

Study Course on International Tax for Beginners by WIRC of ICAI

Domestic Tax Provisions vis-à-vis International Tax



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Overview of Presentation

- Need & Rationale of International Taxation
- Source & Resident Taxation
- Ingredients of International Taxation
- Treaties: Types of Double Tax Avoidance Treaties / Double Tax Convention (DTC)
- Purpose and Objective of the DTC
- Double taxation conflicts
- Treaties – Legal Status and Model Tax Conventions
- Structure of Tax Treaties – OECD Model
- Tax Treaties and Domestic tax law
- How to apply DTAA
- Non Resident Taxation under Domestic tax law
- Scope of Total Income & Computation of Income
- Exemptions to non-residents



Need & Rationale of International Taxation

- Increased world trade & Globalization
 - Increased movement of people
 - Borderless Global Economy due to eCommerce
 - Cross Border M & A
- Therefore, issues in taxation arise due to income earned in foreign state and its taxation in resident state (i.e. taxation of global income) as well as in foreign state (i.e. source based taxation).



Rationale – Tax System

- Taxation on the basis of connecting factors of Subject (tax payer) of taxation or Object (activity) of taxation
- Source Rule for Object and Resident Rule for Subject. If all the countries adopt source as principle there will not be any Double taxation
- Taxation on the basis of Source Rule or Resident Rule, mix of the two is most common
- State has right to tax subject on the basis of their participation in the economic, commercial and social life of any territory
- Capital export and import neutrality



Source & Resident Taxation

- Every country has its own tax laws following two charging principles:
 - i. Taxation of Resident Individuals and corporations on income arising in foreign countries – i.e. taxation of foreign income of Residents
 - ii. Taxation of Non-residents on income arising domestically – i.e. taxation of Non-Residents
- Therefore, taxation of foreign income by one country (Resident country) is the taxation of Non-resident for another country (Source country) leading to dual taxation.



Ingredients: International Taxation

- International taxation encompasses global tax rules that apply to transaction/s between two or more countries
- No separate Codified law – No separate tax
- Involves legal domestic provisions of different countries that covers the tax aspects of cross - border transactions
- Thus, it involves studying Non Resident provisions in a domestic law and its impact in Resident country
- Involves study of domestic law of at least two countries and at time, more than two



Double Taxation Avoidance Agreements

- Hence, it is important to:
 - Define Taxing Rights among the countries, and
 - Avoid Double Taxation Conflicts
- The above is achieved by Agreement for Avoidance of Double Tax or Double Tax Avoidance Agreement – “DTAA” or Double Tax Conventions / Treaties.



Legislation in International Taxation

- Domestic tax law provisions e.g. Income-Tax Act, 1961
- Tax Treaty provisions e.g. India – UK DTAA
- Foreign country's tax law provisions e.g. UK Tax laws



Purpose & Objective of DTAA

- Elimination of Juridical Double taxation arising due to taxation on the income of the tax payer in two countries
- Certainty of tax treatment
- Prevention of Fiscal evasion
- Prevention of tax discrimination
- Resolution of tax disputes
- Lower compliance cost
- Limitation of taxation of cross border transactions / trade
- Does not eliminate Economic Double taxation arising due to taxation on same income in the hands of different tax payers



Double Taxation conflicts

- Dual taxation arises from various kinds of conflicts due to operation of domestic laws of two countries in addition to source – resident taxation:
 - Source – Residence conflict
 - Residence – Residence conflict
 - Source – Source conflict
 - Income characterization conflict
 - Assessee characterization conflict



Types of Treaties

- Double Tax treaties
- Bilateral Investment treaties
- Preferential trade and investment agreements
- Shipping and Air Transport treaties
- Multilateral Tax treaties
- Multilateral directives on taxation and mergers



Treaties – Legal Status

- A formal agreement between two or more sovereign states
- Phases: Negotiations, Signature, ratifications and entry into force
- Country's view on these agreements and International law
 - Treaty prevails over domestic law
 - Treaty is nothing but the part of domestic law
- Restricts the national taxing powers of cross border transaction



Model Tax Conventions

- Model Tax Convention – A need
- Scope of Model Conventions & its content
- Legal standing & acceptance of Model DTC
- League of Nations models 1928 -1946
- OECD Model – 1963, 1977, 1992 and so on
- UN Model – 1980 and 2001
- CIAT Model, ASEAN Model
- National Models e.g. US Model, Netherlands Model, etc.



OECD Model Convention

- Provides uniform basis to address common problems that arise in cross border taxation, typically Source - Residence conflict situations [Need of a model]
- Nature of OECD Model Convention
 - It is a model agreement used to initiate negotiations
 - Interpretation of each Article is provided as commentary which is binding to the member nations
 - Members can declare their reservation on the model or the commentary



OECD Model Convention (con't)

- Revision and updates to OECD model
 - Changing business and transaction pattern
 - Changing members' thoughts and reflect their views, comments & reservations
- Significance of Commentary
 - Basic document with interpretation informed in advance
 - Non members' view included since 1997
 - India's view considered as observer in 2006



Structure of OECD Model

- Articles 1, 2 & 29: Scope of the Convention [Persons, Taxes covered & Territorial extension]
- Articles 3, 4, 5: Definitions (Misc. defn., Resident & PE)
- Articles 6 to 21: Taxation of various types of income
 - Shared allocation of taxes, and
 - Exclusive allocation of taxing rights
- Articles 23A & 23B: Elimination of Double taxation
 - Exemption method (Article 23A)
 - Credit method (Article 23B)
- Articles 24 to 28: Special provisions
 - Procedural rules (Articles 25, 26 & 27 resp. about MAP, information exchange & assistance in collection of taxes)
 - Principles (Article 24 & 28 resp. about non-discrimination of diplomatic persons)



Structure of OECD Model (con't)

- Articles 30 & 31: Final provisions (Entry into force & Termination resp.)
- Article 25: Can also be considered with Articles 23A & 23B
- Articles 9 & 26: Can also be considered as Anti-Avoidance provisions of the Treaty



Overall Allocation of Income

R State

S State

Article 12, 18, 21 (exclusive taxation of R state)

(a sharing rule) → Article 10, 11

(state shares income

only if conditions are satisfied)

→ Article 6, 7 or 15

(exclusive taxation of S state) → Article 19



Tax Treaties and Domestic Law

- Constitutional reference
- Information as to tax law & its position as to treaty in the domestic tax laws
- No interference of Domestic law
- Treaty derives support from tax laws as per Article 3(2) of the Model
- Domestic law to compute income in accordance with the Treaty
- Changes in Domestic law after execution of Treaty – Ambulatory vs Static approach
- GAAR and specific Anti-Abuse provisions
- Most of administrative processes as to method for collection of tax, computational mechanism are left to domestic law i.e. ITA
- How the above operates



Scope and Entitlement to Treaty benefits

- Section 90 and 91 of the ITA-DTC or Act, Year wise(Business Income only), Head wise, or otherwise.-A common Sense Approach
- Article 1:Personal scope, Article 2:Taxes covered, Article 29:Territorial scope
- Article 3(1)(a): An individual, a company and any other body of persons
- Resident – Article 4: Liable to tax in a state by reason of domicile, residence or place of management and similar criteria Contracting State: A state which is/are party to the DTC



Scope and Entitlement to Treaty benefits (con't)

- Persons who are resident of one of the contracting states Article 1
- Person is defined Article 3(1)(a)
- Persons who are resident and liable to tax in the contracting state defined Article 4(1)



Scope and Entitlement to Treaty benefits (con't)

- Article 2(1)
Taxes covered: Taxes on Income or Capital irrespective of the body levying the taxes, except certain taxes
- List of Taxes: Income Tax, Corporation Tax, Wages tax, Dividend Tax
- Article 2(4)
 - Replacement of Tax by an another type of tax then Treaty remains applicable
 - Notification of changes required
- Article 29: Territorial scope: Land, Water, Continental Shelf and Economic Zone



Tax Credit

- Article 23A & Article 23B
- Two Methods
 - Exemption Method
 - Credit Method-
Each state provides ordinary credit in different form such as Unilateral Credit, Full Credit, Ordinary Credit, Tax sparing Credit and Underlying Tax credit. Credit with Progression (Foreign Income included for Rate purposes)



Tax Credit (con't)

- Article 23A – Exemption Method
1. Where a resident of a Contracting State derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in the other Contracting State, the first-mentioned State shall, subject to the provisions of paragraphs 2 and 3, exempt such income or capital from tax.
 2. Where a resident of a Contracting State derives items of income which, in accordance with the provisions of Articles 10 and 11, may be taxed in the other Contracting State, the first-mentioned State shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in that other State. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to such items of income derived from that other State.



Tax Credit (con't)

- Article 23A – Exemption Method (con't)
3. Where in accordance with any provision of the Convention income derived or capital owned by a resident of a Contracting State is exempt from tax in that State, such State may nevertheless, in calculating the amount of tax on the remaining income or capital of such resident, take into account the exempted income or capital.
 4. The provisions of paragraph 1 shall not apply to income derived or capital owned by a resident of a Contracting State where the other Contracting State applies the provisions of this Convention to exempt such income or capital from tax or applies the provisions of paragraph 2 of Article 10 or 11 to such income.



Tax Credit (con't)

- Article 23B – Credit Method

1. Where a resident of a Contracting State derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in the other Contracting State, the first-mentioned State shall allow:
 - (a) as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in that other State;
 - (b) as a deduction from the tax on the capital of that resident, an amount equal to the capital tax paid in that other State.

Such deduction in either case shall not, however, exceed that part of the income tax or capital tax, as computed before the deduction is given, which is attributable, as the case may be, to the income or the capital which may be taxed in that other State.



Tax Credit (con't)

- Article 23B – Credit Method (con't)

- 2. Where in accordance with any provision of the Convention income derived or capital owned by a resident of a Contracting State is exempt from tax in that State, such State may nevertheless, in calculating the amount of tax on the remaining income or capital of such resident, take into account the exempted income or capital.



Tax Credit (con't)

- Issues arising in Tax Credits
 - Mismatch of timing
 - Conflict of Characterisation
 - Conflict of Attribution
 - Double Non-taxation
 - Domestic Tax Credit Rules-Attributable Foreign Income, MAT and Exempt Income, MAT on Exempt and Foreign Income, Foreign Tax and MAT (Notified on 27.06.2016, effective from 01.04.2017)
 - Controlled Foreign Company (CFC) Rules
 - Inappropriate application of Tax Treaty - TDS



How to apply DTAA

- **First determine which DTAA is applicable:**

Step	Description
1	Determine the nature of the transaction of income under IT Act
2	One of the parties to the transaction should be a Non-Resident
3	Determine the residential status of the Non-Resident
4	The tax treaty between India and the country of residence of Non-resident is the applicable DTAA



How to apply DTAA (con't)

- **Next determine taxability as under:**

Step	Description
1	Determine the nature of income arising to the NR / FC according to ITA and the articles of DTAA (specific and general).
2	If any of the Specific Articles for taxation as per DTAA are applicable as per the nature of income under ITA, then the income is computed under ITA but having regard to provisions of that Article
3	If the Non-Resident has a Permanent Establishment (PE) in India then general articles for taxation would be applicable
4	Accordingly determine the tax liability under the DTAA and under the IT Act. If tax is not payable under ITA, treaty may not be looked into.
5	Applying section S.90(2), determine whether IT Act / DTAA is more beneficial (treaty override) and accordingly finalize tax liability as per more beneficial provisions.



Taxation of Non Residents – Treaty Operation

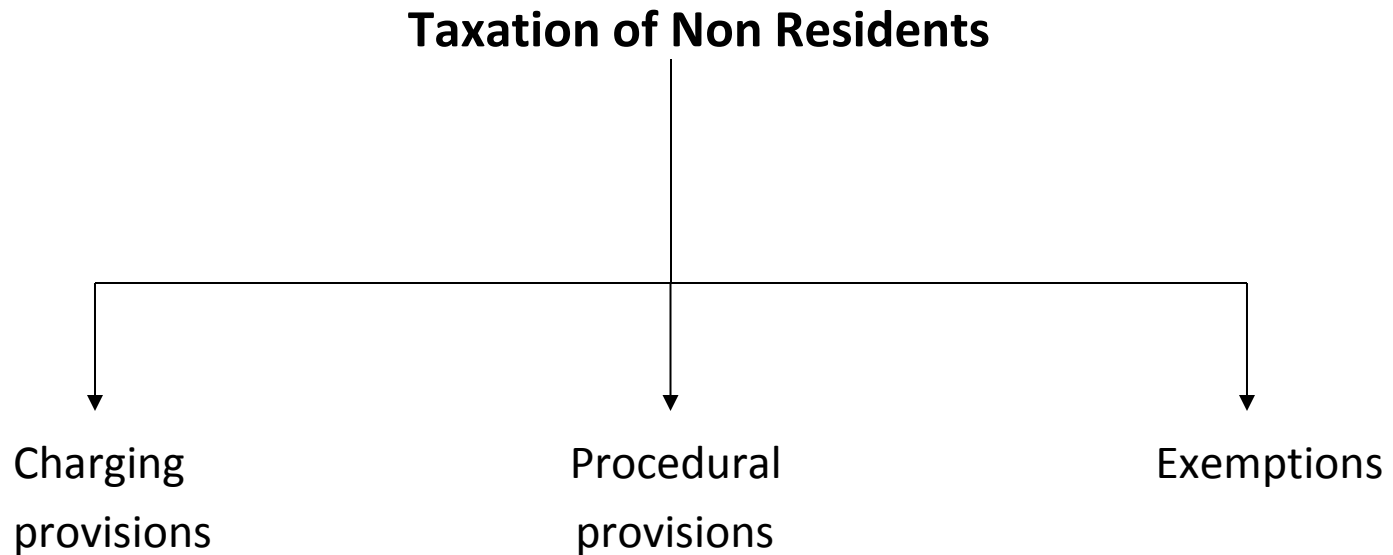
- Source Rule
- Source taxation limitation
- Alternate possible Article of the DTAA
- Lower rates of taxation
- Narrower scope of income
- Not a charging provision, can only reduce burden
- Treaty, a part of domestic law
- Computation rule of ITA applies
- Article 3(2) of DTAA for meaning of words / phrases
- Non discrimination under Article 24 of DTAA
- Information Exchange and Mutual Assistance Procedure



Taxation of Non Residents – Computation of Income

- Specific provisions Vs general provisions
 - CIT Vs Copes Vulcan Inc. [167 ITR 884 (MAD.)]
- Exclusion from income of each type
- Gross basis of taxation Vs net basis of taxation
- Scheme of the ITA – Gross basis, Net basis, Tax rates & TDS
- Simultaneous operations of the provisions are normally avoided
- Circular No. 333 dt. 2nd April, 1982 & S.90(2): If provisions of the DTAA are beneficial, then that shall prevail
 - CIT Vs Vishakhapatnam Port Trust [144 ITR 146 (SC)]

Taxation of Non Residents – Overview of provisions of IT Act





Relevant Charging provisions of IT Act for International Taxation

Section of IT Act	Provision
5	Scope of Total Income
9	Income deemed to accrue or arise in India
44B-44BBB & 44C-44DA	Presumptive Tax
Chapter XII-A: 115C-115I	Provisions relating to certain incomes of Non-Residents
172	Shipping business of non-residents

Relevant Procedural provisions of IT Act for International Taxation

Section of IT Act	Provision
2(30), 2(42)	Definition of a non-resident and resident
4 to 8	Charge of income-tax, scope to total income, etc.
40(a)(i), 44C	Amount not deductible, Head office expenditure of non-residents
47, 48	Capital gains
56, 58	Income from other sources
90 to 92	Double taxation relief
92A to 92F, 93	Income from international transactions, provisions relating to avoidance of tax
112(1)(c)	Tax on long-term capital gains
115A-115AC,115BBA	Tax rates relating to certain income of Non-Residents
139	Return of Income
173, 174	Recovery of tax in respect of non-residents, Assessment of persons leaving India
195,195A,196A,206AA	Withholding tax obligations on payment to Non-Resident, Income payable 'Net of Tax', etc.
201,204,220(7),230, 245P to 245V, 270A to 275, 293A	Deduction at source, Collection & recovery of tax, Advance Rulings, Penalties, Power to make exemptions



Relevant Exemptions under Section 10 of IT Act

10(4)(i),(ii)	10(4B)
10(6)(ii),(vi),(viii),(xi)	10(6A),10(6B),10(6C)
10(7)	10(8), 10(8A), 10(8B)
10(9)	10(15)
10(23)	10(34)
10(35)	10(36)
10(37)	10(38)



Non Resident Taxation

- Chargeability & Scope of the Taxation – Sec. 4, 5, 6 & 9 of ITA
- Taxation of Non Resident Indians (NRIs)
- Taxation of Non Residents (including foreigners)
- Exemptions
- Procedure & Returns



Scope of Taxation

- In case of Non Resident
 - Income received or deemed to be received in India (irrespective of accrual)
 - Income accrues or arises in India or deemed to accrue or arise in India is chargeable to tax u/s 5(2)(a) & 5(2)(b) respectively
- Concept of “Receipt”, “Accrues or arises” and “deemed to Accrue or arise”

Performing Right Society Ltd. Vs CIT 106 ITR 11 (SC): Place of signing the agreement is not relevant for accrual



Income deemed to accrue or arise

- Sec. 9 of the ITA provides for list of income which is deemed to accrue or arise in India
 - Income accrues directly or indirectly from any business connection in India or from or through- any property/source of income or transfer of asset [Sec (9)(1)(i)]
 - Income from Salaries earned in India [Sec (9)(1)(ii)]& salary paid by Govt for services rendered out side India 9(1)(iii)]
 - Dividend paid by Indian Co. [Sec (9)(1)(iv)]
 - Income in the nature of interest, royalties & fees for technical services [Sec (9)(1)(v), (vi) & (vii)]
 - S. 9(1)(vi)



Taxability of Non-Residents under the Income Tax Act, 1961

Section	Nature of Income	Description / Source Rule
9(1)(i)	Business Income	Income from a business connection in India or through or from any property or capital asset or source of income or transfer of capital asset situated in India
9(1)(ii)	Salaries	Salaries for services rendered in India
9(1)(iii)	Salaries	Salaries by Govt. to Indian citizen for services outside India
9(1)(iv)	Dividend	Dividend paid by an Indian company outside India (now exempt)
9(1)(v)	Interest	Interest by Govt. or by a resident (unless for the purposes of a business or source outside India)
9(1)(vi)	Royalty	Royalty by Govt. or a resident (unless for the purposes of a business or source of Income outside India)
9(1)(vii)	FTS	Fees for Technical Services by Govt. or a resident (unless for a business or source outside India)



Taxation of Non Residents – Computation of Income

- Section 9(1)(i)
 - Business Connection Test: R. D. Aggarwal's case [56 ITR 20 (SC)]
 - Rule 10 of ITA, proportionate method a guess work, No. of HC and SC's decision on the subject of determination of proportion.
 - Expanded meaning of Business Connection-Presence of Agent
 - Exclusions u/s. 9(1) & Articles 5 & 7 of the DTAA
 - Under the Treaty, income is taxed only if NR has PE in India as per the attribution rules of Article 7 subject to S.44 C of ITA
- Section 9(1)(ii)
 - Salary income if it is earned in India
 - S. 10(6)(vi), S. 16 & 17 of ITA read with Article 16 of DTAA
- Section 9(1)(iii)
 - Salary income payable by the Government to a citizen of India for services outside India read with Article 19 of DTAA on Government services



Taxation of Non Residents – Computation of Income

- Section 9(1)(iv)
 - A dividend paid by Indian company outside India
 - Exempt under ITA u/s. 10(34), Article 10 of DTAA may reduce tax on dividend as and when applicable. Tax credit of DDT in COR
- Section 9(1)(v) – Source rule for interest:
 - Definition Of Interest S.2(28A) and Art 11 of Art.11
 - Income by way of interest payable by (a) Government, (b) Resident, (c) Non Resident
 - Provisions of Article 11 of DTAA may reduce the burden of taxation on interest income of the Non Resident



Definition: Royalty – S.9(1)(vi)

- IT Act, 1961: Consideration for
 - (i) the transfer of all or any rights (including the granting of a licence) in respect of a patent, invention, model, design, secret formula or process or trade mark or similar property ;
 - (ii) the imparting of any information on working of ;
 - (iii) the use of any patent, invention, ;
 - (iv) the imparting of any information or skill ;



Definitions: Royalty (con't)

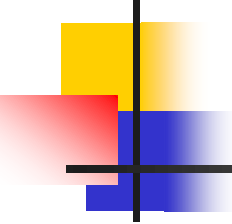
- IT Act, 1961: Consideration for

(iva) the use or right to use equipment but not including the amounts referred to in section 44BB;

(v) the transfer of all or any rights (including the granting of a licence) in respect of any copyright, , but not including cinematographic films ; or

(vi) the rendering of any services in connection with the activities referred to in sub-clauses (i) to (iv), (iva) and (v)

[Explanation 2 to Section 9(1)(vi)]



Definition: Fees for Technical Services – S.9(1)(vii)

- FTS defined under the Act as any consideration (including any lump sum consideration) for the rendering of any managerial, technical or consultancy services (including the provision of services of technical or other personnel) but does not include consideration for any construction, assembly, mining or like project undertaken by the recipient or consideration which would be income of the recipient chargeable under the head “Salaries”

[Explanation 2 to Section 9(1)(vii)]



Source Rule - Royalty

- As per S.9(1)(vi), income by way of royalty payable by—

(a) the Government ; or

(b) a person who is a resident, except where the royalty is payable in respect of any right, property or information used or services utilized 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 ; or

(c) a person who is a non-resident, where the royalty is payable in respect of any right, property or information used or services utilized for the purposes of a business or profession carried on by such person in India or for the purposes of making or earning any income from any source in India



Source Rule - FTS

- As per S. 9(1)(vii), income by way of Fees for Technical Services payable by—
 - (a) the Government ; or
 - (b) a person who is a resident, except where the fees are payable in respect of services utilized in 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 ; or
 - (c) a person who is a non-resident, where the fees are payable in respect of services utilized in a business or profession carried on by such person in India or for the purposes of making or earning any income from any source in India



Source Rule & Scope - FTS

- Services are paid by specified persons, Government, Resident & Non-resident
- Services are in accordance with the proposals approved by the Government
- Services are used / utilised in India
- What about location of services to be rendered in India
 - Rendered in India and utilised in India
[Territorial nexus: Ishikawajima's case 288 ITR 408(SC) {2007}]
[Aspect Software Inc vs. aDIT [2015] 61 taxmann.com 36 (Del ITAT)]
 - Retrospective clarificatory amendment w.e.f. 1.4.1976 through Finance Act, 2007 to Section 9
 - Deemed to accrue or arise in India and 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 had rendered services in India



Source Rule compared – Royalty & FTS

S. 9(1)(vi) & 9(1)(vii) Compared with Article 12 of the DTAA

- Royalties and FTS arising in a contracting state and paid to a resident of the other contracting state may be taxed in that other state [Article 12(1)]
- Royalties or fees for technical services shall be deemed to arise in a contracting state when the payer is a resident of that state. Where, however, the person paying the royalties, whether he is a resident of a contracting state or not, has in a contracting state a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the state in which the permanent establishment or fixed base is situated [Article 12(5)]
- Article 12(5) states only a source rule but no distribution rule as found in Article 12(1)



Taxation of NRIs - Chapter XIIIA

- 115C – Definitions
- 115D – Computational Provisions
- 115E – Tax rates on investment, income & capital gains
- 115F – Capital gains on foreign exchange assets not to be charged in certain cases
- 115G – Filing Returns
- 115H – Benefits to Resident/s
- 115I – Option of the Assessee
- Planning for Non Residents



Special Provisions for NRI - XIIA

- Eligible Assessee – Only NRIs
- Nature of Income – Investment Income & LTCG from foreign exchange asset, as specified
- Specified Asset – Shares, Debentures and Deposits of Public Company; Public Deposits and notified securities of Central Government
- Tax Rates: Investment Income @ 20%
: Long term capital gain from Specified Asset @ 10%



XIIA - Computation of Income

- Taxation on gross basis only
- No deduction of expenses
- No deduction u/c VIA of the Act
- Capital gains computation in Foreign currency as per 1st proviso to sec 48
- No capital gains if amount of gain is reinvested (sec 115F)
- No return of income is required if
 - Income includes only investment & LTCG
 - Tax as required is deducted as per ITA
- Provisions are redundant – e.g. Exempt dividend, LTCG & STCG with STT, Equity oriented Mutual Fund income, etc.



Capital Gains on shares & debentures

Capital Gains where Securities Transaction Tax is applicable

- LTCG exempt from tax [sec 10(38) of ITA]
- STCG tax @ 15% (sec 111A)
- LTCG where STT is not applicable
 - Sec 48: Computation of capital gains
 - Proviso to sec 48 provides for computation in FC
 - Sec 112 provides for rates of taxation
 - All Non resident persons are taxed @ 20%
 - Tax rates of
 - 10% under proviso to S. 112 before application of 2nd proviso to S. 48 as held in Timken, France [AAR No. 739 of 2006]; Fujitsu Services [AAR No. 800 of 2009]
 - However, benefit of 10% under proviso to S. 112 not available to non-residents as held in Cairn UK Holdings [AAR No. 950/2010 dt. 01.08.2011]
 - Provisions of the DTAA – Article 13



Special tax provisions for NRs

- Sec 115A: Applicable to all NRs in respect of income from dividend, interest, units of MFs, Royalties & FTS (except CG) received from Government or Indian concern
- Sec 115AB: Applicable to Overseas Financial Organization in respect of Income & LTCGs from units of MFs purchased in foreign currency taxed @ 10%
- Sec 115AC: Applicable to NRs in respect of income from Bonds & GDR of Indian Co. or a public sector Co. or dividends from Bonds & GDR or LTCG from its transfer, Transfer of GDR by NR to NR, is not a transfer(S.47).Conversion of FCCB to shares is also not a transfer under clause 8 of the Scheme
- Sec 115AD: Applicable to only FII on income from securities & CGs

Special Provisions – 115A

Nature of Income	Div	MFs Units	Int	Int - Debt Fund	Roy Amended by Finance Act, 2015	FTS Amended by Finance Act, 2015	
Tax Rates	20	20	20	5	10	10	
Chap VIA dedn	No	No	NO	NO	Yes	Yes	
Dedn of exp and who can be payer	No expenses u/s 28 to 44C or sec. 57 of ITA and payment be made by Govt or Indian concern (not defined)						
Return of Income (ROI)	No ROI if a) income includes only dividend, interest & income from units of MFS, and b) TDS is deducted as per ITA						



Special Provisions – 115AB

Nature of Income	Income from MF Units	LTCG from transfer of MFs Units
Tax Rates	10	10
Second Proviso to Sec. 48	-	Not Apply
Chapter VIA Deduction	Not available	
Return of Income (ROI)	No exemption for filing ROI	



Special Incomes - Sec 115AC

Nature of Income	Div	Int	LTC
Tax Rates	10	10	10
Proviso to sec 48	-	-	Not Apply
Chap VIA dedn	Not Available		
Dedn of exp	No expenses available for deduction		
Return of Income (ROI)	No ROI if a) income includes only dividend, interest & income from units of MFS, and b) TDS is deducted as per ITA		

Special Income of FII–Sec 115AD

Nature of Income	Div	Int	STC	LTC
Tax Rates	20	20 (5% u/s 194LD)	30 (15% if STT is paid)	10
Chap VIA dedn	Not Available			
Dedn of exp	No Expenses available for dedn			
Return of Income (ROI)	No ROI if a) income includes only dividend, interest & income from units of MFS, and b) TDS is deducted as per ITA			



Presumptive Taxation

- Income of Foreign Shipping Company in India (Sec 44B & 172) / Article 8 of DTAA
- Income from providing services etc. in connection with business of exploration etc. of mineral oils (Sec 44BB) / Article 5 & 7 of the DTAA & S.28 to 43 of ITA
- Business of operation of Aircrafts(Sec 44BBA) / Article 8 of DTAA
- Business of civil construction in Turnkey Power Projects (Sec 44BBB) / Article 5 & 7 of the DTAA & S.28 to 43C of ITA
- Non Resident Sportsmen or Sports Association (Sec 115BBA) / Article 7 of the DTAA

Presumptive Taxation – Special provisions in case of Non-Residents engaged in certain business

	Sec. 44B	Sec. 44BB	Sec. 44BBA	Sec. 44BBB
This section applies to -	Non-resident engaged in operating ships	Non-resident engaged in providing service / facilities or supplying plant / machinery for extraction or production of mineral oils (incl. petroleum & natural gas)	Non-resident engaged in operating Aircraft	Foreign company engaged in civil construction or erection, testing or commissioning of plant or machinery in connection with an approved turnkey power project
Deemed Income	7 ½% of gross receipts	10% of gross receipts	5% of gross receipts	10% of gross receipts
Computation of lower income	Not available	Available	Not available	Available
Effective Tax Rate under ITA	40% of 7.5% i.e. 3%	40% of 10% i.e. 4%	40% of 5% i.e. 2%	40% of 10% i.e 4%

Tax rate as applicable to foreign companies is 40% excluding surcharge & cess

Presumptive Taxation – Special provisions in case of Non-Residents engaged in certain business (con't)

	Sec. 172	Sec. 115BBA
This section applies to -	Non-resident engaged in operating ships	Non-resident sportsmen or sports associations, non-resident entertainer
Deemed Income	7 ½% of gross receipts	20% of gross receipts
Computation of lower income	Available	Not available
Effective Tax Rate under ITA	40% of 7.5% i.e 3%	40% of 20% i.e 8%
Tax rate as applicable to foreign companies is 40% excluding surcharge & cess		



Branch of a Foreign Company

- Ceiling Limits in respect of Head Office Expenses [Section 44C of ITA]:

The foreign companies operating in India through branches, shall be entitled to a deduction in respect of head office expenditure and it will be limited to:

- (a) an amount equal to 5% of the adjusted total income of the tax-payer for the relevant year: or
- (b) the actual amount of head office expenditure attributable to the business in India, whichever is the least.

It covers all executive and general administration expenses including rent, rates, taxes, insurance, salary, travelling etc. incurred outside India.

- Interest payable to Head Office of non-resident [Expl. (a) to Section 9(1)(v)]:

- Interest payable by PE in India (e.g. by Branch of Foreign Bank) to H.O. or any PE outside India shall be deemed to accrue or arise in India and shall be chargeable to tax in addition to any income attributable to the PE in India
- PE in India shall be deemed to be a person separate 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 shall apply accordingly



Taxation: S. 44DA

- This section applies to Non-resident (not being a company) or a foreign company receiving income by way of Royalty or Fees for Technical Services, right, property or contract in respect of which is effectively connected to a PE or fixed place of profession in India in pursuance of approved agreement.
- Income is computed under the head 'Profits & Gains of business or profession' and taxed on net basis
- If income not effectively connected with the PE in India, then provisions of section 115A shall apply & income will be taxed on gross basis
- Provisions of S. 44BB shall not apply (Note the exclusion u/s. 9(1)(vii))
- Articles 5 & 7 of the DTAA also applies

Taxation: S. 44DA

Receipts pursuant to agreement after 31.03.2003	Rate	Applicable Section	Basis of taxation
a) If effectively connected with PE or fixed place of profession even if Government approved or in accordance with industrial policy.	40%+s.c.	44DA	Net
b) Not effectively connected with PE			
i. Approved by Government or in accordance with Industrial policy	10%+s.c. (As amended by Finance Act, 2015)	115A	Gross
ii. Not covered by (i.) above	40%+s.c.	S.28 r.w. amended S.44D	Net (?)
<ul style="list-style-type: none"> • Whether TDS necessarily @ 10% even if receipt effectively connected with FE's PE? • Applicability of Section 115A for payment by PE of FCO in India., Can that satisfy the term Indian concern? • Allowance and reimbursements by NR'S PE in India to HO 			



Exemptions to Non-residents

- Interest on NRE Deposit u/s. 10(4)(ii)
- Remuneration received by an Individual u/s. 10(6)(vi)
- Salary received from employment on a foreign ship u/s. 10(6)(viii)
- Fees earned by consultant u/s. 10(8A)
- Interest on specified securities u/s. 10(15)
- International sporting event held in India u/s. 10(39)
- Profits from units in FTZ/SEZ or an undertaking as EOU u/s. 10A, 10AA & 10B
- Eligible articles or things u/s. 10BA



Exemptions to Non-residents (con't)

- Income of Foreign Investment Fund / Investor in such fund registered with SEBI as Category I or a Category II Alternative Investment Fund is exempt from tax
[S. 10(23 FBA & FBB)]
- Such Investment Funds have 'pass through status' i.e investors in Investment Funds are taxed on any income distributed by the Investment Funds (S. 115UB)
 - Tax treatment depends on nature of income viz. dividend, short-term gains, long-term gains
- No tax exemption for unregistered Investment Funds
 - It can however avail benefits of DTAA if India has with that jurisdiction



Exemptions to Non-residents (con't)

- Capital Gains on Units of Unit Scheme, 1964
[S. 10(33)]
- Any income by way of dividend referred to u/s. 115
[S. 10(34)]
- Any income received in respect of units of Mutual Funds
[S.10(35)]
- Long term capital gains on Equity shares and Units of Equity oriented Mutual Funds on which STT is paid
[S. 10(38)]



S. 195 - Withholding Tax on payments to Non-residents

- Any person responsible for paying to a non-resident, not being a company, or to a foreign company, any interest or any other sum chargeable under the provisions of this Act (not being income chargeable under the head “Salaries” shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rates in force.
 - Applies to payments made of any interest or ‘any other sum’ to NR
 - Obligation to withhold tax if payment is chargeable
 - Does not apply to “Salaries”
 - Deduction at earlier of payment or credit
 - Deduction at the rates in force – Sec 2 (37A)
- Obligation to withhold taxes also applies to Non-Residents



S. 195 (6) – Furnishing of Information

Payer shall furnish information relating to payments made to NR which are chargeable to tax in India in the following prescribed manner–

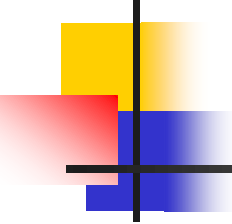
- Form 15CA: Furnishing information electronically to IT Dept. & signed print out of the same to be filed with the payer's banker.
- Form 15 CB: (obtained from CA) to be furnished and verified electronically.

- Form 15CB is not required to be obtained for:
 - a) remittances covered in the specified list covering 33 items (Rule 37BB) or
 - b) the remittances not exceeding Rs. 50,000 per transaction and aggregate of such payments during the financial year doesn't exceed Rs. 5,00,000.
 - c) remittances not chargeable to tax



Rule 37BB – Remittances covered in specified list

Sr. No.	Nature of payment
1	Indian investment abroad - in equity capital (shares)
2	Indian investment abroad - in debt securities
3	Indian investment abroad - in branches and wholly owned subsidiaries
4	Indian investment abroad - in subsidiaries and associates
5	Indian investment abroad - in real estate
6	Loans extended to Non-Residents
7	Advance payment against imports
8	Payment towards imports - settlement of invoice
9	Imports by diplomatic missions
10	Intermediary trade
11	Imports below Rs.5,00,000 - (For use by ECD offices)
12	Payment for operating expenses of Indian shipping companies operating abroad
13	Operating expenses of Indian Airlines companies operating abroad
14	Booking of passages abroad - Airlines companies
15	Remittance towards business travel
16	Travel under basic travel quota (BTQ)
17	Travel for pilgrimage



Rule 37BB – Remittances covered in specified list (con't)

Sr. No.	Nature of payment
18	Travel for medical treatment
19	Travel for education (including fees, hostel expenses etc.)
20	Postal services
21	Construction of projects abroad by Indian companies including import of goods at project site
22	Freight insurance - relating to import and export of goods
23	Payments for maintenance of offices abroad
24	Maintenance of Indian embassies abroad
25	Remittances by foreign embassies in India
26	Remittance by non-residents towards family maintenance and savings
27	Remittance towards personal gifts and donations
28	Remittance towards donations to religious and charitable institutions abroad
29	Remittance towards grants and donations to other Governments and charitable institutions established by the Governments
30	Contributions or donations by the Government to international institutions
31	Remittance towards payment or refund of taxes
32	Refunds or rebates or reduction in invoice value on account of exports
33	Payments by residents for international bidding.



Rule 37BC w.e.f. 24.06.2016

Relaxation from deduction of tax a higher rate under section 206AA-

In the case of a non-resident, not being a company, or a foreign company (hereafter referred to as 'the deductee') and not having Permanent Account Number, the provisions of section 206AA shall not apply in respect of payments in the nature of interest, royalty, fees for technical services and payments on transfer of any capital asset, if the deductee furnishes the details and the documents specified in sub-rule (2) to the deductor.

Sub-Rule (2): The deductee referred to in sub-rule (1), shall in respect of payments specified therein, furnish the following details and documents to the deductor, namely:-

- Name, e-mail id, contact number
- Address in the country outside India where the deductee is the resident
- A certificate of his being resident in any country outside India from the Government of that country if the law of that country specifies for the issuance of such certificate (TRC)
- Tax identification number of the deductee (TIN)



Summary - Computation of income of NR in India

- Normal computation procedure of S. 16 to 27 in case of salaries & income from house property and u/s 28 to 44C for business income is applicable
- Business income sec 9(1), Business connection in India, attribution as per rule 10 if
 - there is presence of Permanent Establishment of NR & income in India
 - Prominent example is Branch of a Foreign Bank
 - Other income of S. 9 is taxed on a gross basis
- Presumptive taxation in India S.115 applicable strictly as per the conditions of each of subsection, S.44 to S.44BBB etc. & S.172 of ITA(A code by itself as distinguished from S.44B).Provisions of S.172 are notwithstanding the Act. where as S.44B makes exception to S 28 to 44C
- MAT, surcharge & Education cess [S. 2(37A), on rates in force] on income in India
- Double Tax Avoidance Agreements [S. 90(2)]
- Advance Rulings u/s 245 of ITA
- Tax is deducted on most of the income either u/s 192 or u/s 195/196
- Income can be taxed on a net basis also. Tax rates are different for net basis of taxation. Sec 9(1),S.44DA,S.172 and where accounts are maintained and lower tax option is available under presumptive tax provisions ie.S.44BB and 44BBB.



Thank You
