



# NRI Taxation

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*Dubai Chapter of  
ICAI*

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# Scheme of Taxation

- Section 4 – Charging Section
- Income chargeable at rates prescribed by Finance Act provided
  - It comes within Scope of Total Income U/s 5 and/or deemed income U/s. 9
  - It is not exempt U/s 10 and
  - It is subject to the provisions of Double Tax Avoidance Agreement entered by India, in case of income arising from cross border transaction



# Meaning of the term 'NRI' under Income tax Act

“Non resident Indian” means an individual,  
being a

- citizen of India or
  - a person of Indian origin
- who is not a "resident"

*Explanation.* — A person shall be deemed to be of Indian origin if he, or either of his parents or any of his grand-parents, was born in undivided India- Sec 115C



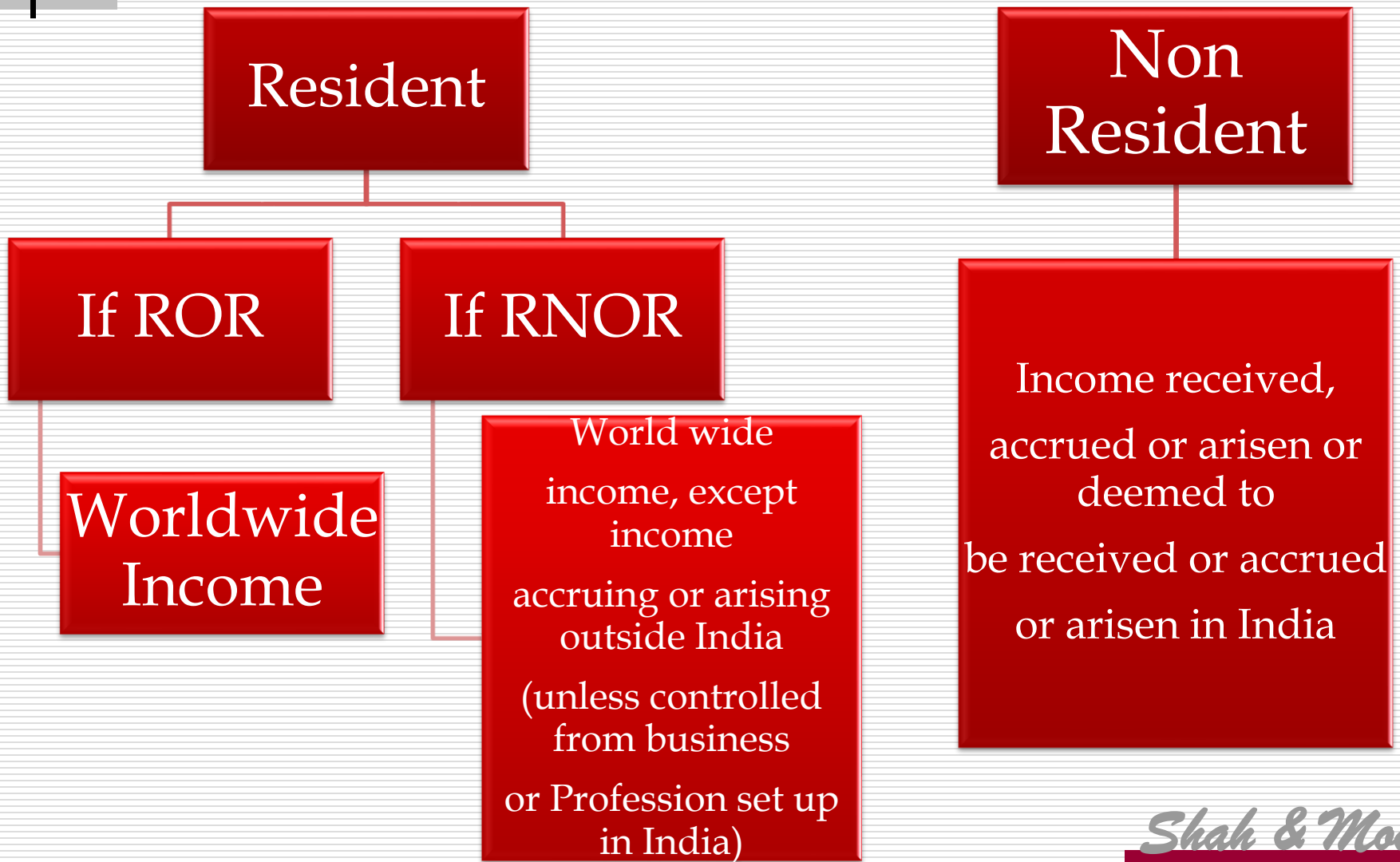
# Residential Status –

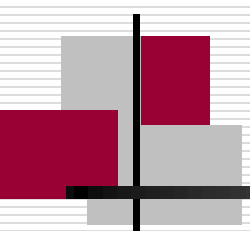
## *Section 6 of Income Tax Act (ITA) ,1961*

- **Individual's Residential Status under ITA can be of following three categories:**
  - Resident and ordinarily resident
  - Resident but not ordinarily resident
  - Non resident
- **Determining factors**
  - Individual – Physical presence
  - HUF, Firm, AOP, others – Control and Management of its affairs
  - Company – An Indian company is always treated as resident in India. Any other company would be a resident if its 'place of effective management (POEM)' is in India .

Every person other than individual and a company is non-resident only if  
the control and management of its affairs  
is situated **wholly outside India**

# Taxability under the ITA





# Residential Status and Tax Liability

- **Resident & Ordinarily Resident**

- ☐ World Income Taxable.

- **Resident But Not Ordinarily Resident**

- ☐ Income accruing or arising in India OR
- ☐ Received OR
- ☐ Deemed to be received in India OR
- ☐ Arising out of business controlled from India

- **Non Resident- Sec 5(2) read with Sec 9(1)**

- ☐ Only Income accruing OR
- ☐ Arising in India OR
- ☐ Received in India OR
- ☐ Accruing outside India but Deemed to Accrue in India

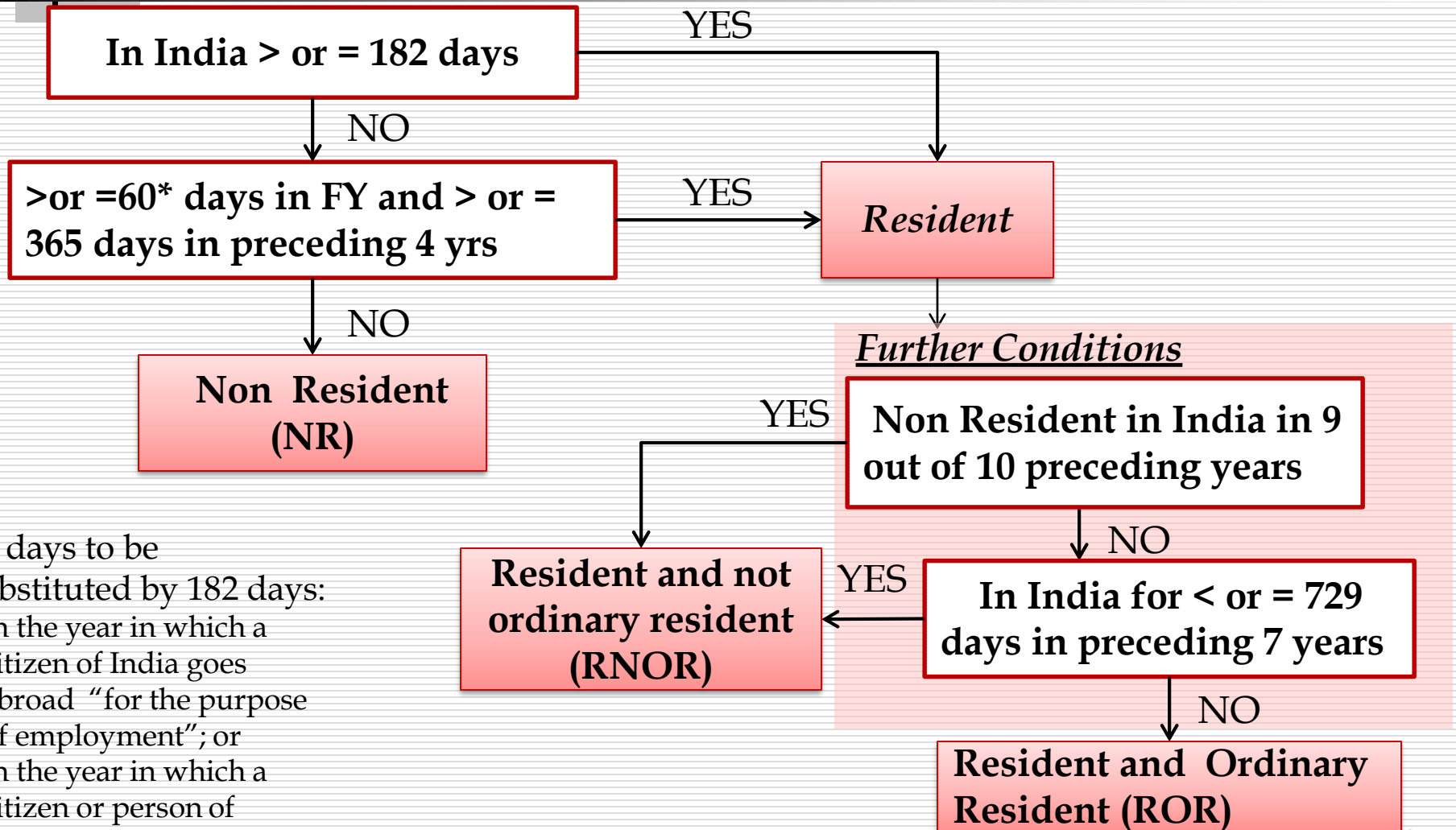


# Residential Status And Tax Liability- Sec 5

## EXCEPTIONS

- Whether mere receipt of income without accrual in India makes it taxable in India?
- Salary income of NRI accrued outside India but deposited in NRE bank a/c in India is not taxable as per the pronouncements made in the case of Arvind Singh Chauhan [TS-80-ITAT-2014(AGR)]
- Such salary income is not taxable as assessee had lawful right to receive salary outside India, & cheques were merely deposited subsequently in Indian bank.
- Hence salary income cannot be said to have been deemed to accrue in India if it is merely received in India.

# Tax Residency Test for Individuals under ITA



60 days to be substituted by 182 days:

- In the year in which a citizen of India goes abroad "for the purpose of employment"; or
- In the year in which a citizen or person of Indian origin comes on a visit in India





# TEST OF RESIDENCE FOR INDIVIDUALS

## Basic Conditions for a Resident :

- In India for 182 days or more in Previous year, or
- In India for 60(\*) days or more during Previous year and 365 days or more during 4 preceding previous year

Exceptions permitted to the Basic Conditions:

- (\*) Indian **Citizen** leaving India “for Employment” no of days will be considered as 182
- (\*) Indian **Citizen** or **PIO** coming to India “On a visit” no. of days will be considered as 182



# ADDITIONAL CONDITIONS FOR R & OR

## Satisfaction of both of the Additional Conditions for Ordinarily Resident :

- Resident in 2 or more previous year out of block of 10 previous years w.e.f A.Y 2004-05 (instead of 9 years)

**AND**

- Stay in India for 730 days or more during seven previous years preceding that previous year

- **Supporting Case law:**

In case of [2008] 169 Taxman 454 (SC) Pradeep Mehta vs CIT. It was held that both the conditions have to be fulfilled to be regarded as R & OR. Not meeting one of the above condition will make an Individual- R & NOR

# Example on Residential Status

Previous 7 years	S. No.	Financial Year	No. of Days	Cumulative Stay in previous 7 years
	10	2008-2009	18	-
	9	2009-2010	0	-
	8	2010-2011	24	-
1	7	2011-2012	0	0
2	6	2012-2013	0	0
3	5	2013-2014	9	9
4	4	2014-2015	343	352
5	3	2015-2016	183	535
6	2	2016-2017	169	704
7	1	2017-2018	24	728



# Example on Residential Status

Assume that in the F .Y. 2018-19, he shall be in India for more than 182 days, examine his residential status

- The number of days stay during previous seven years i.e. 2011-12 to 2017-2018 is 728 days i.e less than 730 days even though he is resident in two previous years.
- Hence his status for the previous year F.Y 2018-19 is RBNOR



# Implications of R&NOR

- R & NOR status can be available for two years from the year in which they return in India.
- Overseas passive income the person will not be taxable in India.
- R & NOR status may result in double non taxation
- No requirement of disclosure of foreign assets in Indian Income Tax Return
- Sec.195 doesn't cover within its ambit RbNOR because of Sec 2(30) definition of NR includes RbNOR only for Sec 92, 93 & 168 and not for Sec.195. So no obligation to withhold tax for making payment to NR by RbNOR



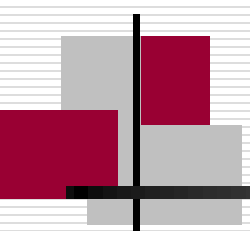
# Judicial Pronouncements related to NRI Status

**Whether stay outside India in connection with employment qualifies as exception?**

- Person receives salary in India and is employed by an employer in India. During year he is out of India for 218 days on tours, in connection with his employment. The person cannot claim non-resident status. (ITO V. K.Y. Patel 33 ITD 714)

**Whether occasional visit of an employee deputed abroad included in stay in India?**

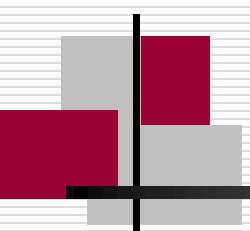
- Indian employee (who continued to be an employee of Indian company/had lien on employment in India) was deputed abroad. For the purpose of determining the residence, the period of occasional visit to India has to be excluded as mentioned in 6(1)(c)- CIT Vs. Manoj Kumar Reddy Nare, 2011-TII-29-HC-KAR-Intl (CTC Journal- Sept 2011- pg 144, [2011] 12 326 (Kar.)



# Judicial Pronouncements related to NRI Status

**Does stay outside India include the period to explore business opportunities?**

- Person goes out of India to explore business probabilities, it could not be held that he had gone out for purposes of 'employment outside India' within meaning Explanation (a) to section 6(1) (Ziaulla Sheriff v. Asstt. CIT, (International Taxation) (2008) 116 TTJ 76 (Bang.))



# Judicial Pronouncements related to NRI Status

## Whether employment includes self employment?

- An Indian citizen leaving India for the 'purpose of employment' is nowhere defined in the act. It also takes into consideration self employment like business or profession. Person receiving income from self employment abroad falls under exception as per explanation u/s 6(1)(c). (ACIT, Circle 33(1) V. Jyotinder Singh Randhawa [2014] 46 taxmann.com 10 (Delhi - Trib.))  
(K. Sambasiva Rao v. ITO [2014] 42 taxmann.com 115 (Hyderabad - Trib.))

## Whether forced stay in India to be included while computing his stay?

- In order to determine residential status of assessee in India during the assessment years, number of days of his forced stay due to untenable impounding of assessee's passport by CBI were to be excluded while computing days of his stay in India as mentioned in the case of CIT vs Suresh Nanda [2015] 57 taxmann.com 448 (Delhi)





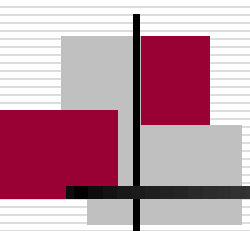
# Points to Remember

- In the 1st year of leaving India for employment ensure that you leave on or before September 28, otherwise total income including foreign income will be taxable for Non DTAA Countries
- In the following years, the person can visit India up to total of 181 days stay in India per year for Indian citizen and persons of Indian Origin. If however stay in India falls in two different financial year, number of days can get extended to 362. Person can come on 2nd October (3rd October in case of leap year) in first following year



# Points to Remember

- During last year abroad, on final return to India try always to come back on or after February 1st (or February 2nd in case of leap year). Since return before this date will result in exceeding 59 days in any case
- However, if a person whose stay in India in past four previous years does not exceed 365 days stay would be allowed to retain Non resident status even if he is in India up to 181 days. In such a situation he may return after September 28 of the relevant year



# Choice to opt for beneficial provisions of tax treaty or ITA

- Section 90 of the ITA provides that where India has entered into an Agreement for Avoidance of Double Taxation ("DTAA"), the provisions of the ITA shall be applicable to the extent they are more beneficial to the taxpayer over the provisions of the DTAA.
- Accordingly , while considering the tax implications in the hands of a NR, it would be relevant to examine the provisions of the relevant DTAA.
- If tax is deducted at a rate specified in DTAA, then no Surcharge or Education Cess should be levied thereon. DIC Asia Pacific Pte. Ltd v. ADIT [2012] 22 taxmann.com 310 (Kol.)



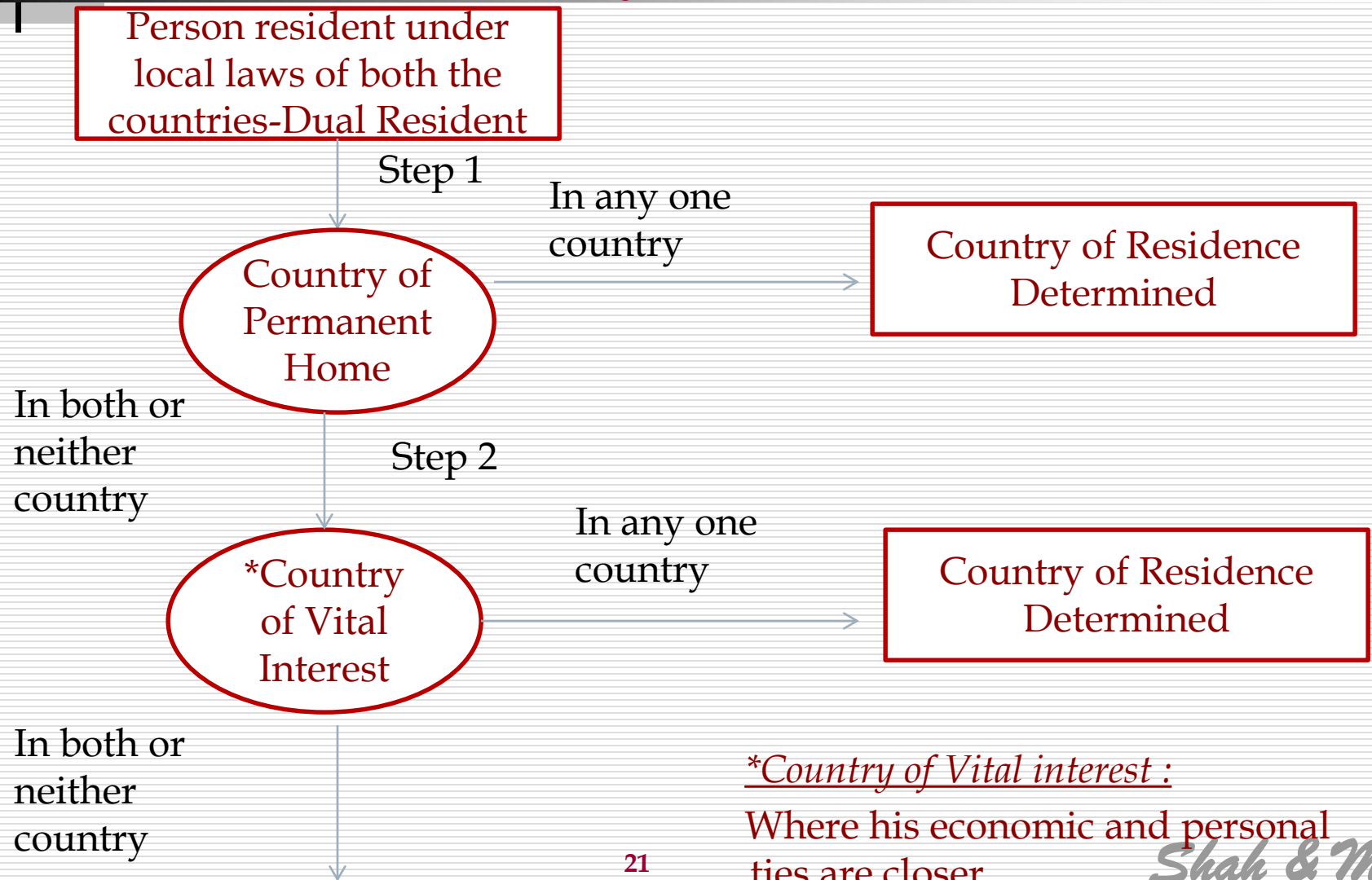
# Residency as per India- UAE Tax Treaty- Article 4

- For the purposes of this Agreement the term 'resident of a Contracting State' means:
  - (a) **India:** any person who, under the laws of India, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature.

Exception -does not include any person who is liable to tax in India in respect only of income from sources in India; and

- (b) **UAE:** an individual who is present in the UAE for a period or periods totalling in the aggregate at least 183 days in the calendar year concerned,

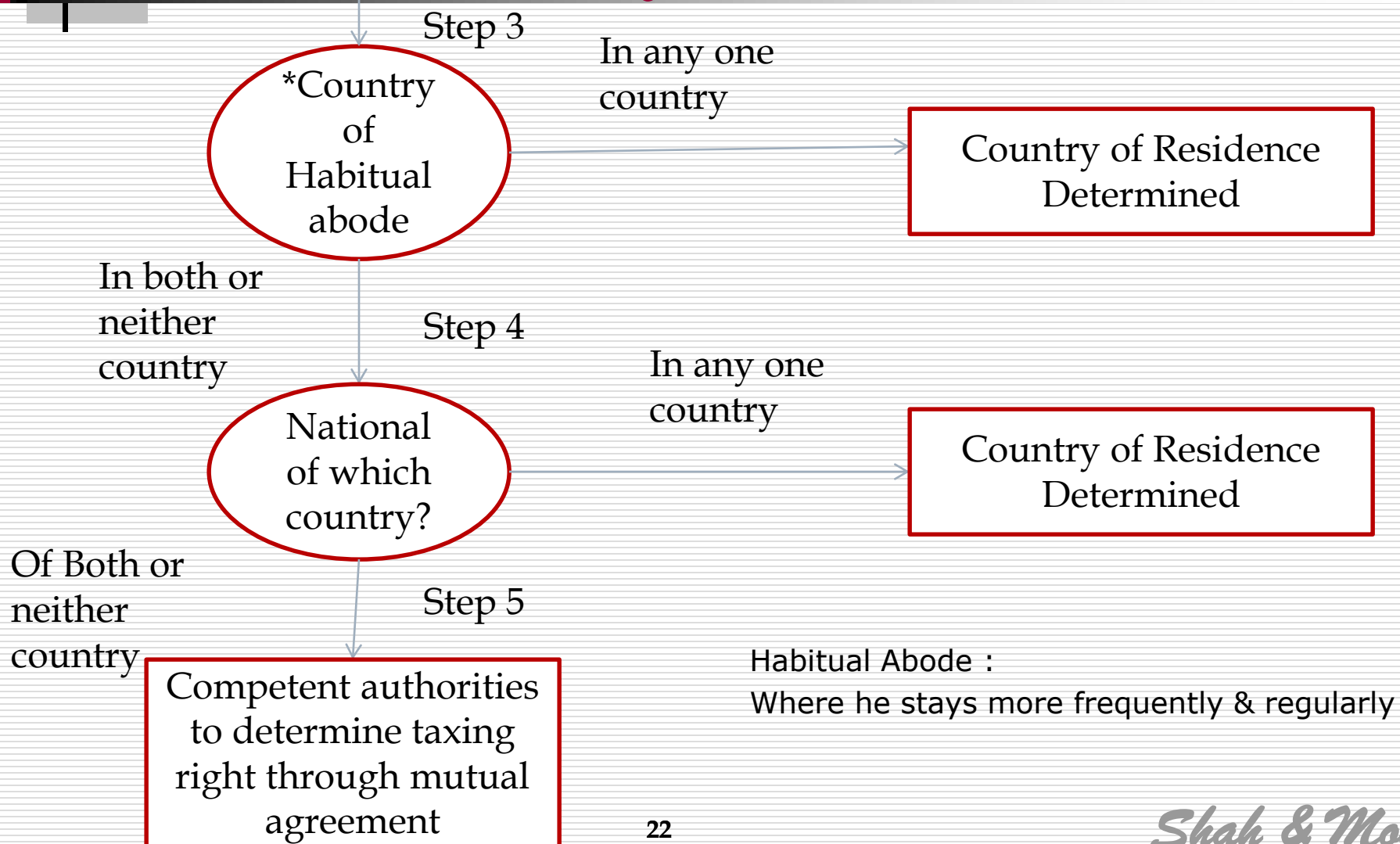
# Dual Residency & Tie Breaker Test



\*Country of Vital interest :

Where his economic and personal ties are closer

# Dual Residency & Tie Breaker Test





# Case Study 1 on Res. Status & Tie Breaker Test

*Financial Year in INDIA : April to March (Resident  $\geq$  182 days - as per Act)*

*Financial Year in UAE: Calendar Year (Resident  $\geq$  183 days - as per DTAA)*

**1. Individual Citizen of India leaving India on 28th September, 2018 for purpose of Employment or as a crew of Indian Ship and not returning to India during Indian Financial Year.**

- As the individual being Citizen and leaving for employment is staying in India for less than 182 days, the person becomes Non Resident for FY 2018-19.
- Implication on Res Status in India- Non Resident and hence salary earned in UAE not taxable in India



## Case Study 2 on Residential Status

2. Individual **Citizen** of India leaving India on 29th September, 2018 for purpose of **Employment** or as a **crew of Indian Ship** and not returning to India during Indian Financial Year.
- ☐ Since the person is staying in India for 182 days, the person becomes Resident for FY 2018-19.
  - ☐ Also in UAE the person does not becomes resident as he stays for less than 183 days for year 2018. But in Year 2019, the person will be resident in UAE thus overlapping residential status from Jan to Mar.
  - ☐ Implication as per ITA- Taxable from April 2018 to March 2019 (including income from 29 September, 2018 till 31st March, 2019)\*





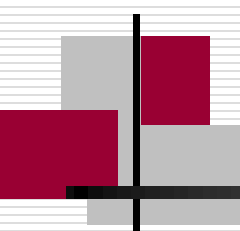
## Case Study 2 (Contd..)

\*However since the person is resident of both Countries for the period of Jan to March 2019, a Residential Status tie breaker as mentioned in DTAA will be applied.

- ☐ If the person fulfils conditions and becomes resident of UAE for the period Jan-Mar 2019 then in India Income will be taxable for period till 31st December 2018 & Jan to Mar 2019 salary would be taxable in UAE
- ☐ If the person fails to fulfils conditions and becomes resident of India, then income earned in UAE till 31st March will be taxable.

Few examples in relation to **Conditions** under Residential Tie Breaker:

- ☐ If in the above example, if the person is having Permanent home in both the Countries, then 'Country of Vital Interest' is to be checked. Under 'Country of Vital Interest' emphasis is on 'personal and economical interest'. Let us take different situations:
- ☐ Employment & Family both are in UAE – Vital Int in UAE hence NRI
- ☐ Employment in UAE & Family in India – Jump to 'Country of Habitual abode'



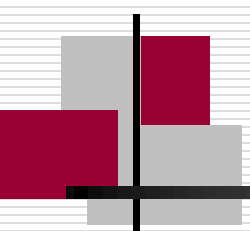
# Source Rule for taxation as per ITA & India-UAE Tax Treaty

Nature of Income	IT Act	Treaty
Business or Profession	Sec. 9(1)(i)	Art. 5, 7 & 14
Salary	Sec. 9(1)(ii)	Art. 15
Rental Income	Sec 9(1)(i)	Art 6
Dividend Income	Sec. 9(1)(iv) & Sec.115A	Art. 10
Interest Income	Sec. 9(1)(v) & Sec.115A	Art. 11
Royalty	Sec. 9(1)(vi) & Sec.115A	Art. 12



## Source Rule contd...

Nature of Income	IT Act	Treaty
Income from other sources	Sec. 9(1)(i) read with section 56	Art. 22
Pension and Annuity Income	Sec. 9(1)(i)	Art. 19
FTS	Sec. 9(1)(vii) & Sec.115A	Not Covered
Capital Gains	Sec. 9(1)(i) & Sec. 45	Art. 13



# Source Rule for taxation under ITA & India-UAE Tax Treaty

- Sec 9(1)(i) – Income arising from Business Connection *in India* or from any property in India or from any asset or source of income in India or through the transfer of a capital asset situated in India.
- Sec 9(1)(ii) – Salary Income – If *earned in India*
- Sec 9(1)(iii) – Salary *paid by Govt to a citizen of India* for service outside India
- Sec 9(1)(iv) – Dividend *paid by an Indian Company* outside India
- Sec 9(1)(v) – Interest *paid by Govt or a resident person* including interest paid by resident branches to its head office or branches abroad
- Sec 9(1)(vi) – Royalty *paid by Govt or resident and* even non resident where royalty is payable in respect of any property utilised for the purpose of business or profession or making or earning any income from any source in India.
- Sec 9(1)(vii) - Fees for Technical Services *paid by Govt or resident* and even non resident where fees is payable in respect of any services utilised for the purpose of business or profession or making or earning any income from any source in India.



# Understanding Source Rule qua nature of income

- Rule for taxation in Source Country will depend upon
  - Nature of income or characterisation of income
  - Scope of income under the Act Vs Treaty
  - Specific factors qua nature of income



## Source Rule contd..

- Income from property in India
  - Act- If situs of property is in India then taxable in India- say, House Property Income - Sec 22
  - Treaty- same as above- Article 6
- Income from Asset or Source of Income
  - Act- If situs of asset is in India then taxable in India- IFOS – Sec 56
  - Treaty- Article 22 (Other Income) Taxable in UAE



## Source Rule Contd..

- Capital Gains from Immovable Property in India
  - Act- - taxable in India- Sec 45
  - Treaty- Taxable in India as situs in India Art 13
- Cap gains from shares
  - Act- Taxable in India- Sec 45
  - Treaty- Taxable in India if Company whose shares are transferred is Resident of India – Art 13



## Source Rule Contd..

- Cap gains from Securities other than shares
  - ☐ Act- Taxable in India- Sec 45
  - ☐ Treaty- Taxable in U.A.E – Art 13 (5)
  - ☐ So gains on units of MF would be taxable in UAE. Case law- *Vinod Vohra Vs ADIT*-[2012] 26 *Taxmann.com* 23 (Delhi) and *ITO vs. Satish Beharilal Raheja* [2013] 37 *taxmann.com* 296 (Mumbai - Trib.)
- Cap gains from sale of jewellery, bullion, paintings, movable property other than business property
  - ☐ Act- Taxable in India- Sec 45
  - ☐ Treaty- Taxable in UAE – Art 13(5)





## Source Rule Contd..

- Capital gains from Indirect Transfer of shares i.e. controlling interest
  - Act- Sec 9(1)(i) & Sec 45- Taxable in India
  - Treaty- can it be argued that 'controlling interest' is different from shares and hence not covered by Art 13(4) but by Art 13(5) & hence taxable in UAE (Argument raised in AAR-1232 of 2012)



# Capital Gain Article 13- India-UAE tax treaty

- 1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in paragraph 2 of Article 6 and situated in the other Contracting State may be taxed in that other State.
  
- 2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such fixed base may be taxed in that other State.



# Capital Gain Article 13- India-UAE tax treaty

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- 3. Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State.
- 4. Gains from the alienation of shares other than those mentioned in paragraph 3 in a company which is a resident of a Contracting State may be taxed in that State.
- 5. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3 and 4 above shall be taxable only in the Contracting State of which the alienator is a resident.



## Source Rule Contd..

- Interest Income earned by NRI
  - NRO – Rate of tax withholding under the Act 20%+ SC+ Cess- (NRO Int is considered as Investment Income –Sec 115D- AAR NO.784 of 17.12.2008 – Dr. Virendrakumar Raina)
  - NRO- Rate of tax under Article 11- 12.5% (treaty rate being lower same can be adopted)
  - Other interest- Rate of tax withholding under the Act – 30% + SC+ Cess
  - Treaty- Rate of tax under Article 11- 12.5%
- NRE – Exempt u/s 10(4)
- FCNR-Exempt u/s 10(15)(iv)(fa)



## Source Rule Contd..

- Dividend on shares
  - Act- Div Dist Tax- Sec 115 O- Exempt in the hands of shareholder be it Res or Non Resident
  - 10% additional tax on dividend in excess of Rs.10 lakhs is not applicable to Non Resident (Sec 115BBDA doesn't apply to NR)



## Source Rule Contd..

- Fees for Technical Services paid by Res Indian to NR – tax resident or UAE
  - Act- Taxable in India- Sec 9(1)(vii) read with 115A
  - Treaty- No FTS Article- hence character of income would be business profit and in the absence of PE not taxable in India
- In case of no separate clause for FTS- such payment is classifiable as 'Business Profits'- Tekniskil (Sendirian) Berhard V. CIT [1996] 222 ITR 551 (AAR), Siemens Aktiengesellschaft V. ITO [1987] 22 ITD 87 (Mum), GUJ Jaeger GmbH V. ITO [1991] 37 ITD 64 (Mum), Christiani & Nielsen Copenhagen V. First ITO [1991] 39 ITD 355 (Mum)



## Source Rule Contd..

- Royalty paid by Res Indian to NR tax resident of UAE
  - Act- liable @ 10% + SC + Cess
  - Treaty- liable @ 10%- Art 12(2)- treaty rates do not require addition of surcharge or cess. Case law- Sunil Motiani Vs ITO ITA No. 276/MUM/2012 .



## Source Rule Contd..

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- Non Govt. Pension & Annuity paid by Res Indian to tax resident of UAE
  - Act- Taxable in India – Either Salary (Sec 16) or Other sources- Sec 56
  - Treaty- Taxable in UAE – Art 19





# Source Rule & Characterisation issue

- Income From letting of machinery, plant or furniture & also building – where letting of building is inseparable from letting of machineries...
  - ❑ Character under Act- IFOS- Sec 56(2)(iii)
  - ❑ Character under Treaty could be Income from Immovable property hence taxable in India
  - ❑ But, since characterisation has changed to IFOS under the Act, now the taxability would be in UAE



# Business Profits

## Business & Profession:

- Act 9(1)(i)- Presence of Business Connection in India
- Treaty Article 5 & 7 & 14- Presence of PE or Fixed Base in India
- Concept- Business *with* India or Business *in* India



# Tax Residency Certificate to access Tax Treaty

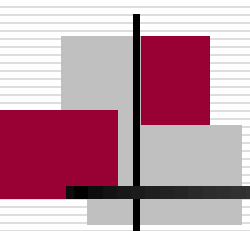
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- Fin Act 2012, has introduced sub-section 4 to Sec 90 to provide that a NR will not be entitled to claim treaty benefits unless he obtains a TRC from the Govt., of his residence country/territory certifying that he is a tax resident of that country.
- All Non-Residents to submit TRC (Individual, Company, LLC, LLP– No threshold limit



# Tax Residency Certificate

- Section 90(5) and Not.57/2013 dated 1st Aug 2013 mandates submission of following information in Form 10F if TRC doesn't contain these information:
  - 1) Status (individual, company etc) of assessee.
  - 2) Nationality or country or specified territory of incorporation or registration
  - 3) Assessee's tax identification number
  - 4) Period for which the residential status is applicable
  - 5) Address of the assessee in the country of specified territory outside India
- Self-Attestation of Form 10F by the assessee



# Tax residency Certificate Sufficient Evidence to Claim beneficial Ownership

- DIT v. Universal International Music B.V (2013) 214 Taxman 19 (Bom.)(HC)
- The tribunal arrived at the fact that the assessee was a beneficial owner of the royalty received on the basis of Tax Residency Certificate submitted by the assessee.
- Reliance was placed by the tribunal on CBDT Circular No 789 dated 13/04/2000 that certificate from revenue authorities is sufficient evidence of beneficial ownership.



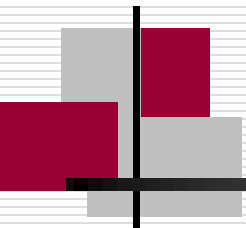
## Rule 37BC – Relaxation from deduction at higher rate in the absence of PAN

- In case of payments in nature of Interest, Royalty, Fees for Technical Services and payments for transfer of Capital Assets, to NR not having PAN, provisions of Sec 206AA do not apply.
- Payments in nature of Salary are however not covered.
- NR not having PAN shall furnish following documents to deductor:
  - Name, Email id, Contact Number
  - Address in country of which NR is resident
  - Certificate of his being resident of foreign country.
  - Tax Identification Number of NR of such country.



# Action Points after becoming NRI

- Convert your savings account to NRO A/c & take due care to intimate NRI status for proper tax deduction
- Regularly file your Return of Income for Indian Income under NRI status, even if full Tax is deducted at source to avoid penalty implications u/s 270A- (*under reporting of income & misreporting of income*)
- Copies of passport with clear data on visits etc., to establish threshold for number of days was never breached
- Maintain documentation for transfer from NRO A/c to NRE A/c or repatriation to overseas bank a/c. Keep all the evidences for all such transfer to demonstrate that transfer of wealth from India to overseas is out of tax <sup>47</sup> paid Indian income



OVERSEAS ASSETS/WEALTH OF NRI & EXPOSURE TO

# ANTI TAX AVOIDANCE PROVISIONS OF THE IT ACT





## Sec 68 & 69- Unexplained Income

- Unexplained credits – Sec 68 & Unexplained Investments- Sec 69 leading to exposure of “Undisclosed Income”
- Implications on foreign income/assets owned by citizens
- Source of data for tax authorities- Automatic Exchange of Information Agreements between countries, FATCA etc



# Implications of Sec 68 & 69 to NRIs

- As such no implications of unexplained credits or investment to NRIs for their overseas income & assets
- Charging Sec 5(2) applies only to income accruing or arising in India or received in India
- If assets are financed out of overseas income and hence there is no nexus between income accruing in India and funding of overseas assets



# Implications of Sec 68 & 69

- Observation of Mumbai Tribunal in the case of DCIT Vs. Hemant Pandya ITA No. 4679 & 4680 of 2016 decided on 16th November, 2018 :
- Excerpts from SC decision of Vodafone
- *"Under Section 5(2) of the Income Tax Act, in case of NRIs the income accrued and received outside India cannot be subject to tax in India. What is not taxable under Section 5(2), cannot be taxed under the provisions of Sections 68 and 69 as undisclosed income"*



## Unexplained Income.. Contd...

- *“Onus of proving that an amount falls within the taxing ambit is on the department and it is incorrect to place the onus of proving negative on the assessee”*



# Necessity of documentation for establishing foreign income as source for creation of foreign assets

## ■ Illustrative List

- ☐ Get the statement of income along with Income – Exp A/c or Capital A/c & Balance Sheet and Cash flow statements prepared for every year
- ☐ Get such statement certified by CA/CPA to have better evidential value
- ☐ Keep all the documents supporting income credited in (all) bank account
- ☐ Keep documents supporting assets/investments
- ☐ Keep above documents even in respect of Indian income and assets



## Foreign assets....

- In short, make sure that- amount in foreign bank a/c is not sourced from India &
- If sourced from India (by transfer from NRO) keep proper documentation corroborating such receipt with Indian tax return
- Indian Income Tax has otherwise no jurisdiction over foreign income & assets while being Non Resident

# Clarification on disclosure of Foreign Assets under Black Money Act given vide Circular no.13 of 2015 Dated 06/07/2015

**Relevant FAQ'S are reproduced below:**

**Q24** A person is a resident now. However, he was a non-resident earlier when he had acquired foreign assets (which he continues to hold now) out of income which was not chargeable to tax in India. Does the person need to file a declaration in respect of those assets under Chapter VI of the Act?

■ **Answer-** No. Those assets do not fall under the definition of undisclosed assets under the Act.

# Clarification on disclosure of Foreign Assets under Black Money Act given vide Circular no.13 of 2015 Dated 06/07/2015

**Q32** A person was employed in a foreign country where he acquired or made an asset out of income earned in that country. Whether such asset is required to be declared under Chapter VI of the Act?

**Answer**-If the person, while he was a non-resident in India, acquired or made a foreign asset out of income which is not chargeable to tax in India, such asset shall not be an undisclosed asset under the Act. However, if income was accrued or received in India while he was non-resident, such income is chargeable to tax in India. If such income was not disclosed in the return of income and the foreign asset was acquired from such income then the asset becomes undisclosed foreign asset and the person may declare such asset under Chapter VI of the Act





# Power to Reassess Foreign Asset or Income chargeable to tax in India under ITA

- Income tax act provides time limit to issue notice for reassessment – Section 149
- Wherein Income tax officer can reopen/reassess the return of income for period of **sixteen years** if he has reason to believe that income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment.-Section 149(1)(c)



# Capital Gains on Shares & Debentures (Without STT) and Other Capital Assets

## **Relevant Sections 48 & 112 :**

- Section 48 - Mode of computation of LTCG
- Section 112 - Rate of tax

## **Benefit of capital gain 1<sup>st</sup> Proviso:**

- Available to all Non residents (Including HUF)
- Capital assets being shares & debentures of Indian Companies
- Capital gain shall be computed by converting Cost of acquisition, Expenditure for transfer and also Sales proceeds into Foreign Currency
- Capital gain so computed shall be reconverted into Indian Rupees

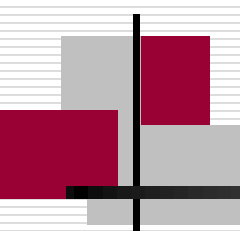


# Capital Gains Provisions for NRIs

- On other assets normal provision will apply like indexed cost, cost of improvement etc
- Immovable properties – All benefits of Sec 54, 54F, 54EC available
- Sec 112(1)(c)(ii) - LTCG on assets other than unlisted securities will be taxed @ 20%
- Sec 112(1)(c)(iii) - LTCG on unlisted securities will be taxed @ 10% without giving effect to first and second proviso to Section 48 (no currency conversion & no indexation)

## **Other Income Tax Provisions:**

- Enhanced limit of Basic exemption available for Senior Citizens and Women assessee is Not available to Non Resident Senior Citizen and Women



# Capital Gain on Shares & Securities (With STT)

- Long term capital gain – Exempt under Section 10(38) only if sold up to 31st March 2018. Any income arising from sale of equity share of company or unit of an equity oriented fund or unit of business trust on or after 1st April 2018 will be taxable in terms of Section 112A.
- Short term capital gain – Tax @ 15%
  - No threshold limit deduction is available with respect to such STCG. (Proviso to Sec 111A)



# Other Provisions of relating to NRI

- Non resident in India for the previous year cannot claim basic exemption (INR 2.5 Lakhs /0.25 Million )for income taxed at special rates:
  1. Section 112 ,111A, 112A [LTCG, STCG]
  2. Section 115BBA [ Income received by Non resident Sports person]
- Additional basic exemption limit is not available to Non residents Senior citizen and Super senior citizen
- Form 15G and Form 15H cannot be submitted by non residents [Form for claiming no deduction of TDS]

# Short Term Capital Gain for NRI

Capital Asset	Taxability
Sale of Listed Equity shares on stock exchange	Flat rate - 15% (111A) <i>Slab of 2,50,000 not available.</i>
Sale of Units Equity oriented Mutual funds where STT is paid	Flat rate - 15% (111A) <i>Slab of 2,50,000 not available.</i>
Other Short term Capital Asset	Slab Rate

*Note: 1. For Investment made in Foreign Currency in Shares/Debentures of Indian Company Benefit of 1<sup>st</sup> Proviso to Sec 48 is available  
2. However, under treaty Gains on MF units taxable in Resident Country i.e. UAE*

# Long Term Capital Gains in case of Non-Residents

Capital Asset	<u>1<sup>st</sup> Proviso</u> – Foreign Currency Conversion <u>2<sup>nd</sup> Proviso</u> – Indexation to section 48	Taxability
<b>A) LISTED EQUITY SHARES</b>		
1. Sold <b>on stock exchange</b> (whether purchased in Indian currency or foreign currency).	N.A.	Taxable above Rs 1 Lakh @10% (Sec 112A) <i>Slab of 2,50,000 not available.</i>
2. Sold <b>off market</b> (Purchased in <u>foreign currency</u> or a case of re-investment).	1st proviso to section 48 available.	Flat rate of 10%. (Sec 112) <i>Slab of 2,50,000 not available.</i>
2. Sold <b>off market</b> (purchased in <u>Indian currency</u> ).	2nd proviso to section 48 is available.	-10% without indexation -20% with indexation whichever is lower. (Sec 112) <i>Slab of 2,50,000 not available.</i>

# Long Term Capital Gains in case of Non-Residents

Capital Asset	<u>1<sup>st</sup> Proviso</u> – Foreign Currency Conversion <u>2<sup>nd</sup> Proviso</u> - Indexation to section 48	Taxability
<b>B) Unlisted Equity Shares</b>		
1. Sold through public offer and such sale forms part of public offer & STT paid by seller and shares subsequently listed (Purchased in Indian currency or foreign currency)	N.A.	Taxable above Rs 1 Lakh @10% ( <i>Sec 112A</i> ) <i>Slab of 2,50,000 not available.</i>
2. Other than above (Purchased in Foreign Currency)	<u>Option 1:</u> Without giving effect to 1 <sup>st</sup> proviso to section 48 <u>Option 2:</u> If Effect given to 1 <sup>st</sup> proviso to section 48	Flat rate of 10%. <i>Slab of 2,50,000 not available.</i>  Flat rate of 20%. <i>Slab of 2,50,000 not available.</i>
3. Other than above (Purchased in Indian Currency)	N.A.	Flat rate of 10%. <i>Slab of 2,50,000 not available.</i>



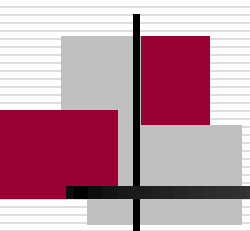
Capital Asset	<u>1<sup>st</sup> Proviso</u> – Foreign Currency Conversion <u>2<sup>nd</sup> Proviso</u> - Indexation to section 48	Taxability
<b>B) Units of equity oriented MF and units of Business Trust</b> (Purchased in Indian currency or foreign currency)		
1. On sale STT paid	N.A.	Taxable above Rs 1 Lakh @10% (Sec 112A) <i>Slab of 2,50,000 not available.</i>
2. Units of Equity Oriented Mutual fund and units of Business Trust on sale no STT paid.	1 <sup>st</sup> proviso is not applicable to units 2 <sup>nd</sup> proviso available.	20% with indexation. <i>Slab of 2,50,000 not available.</i>
<b>C) Units of other Mutual Funds</b>		
	1 <sup>st</sup> Proviso is not applicable to units 2 <sup>nd</sup> proviso available.	20% with indexation <i>Slab of 2,50,000 not available.</i>

***Note: However, under treaty Gains on MF units taxable in Resident Country i.e. UAE***



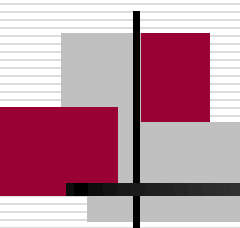
# Long Term Capital Gains in case of Non-Residents

Capital Asset	<u>1<sup>st</sup> Proviso</u> – Foreign Currency Conversion <u>2<sup>nd</sup> Proviso</u> – Indexation to section 48	Taxability
<b>D) Bonds and Debentures</b>		
Listed Bonds and Debentures (Purchased in Indian currency )	1 <sup>st</sup> Proviso to section 48 is applicable.	Flat rate of 10%. <i>Slab of 2,50,000 not available.</i>
Unlisted Bonds and Debentures (Purchased in foreign currency or in Indian currency )	<u>Option 1:</u> Without giving effect to 1 <sup>st</sup> proviso to section 48 <u>Option 2:</u> If Effect given to 1 <sup>st</sup> proviso to section 48	Flat rate of 10%. <i>Slab of 2,50,000 not available.</i>  Flat rate of 20%. <i>Slab of 2,50,000 not available.</i>
<b>E) Other assets</b> (whether purchased in Indian currency or foreign currency)	Indexation is available.	20% Flat rate.



# Exemption under Capital Gains Contd...

- Any transfer of a capital asset, being –
  - (a) bond or Global Depository Receipt referred to in sub-section (1) of section 115AC; or
  - (b) rupee denominated bond of an Indian company; or
  - (c) derivative,  
made by a non-resident on a recognised stock exchange located in any International Financial Services Centre (IFSC) and where the consideration for such transaction is paid or payable in foreign currency-Section 47 (viiab)



# Who are required to obtain PAN? (Permanent Account Number for Income Tax)

## ■ Rule 114B

- ☐ For Demat holders
- ☐ Purchase MF, Debenture, Bond > Rs. 50,000
- ☐ Sale or Purchase of Shares > Rs 100,000
- ☐ Sale or Purchase of Goods/Service > Rs 200,000
- ☐ Income Chargeable to tax in India (income above Basic Exemption Limit)

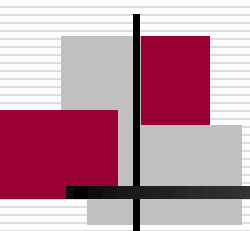
## ■ Recent Amendment Sec 139A

*MD, Director, Partner, Trustee, Author, Founder, Karta, CEO, Principal officer or Office bearer of – Resident Non Individual Entity having financial transaction above INR 2.5 Lakh*



# Specific Transactions Exempt from Capital Gains for Non residents under ITA

- There are some transactions which are not treated as transfer under ITA– Section 47
- Any transfer of a capital asset, being bonds or Global Depository Receipts referred to in sub-section (1) of section 115AC, made outside India by a non-resident to another non-resident –Section 47(viia)
- Any transfer of a capital asset, being a Government Security carrying a periodic payment of interest, made outside India through an intermediary dealing in settlement of securities, by a non-resident to another non-resident.-Section 47(viib)

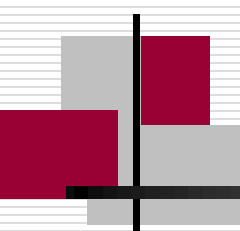


# Disclosure Required of Schedule Foreign Asset (F.A) for R & O.R

- Schedule F.A is mandatory for R&OR , Non compliance of which will result in penalty of INR 10 Lakhs- Section 43 of Black Money Act.

## Particulars of Disclosure:

- A. Details of Foreign Bank Accounts held (including any beneficial interest) at any time during the previous year
  - ☐ This disclosure shall not apply if Individual has bank A/c balance less than INR 5 Lakhs
- B. Details of Financial Interest in any Entity held (including any beneficial interest) at any time during the previous year
- C. Details of Immovable Property held (including any beneficial interest) at any time during the previous year.
- D. Details of any other Capital Asset held (including any beneficial interest) at any time during the previous year



# Disclosure Required of Schedule Foreign Asset (F.A) for R & O.R

- E. Details of account(s) in which you have signing authority held (including any beneficial interest) at any time during the previous year and which has not been included in A to D above.
- F. Details of trusts, created under the laws of a country outside India, in which you are a trustee, beneficiary or settler
- G. Details of any other income derived from any source outside India which is not included in,- (i) items A to F above and, (ii) income under the head business or profession

## Exception :

In case of an individual, not being an Indian citizen, who is in India on a business, employment or student visa, an asset acquired during any previous year in which he was non-resident is not mandatory to be reported in this schedule if no income is derived from that asset during the current previous year.



Q & A...

Questions ...







THANK YOU

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*FIRST DESERVE*

*AND*

*THEN DESIRE!!*

