resulting capital gains shall be reconverted into Indian currency.

The aforesaid manner of computation of capital gains shall be applied for every purchase and sale of shares or debentures of an Indian company.

Rate of exchange for conversion [Rule 52]

Rule 52 provides that the **average of the telegraphic transfer buying rate and telegraphic transfer selling rate** of the foreign currency initially utilized in purchase of the capital asset as on the date specified in column (3) in the table below, shall be considered to convert rupees into foreign currency for the purpose of computation of capital gains.

S. No.	Item	Date
(a)	Cost of acquisition of capital asset	Date of acquisition of capital asset
(b)	Expenditure incurred wholly and exclusively in connection with transfer of capital asset	Date of transfer of capital asset

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(c)	Full value of consideration received or accruing as a result of transfer of a capital asset	Date of transfer of capital asset

For **reconverting capital gains** computed in the foreign currency initially utilized in the purchase of the capital asset into rupees, the **telegraphic transfer buying rate of such currency, as on the date of transfer of the capital asset**, is to be considered.

Meaning of certain terms

Term	Meaning
Telegraphic transfer buying rate	The rate or rates of exchange adopted by the State Bank of India for buying foreign currency having regard to the guidelines specified from time to time by the RBI for buying foreign currency where such currency, made available to that bank through a telegraphic transfer.
Telegraphic transfer selling rate	The rate of exchange adopted by the State Bank of India for selling foreign currency where such currency is made available by that bank through telegraphic transfer.

The benefit of currency fluctuation would not be available in respect of capital gains arising from the transfer of the following long term capital assets referred to in section 198 –

(i) equity share in a company on which STT is paid both at the time of acquisition and transfer.

(ii) unit of equity-oriented fund or unit of business trust on which STT is paid at the time of transfer.

Other Important Points

a. It is also provided that the aforesaid manner of computation of capital gains shall be applicable in respect of capital gains accruing or arising from every re-investment thereafter in and sale of shares in or debentures of an Indian company.

b. The shares and debentures (whether short-term or long-term) of Indian companies only are covered under section 72(6).

c. As a measure to enable Indian companies to raise funds from outside India, the RBI has permitted them to issue rupee denominated bonds outside India.

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Accordingly, in case of non-resident assesses, any gains arising on account of appreciation of rupee between the date of purchase and the date of redemption of rupee denominated bond of an Indian company held by him against foreign currency in which investment is made shall not be included in computation of full value of consideration. This would provide relief to the non-resident investor who bears the risk of currency fluctuation **[Section 72(7)].**

d. If the total income of an assessee includes any income chargeable under the head 'Capital Gains' arising from transfer of a capital asset being an equity share in a company or unit of an equity oriented fund or unit of a business trust, then, tax on short term capital gains shall be payable at the rates specified in section 196, if transaction of sale of such security has been entered on or after October 1, 2004 on which STT is chargeable; and tax on long-term capital gains shall be payable on such securities as per section 198, if STT has been paid both at the time of acquisition and transfer of equity share or at the time of transfer of unit of equity oriented fund or unit of business trust.

e. Tax rates on long term capital gains arising to non-residents:

S. No.	Long-term capital asset (LTCA)	Rate of tax
(i)	Unlisted securities or shares of a company not being a company in which the public are substantially interested [Section 197(4)]	12.5% without foreign currency fluctuation
(ii)	Other Assets (other than taxable u/s 198)	12.5%

f. Section 79 provides that where the consideration received or accruing as a result of transfer of a capital asset, being share of a company other than a quoted share, is less than the fair market value[2] of such share determined in such manner as may be prescribed, such fair market value shall be deemed to be the full value of consideration received or accruing as a result of such transfer.

This provision would, however, not be applicable to any consideration received or accruing as a result of transfer by such class of persons and subject to such conditions as may be prescribed.

[2] *The manner of determination of fair market value of share of a company is given in Rule 57. Definition of class of persons is given in Rule 58. For detailed reading of Rule 57 and 58 of the Income-tax Rules, 2026, students may visit https://www.incometaxindia.gov.in/income-tax-rule-2026*

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g. Section 80 provides that, in case where the consideration received or accruing as a result of the transfer of a capital asset by an assessee is not ascertainable or cannot be determined, then, for the purpose of computing income chargeable to tax as capital gains, the fair market value of the said asset on the date of transfer shall be deemed to be the full value of consideration received or accruing as a result of such transfer.

ILLUSTRATION 11

Mr. A, a non-resident Indian, remits US $ 40,000 to India on 16.09.2006. The amount is partly utilised on 3.10.2006 for purchasing 10,000 equity shares in A Ltd, an Indian Company, at the rate of ₹ 12 per share. These shares are sold for ₹ 64 per share on 30.03.2027. Fair market value of these shares on 31.01.2018 was ₹ 35 per share.

The telegraphic transfer buying and selling rate of US dollars adopted by the State Bank of India is as follows:

Date	Buying Rate (1 US$)	Selling Rate (1 US $)
16.09.2006	18	20
3.10.2006	19	21
30.3.2027	79	81

Compute the capital gain chargeable to tax for the tax year 2026-27 on the assumption that –

(a) These shares have not been sold through a recognised stock exchange.

(b) These shares have been purchased and sold through a recognised stock exchange.

Ignore the provisions of sections 212 to 217.

SOLUTION

(a) Where the shares are not sold through recognised stock exchange

Particulars	US $
Sale consideration (₹ 6,40,000/80)	8000
Less: Cost of Acquisition (1,20,000/20)	6000
Long term capital gain	**2000**

Long-term capital gain converted into $ 2000 x ₹ 79 = ₹ 1,58,000

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(b) Where the shares are purchased and sold through a recognised stock exchange

Particulars		₹
Sale consideration		6,40,000
Less: Cost of Acquisition		
Higher of the following		
Cost of acquisition	1,20,000	
Lower of Fair market value as on 31.1.2018 and Full value of consideration (i.e., lower of ₹ 3,50,000 and ₹ 6,40,000)	3,50,000	3,50,000
Long term capital gain		**2,90,000**

Long term capital gains upto ₹ 1,25,000 would be exempt. Long term capital gains exceeding ₹ 1,25,000, i.e., ₹ 1,65,000 is taxable @12.5% under section 198.

21.12 SPECIAL PROVISIONS RELATING TO NON-RESIDENT INDIANS

Chapter XIII-E (sections 212 to 217) contains special provisions relating to the computation of the total income of non-resident Indians and the manner of computing tax on investment income and long-term capital gains arising from the transfer of foreign exchange assets. These special provisions are as follows:

Section	Provision
212	Interpretation
213	Special provision for computation of total income of non-residents
214	Tax on investment income and long-term capital gains
215	Capital gains on transfer of foreign exchange assets not to be charged in certain cases
216	Return of income not to be furnished in certain cases
217	Application of benefits under section 212 to 216

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Let's discuss these provisions applicable to a non-resident Indian who derives investment income from a foreign exchange asset and/or long-term capital gains in respect thereof.

(1) Interpretation [Section 212]

	Terms	Meaning
(a)	Convertible foreign exchange [Section 2(30)]	Foreign exchange which is treated by the Reserve Bank of India as convertible foreign exchange for the purposes of the Foreign Exchange Management Act, 1999 and any rules made thereunder or any other corresponding law.
(b)	Foreign exchange asset [Section 212(a)]	Any specified asset which the assessee has acquired or purchased with, or subscribed to in, convertible foreign exchange.
(c)	Investment income [Section 212(b)]	Any income derived from a foreign exchange asset.
(d)	Long-term capital gains [Section 212(c)]	Income chargeable under the head "Capital gains" relating to a capital asset, being a foreign exchange asset which is not a short-term capital asset.
(e)	Non-resident Indian [Section 212(d)]	An individual, who is not a resident and is (i) A citizen of India; or (ii) A person of Indian origin; As per Sec. 2(78) "person of Indian origin" means an individual who or either of his parents or any of his grand-parents, was born in undivided India
(f)	Specified asset [Section 212(e)]	Any of the following assets - (i) Shares in an Indian company; (ii) Debentures issued by an Indian company which is not a private company (iii) Deposits in an Indian Company which is not a private company (iv) Any security of the Central Government (v) Any other asset which the Central Government may notify

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(2) Special provisions relating to taxation of investment income and long-term capital gains of a non-resident [Sections 213 to 215]

(i) **Taxation on gross basis [Section 213(1)]:** Section 213 deals with the computation of total income of non-residents. In computing the investment income of non-resident Indian, no deduction is allowed under any provision of the Act in respect of any expenditure or allowance.

(ii) **No deduction allowed [Section 213(2)]:** No deduction under Chapter VIII shall be allowed, where the gross total income of a non-resident Indian consists only of investment income or/and long-term capital gain.

However, where the gross total income includes investment incomes or/and long-term capital gain, the deduction under Chapter VIII shall be allowed only on that portion of gross total income which does not include the investment income and long-term capital gain.

(iii) **Tax rate on investment income and long-term capital gains [Section 214]:** Under section 214, tax payable by non-resident Indian shall be aggregate of–

S. No.	Income	Tax rate
1.	Investment income	20%
2.	Long term capital gains from transfer of specified assets (i.e., purchased in foreign currency)	12.5%
3.	Other total income	Applicable tax rates

(iv) **Exemption for long-term capital gains [Section 215]:** Where a non-resident Indian has

- ❖ long term capital gains arises from transfer of a foreign exchange asset (herein referred to as original asset) and
- ❖ within six months after the date of such transfer, invested the whole or part of the net consideration in any specified asset (herein referred to as new asset)

then the capital gains would be computed in the following manner:

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(a) If the cost of the new asset **is not less than the net consideration** in respect of the original asset, the whole of the capital gain shall not be charged under section 67.

(b) If the cost of the new asset **is less than the net consideration** in respect of the original asset, the amount as calculated below shall not be charged to tax under section 67 -

$$A = B \times \frac{C}{D}$$

A = Capital not chargeable to tax

B = Whole of the capital gains

C = Cost of acquisition of the new asset

D = Net Consideration in respect of original asset



1. Net consideration means the full value of consideration from transfer as reduced by any expenditure incurred wholly and exclusively in connection with such transfer.

2. Where the new asset is transferred or converted (otherwise than by transfer) into money within 3 years from the date of its acquisition, capital gains arising from the transfer of original asset not so charged to tax earlier shall be deemed to be the income under the head "Capital Gains'' relating to long term capital assets. The same shall be charged to tax in the tax year in which new asset is transferred or converted into money.

ILLUSTRATION 12

A non-resident Indian acquired shares in an Indian company, A Ltd., on 1.1.2009 for ₹ 1,00,000 in foreign currency. These shares are sold by him on 1.1.2027 for ₹ 3,00,000. He invests ₹ 3,00,000 in shares on 31.03.2027 and these shares are sold by him on 30.06.2027 for ₹ 3,50,000. Discuss the tax implications. Ignore the effect of provisions of section 72(6).

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SOLUTION

Computation of Long-term Capital Gain for Tax Year 2026-27

Particulars	Amount (₹)
Sale consideration	3,00,000
Less: Cost of Acquisition	1,00,000
Long term capital gain	2,00,000
Less: Exemption under section 215	2,00,000
Exempt long-term capital gain	**NIL**

Capital Gain for Tax year 2027-28:

1. LTCG of ₹ 2,00,000 which was exempt in Tax Year 2026-27 becomes taxable this year i.e., tax year 2027-28.
2. STCG of ₹ 50,000 is also taxable this year i.e., tax year 2027-28.

ILLUSTRATION 13

Mr. John, a non-resident Indian, purchased unlisted shares of an Indian Company at a cost of ₹ 70,000 on 01.07.2010 in foreign currency. Mr. John sold the said shares for a consideration of ₹ 2,50,000 on 01.08.2026 and the expenditure incurred wholly or exclusively in connection with the transfer is ₹ 10,000. Compute the taxable capital gain if he invested in a specified asset ₹ 1,50,000 out of sale consideration. Ignore the provisions of section 72(6).

SOLUTION

Particulars	Amount (₹)
Sale Consideration	2,50,000
Less: Transfer Expenses	10,000
Net Consideration	2,40,000
Less: Cost of Acquisition	70,000
Long-term capital gain	1,70,000
Less: Exemption u/s 215	1,06,250*
Taxable long-term capital gain	**63,750**

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$$\frac{*1,70,000 \times 1,50,000}{2,40,000} = ₹\ 1,06,250$$

(3) Option not to file income-tax return [Section 216]

A non-resident Indian need not furnish a return of income under section 263(1) if he satisfies the following two conditions:

(a) His total income during the tax year consists only of investment income or income by way of long-term capital gains or both; and

(b) Tax deductible at source has been deducted from such income.

(4) Continuance of benefits after the non-resident becomes a resident [Section 217]

Where a NRI in any tax year

- ❖ becomes assessable as a resident in respect of total income in a subsequent year, and
- ❖ furnishes a declaration in writing to the Assessing Officer along with the return of income under section 263 for the tax year for which he is so assessable.

to the effect that the provisions of sections 212 to 216 shall continue to apply to him in respect of the investment income derived from foreign exchange assets being debentures, deposits, securities of Central Government and such other notified assets as specified under section 212(e) other than shares in an Indian Company

then, the provisions of sections 212 to 2016 shall continue to apply to him in relation to such income for that tax year and every subsequent year until the transfer or conversion of such assets into money.

(5) Option not to be governed by sections 212 to 216 [Section 217(2)]

This section gives an option to a non-resident Indian to elect that he should not be governed by the provisions of sections 212 to 216 for any tax year by declaring it in his return of income for such tax year under section 263 and if he does so the provisions of sections 212 to 216 shall not apply to him for that tax year and

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his total income for that tax year shall be computed and charged to tax according to the other provisions of the Act.

21.13 TAX ON BUSINESS INCOME OF OFFSHORE BANKING UNITS OR INTERNATIONAL FINANCIAL SERVICES CENTRE UNIT

Section 218 provides that where the total income of an assessee includes income of the nature referred to in section 147(3), the income-tax payable shall be the aggregate of the amounts computed at the rates specified below -

Sl. No.	Income	Rate of tax
1	Income referred to in section 147(3)	15%
2	Total income as reduced by the income referred to against Sl. No. 1	Rates in force

Section 147(3) refer the income from

(a) an Offshore Banking Unit located in a Special Economic Zone; or

(b) the business activities referred to in section 6(1) of the Banking Regulation Act, 1949, with undertakings in a Special Economic Zone or entities that develop, develop and operate, or develop, operate and maintain Special Economic Zone; or

(c) the approved business activities of any Unit of an International Financial Services Centre set up in a Special Economic Zone; or

(d) transfer of an asset being, an aircraft or a ship, leased by a unit referred to in clause (c) if such unit commenced its business operations by 31st March, 2030.

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21.14 SPECIAL PROVISIONS RELATING TO CONVERSION OF INDIAN BRANCH OF A FOREIGN BANK INTO A SUBSIDIARY COMPANY

(1) Conversion of an Indian branch of foreign company into subsidiary Indian company [Section 219(1)]

(i) Where a foreign company engaged in banking business in India through its branch situated in India, which is converted into an Indian subsidiary company in accordance with the scheme framed by RBI and irrespective of anything contain in this Act and subject to the conditions notified by the Central Government:

- ❖ the capital gains arising from such conversion would not be chargeable to tax in the tax year in which such conversion takes place.
- ❖ the provisions of the Act relating to
  - o treatment of unabsorbed depreciation, set-off or carry forward and set-off of losses,
  - o tax credit in respect of tax paid on deemed income relating to certain companies, and
  - o computation of income of foreign company and Indian subsidiary company

  would apply with such exceptions, modifications and adaptations as specified in the notification.

Accordingly, the Central Government has, vide Notification no. 85/2018 dated 6.12.2018, specified the conditions to be fulfilled –

(1) For Capital Gains exemption: Where a foreign company is engaged in the business of banking through its Indian branch and converts such Indian branch into its Indian subsidiary company in accordance with the scheme framed by RBI, the capital gains arising from such conversion would not be chargeable to tax, if -

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(a) the Indian branch amalgamates with the Indian subsidiary company in accordance with the scheme of amalgamation approved by the shareholders of the foreign company and the Indian subsidiary company and sanctioned by the RBI[3].

(b) all the assets and liabilities of the Indian branch immediately before conversion would become the assets and liabilities of the Indian subsidiary company.

(c) the asset and liabilities of the Indian branch are transferred to the Indian subsidiary company at values appearing in the books of account of the Indian branch immediately before its conversion.

Note - Any change in the value of assets consequent to their revaluation would not be considered while determining the value of the assets.

(d) the foreign bank or its nominee shall hold the whole of the share capital of the Indian subsidiary company during the period beginning from the date of conversion and ending on the last day of the tax year in which the conversion took place and continue to hold the shares of Indian subsidiary company carrying not less than 51% of the voting power for a period of five years immediately succeeding the said tax year.

(e) the foreign company does not receive any consideration or benefit, directly or indirectly, in any form or manner, other than by way of allotment of shares in the Indian subsidiary company.

(2) Application of the provisions of the Income-tax Act, 2025 with modifications/ exceptions: The provisions of the Income-tax Act, 2025 relating to unabsorbed depreciation, set off or carry forward and set off of losses, tax credit in respect of tax paid on deemed income relating to certain companies and the computation of income in case of foreign company and

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[3]under paragraph 20(h) of the Framework for setting up of wholly owned subsidiaries by foreign banks in India issued by the Reserve Bank of India vide Press release number 2013-2014/936 dated 6th November, 2013

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Indian subsidiary company shall apply with following modifications, exceptions and adaptation –

	Purpose	Modification/exception/adaptation
(a)	**Allowance of depreciation under section 33**	The aggregate deduction, in respect of depreciation on buildings, machinery, plant or furniture, being tangible assets, or know-how, patents, copy rights, trademarks, licenses, franchises or any other business or commercial rights of similar nature, being intangible assets, allowable to the Indian branch and the Indian subsidiary company shall not exceed in any tax year the deduction calculated at the prescribed rates as if the conversion had not taken place. Such deduction would be apportioned between the Indian branch and the Indian subsidiary company in the ratio of the number of days for which the assets were used by them;
(b)	**Set-off and c/f of loss and depreciation**	The accumulated loss and the unabsorbed depreciation of the Indian branch would be deemed to be the loss or allowance for depreciation of the Indian subsidiary company for the tax year in which conversion was effected; and provisions of the Income-tax Act, 2025, relating to set off and carry forward of loss and allowance for depreciation shall apply accordingly.
(c)	**Determination of actual cost u/s 39(1)(a)**	The actual cost of the block of assets in the case of the Indian subsidiary company shall be the written down value of the block of assets as in the case of the Indian branch on the date of its conversion into the Indian subsidiary company. The actual cost of any capital asset on which deduction has been allowed or is allowable under section 46, shall be treated as 'nil' in the case of the Indian subsidiary company if the capital asset became the property of the Indian subsidiary

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		company as a result of conversion of the Indian branch.
(d)	**Cost of acquisition of other capital assets**	Where the capital asset other than those referred to in (c) above became the property of the Indian subsidiary company as a result of conversion of the Indian branch, the cost of acquisition of the asset for the purposes of computation of capital gains shall be deemed to be the cost for which the Indian branch acquired it or, as the case may be, the cost for which previous owner has acquired it.
(e)	**Tax credit**	The tax credit of the Indian branch shall be deemed to be the tax credit of the Indian subsidiary company for the purpose of the tax year in which conversion was effected; and the provisions of section 206 of the Income-tax Act, 2025 shall apply accordingly.
(f)	**Amortisation of VRS Expenditure**	The provisions of section 52 of the Act shall, as far as may be, apply to the Indian subsidiary company, as they would have applied to the Indian branch, if the conversion had not taken place.
(g)	**Deemed credit balance in provision for bad and doubtful debts**	The credit balance in the provision for bad and doubtful debts account made under section 31(1) Table Sl. No 1 of the Indian branch on the date of conversion shall be deemed to be the credit balance of the Indian subsidiary company and the provisions of section 29 to 32 of the Income-tax Act, 2025, shall apply accordingly.
(h)	**Non-applicability of section 92(2)(m)**	The provisions of section **92(2)(m)** (income from other sources in respect of gift received) shall not apply to the transaction of receipt of shares in the Indian subsidiary company by the foreign company or its nominee in consequence of the conversion of the Indian branch into the Indian subsidiary company.

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Meaning of certain terms

Term	Meaning
Accumulated loss	So much of the loss of the Indian branch before its conversion into Indian subsidiary company under the head "Profits and gains of business or profession" (not being a loss sustained in a speculation business) which such Indian branch would have been entitled to carry forward and set off under the provisions of section 112, if the conversion had not taken place.
Unabsorbed depreciation	So much of the allowance for depreciation of the Indian branch before its conversion into Indian subsidiary company, which remains to be allowed and which would have been allowed to the Indian branch under the provisions of the Act, if the conversion had not taken place.
Previous owner	In relation to any capital asset owned by the Indian subsidiary company means the last tax owner of the capital asset who acquired it by a mode of acquisition other than those referred in section 73(1) [Table: Sl. No. 1] (capital asset by way of gift or will or other cases specified therein) or section 219(1).
Tax credit	So much of the tax credit of the Indian branch before conversion into Indian subsidiary company which such Indian branch would have been entitled to carry forward and set off under the provisions of section 206, if the conversion had not taken place.
Date of conversion	The date, which the Reserve Bank of India appoints for the vesting of undertaking of the Indian branch in Indian subsidiary company[4]

[4] *under paragraph 20(i) of the Framework for setting up of wholly owned subsidiaries by foreign banks in India issued by the Reserve Bank of India vide press release number 2013-2014/936 dated 6th day of November 2013.*

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(2) Consequences of failure to comply with the specified conditions [Section 219(2)]

If the conditions specified in the scheme of RBI or notification issued by the Central Government are not complied with, then, all the provisions of the Act would apply to the foreign company and Indian subsidiary company without any benefit, exemption or relief under this section.

(3) Consequences of subsequent failure to comply with the conditions [Section 219(3)]

If the benefit, exemption or relief has been granted to the foreign company or Indian subsidiary company in any tax year and thereafter, there is a failure to comply with any of the conditions specified in the scheme or notification, then,

- such benefit, exemption or relief shall be deemed to have been wrongly allowed
- the Assessing Officer is empowered to re-compute the total income of the assessee for the said tax year and make the necessary amendment.
- the provisions of rectification under section 287, would, accordingly, apply and the four year period within which such rectification should be made has to be reckoned from the end of the tax year in which the failure to comply with such conditions has taken place.

21.15 WITHHOLDING TAX PROVISIONS FOR NON-RESIDENTS

(I) Salary payable in foreign currency [Section 392]

By virtue of section 9(3)(a), salary is deemed to accrue or arise in India, if services are rendered in India. Therefore, if a non-resident renders services in India, the salary income would be chargeable to tax in India and the person responsible for paying the salary income i.e., the employer, has to deduct withholding tax in accordance with the provisions of section 392, at the rates in force for the tax year

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in which the payment is made where the employee exercises option to opt out of new tax regime under section 202.

(i) Tax on non-monetary perquisites paid by employer [Section 392(2)(a)]– In case of non-monetary perquisite, employer can opt to pay tax on whole or part of such income without making any deduction therefrom at the time tax was otherwise deductible.

Such tax will have to be calculated at the average rate applicable to aggregate salary income of the employee and payment of tax will have to be made every month along with tax deducted at source on monetary payment of salary, allowances etc. [Section 392(1)].

(ii) Meaning of Average rate of income-tax– Average rate of income-tax means the rate arrived at by dividing the amount of income-tax calculated on the total income, by such total income [Section 2(16)].

(iii) Calculation of TDS where salary is payable in foreign currency [Section 392(8)]- Section 392(8) deals with the provisions of withholding tax in case of salary payable in foreign currency. For the purpose of deduction of tax on salary payable in foreign currency, the value in rupees of such salary shall be calculated after converting the salary payable into Indian currency.

As per rule 26, for the purpose of deduction of tax at source on any income payable in foreign currency, the rate of exchange for calculation of the value in rupees shall be the telegraphic transfer buying rate as adopted by State Bank of India

- on the date on which such tax is required to be deducted under the provisions of Chapter XIX-B of the Act
- but where the telegraphic transfer buying rate is not published on such date, the last such published rate may be taken.

(II) Withholding tax on payments to non-residents other than "Salaries" [Section 393(2)]

Table to section 393(2) contains certain payments made to non-residents listed from Sl. No. 1 to 17, along with the details of income or sum, payee, payer, being the person responsible for paying such income or sum and rate of TDS.

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Further, **Table to section 393(4)** contains the relevant conditions and exemptions from deduction of tax at source, while the interpretation of certain terms is contained in section 402.

For ease of understanding, the discussion to section 393(2) has been arranged transaction-wise with reference to each Serial Number. While discussing each transaction, the relevant conditions and exemptions specified in the Table referred to in section 393(4), along with the interpretation of certain terms referred to in section 402, have also been incorporated so as to enable students to understand the complete implications of the transaction in one comprehensive reading. Now let's begin with the discussion:

As per section 393(2), where any income or sum of the nature specified in the Table to section 393(2), is credited or paid by the person specified in the said table during the tax year, to a non-resident (referred as payee), the payer, being the person responsible for paying shall deduct income-tax on the amount of such income or sum,

(a) at the specified rate

(b) at the time of credit of income or sum to the account of the payee or at the time of its payment in cash or by way of a cheque or a draft or by any other mode, whichever is earlier; and

(c) subject to the provisions of sub-sections (4), (8) and (9).

As per section 393(8), no tax shall be deducted at source from the interest paid by an Offshore Banking Unit on borrowing from or deposit made on or after 1st April 2005, by a non-resident or a person not ordinarily resident in India.

Further, as per section 393(9), no tax shall be deducted at source from any payment to a person for, or on behalf of, the New Pension System Trust[5]

The credit of any income or sum to any account, whether called "suspense account" or by any other name, in the books of account of the person liable to pay such income or sum, shall be deemed to be the credit of such income or sum to the account of the payee and tax has to be deducted at source accordingly [Section 393(11)].

[5] *referred to in Schedule VII (Table: Sl. No. 41)*

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Payment to non-resident sportsmen or sports association or entertainer [Section 393(2) (Table Sl. No. 1)]

Sl. No.	Nature of income or sum	Payee	Payer	Rate
1.	Any income referred to in section 211.	(a) A non-resident sportsman (including an athlete) or an entertainer, who is not a citizen of India; or (b) a non-resident sports association or institution.	Any person	20%



Section 393(2) [Table: Sl. No. 1)] casts responsibility on any person responsible for paying any income referred under section 211 to a **to a non-resident** to deduct tax at source @ 20% **on the entire amount** at the time of credit or payment, whichever is earlier.

Section 211 provide for taxability @20% of certain incomes such as

- from participation in any game (other than winnings from lottery, crossword etc.) or sport in India or advertisement, contribution of articles relating to any game or sport in India in newspapers, magazines or journals in the hands of non-resident sportsman (including an athlete), who is not a citizen of India.
- Guarantee amount paid or payable to a non-resident sports association or institution in relation to any game (other than winnings from lottery, crossword etc.) or sport played in India.
- income received or receivable by a non-resident entertainer (who is not a citizen of India) from his performance in India.

Income by way of interest from an Indian company or business trust [Section 393(2) (Table Sl. No. 2, 3 & 4)]

Sl. No.	Nature of income or sum	Payee	Payer	Rate
2.	Any income by way of interest payable in respect of moneys borrowed in foreign	Any non-resident (not being a company) or a	Any Indian company or a business trust.	5%

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	currency from a source outside India - (a) under a loan agreement or issue of long-term infrastructure bond on or after the 1.7. 2012 but before the 1.7.2023; or (b) by way of issue of any long-term bond on or after the 1.10.2014 but before the 1.7.2023, which is approved by the Central Government in this behalf.	foreign company.		
3.	Any income by way of interest payable in respect of moneys borrowed from a source outside India by way of issue of rupee denominated bond before the 1.7.2023.	Any non-resident (not being a company) or a foreign company.	Any Indian company or a business trust.	5%
4.	Any income by way of interest payable in respect of moneys borrowed from a source outside India by way of issue of any long- term bond or rupee denominated bond, which is listed only on a recognized stock exchange located in any International Financial Services Centre.	Any non-resident (not being a company) or a foreign company.	Any Indian company or a business trust.	(a) 4%, where such bonds are issued on or after the 1.4.2020 but before the 1.7.2023; or (b) 9%, where such bonds are issued on or after 1.7.2023.

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Section 393(2) [Table: Sl. No. 2, 3 & 4)] casts responsibility on an Indian Company or a business trust paying interest **to a non-resident non-corporate or a foreign company** with respect to the above specified borrowings to deduct tax at source lower rate of 5% or 4% or 9%, as the case may be **on the entire amount** at the time of credit or payment, whichever is earlier.

The taxability of the above specified interest income is provided in section 207(1) at the same rates at which tax is deductible at source under section 393(2) (Table: Sl. No. 2, 3 & 4).

In the above serial numbers, interest payable shall be income to the extent to which such interest does not exceed the amount of interest calculated at the rate approved by the Central Government in this behalf, having regard to the terms of the loan or the bond and its repayment [Note 1 to section 393(2) (Table: Sl. No. 2,3 & 4)].

Income by way of interest from Infrastructure Debt Fund [Section 393(2) (Table Sl. No. 5)]

Sl. No.	Nature of income or sum	Payee	Payer	Rate
5.	Any income by way of interest.	Any non-resident (not being a company) or a foreign company.	Any infrastructure debt fund[6]	5%



Section 393(2) [Table: Sl. No. 5)] casts responsibility on an infrastructure debt fund paying interest **to a non-resident non-corporate or to a foreign company** to deduct tax at source at a lower rate of 5% **on the entire amount** at the time of credit or payment, whichever is earlier.

The taxability of the above specified interest income is provided in section 207(1) at the same rate at which tax is deductible at source under section 393(2) (Table: Sl. No.5).

[6] *referred to in Schedule VII (Table: Sl. No. 46).*

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Income in respect of units of Mutual Fund or Specified Company [Section 393(2) (Table Sl. No. 10)]

Sl. No.	Nature of income or sum	Payee	Payer	Rate
10.	Any income - (a) in respect of units of a Mutual Fund[7] or (b) in respect of units from the specified company.	Any non- resident (not being a company) or a foreign company.	Any person.	20%



Section 393(2) [Table: Sl. No. 10)] casts responsibility on any person paying interest **to a non-resident non-corporate or to a foreign company** to deduct tax at source at a lower rate of 20% or where a DTAA is applicable and if the payee furnished a tax residency certificate, then tax shall be deducted at the rate provided in the DTAA, if such rate is lower than 20%, **on the entire amount** at the time of credit or payment, whichever is earlier.

The taxability of the above specified interest income is provided in section 207(1) at the same rate at which tax is deductible at source under section 393(2) (Table: Sl. No. 10).

No tax is deductible at source on income payable in respect of units of Unit Trust of India to a non-resident Indian or a non-resident HUF, subject to prescribed conditions. Accordingly, where the units have been acquired from the Unit Trust of India out of the funds in a Non-resident (External) Account maintained with any bank in India or by remittance of funds in foreign currency, in accordance, with the provisions of the Foreign Exchange Management Act, 1999, and the rules made thereunder.

[7] *specified under Schedule VII (Table: Sl. No. 20 or 21)*

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Income in respect of units of any offshore fund [Section 393(2) (Table Sl. No. 11 & 12)]

Sl. No.	Nature of income or sum	Payee	Payer	Rate
11.	Any income in respect of units purchased in foreign currency referred to in section 208.	Any offshore fund	Any person	10%
12.	Any income by way of long-term capital gains arising from the transfer of units purchased in foreign currency referred to in section 208.	Any offshore fund	Any person	12.5%



Section 393(2) [Table: Sl. No. 11 & 12)] casts responsibility on any person paying the above specified income **to any offshore fund** to deduct tax at source at a lower rate of 10% or 12.5%, as the case may be, **on the entire amount** at the time of credit or payment, whichever is earlier.

The taxability of the above specified income and long-term capital gains is provided in section 208 at the same rate at which tax is deductible at source under section 393(2) (Table: Sl. No. 11 & 12).

Income from bonds or Global Depository Receipts [Section 393(2) (Table Sl. No. 13 & 14)]

Sl. No.	Nature of income or sum	Payee	Payer	Rate
13.	Any income by way of interest or dividends in respect of bonds or Global Depository Receipts[8]	Any non-resident	Any person	10%
14.	Any income by way of long-term capital gains arising from the transfer of bonds or Global Depository Receipts[9]	Any non-resident	Any person	12.5%

[8] *referred to in section 209.*
[9] *referred to in section 209.*

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Section 393(2) [Table: Sl. No. 13 & 14)] casts responsibility on any person paying the above specified income or LTCG **to any non-resident** to deduct tax at source at a lower rate of 10% or 12.5%, as the case may be, **on the entire amount** at the time of credit or payment, whichever is earlier.

The taxability of the above specified income or LTCG is provided in section 209 at the same rate at which tax is deductible at source under section 393(2) (Table: Sl. No. 13 & 14).

Income in respect of securities of FII [Section 393(2) (Table Sl. No. 15)]

Sl. No.	Nature of income or sum	Payee	Payer	Rate
15.	Any income in respect of securities referred to in section 210(1) (Table: Sl. No. 1)	Any Foreign Institutional Investor	Any person	20%



Section 393(2) [Table: Sl. No. 15)] casts responsibility on any person paying the above income in respect of securities **to any Foreign Institutional Investor** to deduct tax at source at the rate of 20%, **on the entire amount** at the time of credit or payment, whichever is earlier.

The taxability of the income in respect of securities is provided in section 210(1) (Table Sl. No. 1) at the same rate at which tax is deductible at source under section 393(2) (Table: Sl. No. 15).

No tax is deductible at source on capital gains arising from transfer of securities, payable to a FII. Moreover, where an agreement referred to in section 159(1) or section 159(2) applies to the Foreign Institutional Investor and if the FII has furnished a tax residency certificate referred to in section 159(8), as the case may be, then, tax thereon shall be deducted @20% or at the rate or rates of income-tax provided in such agreement for such income, whichever is lower.

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Any other sum payable to a non-resident [Section 393(2) (Table Sl. No. 17)]

Sl. No.	Nature of income or sum	Payee	Payer	Rate
17.	Any interest (not being interest referred to against serial numbers 2, 3, 4 and 5) or any other sum chargeable under the provisions of this Act, not being income chargeable under the head "Salaries".	Any non-resident (not being a company) or a foreign company	Any person	Rates in force



Section 393(2) [Table: Sl. No. 17)] casts responsibility on any person responsible for paying interest (other than interest referred to against serial numbers 2, 3, 4 and 5) 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.

Under section 393(2) [Table: Sl. No. 17], the obligation to deduct tax at source from interest and other payments to a non-resident, which are chargeable to tax in India, is on "any person responsible for paying to a non-resident or to a foreign company".

The words "any person" used in section 393(2) [Table: Sl. No. 17] is intended to include both residents and non-residents. Therefore, a non-resident person is also required to deduct tax at source before making payment to another non-resident, if the payment represents income of the payee non-resident, chargeable to tax in India. Therefore, if the income of the payee non-resident is chargeable to tax, then tax has to be deducted at source, whether the payment is made by a resident or a non-resident.

Note 3(b) with respect to section 393(2) [Table: Sl. No. 17], clarifies that the obligation to deduct tax at source and comply with the provisions of this serial number extend to all persons resident or non-resident, whether or not, the non-resident person has -

(i) a residence or place of business or business connection in India; or

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(ii) any other presence in any manner whatsoever in India.

Example: Payment to a non-resident by way of royalties and payments for technical services rendered in India are common examples of sums chargeable under the said provisions of the Act to which the liability for deduction of tax at source would apply.

Further, Note 3(a) with respect to section 393(2) [Table: Sl. No. 17] provide that if interest is payable by the Government or a public sector bank or a public financial institution[10], deduction of tax shall be made only **at the time of payment** thereof in cash or by the issue of a cheque or draft or by any other mode.



As per section 397(1)(a) every person deducting or collecting tax shall apply for allotment of a tax deduction and collection account number to the Assessing Officer within such time as may be prescribed, if that person has not already been allotted such number.

However, a resident individual or Hindu undivided family in respect of a transaction where he is required to deduct tax on any consideration for the transfer of any immovable property under section 393(2) [Table: Sl. No. 17] is not required to obtain TAN.

It may also be noted that as per section 397(3)(d) the person responsible for paying any sum, whether or not chargeable to tax under the provisions of the Act, to a non-corporate non-resident or to a foreign company, shall be required to furnish the information relating to payment of such sum in the prescribed form and prescribed manner.

Application by payee for lower rate or no deduction of tax at source

Under section 395(1)(a), where tax is required to be deducted on any income or sum under Chapter XIX, then subject to the rules made under this Act, -

(a) the payee may make an application before the Assessing Officer for deduction of income-tax at a lower rate or no deduction of income-tax, as the case may be; and

[10] *within the meaning of Schedule VII (Note 3)*

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(b) the Assessing Officer on being satisfied that the total income of the payee justifies deduction of income-tax at a lower rate or no deduction of income-tax, as the case may be, shall issue to him a certificate as appropriate; and

(c) when a certificate is issued, the person responsible for paying the income or sum shall deduct the tax at the rate specified in such certificate, or deduct no income-tax, as the case may be, till its validity.

As per section 395(6), the application for lower rate or no deduction of tax at source may also be filed by the payee before the prescribed income-tax authority, subject to such conditions as may be prescribed, and such authority on electronic verification of the contents of the application, may -

(a) either issue a certificate for deduction of income-tax at lower rate or no deduction of income-tax; or

(b) reject such application on account of non-fulfilment of the prescribed conditions or on account of the application being incomplete.

Application by payer paying to a non-resident any sum

As per section 395(2)(a), the person responsible for paying to a non-resident any sum as mentioned in section 393(2) (Table: Sl. No. 17), may make an application to the Assessing Officer in such form and manner as may be prescribed, where he considers that the whole of such sum would not be chargeable in the case of the recipient.

The application shall be for determination of the appropriate proportion of the sum chargeable to tax, by the Assessing Officer in the manner as may be prescribed; and when the determination is made by the Assessing Officer, the tax shall be deducted under section 393(2) (Table: Sl. No. 17) only on that proportion of sum which is chargeable to tax under the Act.

Non-applicability of higher rate of TDS under section 397 for non-furnishing of PAN

As per section 397(2)(a), every person, entitled to receive any amount on which tax is deductible or, paying any amount on which tax is collectible, shall furnish his valid Permanent Account Number (PAN) to the person responsible for deducting or collecting tax.

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In case of failure to furnish PAN, tax shall be deducted at the higher of the following rates -

(A) at the rate specified in the relevant provision of this Act; or

(B) at the rate or rates in force; or

(C) at the rate of 5% where tax is required to be deducted under section 393(1) [Table: Sl. No. 8(ii) or 8(v)]; or 20% in any other case

Levy of higher rate of TDS in the absence of PAN would not be attracted to a non-resident, not being a company or a foreign company, in respect of -

(i) payment of interest on long-term bonds as specified in section 393(2) (Table: Sl. Nos. 2, 3 and 4); and

(ii) any other payment subject to such conditions, as may be prescribed.

Accordingly, Rule 217 provide that the higher rate of TDS shall not apply to a non-resident, not being a company, or to a foreign company (the deductee), where such deductee does not have a Permanent Account Number, in respect of payments in the nature of interest, royalty, fees for technical services, dividend and payments on transfer of any capital asset, if the deductee furnishes the following details and the documents:

(a) name, e-mail id, contact number;

(b) address in the country or specified territory outside India of which the deductee is a resident;

(c) a certificate of his being resident in any country or specified territory outside India from the Government of that country or specified territory, if the law of that country or specified territory provides for issuance of such certificate; and

(d) Tax Identification Number of the deductee in the country or specified territory of his residence and in case no such number is available, then a unique number on the basis of which the deductee is identified by the Government of that country or the specified territory of which he claims to be a resident.

Further, higher rate of TDS shall also not apply in respect of payments made to a person being a non-resident, not being a company, or a foreign company, if such person is not required to apply for PAN in view of the provisions of section 262 and rules prescribed therein.

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(III) Refund for denying liability to deduct tax [Section 434]

(a) Application for refund of tax - This section provides that

- where under an agreement or other arrangement, in writing, the tax deductible on any income, other than interest, under section 393(2) Table Sl. No.17 is to be borne by the person by whom the income is payable, and
- such person having paid such tax to the credit of the Central Government, claims that no tax was required to be deducted on such income,

he may file an application before the Assessing Officer for refund of such tax in prescribed form 160. The claim for refund of tax shall be accompanied by a copy of an agreement or arrangement as applicable.

(b) Time limit for filing application - Such application may be filed within 30 days from the date of payment of such tax.

(c) Passing of order by Assessing Officer - The Assessing Officer has to, by an order in writing, allow or reject the application. However, no application would be rejected unless an opportunity of being heard has been given to the applicant. The Assessing Officer, may, before passing an order make such inquiry as he considers necessary.

(d) Time limit for passing order - The order has to be passed within 6 months from the end of the month in which application for refund is received.



Procedure for refund [Circular No.7/2011 dated 27.9.2011]

The CBDT has, through *Circular No.7/2011 dated 27.9.2011*, modified Circular No.07/2007, dated 23.10.2007 which laid down the procedure for refund of tax deducted at source under section **393(2) (Table: Sl. No.17)** to the person deducting tax at source from the payment to a non-resident. The said Circular allowed refund to the person making payment under section **393(2) (Table: Sl. No.17)** in the circumstances indicated below where, after the deposit into Government account of the tax deducted at source,

(a) the contract is cancelled, and no remittance is made to the non-resident;

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(b) the remittance is duly made to the non-resident, but the contract is cancelled. In such cases, the remitted amount has been returned to the person responsible for deducting tax at source;

(c) the contract is cancelled after partial execution and no remittance is made to the non-resident for the non-executed part;

(d) the contract is cancelled after partial execution and remittance related to non-executed part is made to the non-resident. In such cases, the remitted amount has been returned to the person responsible for deducting the tax at source or no remittance is made but tax was deducted and deposited when the amount was credited to the account of the non-resident;

(e) there occurs exemption of the remitted amount from tax either by amendment in law or by notification under the provisions of Income-tax Act, 2025;

(f) an order is passed under the provisions of the Income-tax Act, 2025 reducing the tax deduction liability of a deductor under section **393(2) (Table: Sl. No.17).**

(g) there occurs deduction of tax twice from the same income by mistake.

(h) there occurs payment of tax on account of grossing up which was not required under the provisions of the Income-tax Act, **393(2) (Table: Sl. No.17).**

(i) there occurs payment of tax at a higher rate under the domestic law while a lower rate is prescribed in the relevant double taxation avoidance treaty entered into by India.

In the cases mentioned above, income does not either accrue to the non-resident or it accrues but the excess amount in respect of which refund is claimed, is borne by the deductor. The amount deducted as tax under section 393(2) (Table: Sl. No.17) and paid to the credit of the Government therefore belongs to the deductor.

In the type of cases referred to in (a), the non-resident not having received any payment would not apply for a refund. For cases covered in (b) to (i), no claim may be made by the non-resident where he has no further dealings with the

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resident deductor of tax or the tax is to be borne by the resident deductor. The resident deductor was therefore put to genuine hardship as he would not be able to recover the amount deducted and deposited as tax.

In the type of cases referred to above, where no income has accrued to the non-resident due to cancellation of contract or where income has accrued but no tax is due on that income or tax is due at a lesser rate, the amount deposited to the credit of Government to that extent under section 393(2)(Table: Sl. No.17), cannot be said to be "tax".

Therefore, the CBDT decided that this amount can be refunded to the person who deducted it from the payment to the non-resident, under section 393(2) (Table: Sl. No.17).

Refund to the person making payment under section 393(2) (Table: Sl. No.17) is being allowed as income does not accrue to the non-resident or if the income is accruing no tax is due or tax is due at a lesser rate. The amount paid into the Government account in such cases to that extent, is no longer "tax".

If a resident deductor is entitled for the refund of tax deposited under section 393(2) (Table: Sl. No.17), then, it has to be refunded with interest under section 437 from the date of payment of such tax [Circular No. 11/2016 dated 26.4.2016].

In case of refund being made to the person who made the payment under section 393(2) (Table: Sl. No.17), the Assessing Officer may, after giving intimation to the deductor, adjust it against any existing tax liability of the deductor under the Income-tax Act, 2025, or any other direct tax law. The balance amount, if any, should be refunded to the person who made such payment under section 393(2) (Table: Sl. No.17).

A refund in terms of this circular should be granted only after obtaining an undertaking that no certificate under section 395(4) of the Income-tax Act has been issued to the non-resident. In cases where such a certificate has been issued, the person making the refund claim under this circular should either obtain it or should indemnify the Income-tax Department from any possible loss on account of any separate claim of refund for the same amount by the non-resident. A refund in terms of this circular should be granted only if the deductee has not filed return of income and the time for filing of return of income has expired.

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The refund as per this circular is, *inter alia*, permitted in respect of transactions with non-residents, which have either not materialized or have been cancelled subsequently. It, therefore, needs to be ensured by the Assessing Officer that they disallow corresponding transaction amount, if claimed, as an expense in the case of the person, being the deductor making refund claim. Besides, in all cases, the Assessing Officer should also ensure that in the case of a deductor making the claim of refund, the corresponding disallowance of expense amount representing TDS refunded is made.

The said Circular, however, did not cover a situation where tax is deducted at a rate prescribed in the relevant DTAA which is higher than the rate prescribed in the Income-tax Act, 2025. Since the law requires deduction of tax at a rate prescribed in the relevant DTAA or under the Income-tax Act, 2025, whichever is lower, there is a possibility that in such cases excess tax is deducted relying on the provisions of relevant DTAA.

Accordingly, in order to remove the genuine hardship faced by the resident deductor, the CBDT has modified *Circular No. 07/2007, dated 23-10-2007* to the effect that the beneficial provisions under the said Circular allowing refund of tax deducted at source under section 393(2) (Table: Sl. No.17) to the person deducting tax at source shall also apply to those cases where deduction of tax at a higher rate under the relevant DTAA has been made while a lower rate is prescribed under the domestic law.

Note - *The withholding tax provisions contained in section 393(2) [Table: Sl. No. 6 to 9] with respect to income distributed by Business Trust (REITs), Investment Fund or Securitisation Trust to non-resident taxpayers are discussed in detail in Chapter 10: Assessment of Registered Non-profit Organisations, Political Parties and Other Special Entities (Module 2). Further, the withholding tax provisions applicable for both resident and non-resident taxpayers contained section 393(3) are discussed in detail in Chapter 13: Deduction, Collection and Recovery of Tax (Module 3).*

It may also be noted that consequent to exclusion of exemption provisions contained in Schedule VI Table: Sl. No. 1 to 4 with respect to specified fund by way Study Guidelines, the TDS provisions under Section 393(2) Table: Sl. No. 16 in relation thereto are not covered in this chapter.



In case of non-resident payee, the rate of tax would be increased by surcharge, wherever applicable, and health and education cess @4%.

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21.16 MISCELLANEOUS PROVISIONS

(1) Recovery of tax arrear in respect of non-resident from his assets [Section 422]

In a case where a non-resident entitled to the income arising from

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

the tax chargeable thereon, whether in his name or in the name of his agent who is liable as a representative assessee,

- may be recovered by deduction under any of the provisions of Chapter XIX-B (Deduction and collection at source) and
- any arrears of tax may be recovered as per the provisions of the Income-tax Act from any assets of the non-resident which are, or may at any time come, within India.

(2) Recovery of tax in pursuance of agreement with foreign countries [Section 418]

Where an agreement is entered by the Central Government with the Government of other country outside India for recovery of income-tax under this Act or corresponding law of that country and the Government of the other country or any authority under that Government may send to the CBDT a certificate of recovery of any tax due under such corresponding law from

- a resident or
- a person having property in India,

the CBDT may forward such certificate to Tax Recovery Officer having jurisdiction over the resident or within whose jurisdiction such property is situated, for recovery of such tax.

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Tax Recovery Officer can proceed to recover the amount specified in the Certificate in the manner in which he would proceed to recover an amount specified in a certificate drawn up by him under section 413, that is to say, by –

(a) attachment and sale of the assessee's movable or immovable property

(b) arrest of the assessee and his detention in prison.

(c) appointing a receiver for the management of the assessee's movable and immovable property.

He shall thereafter remit the sum so recovered after deducting his expenses in connection with the recovery proceedings to the CBDT.

Similarly, where an assessee is in default or is deemed to be in default in making a payment of tax, the Tax Recovery Officer may,

- if the assessee is a resident of a country (being a country with which the Central Government has entered into an agreement for the recovery of income tax under this Act and the corresponding law in force in that country) or
- has any property in that country,

forward to the CBDT a certificate drawn up by him under section 413. Thereafter, the CBDT may take such action thereon as it may deem appropriate having regard to the terms of the agreement with such country.

(3) Submission of statement by a non-resident having liaison office [Section 505]

(i) A non-resident can operate in India through a branch or a liaison office set up after getting the approval of the Reserve Bank of India. Where the branch constitutes a permanent establishment of the non-resident under the applicable agreement for avoidance of double taxation, it has to file its return of income.

(ii) Such a non-resident having a liaison office in India is required to file a statement in the prescribed form to the Assessing Officer having jurisdiction, with such prescribed time. Accordingly, as per Rule 234, an

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annual statement providing the details in respect of activities carried out by the liaison office in India during the financial year shall be furnished in Form No. 162 **within eight months from the end of such financial year.**

(iii) This requirement has to be complied with by every person, being a non-resident having a liaison office in India set up in accordance with the guidelines issued by the RBI under the Foreign Exchange Management Act, 1999.

(iv) The statement is to be furnished in electronic form along with digital signature, duly verified by a Chartered Accountant or by the Authorized Signatory i.e., the person authorized by the non-resident in this behalf.

(4) Furnishing of information or documents by an Indian Concern [Section 506]

(i) There shall be a reporting obligation on the Indian concern through or in which the Indian assets are held by a foreign company or entity.

(ii) For the purposes of determination of any income accruing or arising in India under section 9(10)(a), an Indian concern has to furnish, within the prescribed period to the prescribed income-tax authority, the information or documents, in prescribed manner, if -

- any share of, or interest in, a company or an entity registered or incorporated outside India derives, directly or indirectly, its value substantially from the assets located in India, as referred to in section 9(10)(a), and
- such company or, entity, holds, directly or indirectly, such assets in India through, or in, the Indian concern.

(iii) As per Rule 235, the information has to be furnished in Form No. 163 electronically under digital signature to the Assessing Officer having jurisdiction over the Indian concern,

- within a period of 90 days from the end of the financial year in which the transfer of such share or interest referred to above takes place.

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- However, if the share or the interest has the effect of directly or indirectly transferring the rights of management or control in relation to the Indian concern, the information has to be furnished in Form No.163 within a period of 90 days of the transaction.

(iv) If any Indian concern fails to furnish the information or documents, the prescribed income-tax authority, may direct that such Indian concern shall pay, by way of penalty under section 458,

(a) @2% of the value of the transaction in respect of which such failure has taken place, if such transaction had the effect of directly or indirectly transferring the right of management or control in relation to the Indian concern;

(b) ₹ 5,00,000 in any other case.

(5) Statutory agent of non-residents [Section 306]

According to section 306(1), an agent, in relation to a non-resident person, includes-

❖ Any person in India:

(i) who is employed by or on behalf of the non-resident; or

(ii) who is having any business connection with the non-resident; or

(iii) from or through whom the non-resident is in receipt of any income, whether directly or indirectly; or

(iv) who is trustee of the non-resident; or

❖ any other person who (whether resident or non-resident) has acquired, by means of a transfer, a capital asset in India.

In the first four cases stated above, the person sought to be assessed as the agent of a non-resident must necessarily be in India whereas it need not be so in the fifth case. Thus, a non-resident may be treated as the agent of another non-resident. The appointment of the agent may be made any time before or after the expiry of the relevant tax year. An agent of a non-resident may be appointed under this section even if at the date of such appointment, the non-resident is not alive.

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According to the section 306(2), a broker in India who, in respect of any transactions, does not deal directly with or on behalf of a non-resident principal but deals with or through a non-resident broker cannot be treated as statutory agent in respect such transaction, if the following conditions are satisfied:

- ❖ transactions are carried on in the ordinary course of business through a broker in India and
- ❖ such non-resident broker carries on such transactions in the ordinary course of his business and not as a principal.

Thus, where *bona fide* hedging transactions take place through a broker in India and a foreign broker acting for an undisclosed principal, the Indian broker cannot be deemed to be agent of the foreign principal.

For the purposes of section 306(1)(ii), the expression "business connection" shall have the meaning assigned to it in section 9(9)(a) of the Income-tax Act, 2025.

Before a person can be treated as an agent of a non-resident he must be given a reasonable opportunity of being heard by the Assessing Officer as to his liability to be so treated. [Section 306(3)]

In certain cases, the income received by one person can be assessed in the hands of another. Persons who are liable to be assessed on behalf of other because of their association with the real recipient of the income are known as representative assessees.

In respect of Income of a non-resident which is specified in section 9, agent of a non-resident including a person who is treated as an agent under section 306 would be considered a representative assessee under section 303. As per the provisions of section 304, every representative assessee, shall be subject to the same duties, responsibilities and liabilities as the assessee and the taxes shall be levied upon and recovered from him in like manner and to the same extent as it would be leviable upon and recoverable from the person represented by him.

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TEST YOUR KNOWLEDGE

Questions

1. *Peeyush, who returned to India on 12th June 2026 for permanently residing in India after a stay of about 20 years in U.K., provides the sources of his various incomes and seeks your opinion to know about his liability to income tax thereon in India in tax year 2026-27:*

   (i) Income of rent of the flat in London which was deposited in a bank there. The flat was given on rent by him after his return to India since July, 2026.

   (ii) Dividends on the shares of three German Companies which are being collected in a bank account in London. He proposes to keep the dividend on shares in London with the permission of the Reserve Bank of India.

   (iii) He has got two sons, one of whom is of 12 years and other 19 years. Both his sons are staying in London and not returning to India with him. Each of his sons is having income of ₹ 75,000 in U.K. in foreign currency (not received in India) and of ₹ 20,000 in India.

   (iv) During the preceding tax year when he was a non-resident, he had sold 1000 shares which were acquired by him in British Pound Sterling and the sale proceeds were repatriated. The profit in terms of British Pound Sterling on sale of these 1000 shares was 175% of the cost at ₹ 37,500 while in terms of Indian Rupee it was ₹ 50,000.

2. *Mr. David, a citizen of India, serving in the Ministry of External Affairs in India, was transferred to Indian Embassy in Canada on 31.03.2026. He did not visit India any time during the tax year 2026-27. He has received the following income for the tax Year 2026-27:*

S. No.	Particulars	₹
(i)	Salary (Computed)	5,00,000
(ii)	Foreign Allowance	4,00,000
(iii)	Interest on fixed deposit from bank in India	1,00,000
(iv)	Income from agriculture in Country X	2,00,000
(v)	Income from house property in Country X	2,50,000

Compute his gross total income for tax year 2026-27.

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3. *Mr. A, a citizen of India, left for USA for the purposes of employment on 1.5.2026. He has not visited India thereafter. Mr. A borrows money from his friend Mr. B, who also left India for employment purpose one week before Mr. A's departure, to the extent of ₹ 10 lakhs and buys shares in X Ltd., an Indian company. Discuss the taxability of the interest charged @10% in B's hands, if the said interest has been received in New York.*

4. *JJ Limited, a company incorporated in Australia has entered into an agreement with KK Limited, an Indian company for rendering technical services to the latter for setting up a fertilizer plant in Orissa. As per the agreement, JJ Limited rendered both off-shore services and on-shore services to KK Limited at fee of ₹ 1 crore and ₹ 1.5 crore, respectively. JJ Limited is of the view that it is not liable to tax in India in respect of fee of ₹ 1 crore as it is for rendering services outside India. Discuss the correctness of the view of JJ Limited.*

5. *Examine with reasons whether the following transactions attract income-tax in India, in the hands of recipients under section 9 of Income-tax Act, 2025:*

   (i) A non-resident German company, which did not have a permanent establishment in India, entered into an agreement for execution of electrical work in India. Separate payments were made towards drawings & designs, which were described as "Engineering Fee". The assessee contended that such business profits should be taxable in Germany as there is no business connection within the meaning of section 9(2) of the Income-tax Act, 2025.

   (ii) A firm of solicitors in Mumbai engaged a barrister in UK for arguing a case before Supreme Court of India. A payment of 5000 pounds was made as per terms of professional engagement.

   (iii) Amount paid by Government of India for use of a patent developed by Mr. A, who is a non-resident.

   (iv) Sai Engineering, a non-resident foreign company entered into a collaboration agreement on 25/6/2026, with an Indian Company and was in receipt of interest on 8% debentures for ₹ 20 lakhs, issued by Indian Company, in consideration of providing technical know-how utilised in its business in Mumbai during tax year 2026-27.

6. *Z, an American tourist, comes to India for the first time on June 17, 2026. He leaves India on September 29, 2026. Determine his residential status for the tax year 2026-27.*

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Would your answer change if he is a person of Indian origin and his total income from Indian sources for tax year 2026-27 is ₹ 16 lakhs?

7. *M/s. Global Airlines incorporated as a company in USA operated its flights to India and vice versa during the year 2026-27 (April, 2026 to March, 2027) and collected charges of ₹ 125 lakhs for carriage of passengers and cargo out of which ₹ 65 lakhs were received in New York in U.S Dollars for the passenger fare booked from New York to Mumbai. The total expenses for the year on operation of such flights were ₹ 95 lakhs. Compute the income chargeable to tax of the foreign airlines.*

8. *Atlant France SAS, a company incorporated in France, was engaged in manufacture, trade and supply equipment and services for GSM Cellular Radio Telephones Systems. It supplied hardware and software to various entities in India. Software licensed by assessee embodied the process which is required to control and manage the specific set of activities involved in the business use of its customers, and also made available to its customers, who used it to carry out their business activities. The Assessing Officer contended that the consideration for supply of software embedded in hardware is 'royalty' under section 9(6)(a).*

   Examine the correctness of the action of the Assessing Officer assuming that the software that was loaded on the hardware and embedded in the system does not have any independent existence.

9. *Singtel Ltd. is a company incorporated in Singapore and 55% of its shares are held by Godavari (P) Ltd., an Indian company. Singtel Ltd. has its presence in India also. The details relating to Singtel Ltd. for the tax year 2026-27, are as under:*

Particulars	India	Singapore
Fixed assets at depreciated values for tax purposes (₹ in crores)	120	80
Intangible assets (₹ in crores)	50	200
Other assets (value as per books of account) (₹ in crores)	40	120
Income from trading operations (₹ in crores)	25	50
The above figure includes:		

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(i)	*Income from transactions where purchases are from associated enterprises and sales are to unrelated parties*	*2*	*4*
(ii)	*Income from transactions where sales are to associated enterprises and purchases are from unrelated parties*	*3*	*5*
(iii)	*Income from transactions where both purchases and sales are from/to associated enterprises*	*5*	*10*
Interest and dividend from investments (₹ in crores)		*20*	*15*
Number of employees (Residents in respective countries)		*70*	*90*
Payroll expenses on employees (₹ in crores)		*8*	*12*

Determine the residential status of Singtel Ltd. for tax year 2026-27, if during the tax year 2026-27, eight board meetings were held – 3 in India and 5 in Singapore.

10. *STYLE Inc., a foreign company and a notified Foreign Institutional Investor (FII), derived the following incomes for the tax year 2026-27*

(1) Dividend from listed shares of Indian companies – ₹ 6,20,000

(2) Interest on securities – ₹ 17,32,000 (Expenses of ₹ 26,000 has been incurred to earn such income)

(3) Income from sale of securities and shares:

(i) Bonds of J Ltd.

[Date of purchase 5 May, 2020; Date of sale 7 June, 2026]

Sale proceeds : *₹ 47,00,000*

Cost of purchase: *₹ 32,00,000*

Cost Inflation Index: F.Y. 2020-21: 272; F.Y. 2026-27: 363

(ii) Listed Shares of E Ltd.

[Date of purchase – 2 May, 2026; Date of sale – 9 February, 2027]

Sale Consideration *₹ 12,40,000*

Purchase cost *₹ 7,80,000*

[STT paid both at the time of purchase and sale]

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(iii) Unlisted equity shares of M Ltd.
[Date of purchase – 1 July, 2026; Date of sale – 7 March, 2027]

Sale Consideration	*₹ 8,40,000*
Purchase cost	*₹ 3,72,000*

Compute the total income and tax liability of the FII, STYLE Inc., a foreign company for the tax year 2026-27 as per section 210, assuming that no other income is derived by STYLE Inc. during the tax year 2026-27

Answers

1. Peeyush returned to India on 12th June 2026 for permanently residing in India after staying in UK for 20 years. During the tax year 2026-27, he stays in India for 293 days. Since he has stayed in India for a period of 182 days or more during the tax year 2026-27, he would be a resident in India for the tax year 2026-27. However, he would be a resident but not ordinarily resident, assuming that he was a non-resident in nine out of ten tax years preceding tax year 2026-27 and his stay in India during the seven tax years is 729 days or less preceding the tax year 2026-27. The residential status of Peeyush for tax year 2026-27 is, therefore, **Resident but Not Ordinarily Resident.**

As per section 5(1), only income which is received/ deemed to be received/ accrued or arisen/ deemed to accrue or arise in India is taxable in case of a Resident but not Ordinarily Resident. Income which accrues or arises outside India shall not be included in his total income, unless it is derived from a business controlled in, or a profession set up in India.

(i) Rental income from a flat in London which was deposited in a bank there shall not be taxable in the case of a resident but not ordinarily resident, since both the accrual and receipt of income are outside India.

(ii) Dividends from shares of three German Companies, collected in a bank account in London, would also not be taxable in the case of a resident but not ordinarily resident since both the accrual and receipt of income are outside India.

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(iii) As per section 99(1)(c), income arising directly or indirectly to a minor child is includible in the hands of the parent, after providing for deduction of ₹ 1,500 per child under Schedule III Table: Sl. No. 17.

Accordingly, income of ₹ 20,000 accruing to his minor son, aged 12 years, in India is includible in the income of Peeyush. (If Peeyush opts for old tax regime, he can claim deduction of ₹ 1,500 from this income in which case ₹ 18,500 would be includible in his income). Income accruing to the minor child outside India (which is also received outside India) is **not** includible in the income of Peeyush.

Since the other son is major, his income is not includible in the income of Peeyush.

(iv) Repatriation of sale proceeds of 1000 shares sold in the preceding tax year, when Peeyush was a non-resident, is not taxable in the tax year 2026-27 since it is not the income of that year.

Consequently, only the income includible under section 99(1)(c) would form part of the total income of Mr. Peeyush for tax year 2026-27. Since his total income (i.e., ₹ 20,000/18,500) is less than the basic exemption limit, there would be no liability to income-tax for tax year 2026-27.

2. As per section 6(2), Mr. David is a non-resident for the tax year 2026-27, since he was not present in India at any time during the tax year 2026-27.

As per section 5(2), a non-resident is chargeable to tax in India only in respect of following incomes:

(i) Income received or deemed to be received in India; and

(ii) Income accruing or arising or deemed to accrue or arise in India.

In view of the above provisions, income from agriculture in Country X and income from house property in Country X would not be chargeable to tax in the hands of David, assuming that the same were received in Country X.

Income from 'Salaries' payable by the Government to a citizen of India for services rendered outside India is deemed to accrue or arise in India as per section 9(3)(b). Hence, such income is taxable in the hands of Mr. David, even though he is a non-resident. However, allowances or perquisites paid or allowed as such outside India by the Government to a citizen of India for rendering service outside India is exempt under Schedule III Table: Sl. No. 9. Hence, foreign allowance of ₹ 4,00,000 is exempt.

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Gross Total Income of Mr. David for Tax Year 2026-27

Particulars	₹
Salaries	5,00,000
Income from other sources (Interest on fixed deposit in India)	1,00,000
Gross Total Income	**6,00,000**

3. An individual is said to be resident in India in any tax year, if he -

(i) has been in India during that year for a total period of 182 days or more, or

(ii) has been in India during the four years immediately preceding that year for a total period of 365 days or more and has been in India for at least 60 days in that year.

In the case of an Indian citizen leaving India for the purposes of employment outside India during the tax year, the period of stay during the tax year in condition (ii) above, to qualify as a resident, would be 182 days instead of 60 days.

In this case, Mr. A is an Indian citizen who left India for employment outside India on 01.05.2026. Mr. A has been in India only from 1.4.2026 to 01.05.2026 i.e. for 31 days. Since his stay in India during the tax year 2026-27 is only 31 days, he does not satisfy the minimum criterion of 182 days stay in India for being a resident. Hence, his residential status for tax year 2026-27 is non-resident. Mr. B, who left India one week before A's departure, is also a non-resident for the same reasons.

Section 9(5)(a) provides that income by way of interest payable by a non-resident in respect of any debt incurred, or moneys borrowed and used, for the purposes of a business or profession carried on by such person in India shall be deemed to accrue or arise in India.

Therefore, interest payable by a non-resident in respect of any debt incurred, or moneys borrowed and used, for the purpose of making or earning any income from any source other than a business or profession carried on by him in India, shall **not** be deemed to accrue or arise in India. Therefore, interest payable by Mr. A on money borrowed from Mr. B to invest in shares of an Indian company shall **not** be deemed to accrue or arise in India and hence, is not taxable in India in the hands of Mr. B.

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4. The section 9(11) clarifies that income by way of, *inter alia*, fees for technical services from services utilized in India would be deemed to accrue or arise in India under section 9(7)(a) in case of a non-resident and be included in his total income, whether or not such services were rendered in India.

In this case, the technical services rendered by the foreign company, JJ Ltd., were for setting up a fertilizer plant in Orissa. Therefore, the services were utilized in India. Consequently, as per the section 9(11), the fee of ₹ 2.5 crore for technical services rendered by JJ Ltd. (both off-shore and on-shore services) to KK Ltd. is deemed to accrue or arise in India and includible in the total income of JJ Ltd.

Therefore, the view of JJ Ltd. that it is not liable to tax in India in respect of fee of ₹ 1 crore (as it is for rendering services outside India) is **not** correct.

5. **(i)** Fees for technical services is taxable under section 9(7)(a). In this case, the separate payments made towards drawings and designs (described as "engineering fee") are in the nature of fee for technical services and, therefore, it is taxable in India by virtue of section 9(7)(a), since the services are utilized for execution of electrical work in India *[Aeg Aktiengesllschaft v. CIT (2004) 267 ITR 209 (Kar.)]*.

As per section 9(11), where income is deemed to accrue or arise in India under section 9(7)(a), such income shall be included in the total income of the non-resident German company, regardless of whether it has a residence or place of business or business connection in India.

(ii) As per section 9(2), all income accruing or arising, whether directly or indirectly, through or from any business connection in India is deemed to accrue or arise in India.

In this case, there was a professional connection between the firm of solicitors in Mumbai and the barrister in UK. The expression "business" includes not only trade and manufacture; it includes, within its scope, "profession" as well. Therefore, the existence of professional connection amounts to existence of "business connection" under section 9(2). It was so held by the Supreme Court in *Barendra Prasad Roy v. ITO (1981) 129 ITR 295*.

Hence, the amount of 5,000 pounds paid to the barrister in UK as per the terms of the professional engagement constitutes income which

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is deemed to accrue or arise in India under section 9(2). Hence, it is taxable in India.

(iii) As per section 9(6)(a), income by way of royalty payable by the Government of India is deemed to accrue or arise in India. "Royalty" means consideration for, *inter alia*, use of patent. Therefore, the amount paid by Government of India for use of patent developed by Mr. A, a non-resident, is deemed to accrue or arise in India. Hence, it is taxable in India in the hands of Mr. A.

(iv) ₹ 20 lakhs, being the value of debentures issued by an Indian company in consideration of providing technical know-how for use in its business in India, is in the nature of fee for technical services, deemed to accrue or arise in India to Sai Engineering, a non-resident foreign company, under section 9(7)(a). Hence, it is taxable in India.

Further, as per section 9(5)(a), income by way of interest payable by a resident of India is deemed to accrue or arise in India. Therefore, interest income from debentures of an Indian company is deemed to accrue or arise in India in the hands of Sai Engineering by virtue of section 9(5)(a). Hence, it is taxable in India.

6. Z stayed in India during the tax year 2026-27 for only 105 days. Further, he came to India first time during the tax year 2026-27. He is non-resident for the tax year 2026-27 as he does not satisfy either of the basic conditions.

Even if he is a person of Indian origin whose total income from Indian sources exceeds ₹ 15 lakhs, he would still be a non-resident for tax year 2026-27. For becoming a resident but not ordinarily resident, he should have stayed in India for at least 120 days in the tax year 2026-27 and 365 days in four immediately preceding tax years. Since his stay in India in the tax year 2026-27 is less than 120 days, he would be **non-resident** in India for tax year 2026-27.

7. As per section 61(2) Table: Sl. No. 3, in case of a non-resident engaged in the business of operation of aircraft, 5% of the following amounts would be deemed to be the profits and gains from such business:

(a) sum on account of the carriage of passengers, livestock, mail or goods from **any place in India** paid or payable, whether in or out of India, to the assessee or to any person on his behalf; and

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(b) sum on account of the carriage of passengers, livestock, mail or goods from **any place outside India** received or deemed to be received in India by or on behalf of the assessee.

In the present case, the income chargeable to tax in the hands of M/s Global Airlines applying the provisions of section 61(2) Table: Sl. No. 3 are as follows:

Particulars	Fare booked from India to outside India whether received in India or not (₹)	Fare booked from New York to Mumbai and received outside India (₹)
Fare	60,00,000 (1,25,00,000 – 65,00,000)	65,00,000
Deemed income @5% u/s 61(2) Table: Sl. No. 3	3,00,000 (60,00,000 × 5%)	Nil (since the amount not received in India)

8. The issue under consideration in this case is whether consideration for supply of software embedded in hardware would tantamount to 'royalty' for attracting deemed accrual of income under section 9(6)(a).

As per section 9(6)(a), income by way of royalty payable by a person who is a resident in India would be deemed to accrue or arise in India. However, where it is payable for the transfer of any right or the use of any property or information or for the utilization of services for the purposes of a business or profession carried on by such person outside India or for the purposes of making or earning any income from any source outside India, the amount payable by way royalty would not be deemed to accrue or arise in India, in the hands of non-resident.

For this purpose, 'royalty' includes transfer of all or any right for use or right to use a computer software irrespective of the medium through which such right is transferred.

The facts of the case are similar to the facts in *CIT v. Alcatel Lucent Canada (2015) 372 ITR 476*, wherein the above issue came up before the Delhi High Court. The Court observed that the software supply is an integral part of GSM mobile telephone system and is used by the cellular operators for providing cellular services to its customers. Where payment is made for hardware in which the software is embedded and the software does not have independent

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functional existence, no amount could be attributed as 'royalty' for software in terms of section 9(6)(a).

In this case, since the software that was loaded on the hardware and embedded in the system does not have any independent existence, there could not be any independent use of such software. Therefore, the rationale of the Delhi High Court ruling can be applied to the case on hand. Accordingly, the action of the Assessing Officer in treating the consideration for supply of software embedded in hardware as royalty under section 9(6)a) is **not** correct.

9. The residential status of a foreign company is determined on the basis of place of effective management (POEM) of the company.

For determining the POEM of a foreign company, the important criteria is whether the company is engaged in active business outside India or not.

A company shall be said to be engaged in "**Active Business Outside India"** (ABOI) for POEM, if

- the passive income is not more than 50% of its total income; **and**
- less than 50% of its total assets are situated in India; **and**
- less than 50% of total number of employees are situated in India or are resident in India; **and**
- the payroll expenses incurred on such employees is less than 50% of its total payroll expenditure.

Singtel Ltd. shall be regarded as a company engaged in active business outside India for tax year 2026-27 for POEM purpose only if it satisfies all the four conditions cumulatively.

Condition 1: The passive income of Singtel Ltd. should not be more than 50% of its total income

Total income of Singtel Ltd. during the tax year 2026-27 is ₹ 110 crores [(₹ 25 crores + ₹ 50 crores) + (₹ 20 crores + ₹ 15 crores)]

Passive income is the aggregate of, -

(i) income from the transactions where both the purchase and sale of goods is from/to its associated enterprises; and

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(ii) income by way of royalty, dividend, capital gains, interest or rental income;

Passive Income of Singtel Ltd. is ₹ 50 crores, being sum total of:

(i) ₹ 15 crores, income from transactions where both purchases and sales are from/to associated enterprises (₹ 5 crores in India and ₹ 10 crores in Singapore)

(ii) ₹ 35 crores, being interest and dividend from investment (₹ 20 crores in India and ₹ 15 crores in Singapore)

Percentage of passive income to total income = ₹ 50 crore/ ₹ 110 crore x 100 = 45.45%

Since passive income of Singtel Ltd. **is 45.45%, which is not more than 50%** of its total income, the first condition is satisfied.

Condition 2: Singtel Ltd. should have less than 50% of its total assets situated in India

Value of total assets of Singtel Ltd. during the tax year 2026-27 is ₹ 610 crores [₹ 210 crores, in India + ₹ 400 crores, in Singapore]

Value of total assets of Singtel Ltd. in India during the tax year 2026-27 is ₹ 210 crores

Percentage of assets situated in India to total assets = ₹ 210 crores/₹ 610 crores x 100 = 34.43%

Since the value of assets of Singtel Ltd. **situated in India is less than 50%** of its total assets, the second condition for ABOI test is satisfied.

Condition 3: Less than 50% of the total number of employees of Singtel Ltd. should be situated in India or should be resident in India

Number of employees situated in India or are resident in India is 70

Total number of employees of Singtel Ltd. is 160 [70 + 90]

Percentage of employees situated in India or are resident in India to total number of employees is 70/160 x 100 **= 43.75%**

Since employees situated in India or are residents in India of Singtel Ltd. **are less than 50%** of its total employees, the third condition for ABOI test is satisfied.

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Condition 4: The payroll expenses incurred on employees situated in India or resident in India should be less than 50% of its total payroll expenditure

Payroll expenses on employees employed in and resident of India = ₹ 8 crores.

Total payroll expenses = ₹ 20 crores (₹ 8 crores + ₹ 12 crores)

Percentage of payroll expenses of employees situated in India or are resident in India to the total payroll expenses = 8 x 100/20 = 40%

Since the payroll expenses incurred on employees situated in India or resident in India **is less than 50% of its total payroll expenditure**, the fourth condition for ABOI test is also satisfied.

Thus, since Singtel Ltd. has satisfied all the four conditions, the company would be said to be engaged in "active business outside India" during the tax year 2026-27.

POEM of a company engaged in active business outside India shall be presumed to be outside India, if the majority of the board meetings are held outside India.

Since Singtel Ltd. is engaged in active business outside India in the tax year 2026-27 and majority of its board meetings i.e., 5 out of 8, were held outside India, POEM of Singtel Ltd. would be outside India.

Therefore, Singtel Ltd. would be non-resident in India for the tax year 2026-27.

10. Computation of total income of STYLE Inc., a foreign company and a notified FII, for Tax Year 2026-27

Particulars	₹	₹
Dividend income	6,20,000	
Interest on securities [No deduction is allowable in respect of expenses incurred in respect thereof]	17,32,000	23,52,000
Long-term capital gains on sale of bonds of J Ltd.		
Sale consideration	47,00,000	

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Less: Cost of acquisition [Benefit of indexation is not allowable]	32,00,000	15,00,000
Short-term capital gains on sale of STT paid equity shares of E Ltd.		
Sale consideration	12,40,000	
Less: Cost of acquisition	7,80,000	4,60,000
Short-term capital gains on sale on unlisted equity shares of M Ltd.		
Sale consideration	8,40,000	
Less: Cost of acquisition	3,72,000	4,68,000
Total Income		**47,80,000**

Computation of tax liability of STYLE Inc. for tax year 2026-27

Particulars	₹
Tax@20% on interest on securities and dividend =20% x ₹ 23,52,000	4,70,400
Tax@12.5% on long-term capital gains on sale of bonds of J Ltd. = 12.5% x ₹ 15,00,000	1,87,500
Tax @ 20% on short-term capital gains on sale of listed equity shares of E Ltd., in respect of which STT has been paid = 20% of ₹ 4,60,000	92,000
Tax @ 30% on short-term capital gains on sale of unlisted equity shares of M Ltd. = 30% of ₹ 4,68,000	1,40,400
	8,90,300
Add: HEC@4%	35,612
Tax liability	**9,25,912**
Tax liability (rounded off)	**9,25,910**

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