Computation of Income of Non Resident

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1. Introduction

In the last article we gave an introduction to taxation of non-residents in India and their scope of Income. In this article we will understand how to compute a non-residents income in India.

2. Income of Non-Resident taxable in India

A Non-Resident is liable to tax in India only on that income which is earned by him in India. Income which is earned outside India is not taxable in India. Income is earned in India if–

i. It is directly or indirectly received in India; or
ii. It accrues or arises in India or is deemed to accrue or arise in India.

The meaning of 'deemed to accrue or arise' in India has been laid down in Section 9 of the Income-Tax Act, 1961 ("Act") which is defined as:

- Income from a business connection in India (Section 9(1)(i))
- Income from any property in India (Section 9(1)(i))
- Income from any asset or source of income in India (Section 9(1)(i))
- Capital gain on the transfer of a capital asset situated in India (Section 9(1)(i))
- Income from salary if the services are rendered in India (Section 9(1)(ii))
- Income from salary which is payable by the Government of India for services rendered outside of India when you are an Indian citizen (Section 9(1)(iii))
- Dividend paid by an Indian company even though this may have been paid outside India (Section 9(1)(iv))
- Interest (Section 9(1)(v))
- Royalty received from the Central or the State Government or from specified persons in certain circumstances (Section 9(1)(vi))
- Fees for technical fees received from the Central or the State Government or from specified persons in certain circumstances (Section 9(1)(vii))

It is a general Rule that Income will be covered under either of these heads but more specific nature will override over the General nature as specified in Sec 9(1)

2.1 Computation of Income of non-resident:

Unlike resident taxation, in order to provide ease of computation of taxable income for non-residents, they are taxed on their income from India either on gross basis i.e. on gross income / revenue without any deductions or on net basis i.e. after allowing deduction of business expenses.

2.1.1 Business Income: In case business income is taxable under Section 9(1)(i) due to existence of business connection in India or there is presence of Permanent Establishment ('PE') in India,tax computation would be for business income under sections 28 to 44C of the Act, as may be applicable. Such tax computation would be on net basis i.e. after allowing deduction for all usual business expenses from the gross revenue.

In case of income of non-resident (not being a company) or a foreign company being income by way of Royalty or Fees for Technical Services, right, property or contract 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' in accordance with section 44DA and taxed on net basis. However, if income is not effectively connected with the PE in India, then provisions of section 115A shall apply & such income in nature of Royalty or FTS will be taxed on gross basis at the rate of 10%.

Further, there are special provisions in the nature of presumptive taxation that apply to non-residents engaged in certain specified business where their income is taxed on gross basis. Certain provisions however provide for taxation on net basis at the option of the assesse. These provisions are summarized in the table below.

	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 the Act	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

In addition to the above special provisions on presumptive taxation applicable to non-residents, Section 172 applies to non-resident engaged in operating ships and is a code by itself as distinguished from Section 44B which also applies to non-resident engaged in operating ships as shown in table above. The provisions of Section 172 are notwithstanding the Act and allows for computation of lower income whereas Section 44B makes exception to Sections 28 to 44C and taxes on gross basis only.

2.1.2 Salary & Income from House Property: In case of income of non-resident from Salary and House Property, normal computation procedure under sections 16 to 27 is applicable. Detailed discussions are covered in Paragraph 3 here in below.
Income may also be taxed on the basis of deeming fiction under the provisions of the law however in the absence of the deeming provision tax can be levied only on the The basis of the Real Income.

2.1.3 Capital Gains: For income of non-resident in nature of Capital gains, normal computation procedure under sections 45 to 55 is applicable except that in case on Non-resident Indians ('NRIs'), special provisions are available under Chapter XIIA of the Act under sections 115C to 115I for taxability of Investment Income and Long-term capital gains from foreign exchange assets on gross basis i.e. without deduction of expenses and no deduction under Chapter VIA of the Act. Detailed discussions are covered in Paragraph 3 here in below.

2.1.4 Income from Other Sources: In case of income of non-resident from other sources (i.e. not being investment income eligible for taxation under Chapter XIIA), normal computation procedure under sections 56 to 59 is applicable. Detailed discussions are covered in Paragraph 3 here in below.

3. Computation of Income under different heads of Income:

A non-resident can receive Income in India under one of the following five heads:

3.1. Income from Salary

i. Salary includes wages, annuity, pension, gratuity, perquisites, fees, commission, profits in lieu of salary, any advance of salary, leave encashment salary, annual accretion to the balance at the credit of an employee participating in a recognised provident fund, contribution made by the Central Government or any other employer to the account of an employee under a pension scheme referred to in section 80CCD

ii. A non-resident is taxed on salary received in India or salary for service provided/rendered in India.

E.g.: if a person (US resident) comes to India on a trip and takes up a part time job in an Indian company the person will be liable to tax in India for the services rendered in India and will be liable to tax the same income in USA since he is a resident of USA.

In such cases the person may resort to the provisions of DTAA to avoid double taxation.

iii. In case of a citizen of India, salary paid by the Government of India for services rendered outside India will be taxable in India

iv. Tax on Salary will be deducted at the rates in force

3.2. Income from House Property

i. Income derived from immovable property located in India will be taxable in India. The calculation of such income shall be in the same manner as for a resident.

ii. A non-resident, like resident is allowed

a. A standard deduction of 30%
b. To deduct property taxes
c. To take benefit of interest deduction if there is a home loan, and
d. To claim principal repayment of loan as deduction under section 80C. Also stamp duty and registration charges paid on purchase of a property can also be claimed under section 80C

iii. It is important to note that even if the income is received directly into the non-residents account outside India or in his NRE account, still the income would be liable to tax in India as the source of income i.e. the property is situated in India.

iv. Any payment made to a Non-resident will be subject to deduction of tax at source based on the nature of income. Since, payment of rent to non -resident is not covered under the particular section, TDS will be deducted u/s 195 @31.2% (including cess) on such payment made to non-resident.

3.3. Income from Business

i. Any income earned by a non-resident from a business controlled or set up in India will be taxed in India under the head of business income. Section 28 to Section 44C will be applicable to compute taxable income of non-resident in India
ii. We will explore income from business of non-resident in detail in the next article

3.4. Income from Capital Gains

i. Any capital gain arising on transfer of capital asset situated in India shall be taxable in India. Capital Gains on investments in India in shares, securities shall also be taxable in India. E.g.: if a non-resident sells an immovable property situated in India to another non-resident outside India, such a transaction will be taxable in India because the asset is located in India

ii. "capital asset" means—

a. Property of any kind held by an assessee, whether or not connected with his business or profession;

b. any securities held by a Foreign Institutional Investor which has invested in such securities in accordance with the regulations made under the Securities and Exchange Board of India Act, 1992 (15 of 1992)

However, the term 'capital asset' shall exclude the following:

a. Stock-in-trade, consumable stores, raw materials held for the purpose of business or profession;
b. Movable property held for personal use of taxpayer or for any member of his family dependent upon him. However, jewellery, costly stones, and ornaments made of silver, gold, platinum or any other precious metal, archaeological collections, drawings, paintings, sculptures or any work of art shall be considered as capital asset even if used for personal purposes;
c. Specified Gold Bonds and Special Bearer Bonds;
d. Agricultural Land in India, not being a land situated:

    i. Within jurisdiction of municipality, notified area committee, town area committee, cantonment board and which has a population not less than 10,000;
    ii. Within range of following distance measured aerially from the local limits of any municipality or cantonment board:
        - not being more than 2 KMs, if population of such area is more than 10,000 but not exceeding 1 lakh;
        - not being more than 6 KMs , if population of such area is more than 1 lakh but not exceeding 10 lakhs; or
        - not being more than 8 KMs , if population of such area is more than 10 lakhs.

e. Deposit certificates issued under the Gold Monetisation Scheme, 2015

iii. Income chargeable under Capital Gains due to transfer of asset shall be reduced by deducting the following:
    a. Expenditure incurred wholly and exclusively in connection with such transfer
    b. The cost of acquisition of the asset and cost of improvement

iv. In case of a non-resident, capital gains arising from the transfer of a capital asset being shares, or debentures of, an Indian company shall be computed by converting the cost of acquisition, expenditure incurred in connection with such transfer and the full value of the consideration received or accruing as a result of such transfer into the same foreign currency as was initially utilised in the purchase of the shares or debentures, and the capital gains so computed in such foreign currency shall be reconverted into Indian currency. This should also apply for every reinvestment thereafter in, and sale of, shares in, or debentures of, an Indian company

v. Long-term capital assets are those held for over 36 months preceding the date of transfer. Immovable property or unlisted shares of an Indian company are classified as long-term capital assets if they are held for more than 24 months, else the same are treated as short term. Listed equity shares or units of equity-oriented funds are classified as long-term capital assets only if they are held for more than 12 months.

vi. Tax Rates in case of Capital Gains:

a. Long term Capital Gain (LTCG) on transfer of listed shares or units of equity-oriented mutual funds are taxed @ 10% (without indexation or adjustment of forex fluctuation), if such gains are over Rs. 1 lakh in a financial year and Securities Transaction Tax (STT) has been paid and short term capital gains on the same is @ 15%.

b. LTCG on transfer of immovable properties is @20% (after indexation benefit) and STCG on transfer of immovable property or unlisted shares is as per the slab rate

c. LTCG on unlisted shares/debentures/securities is @10%

d. All the above rates is increased by Surcharge and Cess

It may be noted that in case of Non Resident , Initial threshold of the Income which is not chargeable to tax is not considered and even if Income from capital gains is lower than the threshold amount tax will still be levied on the amount of the capital Gains.

vii. Like residents, even Non-Resident Indians are allowed to claim exemptions under section 54, section 54EC and section 54F on long-term capital gains from sale of a house property. The long-term capital gain can be invested as under

<table>
<tr><th>Section</th><th>Asset sold/ transferred</th><th>Asset to be invested in</th><th>Time period for Investment</th><th>Quantum of exemption</th></tr>
<tr><td>54</td><td>• Residential House Property</td><td rowspan="2">• Residential House Property in India</td><td rowspan="2">• within one year before the date of transfer
• purchased after 2 years from the date of transfer
• constructed within 3 years from the date of sale
• The new asset cannot be sold or transferred before the end of 3 years.</td><td>• if the entire capital gain is invested into new asset, the capital gain will be fully exempted.
• If partial capital gain is invested, then capital gain not invested will be charged to long-term capital gain tax.</td></tr>
<tr><td>54F</td><td>• Capital asset other than house property

Note:
i. one should not own more than one residential house property at the time of transfer of the capital asset. Or</td><td>• To claim full exemption, entire sale proceeds should be invested in new asset.
• In case of partial investment of sale proceeds, the exemption would be:</td></tr>
</table>

	ii. purchase any residential house, other than the new asset, within a period of one year after the date of transfer of the original asset; OR iii. construct any residential house, other than the new asset, within a period of three years after the date of transfer of the original asset			Cost of the new house x Capital Gains Sale Receipts
54EC	• Capital asset being land or building or both	• Bonds of National Highway Authority of India (NHAI) or Rural Electrification Corporation (REC)	• The gain from transfer of asset should be invested within 6 months into these bonds. • The maximum amount that can be invested is Rs.50 Lakhs. • The new asset cannot be converted or transferred before the end of 3 years.	• Amount invested out of capital gain; or • Rs.50 Lakhs; Whichever is lower

3.5. Income from Other Sources

i. Indian sourced income in the form of interest on fixed deposits and saving accounts is taxable in India. Interest received on NRE account is tax free, whereas interest received on NRO account is fully taxable.

ii. Winnings from lotteries, crossword puzzles, races including horse races, card game and other game of any sort, gambling or betting of any form whatsoever, are always taxed under this head.

iii. Where any person receives, in any previous year, from any person or persons on or after the 1st day of April, 2017-

   a. Immovable Property, Movable Property or Cash Received as Gift Without Consideration or for Inadequate Consideration, provided the gift value exceeds Rs 50,000

   b. Clause a. shall not apply to any sum of money or any property received—

      (I) from any relative; or

      (II) on the occasion of the marriage of the individual; or

(III) under a will or by way of inheritance; or

(IV) in contemplation of death of the payer or donor, as the case may be; or

iv. Tax is deducted as per the slab rate under section 195

4. **Deductions under Chapter VI – A**

Following are the Deductions permitted to Non Residents under Chapter VI-A

4.1. Under 80 C up to Rs 1,50,000

i. Life insurance premium payment: The policy must be in the NRI's name or in the name of their spouse or any child's name.

ii. Children's tuition fee payment: Tuition fees paid to any school, college, university or other educational institution situated within India for the purpose of full-time education of any two children.

iii. Principal repayments on loan for the purchase of a house property: Deduction is allowed for repayment of loan taken for buying or constructing residential house property. Also allowed for stamp duty, registration fees and other expenses for purpose of transfer of such property to the NRI. Also, deduction towards property tax paid and interest on home loan deduction is also allowed

iv. Unit-linked insurance plan (ULIPS): ULIPS is sold with life insurance cover for deduction under Section 80C.

v. Investments in ELSS: ELSS has been the most preferred option in recent years as it allows you to claim a deduction under Section 80C upto Rs 1.5 lakhs, it offers the deduction benefit to taxpayers and simultaneously offers an excellent opportunity to earn as these funds invest primarily in the equity market in a diversified manner.

4.2. Under Section 80D

NRIs are allowed to claim a deduction for premium paid for health insurance.

Particulars	**Self, family, children**	**Parents**	**Deduction under 80D (Rs)**
Individual and parents below 60 years	25,000	25,000	50,000
Individual and family below 60 years but parents above 60 years	25,000	50,000	75,000
Both individual, family and parents above 60 years	50,000	50,000	1,00,000

4.3. Under Section 80E

Deduction is available to NRI in respect of interest on loan taken for higher education paid for self, spouse, children or student for whom NRI is a legal guardian.

4.4. Under Section 80G

Deduction is available to NRI for eligible donations.

4.5. Under Section 80 TTA

Deduction is available to NRI by way of interest on deposits (not being time deposits) in a savings account with a banking company, co-operative society or post office upto Rs.10,000.

5. <u>Exemptions to Non Residents</u>

Following are the illustrative list of exemptions permitted to Non-Residents under Section 10

i. Interest and Premium on Redemption on such securities or bonds as the Central Government may, by notification in the Official Gazette – Sec 10(4)(i)
ii. Interest on NRE Deposit u/s. 10(4)(ii) (Please note exemption u/s 10(4) is permitted for NRI under FEMA so one can avail this exemption even if the person is resident under income tax but NRI under FEMA)
iii. In case of an individual not a citizen of India Remuneration received by Foreign Diplomats/Consulate and their staff (Subject to conditions) –Sec 10(6)(ii)
iv. In case of an individual not a citizen of India, remuneration received by him as an employee of a foreign enterprise for services rendered by him during his stay in India –Sec 10(6)(vi)
v. Income chargeable under the head "Salaries" received by or due to any such individual being a non-resident as remuneration for services rendered in connection with his employment on a foreign ship where his total stay in India does not exceed in the aggregate a period of ninety days in the previous year – Sec 10(6)(viii)
vi. Fees earned by a consultant under section 10(8A)
vii. Income by way of interest, premium on redemption or other payment on such securities, bonds, annuity certificates, savings certificates, other certificates issued by the Central Government and deposits, subject to such conditions – Sec 10(15)
viii. Any income arising from the transfer of a capital asset, being a unit of the Unit Scheme, 1964 referred to in Schedule I to the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002 (58 of 2002) and where the transfer of such asset takes place on or after the 1st day of April, 2002 – Sec 10(33)
ix. Any income received in respect of units of Mutual Funds - Sec.10(35)
x. Long term capital gains on Equity shares and Units of Equity oriented Mutual Funds on which STT is paid [S. 10(38)] upto Rs. 1 lac
xi. Income earned from any international sporting event held in India – Sec. 10(39)
xii. Profits from units in FTZ/SEZ or an undertaking as EOU u/s. 10A, 10AA & 10B

6. <u>Special Tax Provisions for Non-Residents</u>

Sections 115A to 115AD prescribes tax rates for various types of investment income of different non-resident entities. However, if the non-resident is covered by a particular DTAA, he may apply the rates prescribed under that DTAA, if beneficial, without any surcharge and education cess.

6.1. Non-Residents in respect of income from dividend, interest, units of Mutual Funds, Royalties & Fees for Technical Services as provided in Sec 115 A, received from Government or Indian concern. Income tax is payable on income derived by non-resident by way of:

i. Dividend other than dividends referred to in section 115-O – tax to be deducted @ 20%
ii. Income received in respect of units, purchased in foreign currency, of a Mutual Fund specified under clause (23D) of section 10 or of the Unit Trust of India - tax to be deducted @ 20%

iii. Interest received from Government or an Indian concern on monies borrowed or debt incurred in foreign currency – 20%

iv. Interest received from an infrastructure debt fund referred to in clause (47) of section 10 – tax to be deducted @ 5%

v. Interest income payable by a Specified Company (i.e. an Indian Company) or business trust to a non-resident/foreign company is liable to deduct income-tax @5%. This section is applicable if interest is paid or payable by the specified company or the business trust.

   a. In respect of monies borrowed in foreign currency from a source outside India –

   - Under a loan agreement (at any time on or after 1st July, 2012 and 1st July, 2023) or
   - By way of issue of long-term infrastructure bonds (at any time on or after July 1, 2012 but before October 1, 2014) or
   - By way of issue of long-term bonds including long-term infrastructure bonds (at any time on or after October 1, 2014 but before July 1, 2023) or

   b. In respect of monies borrowed by it from a source outside India by way of issue of rupee denominated bond before the 1st day of July, 2023

   c. In respect of monies borrowed by it from a source outside India by way of issue of any long-term bond or rupee denominated bond on or after the 1st day of April, 2020 but before the 1st day of July, 2023, which is listed only on a recognised stock exchange located in any International Financial Services Centre – Income tax deducted shall be deducted at the rate of four percent and

   d. To the extent to which such interest does not exceed the amount of interest calculated at the rate approved by the Central Government in this behalf, having regard to the terms of the loan or the bond and its repayment. (Sec. 194LC)

vi. Interest paid to a Foreign Institutional Investor or Qualified Financial Investor on or after June 1, 2013 but before July 1, 2023 on account of investment made by them in Rupee denominated bonds of Indian currency or Government securities, will be liable to tax @ 5%, (Sec. 194LD)

vii. Income by way of interest received by the business trust from SPV is not taxable in the hands of the trust. [Sec 10(23FC)]. However, when such interest is distributed by business trust to unit holders, who are NR or foreign company, withholding tax @5% shall be applicable. (Sec 194LBA)

viii. Any income by way of royalty or fees for technical services (other than income received by such non-resident (not being a company) or a foreign company carries on business in India through a permanent establishment, or performs professional services from a fixed place of profession situated therein, and the royalties or fees for technical services are paid is effectively connected with such permanent establishment or fixed place of profession) from Government or an Indian concern in pursuance of an agreement made by the foreign company with Government or the Indian concern after the 31st day of March, 1976, and where such agreement is with an Indian concern, the agreement is approved by the Central Government or where it relates to a matter included in the industrial policy, for the time being in force, of the

Government of India, the agreement is in accordance with that policy – tax to be deducted at the rate of 10% for income by way of royalty or fees for technical services.

6.2. Provisions applicable in case income only comprises of Income under sec 115A

i. No deductions under chapter VI A is will be permitted for incomes taxed under section 115A, other than income by way of Royalty and fees for Technical Services
ii. No deduction in respect of any expenditure or allowance shall be allowed to the assessee under sections 28 to 44C and section 57 in computing his or its income referred in clause 4.1.
iii. No Return of Income is required to be filed in case income only consists of dividend, interest, income from units of MFS, Royalty and Fees for Technical Services and TDS has been deducted as per Income Tax Act
iv. The above rates will be increased by the applicable surcharge and cess

6.3. Sec 115 AB: Tax on overseas financial organisation (approved by SEBI) in respect of income received in respect of units purchased in foreign currency or income received by way of long-term capital gains arising on sale/ repurchase of units of mutual fund/ UTI purchased in foreign currency is 10%

6.4. Sec 115 AC: Tax on non-resident in respect of interest on bonds of an Indian company issued in accordance with Central Government notification, on bonds of a public sector company sold by the Government, and purchased in foreign currency; dividends (other than dividends referred to in section 115-O) on Global Depository Receipts and long-term capital gains on sale of such bonds/Global Depository Receipts is 10%

6.5. Sec 115AD: Tax on income of Foreign Institutional Investors (FII) from securities or capital gains arising from their transfer

i. Tax on Income (other than income by way of dividends referred to in section 115-O] received in respect of securities (other than units referred to in section 115AB) – 20% in case of a FII and 10% in case of a specified fund.
   "specified fund" means a fund established or incorporated in India in the form of a trust or a company or a limited liability partnership or a body corporate,—
   a. which has been granted a certificate of registration as a Category III Alternative Investment Fund and is regulated under the Securities and Exchange Board of India (Alternative Investment Fund) Regulations, 2012, made under the Securities and Exchange Board of India Act, 1992 (15 of 1992);
   b. which is located in any International Financial Services Centre;
   c. of which all the units are held by non-residents other than unit held by a sponsor or manager;
ii. Short term Capital Gains (STCG) on transfer of the above mentioned securities is 30%. STCG under Sec 115A will be taxed at 15%
iii. Long Term Capital Gains (LTCG) on transfer of the above mentioned securities is 10%
iv. No deduction in respect of any expenditure or allowance shall be allowed to the assessee under sections 28 to 44C and section 57 or under chapter Vl A in computing his income referred in clause 4.5.

7. Tax Deducted at Source – Sec 195

i. Any person responsible for paying any sum other than salary to a non- resident, not being a company or a foreign company 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

ii. Rates in force means Rates as per Finance Act or Double Taxation Avoidance Agreement , whichever is more beneficial (Section 2(37A))

iii. Section 195 uses a special phrase “any other sum chargeable under the provisions of this Act” unlike other provisions in Chapter XVII (TDS provisions

iv. Sum which are not at all chargeable to tax in India (under the Act or the Treaty) shall continue to remain outside the ambit of section 195

v. In case income is embedded in the payment, TDS should be deducted on the gross amount unless an order/certificate permitting lower/nil withholding of tax is obtained

vi. An application can be made by the payer to the AO, if he believes that payment made to Non Resident is not fully chargeable to tax in India in his hands. Certificate may be issued by AO to deduct tax at nil or lower tax rate. However, once sum is ascertained to be even partially chargeable to tax in India, tax is required to be withheld at full rates on grounds of conservatism

vii. Payee may also make an application to AO for non-withholding of tax at source, subject to following conditions (mentioned in Rule 29B):
    a. Assessee has been regularly assessed to tax and has filed all returns of income due as on the date of filing of application;
    b. Not defaulted in respect of any tax interest, penalty, fine, or any other sum;
    c. Not subjected to penalty u/s 271(1)(iii);
    d. Carrying on business in India continuously for at least five years and the value of the fixed assets in India exceeds Rs 50 lakhs

viii. Form 15 CA and 15 CB
    a. Any person (resident /non-resident/ domestic company/foreign company) making a payment to a non-resident must furnish form 15 CA containing the information relating to payment of such sum
    b. If the remittance exceeds Rs 5lakhs, a certificate attested by Chartered Accountant in Form 15CB must be furnished along with form 15 CA
    c. Form 15CB is not required to be furnished If the remittance is not taxable
    d. Form 15 CA and 15CB is not required to be furnished for list of payments specified in Rule 37BB of Income Tax Rules.

As provided above Non Residents has an option to apply a beneficial provisions of the tax Treaty if they find it more beneficial.

8. <u>Mandatory quoting of PAN – Section 206AA</u>

i. Section 206AA provides that where the taxpayer does not furnish its PAN to the person responsible for withholding of tax, tax shall be deducted at source at higher of the following rates:

a. at the rate specified in the relevant provision of this Act; or
b. at the rate or rates in force; or
c. at the rate of 20%.

ii. However, the provisions of section 206AA shall not apply to a non-resident, not being a company, or to a foreign company, in respect of—

a. payment of interest on long-term bonds as referred to in section 194LC; and
b. any other payment subject to such conditions as may be prescribed.

iii. As per Rule 37BC, if deductee is a non-resident or a foreign company, he is not required to furnish his PAN to the deductor if he is in receipt of following income:

a. Interest
b. Royalty
c. Fees for technical services
d. Payments for transfer of any capital asset.

9. <u>Filing of Income Tax Return for Non-Residents</u>

i. A non-resident who earns more than Rs. 2,50,000 in a Financial Year is liable to e-file income tax return in India before the due date.

ii. Non Residents must file income tax returns for the following reasons:
   a. Claim Refunds
   b. Carry forward a loss
   c. There is some evidence of the cost or property

iii. The relaxation of not filing of Return of Income is available to Non-Residents only in respect of Dividend Income , Interest Income , Royalty and FTS on which tax has been deducted [Sec. 115A(5)]

iv. In case of a Non Resident Indian whose total income consists of only investment income or LTCG or both & TDS has been deducted on such income [Section 115G (Chapter XII-A)] then no return needs to be filed

v. Non Residents with tax liability exceeding INR 10,000 in a financial year, are required to pay advance tax. If advance tax payments are missed in a year than interest need to be paid for that as mentioned under Section 234B and Section 234C.

10. <u>Rates of Tax Applicable to Non-residents</u>

10.1. The Income Tax Rates in case of Non Resident Individuals is as follows:

Particulars	**Tax Rate**
Total Income greater than INR 2,50,000	Nil
Total Income is greater than INR 2,50,000 but less than INR 5,00,000	5% of the amount by which the total income exceeds INR 2,50,000;
Total Income greater than INR 5,00,000 but less than INR 10,00,000	INR 12,500 plus 20% of the amount by which the total income exceeds INR 5,00,000
Total Income greater than INR 10,00,000	INR 1, 12,500 plus 30% of the amount by which the total income exceeds INR 10, 00,000.

** The above rates will be increased by surcharge (if applicable) and Cess @ 4% (on income tax + surcharge)

Non Residents cannot avail different exemption limits on basis of gender or age as the Residents can avail

Optional regime of taxation as per Sec 115 BAC without certain deduction has a lower tax Slab rate is also available to Non Residents.

10.2. Income Tax Rate on income of entities other than individual

Entity	Tax Rate
LLP or Partnership Firm	30%
Foreign company	40%

****** The above rates will be increased by surcharge (if applicable) and Cess @ 4% (on income tax + surcharge)

10.3. Surcharge

Particulars	Income above INR 50lakhs to INR 1crore *	Income above INR 1crore to INR 2crore and above 2 crore not included under the 15% and 25% rates *	Income above INR 2 crore to INR 5 crore #	Income above INR 5 crore #
In case of an Individual	10% of Income Tax	15% of Income Tax	25% of Income Tax	37% of Income Tax

* including the income under the provisions of section 111A and section 112A of the Income-tax Act
\# excluding the income under the provisions of section 111A and section 112A of the Income-tax Act

Particulars	Income above INR 1 crore to INR 10 crore	Income above INR 10 crore
In Case of a Firm/LLP	12% of Income Tax	12% of Income Tax
In case of a Foreign Company	2% of Income Tax	5% of Income Tax

10.4. Minimum Alternate Tax

As per Explanation 4 of Section 115JB Mat Provision does not apply to Foreign companies if;

i. The foreign company is a Resident of a country with which India has a DTAA & such foreign company does not have a Permanent Establishment in India as defined in DTAA; or
ii. The foreign company is a Resident of a country with which India does NOT have a DTAA & such foreign company is not required to seek registration under Section 592 of the Companies Act 1956 or section 380 of the Companies Act 2013

11. **Tax Computation :** Nature of Income will be aggregated as per the scheduler System to arrive at a Total Income
With available deduction under each heads of Income to arrive at a Gross Total Income Deduction of Chapter VIA will be available from the Gross total Income giving rise to Net Income liable to Tax at a special Rate as well as at a normal rates of Taxation.

Nature of the Income may give rise to various issues of Interpretation as to it's characterisation and hence rates of taxes. There may be income from securities and

Properties treated as Business Income and Income accrued or not based on the method of Accounting.
Issues could arise as to attribution of the Income when all the operations are not carried out in India
This may further give rise to a question as to which article of the Tax Treaty will be applicable to consider the beneficial Provisions of the Tax Treaty.

Income then will be divided to arrive at a Tax amount as income liable to special rates of Tax as well as normal Rates of Tax or the rates of the taxation provided in the Tax Treaty.

12. Conclusion: The article is focussed to provide the broad overview of the provisions of the computation of the Income which is similar to the computation of Income in case of Resident of India with a distinction as to how it may differ in case of Non Residents.

    Forthcoming articles will provide details of the computation of the Income and the Provisions detailing each character of Income as to it's chargeability to tax and how the provisions of the Treaty ARE Intertwined with the ITA.