

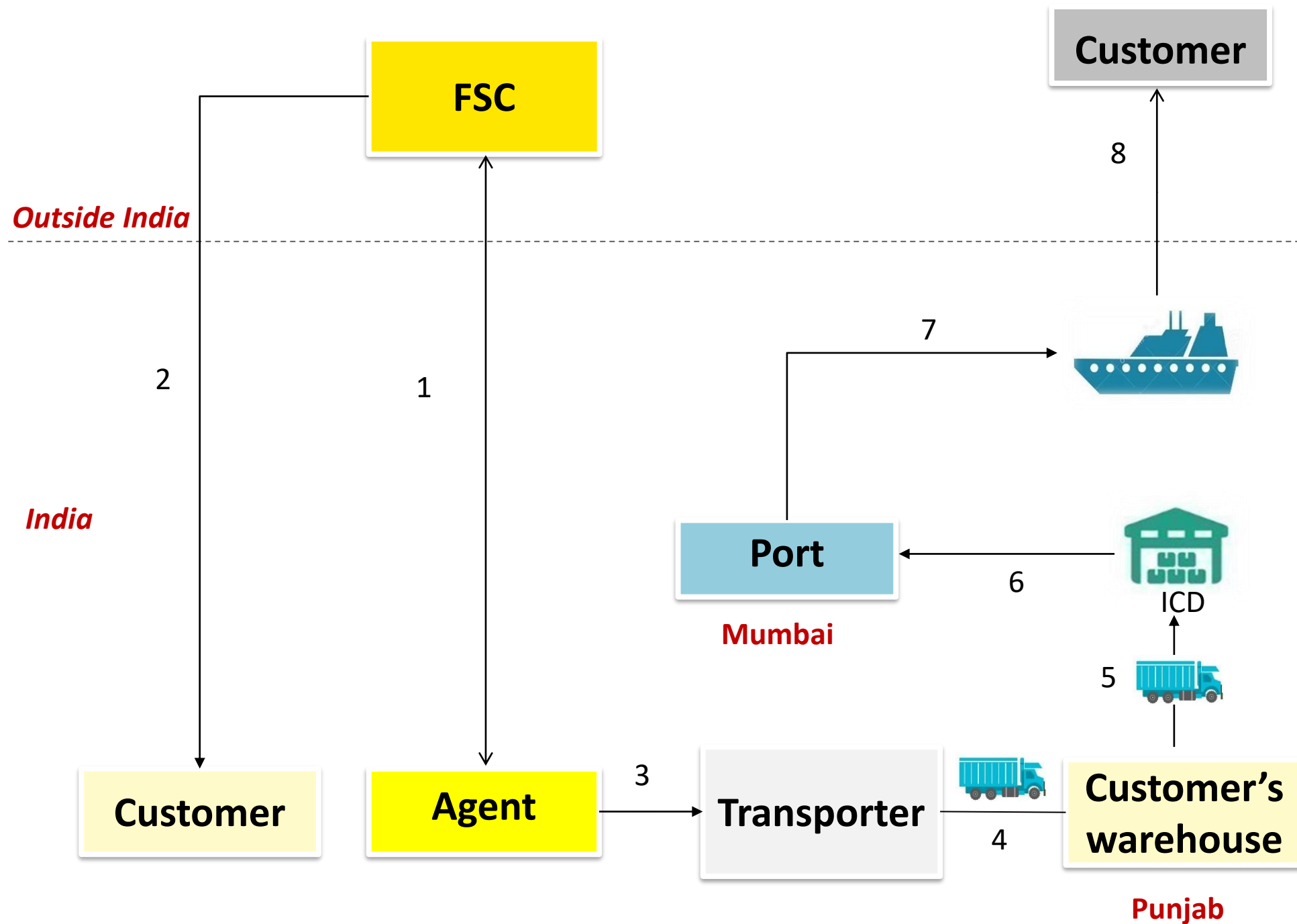
Direct tax aspects of foreign shipping companies

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WIRC, Mumbai
(17 June, 2023)



Illustrative operating model



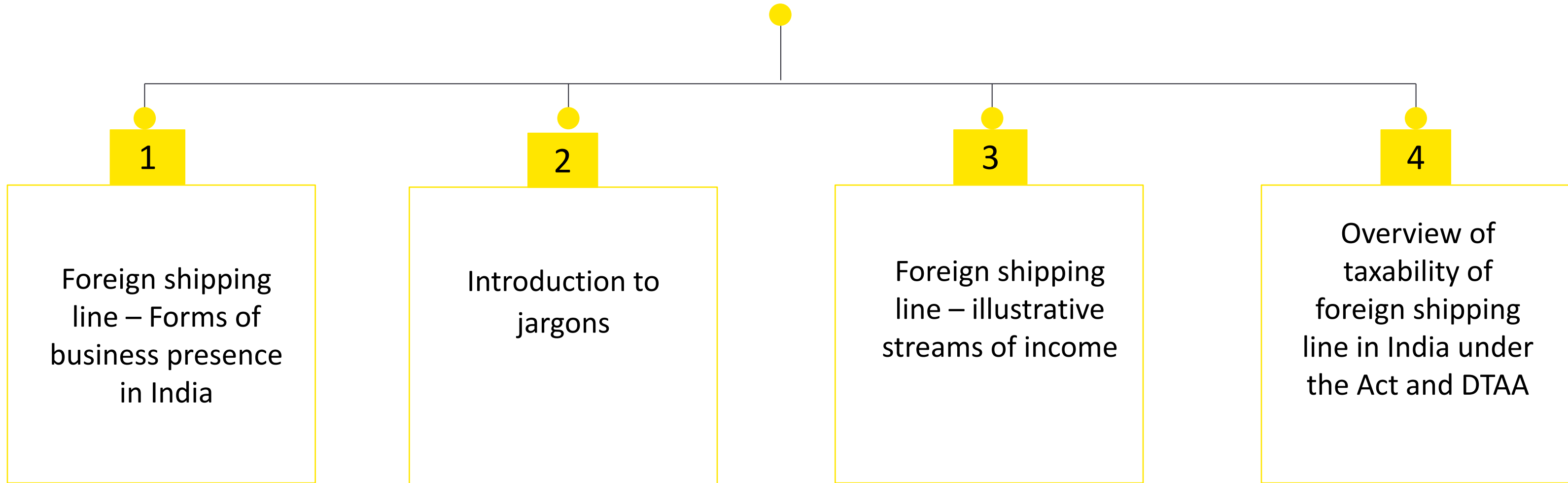
Transaction steps

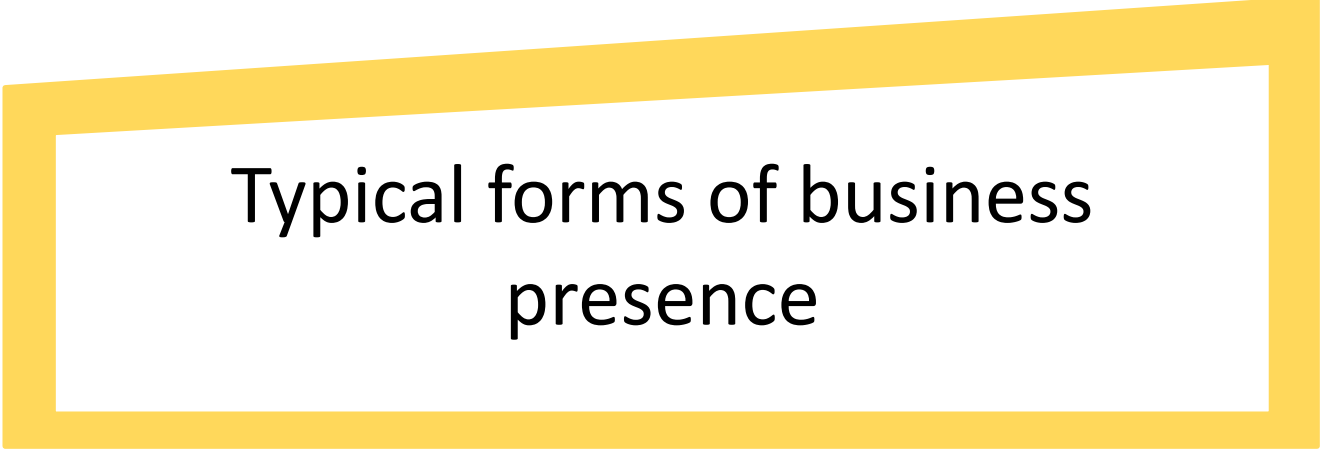
1. FSC appoints an agent in India to provide support services for transportation of its customers goods in lieu of commission
2. Indian customer enters into an agreement with FSC for transportation of its goods outside India
3. Agent coordinates with the local transport contractor for inland movement of goods from customers warehouse in Punjab to Mumbai port
4. Transporter moves goods from customers warehouse (in Punjab) to the port (in Mumbai)
5. Customers goods are temporarily parked in Inland Container Depot till the vessel arrives at the port
6. Once the vessel arrives, the goods are then transported to the port
7. Goods are then loaded on the vessel
8. Movement of vessel in international traffic to destination outside India

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Agenda

What are we discussing today?



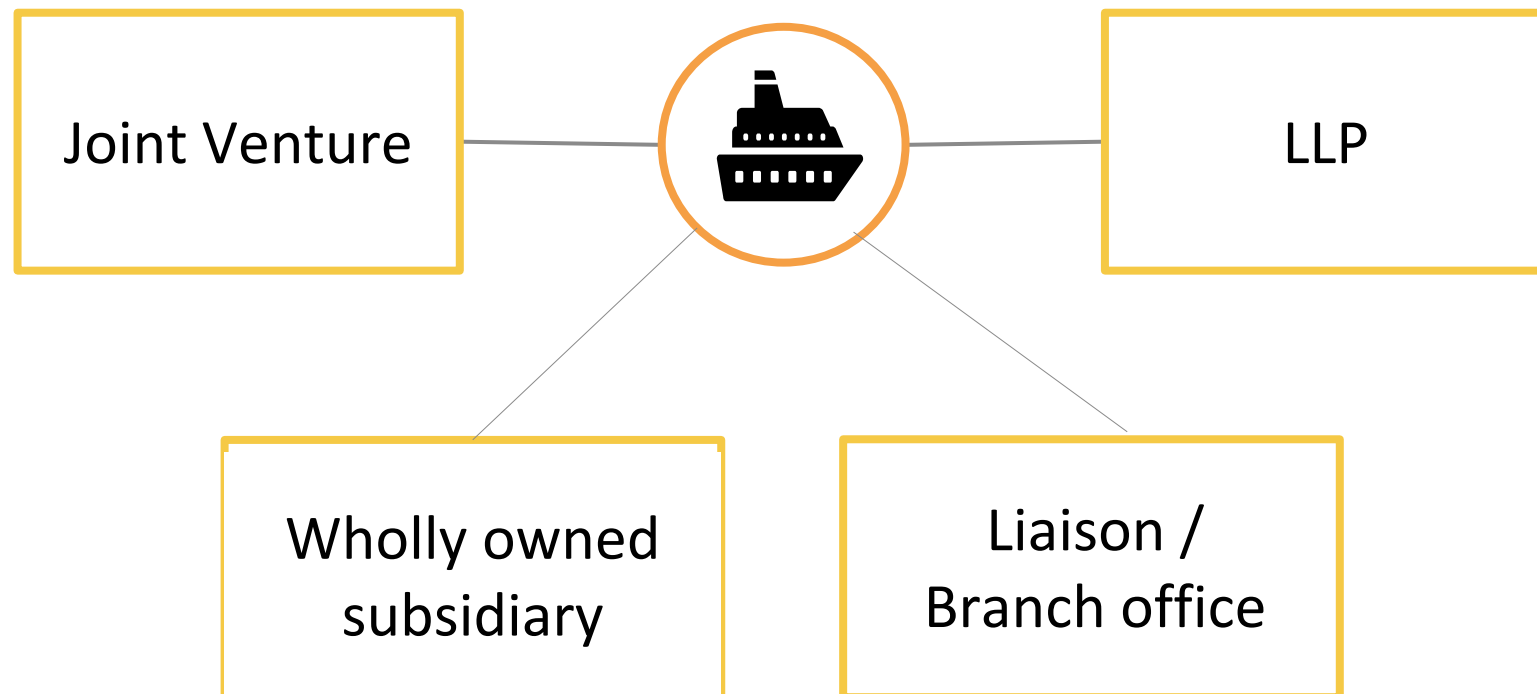
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Typical forms of business
presence

Foreign shipping line - forms of business presence in India

Independent Set-up in India

(Typical forms of business presence)



Third party agents

(For rendering following illustrative services)

- ▶ Report ship to authorities including arrival notification
- ▶ Customs clearance, berth/anchorage booking
- ▶ Fuelling, supplies, repairs and catering to requirements of crew
- ▶ Solicit and negotiate contracts with Indian customers

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Introduction to jargons

Shipping jargons

01

Chartering

- ▶ Bareboat charter
- ▶ Bareboat charter-cum-demise
- ▶ Voyage charter
- ▶ Time charter
- ▶ Slot charter
- ▶ Pooling arrangement

02

Vessels

- ▶ Mother vessel
- ▶ Feeder vessel
- ▶ Non-Vessel Operating Common Carrier

03

Documentation

- ▶ BL (Bill of Lading)
- ▶ DIT relief
- ▶ PCC (Port clearance certificate)

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Illustrative streams of income

Foreign shipping line – illustrative streams of income

1

Freight

Carriage of passengers, live-stock, mail or goods shipped at any Indian port or any port outside India

2

Charter hire

Towards rental / charter of vessels to ships to customers

3

Detention charges

Recovery for delay in returning empty containers – after offloading the goods from the containers in customer's premises

4

Demurrage charges

Recovery of costs incurred on account of customer's goods remaining on the port for a longer duration

5

Slot fee

Towards slots booked instead of charter of entire vessel

6

Income from pooling

Towards pooling of vessels which will sail on a particular route

7

IHC

Movement of cargo from customer's warehouse / plant to port and vice versa

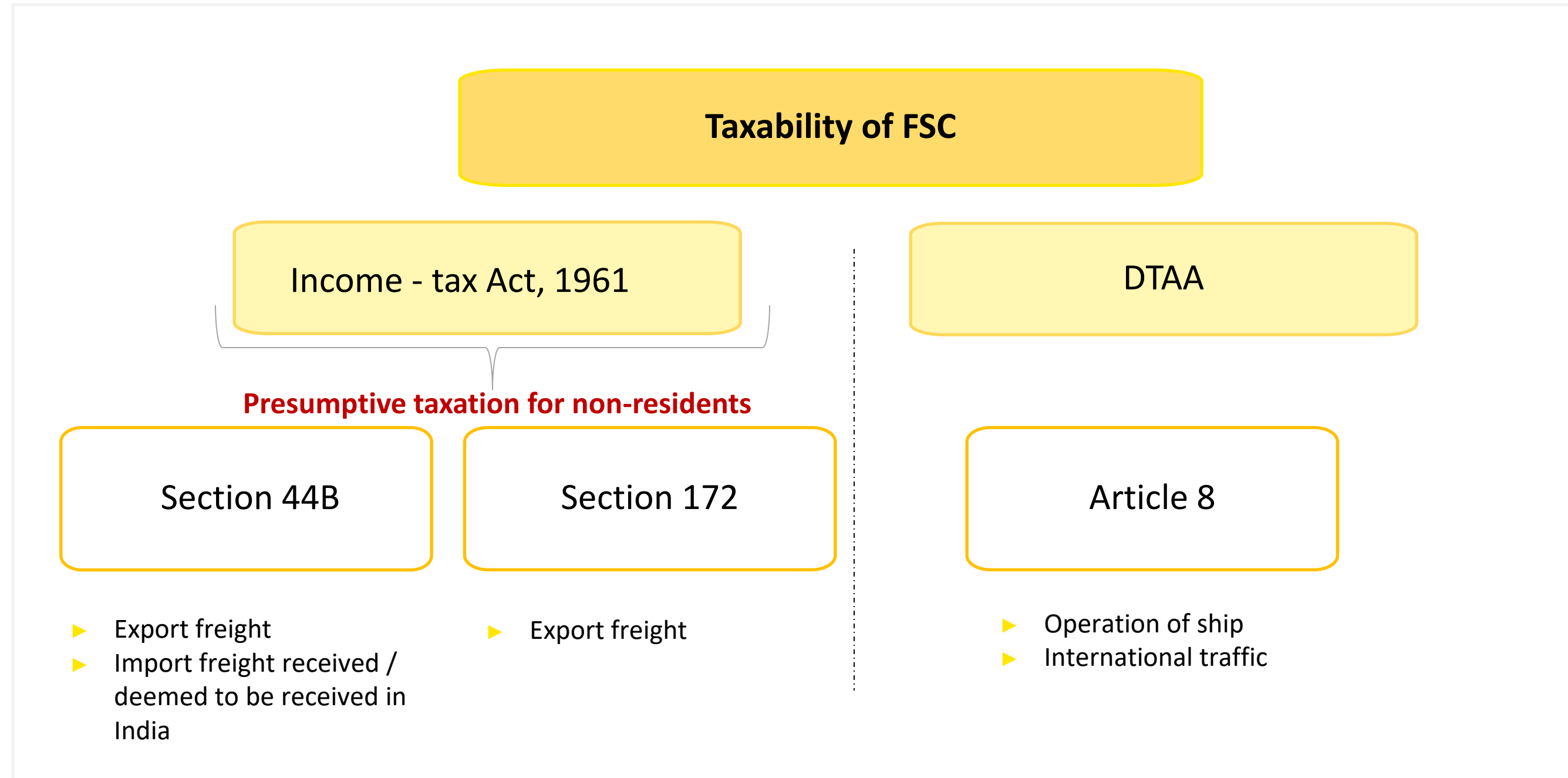
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Other income

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Overview of taxability of foreign
shipping line

Taxability of foreign shipping line in India



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Relevant provisions of the Act

Section 44B of the Act – ‘Regular shipping’

Special provision for computing profits and gains of shipping business in the case of non-residents.

(1) **Notwithstanding** anything to the contrary contained in sections 28 to 43A, in the case of an assessee, being a **non-resident**, engaged in the business of operation of ships, a sum equal to **seven and a half per cent** of the aggregate of the amounts specified in sub-section (2) shall be **deemed to be the profits and gains** of such business chargeable to tax under the head "Profits and gains of business or profession".

(2) The amounts referred to in sub-section (1) shall be the following, namely :—

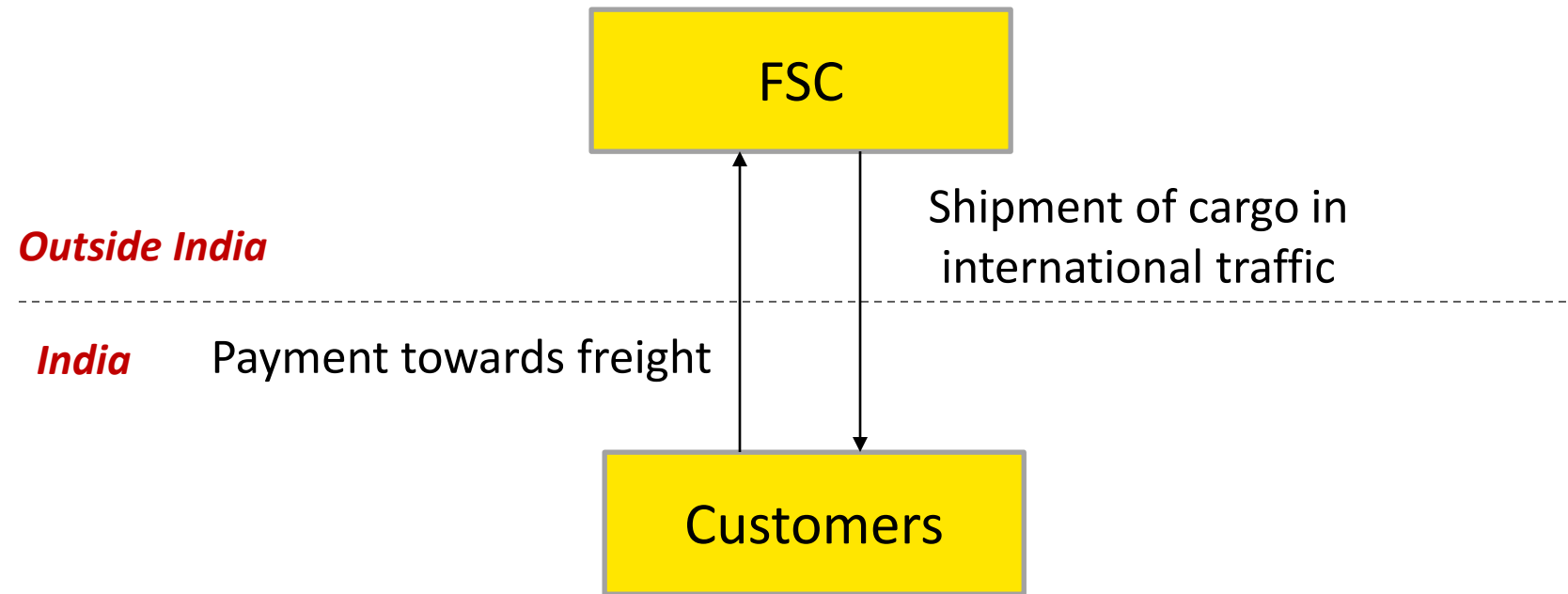
(i) the **amount paid or payable (whether in or out of India) to the assessee or to any person on his behalf on account of the carriage of passengers, livestock, mail or goods shipped at any port in India;** <<EXPORT FREIGHT – wherever received>> and

(ii) the **amount received or deemed to be received in India by or on behalf of the assessee on account of the carriage of passengers, livestock, mail or goods shipped at any port outside India.** <<IMPORT FREIGHT – only if received in India>>

Explanation.—For the purposes of this sub-section, the amount referred to in clause (i) or clause (ii) **shall include** the amount paid or payable or received or deemed to be received, as the case may be, by way of **demurrage charges or handling charges or any other amount of similar nature.**

Points for consideration in respect of Section 44B

Statutory levies to be considered?

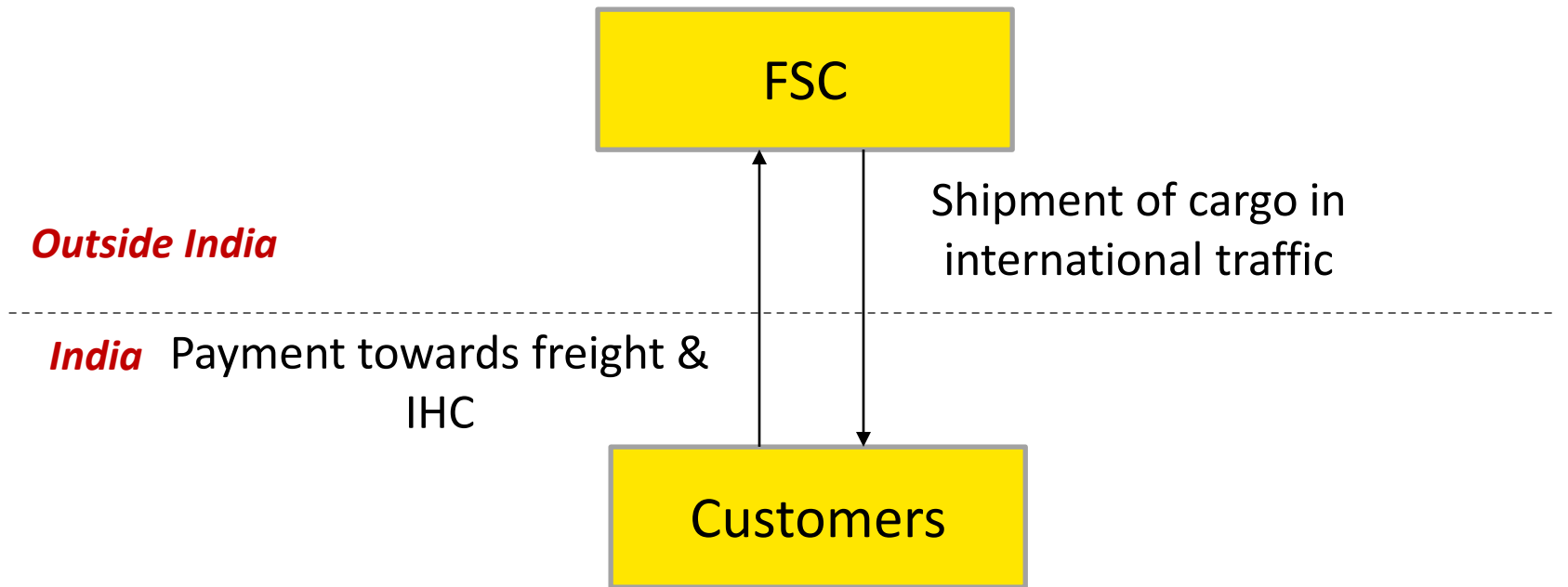


Illustration

Particulars	Amount (Rs)
Freight	100
GST	5
TOTAL	105

Whether Rs. 100 or Rs. 105 should be considered ?

Inland Haulage Charges to be included?



Illustration

Particulars	Amount (Rs)
Freight	100
IHC	15
GST	10
TOTAL	125

Whether Rs. 100 or 115 or Rs. 125 should be considered?

Section 172 of the Act

(1) The provisions of this section shall, **notwithstanding anything contained in the other provisions of this Act**, apply for the purpose of the levy and recovery of tax in the case of any ship, belonging to or chartered by a non-resident, **which carries passengers, livestock, mail or goods shipped at a port in India.** <<EXPORT FREIGHT – wherever received>>

(2) Where such a ship carries passengers, livestock, mail or goods shipped at a port in India, **seven and a half per cent 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.

(3) **Before the departure from any port in India** of any such ship, the master of the ship shall 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 all passengers, livestock, mail or goods shipped at that port since the last arrival of the ship thereat:

Provided that where the Assessing Officer is satisfied that it is not possible for the master of the ship to furnish the return required by this sub-section before the departure of the ship from the port and provided the master of the ship has made satisfactory arrangements for the filing of the return and payment of the tax by any other person on his behalf, the **Assessing Officer may, if the return is filed within thirty days of the departure of the ship**, deem the filing of the return by the person so authorised by the master as sufficient compliance with this sub-section.

(4) On receipt of the return, the Assessing Officer shall assess the income referred to in sub-section (2) and determine the sum payable as tax thereon at the rate or rates in force applicable to the total income of a company which has not made the arrangements referred to in section 194 and such sum shall be payable by the master of the ship.

(4A) **No order assessing the income and determining the sum of tax payable thereon shall be made** under sub-section (4) **after the expiry of nine months from the end of the financial year** in which the return under sub-section (3) is furnished:

Provided that where the return under sub-section (3) has been furnished before the 1st day of April, 2007, such order shall be made on or before the 31st day of December, 2008.

Section 172 of the Act (contd.)

(5) For the purpose of determining the tax payable under sub-section (4), the **Assessing Officer may call for such accounts or documents as he may require.**

(6) A **port clearance shall not be granted to the ship** until the Collector of Customs, or other officer duly authorised to grant the same, is **satisfied that the tax assessable under this section has been duly paid** or that satisfactory arrangements have been made for the payment thereof.

(7) Nothing in this section shall be deemed to prevent the owner or charterer of a ship from claiming before the expiry of the assessment year relevant to the previous year in which the date of departure of the ship from the Indian port falls, that an **assessment be made of his total income of the previous year and the tax payable on the basis thereof be determined in accordance with the other provisions of this Act**, and if he so claims, any payment made under this section in respect of the passengers, livestock, mail or goods shipped at Indian ports during that previous year shall be treated as a payment in advance of the tax leviable for that assessment year, and the difference between the sum so paid and the amount of tax found payable by him on such assessment shall be paid by him or refunded to him, as the case may be.

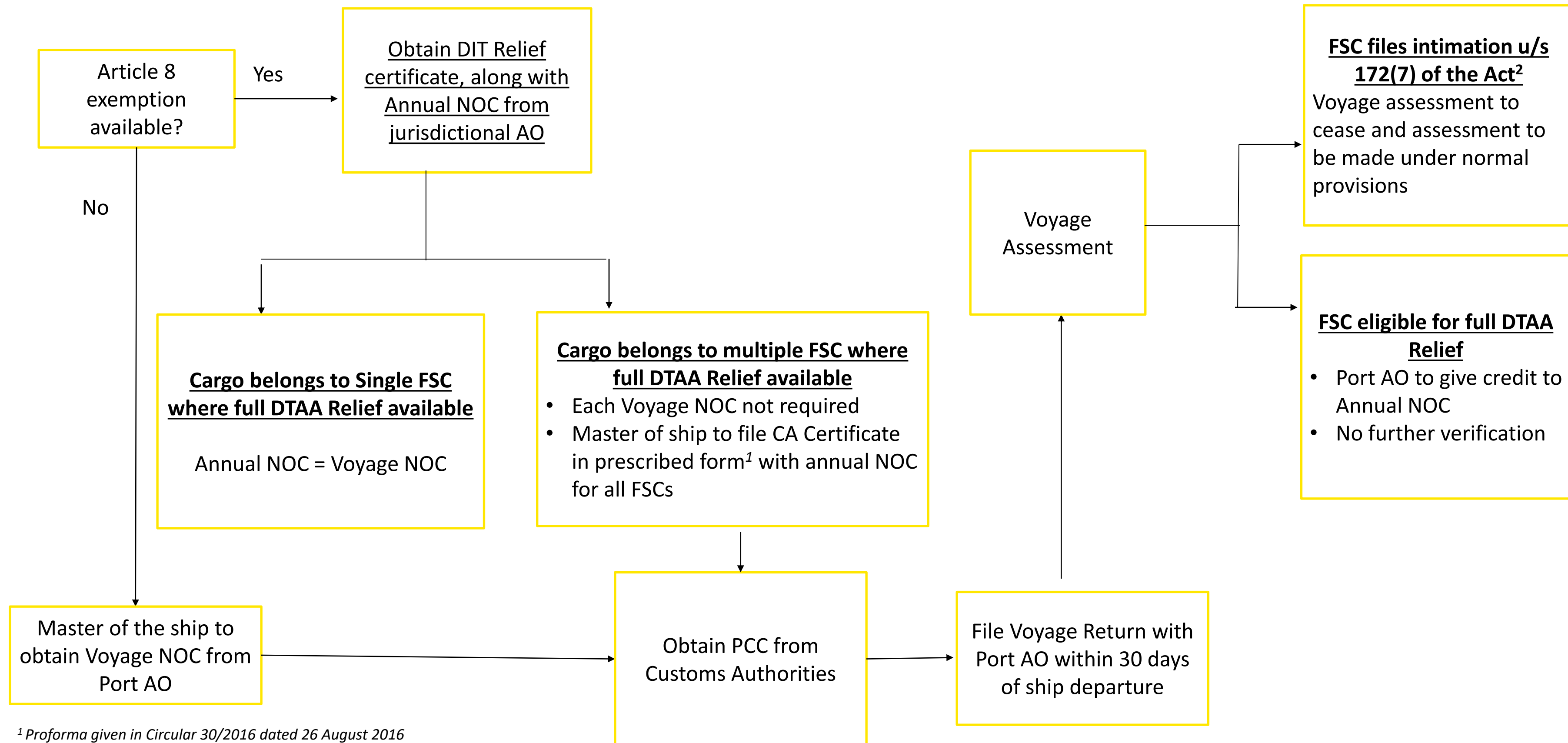
(8) For the purposes of this section, the amount referred to in sub-section (2) shall include the amount paid or payable by way of **demurrage charge or handling charge or any other amount of similar nature.**

Section 172 - 'Occasional shipping' – key considerations

- ▶ Section overrides other provision of the Act
- ▶ Objective:
 - ▶ Levy and recovery of tax in case of ships owned / chartered by a non-resident
 - ▶ Make summary assessment and recover tax before the ship leaves Indian port
- ▶ Taxable income deemed at the rate of 7.5 per cent of export freight, demurrage & handling charges, any other amounts of similar nature
- ▶ Ship permitted to leave India port subject to certain conditions:
 - ▶ Voyage return filed / will be filed within 30 days of departure
 - ▶ Port clearance certificate obtained from authorities
- ▶ Non-resident may choose to be assessed under the normal provisions of the Act

Whether import freight is taxable?

Section 172 – Port clearance procedure



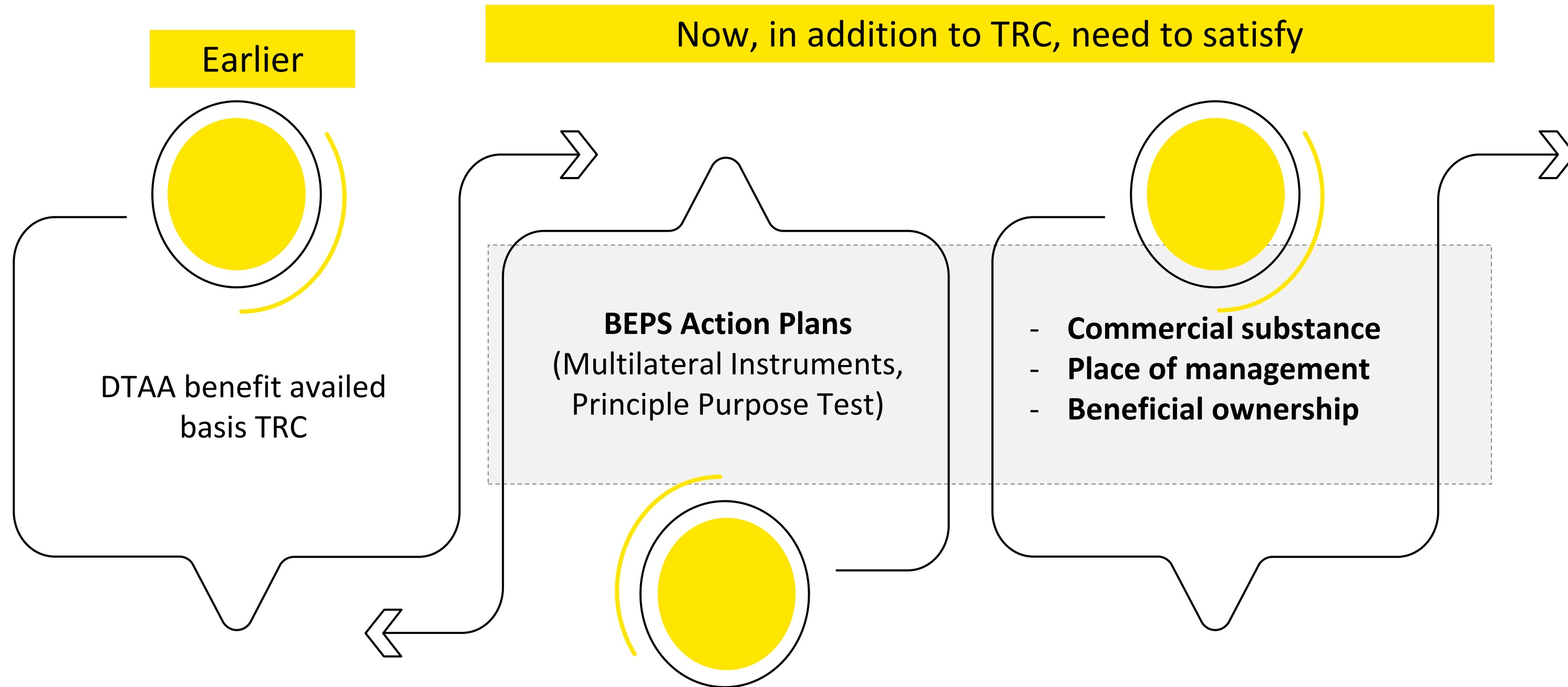
¹ Proforma given in Circular 30/2016 dated 26 August 2016

² Option to be exercised before end of relevant assessment year

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Relevant provisions under DTAA

Is TRC sufficient for DTAA entitlement?



Article 8 – An overview of OECD MC

Article 8(1)

*“Profits of an enterprise of a Contracting State from the **operation of ships** or aircraft in **international traffic** shall be **taxable only in that State**”*

Article 8(2)

*“The provisions of paragraph 1 shall also apply to profits from the **participation in a pool, a joint business or an international operating agency**”*

- ▶ Special provision to determine income from **Shipping & Airline business**
- ▶ Few treaties include the provisions of shipping along with airline under the same Article (e.g. India-USA, India- Singapore, etc), whereas few treaties deal with it under separate Articles.
- ▶ **Right to tax** Shipping income generally vests with the **host¹ country** subject to **prescribed conditions** which, inter-alia, include the following:
 - ▶ **Operation of ships**
 - ▶ **International traffic**

Until 2017 taxing right was with the contracting state in which the **place of effective management was situated**; **Few DTAA's for eg: Germany, Netherlands, Mauritius have retained the above**; Majority of states preferred to assign taxing right to the state of the enterprise²

¹ Certain Tax Treaties give right to tax to the source country @ specified rate eg: Thailand, Ireland, Hongkong, Philippines, etc

² As per OECD commentary (condensed version of 2017) on Article 8

'Operation of ship' as per OECD MC

1	Profits obtained from operation of ships / aircraft	<ul style="list-style-type: none">▶ Profits directly obtained by transportation of passengers or cargo by ships / aircraft (whether owned, leased or otherwise at the disposal of the enterprise) which the enterprise operates in international traffic. eg. freight charges
2	Profits directly connected with operation	<ul style="list-style-type: none">▶ Lease of fully equipped and crewed ship▶ Code-sharing / slot chartering arrangements▶ Inland haulage▶ Lease of containers and detention charges
3	Profits ancillary to operation	<ul style="list-style-type: none">▶ Make a minor contribution relative to operation of ships▶ Cannot be regarded as separate business or source of income▶ Example: Profit from advertisements (on behalf of other enterprises) in magazines aboard ships operated by it
4	Profits from pooling arrangements	<ul style="list-style-type: none">▶ Profits from provision of goods and services by engineers, ground and equipment maintenance staff, cargo handlers, catering staff, customer service personnel in another country relating to transportation of passengers or cargo by another enterprise

Article 8 not applicable in the following cases:

- Shipbuilding yard operated in one country by a shipping enterprise having its POEM in another country
- Investment income (except where such income is an integral part of carrying business of operating ships)

India – US Tax Treaty

Article 8(1)

*“Profits derived by an enterprise of a Contracting State from the operation by that enterprise of ships or aircraft in **international traffic** shall be taxable only **in that State.**”*

Article 8(2)

*“For the purposes of this Article, **profits from the operation of ships ... in international traffic shall mean profits derived by an enterprise ... from the transportation by sea ... of passengers, mail, livestock or goods carried on by the owners or lessees or charterers of ships ... including—***
*(a) the **sale of tickets** for such transportation on behalf of other enterprises;*
*(b) **other activity directly connected** with such transportation ; and*
*(c) the **rental of ships ... incidental to any activity directly connected with such transportation.**”*

Article 8(3)

*“Profits of an enterprise of a Contracting State described in paragraph 1 from the use, maintenance, or rental of containers (including trailers, barges, and related equipment for the transport of containers) **used in connection with the operation of ships or aircraft in international traffic shall be taxable only in that State.**”*

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India – US Tax Treaty (contd.)

Article 8(4)

*“ The provisions of paragraphs 1 and 3 shall also apply to profits from participation in a **pool, a joint business, or an international operating agency.**”*

Article 8(5)

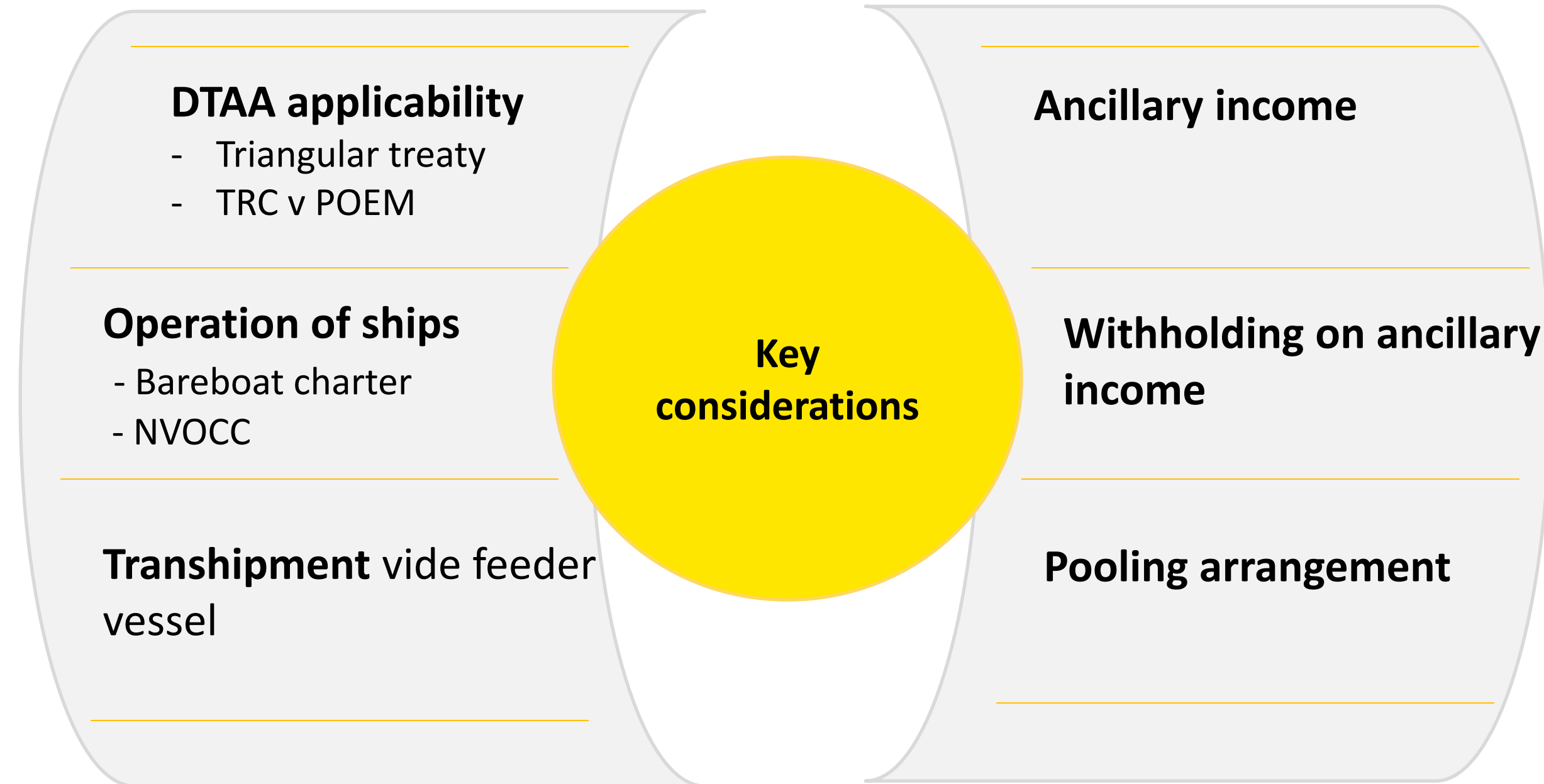
*“For the purposes of this Article, **interest on funds** connected with the operation of ships or aircraft in international traffic **shall be regarded as profits derived from the operation of such ships or aircraft**, and the provisions of **Article 11 (Interest)** shall not apply in relation to such interest.”*

Article 8(6)

*“**Gains derived** by an enterprise of a Contracting State described in paragraph 1 from the alienation of ships, aircraft or containers owned and operated by the enterprise, the income from which is taxable only in that State, **shall be taxed only in that State.**”*

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Taxability of shipping income under DTAA



Glossary

Abbreviations	Particulars
Act	Income Tax Act,1961
AO	Assessing Officer
DTAA	Double Tax Avoidance Agreement
FSC	Foreign Shipping Companies
IATP	International Airlines Technical Pool
IHC	Inland Haulage Charges
ITAT	Income-tax Appellate Tribunal
NOC	No Objection Certificate
NVOCC	Non-Vessel Operating Common Carriers
OECD	Organization for Economic Co-operation and Development
POEM	Place of Effective Management

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Annexures

Annexure 1 : Types of chartering arrangements

Bareboat Charter (dry lease)	<ul style="list-style-type: none">▶ Only ship is leased to the charterer without any crew or equipment
Bareboat Charter Cum Demise	<ul style="list-style-type: none">▶ Bareboat charter where ownership is intended to be transferred to charterer after a specified period
Time Charter (wet lease)	<ul style="list-style-type: none">▶ A fully equipped ship along with crew is provided for a definite period; ship owner retains possession of the ship▶ Vessel operating & maintenance expenses are borne by the ship owner
Slot Charter	<ul style="list-style-type: none">▶ Ship owners plying the ships on a particular route allow other companies, whose ships are not plying on those routes, to use available 'slots' on their ships
Voyage Charter	<ul style="list-style-type: none">▶ A fully equipped ship is provided on hire along with crew, for a particular voyage or trip; majorly used when there is an occasional cargo to transfer
Pooling arrangement	<ul style="list-style-type: none">▶ An agreement wherein a group of ship owners pool their vessels together and place them under the care of an appointed pool manager.▶ Reciprocity is an essential element under pooling arrangement



Annexure 2: Types of vessels

Mother Vessel	<ul style="list-style-type: none">▶ A large vehicle that leads, serves, or carries other smaller vehicles and serves only major ports. A mother ship may be a maritime ship, aircraft, or spacecraft
Feeder Vessel	<ul style="list-style-type: none">▶ Medium-sized vessels that pick-up shipping containers from the smaller ports that are not accessible by large vessels and bring them to larger vessels for their main voyage
Non-vessel operating common carrier	<ul style="list-style-type: none">▶ NVOCC do not own, charter or operate any vessel;▶ Contract directly with the shipper, undertake transportation of goods using container slots on vessels of other operators and issue bill of lading to shippers;

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Annexure 3: Documentation

Bill of Lading

- ▶ A document issued by a shipping company to the shipper that mentions the type, quantity, and destination of the goods being carried.

DIT relief

- ▶ Double income tax (DIT) relief certificate is issued by relevant authorities, in case income is taxable only in resident country in view of DTAA benefit.
- ▶ An essential documentation to be obtained by foreign shippers, so that taxes are not withheld in source country

Port Clearance Certificate

- ▶ A certificate issued by the authorities of a port or harbour which serves as proof that a vessel has fulfilled all the necessary requirements and obligations for departing from the port or harbour and is authorised to set sail.

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Thank you

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