

Indian Budget, 2020

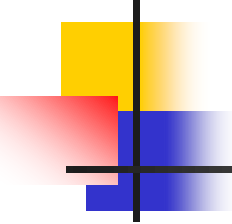
FEMA and Issues in Taxation of Non Residents

JITO (Dubai)
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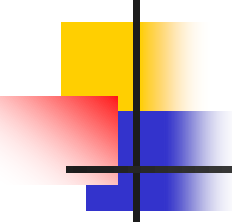
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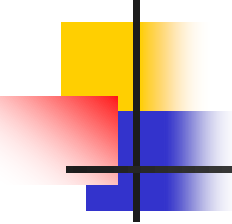
Overview of Presentation

- The Need & Rationale
 - Residential Status under Foreign Exchange Management Act, 1999 (FEMA) and Income Tax Act, 1961 (ITA)
 - Budget 2020 –Proposal amending the Definition of Resident
 - Non Resident Taxation
 - Scope of Total Income & Computation of Income
 - Filing of Return of Income



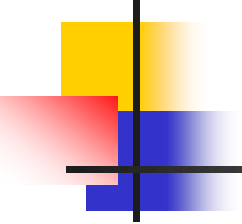
Overview of Presentation

- Vivad se Vishwas Bill, 2020
- Commonly found Non Compliance-FEMA and ITA
- Other incidental Non Compliance-PMLA,PBPT etc
- Exemptions to non-residents
- Wealth Tax & Gift Tax
- Minimum Alternate Tax for foreign company
- Tax Deduction at Source
- Section 195, 197 & 206AA
- Tax Residency Certificate
- Form 15CA/CB



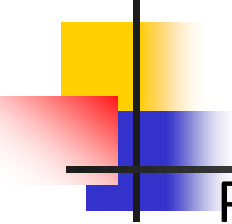
Need and Rationale

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



Definitions

- Section 2(v) of FEMA
- Section 6 of the ITA, 1961
- A Person can be Resident (R) or Non Resident (NR) under both the Acts
- A Person can be Resident under one of the Acts & Non Resident under the another
- Illustration



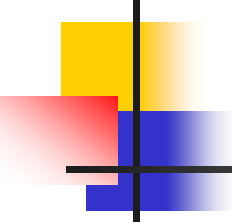
Residential Status under FEMA

Person Resident in India (PRII) means

- A person residing in India for more than 182 days in the preceding previous financial year but does not include
 - A person who has gone out of India or who stays outside India in either case for specified purposes
 - A person who come to or stays in India in either case otherwise than for the specified purposes

* Specified purposes: Employment or business or intention to stay for uncertain period

- Other Person are treated as residents on the basis of their incorporation or registration
- An Office, Branch or Agency in India owned & controlled by a PROI
- An Office, Branch or Agency outside India owned & controlled by a PRII



Determination of Residential Status

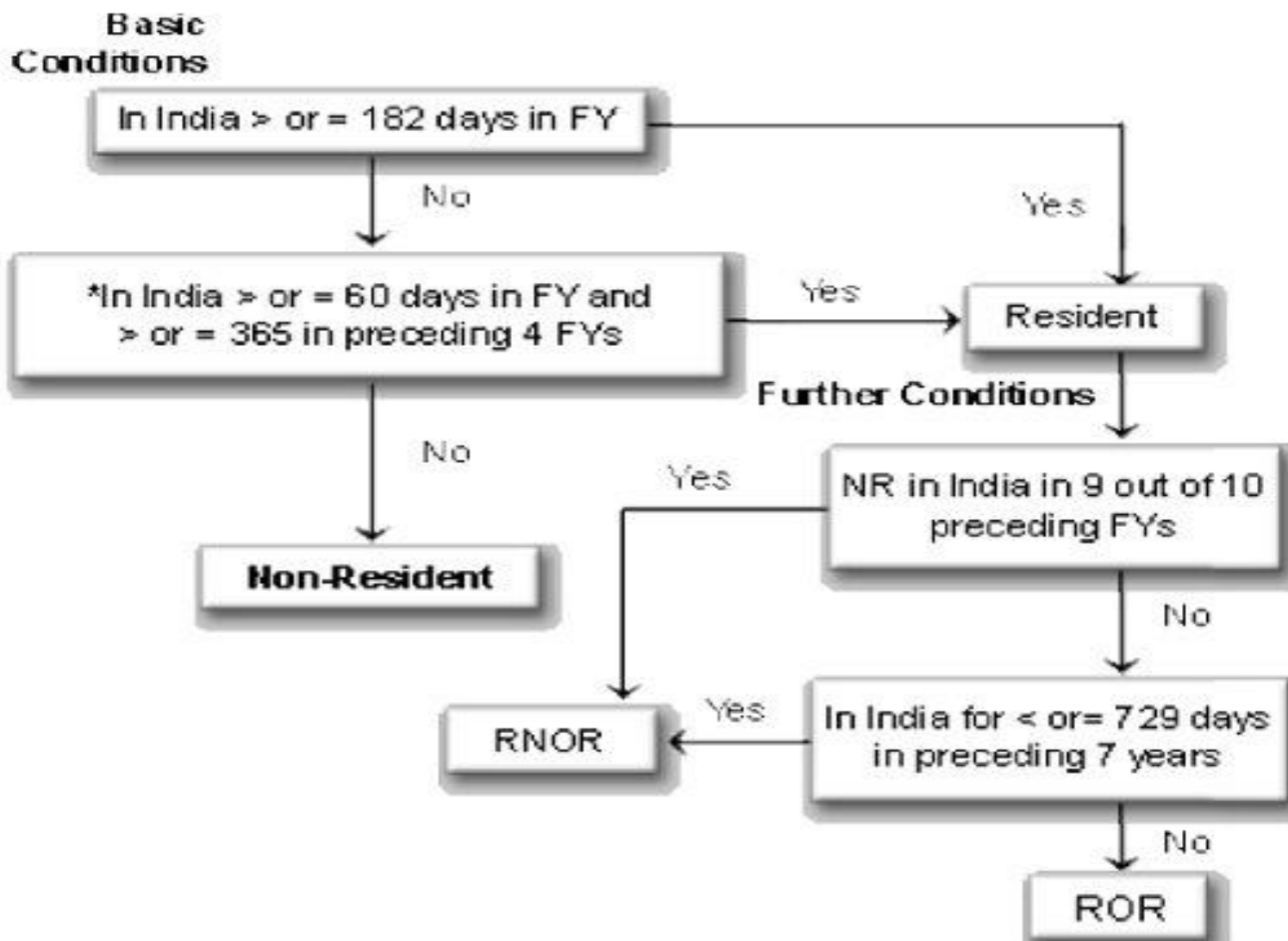
What is his residential status under ITA & FEMA in F.Y 19-20 in the following cases

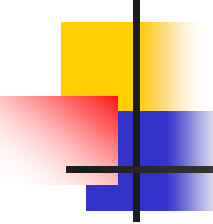
- Case 1 - Mr. A, an Indian citizen, leaves India on 26th September 2019 to take up employment in Dubai.
- Case 2 - Mr. T, an Indian citizen & Managing Director of Global Pharma Co., visits various countries for aggregate of 190 days during the F.Y. 2018-19, in connection of his export business from India. He stays for less than 182 days in India.
- Case – 3 Mr. S, a Non Resident, research scholar of USA arrives in India for permanent settlement on 10th October 2019. He has never visited in India in last five years before his arrival

Residential Status under ITA

- For Individuals

Status	Conditions	Avg Stay in India
Resident [S 6(1)(a)]	Present in India for at least 182 days in the previous year	
Resident [S 6(1)(c)]	Present in India for at least 60 days in the previous year AND at least 365 days in the 4 years preceding the previous year	92 days in a year for 4 years
Resident but not Ordinary Resident [S 6(6)(a)]	Present in India for less than 729 days during the preceding seven years OR who was a non resident in nine out of ten preceding previous years <i>(not a Resident v Non Resident)</i>	104 days in a year for 7 years
Non Resident	One who does not satisfy the above conditions	





Residential Status under ITA

- Explanation to Section 6(1)

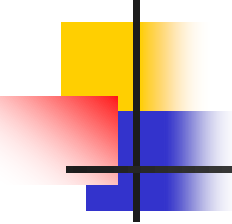
Explanation 1

- (a) Individual – Citizen of India – leaves India in P.Y – for purpose of employment outside India – or as a member of crew of Indian Ship, then 60 days would be substituted by 182 days in section 6(1)(c);
- (b) Individual - Citizen of India or a person of Indian origin - who being outside India - comes on a 'visit' to India in P.Y - then 60 days would be substituted by 182 days in section 6(1)(c).

Non Resident Indian (NRI) as defined u/s 115C (e) means an individual who is a Non Resident and an Indian Citizen or a Person of Indian Origin (PIO). A PIO means a person who himself, or either of his parents, or either of his grandparents, were born in undivided India.

Explanation 2 (w.e.f 01.04.2015)

-Individual – Citizen of India – Member of crew of foreign bound ship leaving India – period of stay in India – manner as may be prescribed
(Notification 70/2015 dated 17.08.2015 – Rule No. 126)



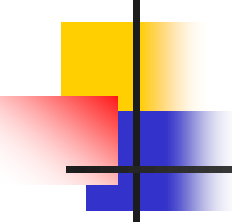
Person leaving India for Employment

1. An Indian employee leaving India in the course of his existing employment on a business visit. He continues to be on the payroll of the Indian company.
NOT ENTITLED to the benefit of the explanation.
2. An Indian employee leaving India on deputation. He continues to be on the payroll of the Indian company
ENTITLED to the benefit of the explanation.
3. An Indian employee leaving India for taking up a new employment with his existing employer; (e.g. on deputation). His payroll is transferred to the payroll of the overseas entity.
ENTITLED to the benefit of the explanation.
4. An Indian employee leaving India for taking up a new employment, with a new employer
ENTITLED to the benefit of the explanation

Residential Status under ITA

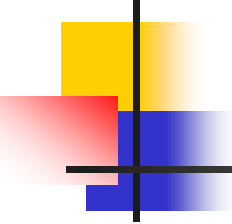
- For Others

Status	Assessee	Conditions
Resident [S 6(2)]	HUF/Firm/AOP	Resident in India EXCEPT where in that year control & management of its affairs is situated wholly outside India
Resident but not Ordinary Resident [S 6(6)(b)]	HUF	Karta/Manager is present in India for less than 729 days during the preceding seven years OR who was a non resident in nine out of ten preceding previous years <i>(not a Resident v Non Resident)</i>
Resident [S 6(3)]	Company	-Indian Company - Control & Management of its affairs is situated wholly in India (upto 31.03.2016) -Place of Effective Management is in India (w.e.f 01.04.2016) <i>(Refer Draft POEM Guidelines dated 23.12.2015)</i>



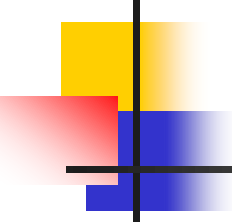
Resident under Income Tax- Budget 2020

- In case of POI and citizens of India (does not apply to foreign citizen of non Indian origin)visiting India the duration of stay in India should be restricted to less than 120 days instead of 182 days, if they were to remain Non residents
- New Insertion of Section 6(1)(A): If a citizen of India is not a tax resident of any other country or territory, then he shall be deemed to be a resident in India in that previous year – (applies only to India citizen)



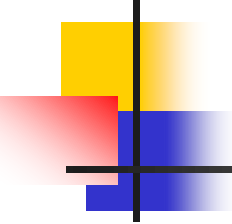
Implication of Change in Defn. of Resident - Budget 2020

- Indian citizen and POI cannot visit India for more than 120 days, else they will be considered as a resident of India, subject to their tax treaty with India
- If a citizen of India is not liable to tax in any country outside India, either by reason of domicile or residence or any other criteria of similar nature then such citizen will be deemed to be a resident in India and consequently their global income will be taxed
- Not ordinarily Resident now requires 7 years of stay out side India out of 10 year, in place of 9 years stay out side India out of 10 years



Implication.....2 – Non Binding Press Release, Budget 2020

- As per the clarification issued in the press release it was stated that the global income of Deemed residents will not be taxed.
- The change of no of days to 120 days instead of 182 days is not intended to tax genuine Non Residents global income even if the stay exceeds 120 days
- The clarification issued in the press release, nullifies the practical significance of the amendments



Calculating No. of Days Stay in India

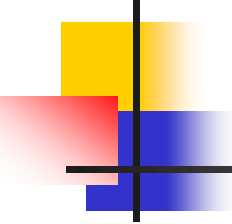
While determining the residential status, the following needs to be kept in mind;

- Date of Travel
- Purpose of travel
- Previous travel record
- Stay period in the year of arrival/departure

While calculating the no. of days of stay in India of an individual;

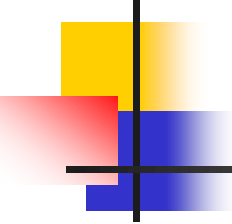
- One must include both, the day of entry in India as well as day of exit from India. *{Petition No. 7 of 1995 225 ITR 462 (AAR)}*
- Both days should be counted as “in India” *{AAR 233 ITR 462}*
- Day of arrival is to be excluded -*Fausta C. Corderio [2012] 53 SOT 522 (Mum ITAT) [Manoj Kumar Reddy v. ITO [2009] 34 SOT 180 (Bang.) wherein reference was made to section 9 of General Clauses Act, the first day in series of days had to be excluded*
- Only day of departure has to be considered as “in India” *{ITO v Dr. R.K Sharma (Jaipur Tribunal No. 1230 dated 22.08.86)}*

A better view is to include both the day of entry as well as exit.



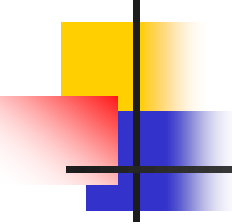
Dividend Distribution Tax - Abolished Sec 115(O)-Budget 2020

- Section 115-O provided for payment of Dividend distribution Tax by Domestic CO.
- It is proposed that no dividend distribution tax shall be paid on the dividend declared, distributed or paid after 31st March 2020
- Classical System Introduced
- Post amendment, dividend paid by domestic companies will now be taxed in the hands of the recipient, FCO receiving dividend may be benefited,
- Inter company dividend will be subject to deduction now in the hands of recipient company but Dividend paid out of FCO dividend not covered
- There could be additional tax by way of MAT on company receiving Dividend



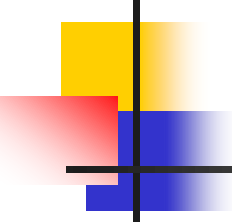
FEMA & ITA - Purpose

- Taxation in India – Purpose under ITA
- Permissibility of a transaction in case of NR/R under FEMA and Taxation in India under ITA
- Duration of the Residential Status
- Current & Capital Account Transactions under FEMA
- Tax law can determine residential status on last day but FEMA can decide on a daily basis



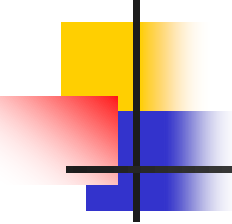
Non Resident Taxation

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



Scope of Taxation

- In case of Non Resident
 - Income received or deemed to be received in India (irrespective of accrual)
 - Income accrues or arises in India or deemed to accrue or arise in India is chargeable to tax u/s 5(2)(a) & 5(2)(b) respectively
- Concept of “Receipt”, “Accrues or arises” and “deemed to Accrue or arise”
 - Performing Right Society Ltd. Vs CIT 106 ITR 11 (SC): Place of signing the agreement is not relevant for accrual

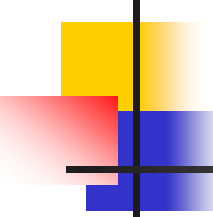


Income deemed to accrue or arise

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

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

Section	Nature of Income	Description / Source Rule
9(1)(i)	Business Income	Income from a business connection in India or through or from any property or capital asset or source of income or transfer of capital asset situated in India
9(1)(ii)	Salaries	Salaries for services rendered in India
9(1)(iii)	Salaries	Salaries by Govt. to Indian citizen for services outside India
9(1)(iv)	Dividend	Dividend paid by an Indian company outside India (now exempt)
9(1)(v)	Interest	Interest by Govt. or by a resident (unless for the purposes of a business or source outside India)
9(1)(vi)	Royalty	Royalty by Govt. or a resident (unless for the purposes of a business or source of Income outside India)
9(1)(vii)	FTS	Fees for Technical Services by Govt. or a resident (unless for a business or source outside India)
9(1)(viii)	Gift	Income arising outside India, being any sum of money referred to in section 2(24)(x) r.w.s 56(2)(viia) to 56(2)(x)

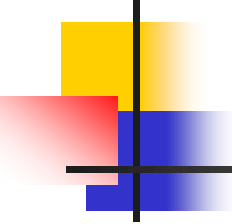


Taxation of Non Residents – Computation of Income

Business Connection Test: R. D. Aggarwal's case [56 ITR 20 (SC)](Sec 9(1)(i))

- Rule 10 of ITA, proportionate method a guess work, No. of HC and SC's decision.
- Expanded meaning of Business Connection-Presence of Agent
- Exclusions u/s. 9(1) & Articles 5 & 7 of the DTAA on narrower attribution in the Act.
- Under the Treaty, income is taxed only if NR has PE in India as per the attribution rules of Article 7 subject to S.44 C of ITA
- Business Connection: Acting on behalf of Non Resident (Explanation 2 to section 9 w.e.f 01.04.2019)
- Significant Economic Presence Test (**Explanation 2A amended to section 9 w.e.f 01.04.2022 and old 2A deleted w.e.f 1.04.2021**)
- Section 9(1)(ii)
 - Salary income if it is earned in India
 - S. 10(6)(vi), S. 16 & 17 of ITA read with Article 16 of DTAA
- Section 9(1)(iii)
 - Salary income payable by the Government to a citizen of India for services outside India read with Article 19 of DTAA on Government services

Section 9(1)(i) – Business Connection Concluding Contracts

- 
- W.e.f 01.04.2019 as per Explanation 2 to Section 9 has been amended to define business connection to include business activity carried out through a person who, acting on behalf of the non-resident;
 - who habitually exercises in India authority to conclude contracts on behalf of the non-resident where the contracts are
 - (i) in the name of the non-resident; or
 - (ii) for the transfer of the ownership of, or for the granting of the right to use, property owned by that non-resident or that non-resident has the right to use; or
 - (iii) for the provision of services by the non-resident; or

Section 9(1)(i) – Business Connection Economic Presence

- W.e.f 01.04.2019 as per Explanation 2A to Section 9 has been introduced wherein it is clarified that significant economic presence of a NR in India shall constitute Business Connection;
- "significant economic presence" (SEP) shall mean—
 - (a) transaction in respect of any goods, services or property carried out by a non-resident in India including provision of download of data or software in India, if the aggregate of payments arising from such transaction or transactions during the previous year exceeds such amount as may be prescribed; or
 - (b) systematic and continuous soliciting of business activities or engaging in interaction with such number of users as may be prescribed, in India through digital means:

Provided that the transactions or activities shall constitute significant economic presence in India, whether or not -

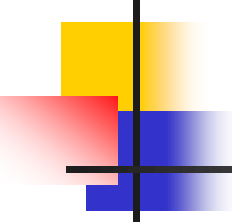
- (i) the agreement for such transactions or activities is entered in India; or
- (ii) the non-resident has a residence or place of business in India; or
- (iii) the non-resident renders services in India:



Expansion of BC –SEP Budget 2020

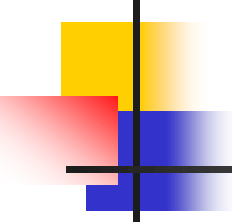
Significant economic presence (SEP) of a non-resident in India shall constitute "business connection" in India and "significant economic presence" for this purpose, shall mean—

- (a) transaction in respect of any goods, services or property carried out by a non-resident **with any person** in India including provision of download of data or software in India, if the aggregate of payments arising from such transaction or transactions during the previous year exceeds such amount as may be prescribed; or
- (b) systematic and continuous soliciting of business activities or engaging in interaction with such number of users as may be prescribed, in India **through-digital means**
- Provided that the transactions or activities shall constitute significant economic presence in India, whether or not,—
 - (i) the agreement for such transactions or activities is entered in India; or
 - (ii) the non-resident has a residence or place of business in India; or
 - (iii) the non-resident renders services in India



Expansion of BC.....Budget 2020

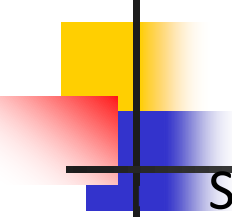
- New Insertion, Explanation 3A: Income attributable to the operations carried out in India, as referred to in Explanation 1, shall include income from—
- Advertisement targeted to a customer who resides in India or a customer who accesses the advertisement through internet protocol address located in India;
- sale of data collected from a person who resides in India or from a person who uses internet protocol address located in India; and
- sale of goods or services using data collected from a person who resides in India or from a person who uses internet protocol address located in India”



Taxation of Non Residents – Computation of Income

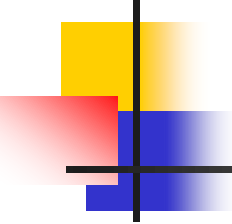
- Section 9(1)(iv)
 - A dividend paid by Indian company outside India
 - Exempt under ITA u/s. 10(34) (to the extent of Rs. 10 lacs but not applicable to Non-Residents), Article 10 of DTAA may reduce tax on dividend as and when applicable. Tax credit of DDT in COR
- Section 9(1)(v) – Source rule for interest:
Definition Of Interest S.2(28A) and Art 11 of Art.11
 - Income by way of interest payable by (a) Government, (b) Resident, (c) Non Resident
 - Provisions of Article 11 of DTAA may reduce the burden of taxation on interest income of the Non Resident

Definition: Royalty – S.9(1)(vi)



S 9 (1)(vi): Royalty: Consideration for the transfer of all or any rights (including the granting of a license) and information, use and imparting of skill, use of equipment, copy rights and services as defined

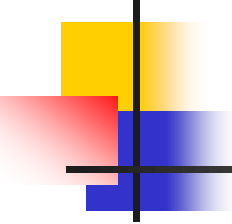
- Therefore, Income by way of 'royalty' payable by a person who is a resident of India is deemed to accrue or arise in India (except when the royalty is payable in respect of any right, property or information used or services utilized for the purposes of a business or profession carried on by such person outside India or for the purposes of making or earning any income from any source outside India)
- Consideration for transfer of rights (including granting of a license) in respect of a trade mark or similar property or for use of a trademark or transfer of rights (including granting of a license) in respect of any copyright, literary, artistic or scientific work, falls under the definition of 'Royalty' under the IT Act



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

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

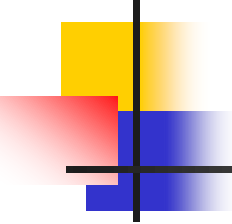
[Explanation 2 to Section 9(1)(vii)]



Source Rule - Royalty

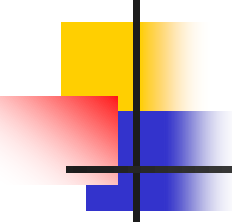
- As per S.9(1)(vi), income by way of royalty payable by
 - (a) the Government ; or
 - (b) a person who is a resident, except where the royalty is payable in respect of any right, property or information used or services utilized for the purposes of a business or profession carried on by such person outside India or for the purposes of making or earning any income from any source outside India ; or
 - (c) a person who is a non-resident, where the royalty is payable in respect of any right, property or information used or services utilized for the purposes of a business or profession carried on by such person in India or for the purposes of making or earning any income from any source in India

Explanation 2 defines the Royalty-Clause (v) amended to remove the exclusion of the **Cinematographic Films from the Defn of Royalty -Budget 2020**



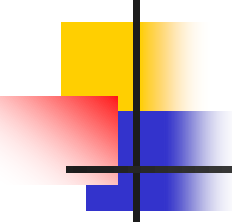
Source Rule - FTS

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



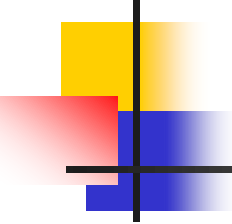
Source Rule & Scope - FTS

- Services are paid by specified persons, Government, Resident & Non-resident
- Services are in accordance with the proposals approved by the Government
- Services are used / utilised in India
- What about location of services to be rendered in India- should be Rendered in India and utilised in India
 - Retrospective clarificatory amendment to Section 9 w.e.f. 1.4.1976 through Finance Act, 2007
 - Deemed to accrue or arise in India and shall be included in the total income of the non-resident whether or not
 - (i) the non-resident has a residence or place of business or business connection in India or
 - (ii) the non-resident had rendered services in India



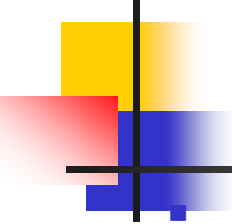
Taxation of Non Residents – Treaty Operation

- Source Rule
- Source taxation limitation
- Lower rates of taxation
- Narrower scope of income
- Not a charging provision, can only reduce burden
- Treaty, a part of domestic law
- Computation rule of ITA applies
- Article 3(2) of DTAA
- Non discrimination under Article 24 of DTAA
- GAAR
- Multi Lateral Instruments (MLI)



Taxation of Non Residents – Computation of Income

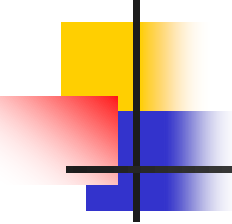
- Specific provisions Vs general provisions
 - CIT Vs Copes Vulcan Inc. [167 ITR 884 (MAD.)]
- Exclusion from income of each type
- Gross basis of taxation Vs net basis of taxation
- Scheme of the ITA – Gross basis, Net basis, Tax rates & TDS
- Simultaneous operations of the provisions are normally avoided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



Computation of income of NR in India

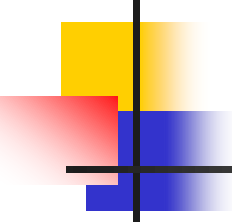
Normal computation procedure of S. 16 to 27 in case of salaries & income from house property and u/s 28 to 44C for business income is applicable

- Business income sec 9(1), Business connection in India, attribution as per rule 10 if
 - there is presence of Permanent Establishment of NR & income in India
 - Prominent example is Branch of a Foreign Bank
 - Other income of S. 9 is taxed on a gross basis
- Presumptive taxation in India S.115 applicable strictly as per the conditions of each of subsection, S.44 to S.44BBB etc. & S.172 of ITA(A code by itself as distinguished from S.44B).Provisions of S.172 are notwithstanding the Act. where as S.44B makes exception to S 28 to 44C
- MAT, surcharge & Education cess [S. 2(37A), on rates in force] on income in India
- Double Tax Avoidance Agreements [S. 90(2)]
- Advance Rulings u/s 245 of ITA
- Tax is deducted on most of the income either u/s 192 or u/s 194 or 195/196
- Income can be taxed on a net basis also. Tax rates are different for net basis of taxation. Sec 9(1),S.44DA,S.172 and in a case where accounts are maintained and lower tax option is available under the provisions of S.44BB and 44BBB.



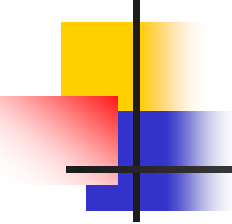
Special Provisions for NRIs - Chapter XIIA

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



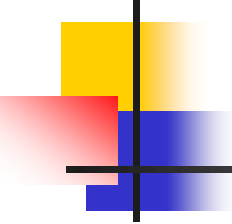
Special Provisions for NRI - XIIIA

- Eligible Assessee – Only NRIs
 - Investment Income & LTCG from foreign exchange asset, as specified
 - Specified Asset – Shares, Debentures and Deposits of Public Company; Public Deposits and notified securities of Central Government
 - Tax Rates: Investment Income @ 20%
: Long term capital gain from Specified Asset @ 10%
- Dividend may be taxed at 20 % as it is now taxable in the hands of the Shareholder-Budget 2020**



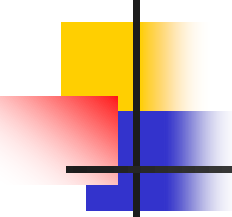
XIIA - Computation of Income

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



Capital Gains on shares & debentures

- Capital Gains where Securities Transaction Tax is applicable
 - LTCG exempt from tax [sec 10(38) of ITA upto Rs. 1 lac] balance taxable @ 10%
 - STCG tax @ 15% (sec 111A)
- LTCG where STT is not applicable
 - Sec 48: Computation of capital gains
 - Proviso to sec 48 provides for computation in FC
 - Sec 112 provides for rates of taxation
 - All Non resident persons are taxed @ 20%
 - Tax rates of
 - 10% in case of listed securities (other than a unit or a zero coupon bond) under proviso to S. 112 without applying 2nd proviso to S. 48
 - Provisions of the DTAA – Article 13



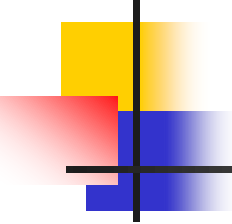
Filing of return by Non Residents Indians

NRI's are not required to file tax returns in India in the following situations;

- If income is below basic exemption limit for that F.Y.
- Total Income consists of only investment income or LTCG or both & TDS has been deducted on such income [Section 115G (Chp XII-A)]
- No Return in case of specified Income u/s 115A. The relaxation of not filing of Return of Income is available ~~only~~ in respect of Dividend Income (~~referred to in Sec 115-O~~) and Interest Income on which tax has been deducted [Sec. 115A(5)], **Royalty and FTS also (Budget 2020)**
- If return of income is not filed within due date, application for condonation of delay can be filed for 6 A.Y's for claiming refund, subject to certain conditions (CBDT Circular No 9/2015 dtd 09.06.2015)

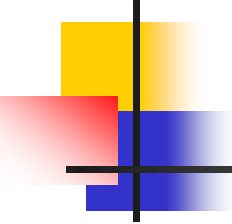
Note:

- NRI's cannot avail different exemption limits on basis of gender or age as the Residents can avail
- If income is LTCG & no TDS is deducted – then even if it is lower than basic exemption, you need to file the returns (as basic exemption limit cannot be availed)
- If TDS has been deducted and the assessee is entitled to refund, you may file the return in order to claim the refund



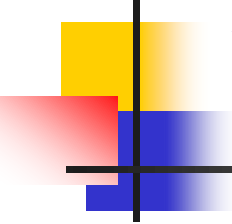
Filing of Tax Return

- Evidence about cost of property
- Ease of obtaining certain visas – To be obtained from India (country of citizenship)
- If return of income is not filed within due date, application for condonation of delay can be filed for 6 A.Y's for claiming refund, subject to certain conditions (CBDT Circular No 9/2015 dtd 09.06.2015)
- Disclosure of beneficiary and beneficial owner
- Complex requirements to establish NR Status can be avoided and handled efficiently- Law permits investigations for past 16 year



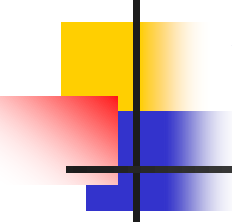
Filing of Tax Return

- In case of sale of property by NRI in India (either to resident or non resident), the buyer has to deduct TDS at the rate of 20% (in case of LTCG)/ 30% (in case of STCG) – Sec 195 of I.T Act
- Lower deduction of Tax certificate from AO possible efficiently if returns are filed
- In order to get credit for the tax deposited by buyer one must file their return
- In case of transfer of funds in the 1Mn\$ scheme from the NRO account, the funds can only be transferred net of taxes, can well be demonstrated that it is net of taxes if returns are filed



Vivad se Vishwas Bill, 2020

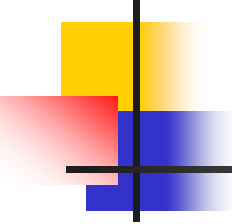
- Mechanism for resolution of pending tax disputes. Waiver of interest and penalty if taxes due paid by March 31, 2020
-
- Authority to grant certificate within 15 days of the receipt of the declaration.
- Withdrawal of appeal on a deemed basis, However High court and Supreme court requires withdrawal by the appellant.
- Impact: No Interest, No Penalty, No reopening of the matter in any proceedings



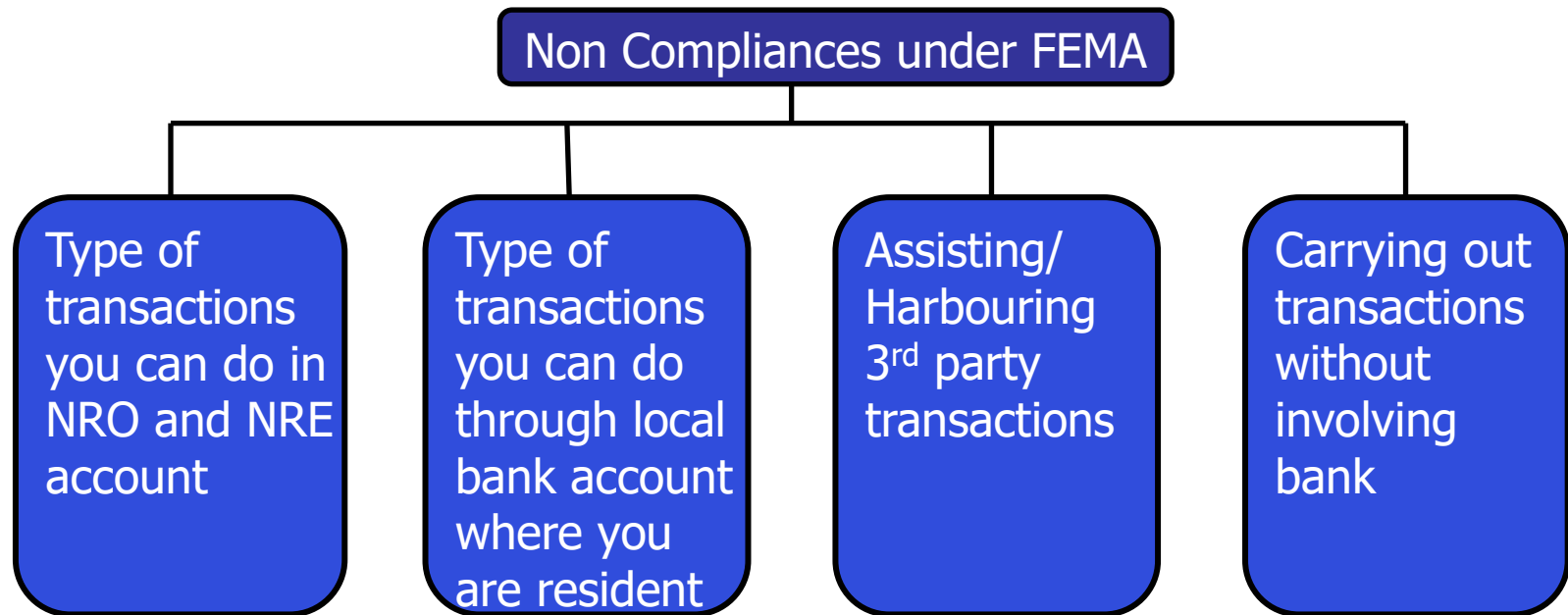
Vivad se Vishwas Bill, 2020

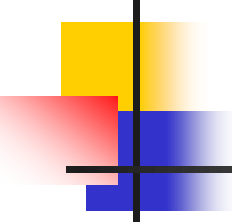
The amount payable by the appellant for resolution of disputes is determined based on whether the dispute relates to payment of tax, or payment of interest, penalty, or fee

Disputes relating to	Payable before March 31, 2020	Additional amount payable after March 31, 2020
Payment of tax	Amount of disputed tax (any interest or penalty associated with such tax will be waived)	(i) 10% of the amount of disputed tax, or (ii) interest and penalty relating to that tax, whichever is lower
Payment of fee, interest, or penalty	25% of the amount under such dispute	Another 5% of the amount under such dispute

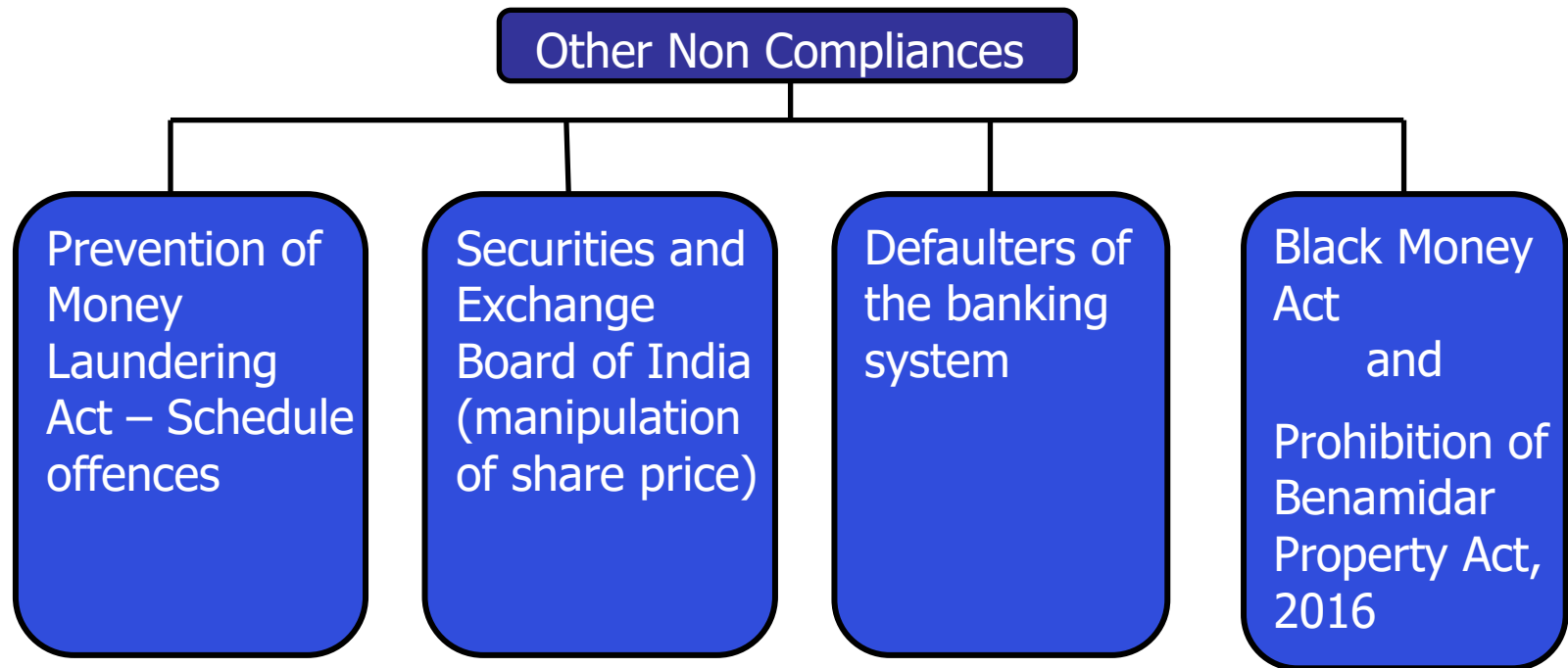


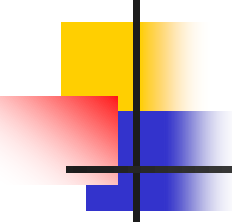
Commonly found Non Compliances under FEMA





Commonly found other Non Compliances





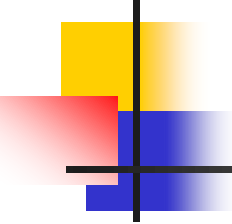
FEMA – Important Terms

**Capital Account
Transaction**

**Current Account
Transaction**

**Liberalised Remittance
Scheme (LRS) for
Residents**

**1Mn\$ Repatriation
Scheme for
Non Residents**



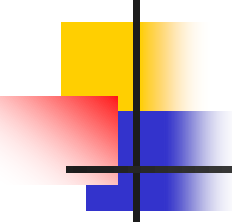
TCS on LRS/Tour Package-Budget 2020

Amendment to Sec 206C

In case of any amt remitted
Under LRS -
AD bank will collect
5% TCS from
remitter

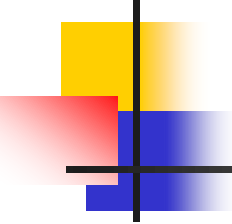
In case of an
Overseas tour
Package –
5% TCS from
buyer

Any seller receiving
sale consideration
for sale of goods
above INR 50
Lakhs - 0.1% of
consideration



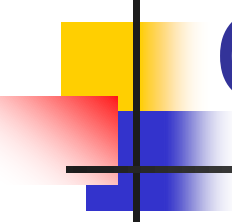
Custom Baggage Rules

Duration of Stay Abroad	Duty Free Allowance	Conditions
3months – 6 months	Used personal and household articles (other than those covered under Annexure-1 & 2 but including the articles covered under Annexure-3) upto an aggregate value of sixty thousand rupees.	Indian Passenger
6months – 1year	Same as above but limit upto one lakh rupees	Indian Passenger
Min stay of one year during the preceding two years.	Same as above but limit upto two lakh rupees	Indian passenger (should not have availed the concession in preceding three years)
Min stay of two years	Same as above but limit upto five lakh rupees	(i) Minimum stay of two years abroad, immediately preceding the date of arrival on transfer of residence; (ii) Total stay in India on short visit during the two preceding years should not exceed six months; and (iii) Passenger has not availed this concession in the preceding three years.



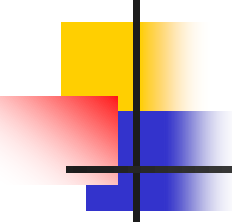
Custom Baggage Rules (contd.)

Annexure 1	Annexure 2	Annexure 3
1. Firearms 2. Cartridge of Firearms exceeding 50 3. Cigarettes exceeding 100 sticks or cigars exceeding 25 or tobacco exceeding 125gms 4. Alcoholic liquor and Wine in excess of 2 litres 5. Gold or Silver in any form other than ornaments 6. Flat Panel Television	1. Colour television 2. Video Home Theatre system 3. Dish washer 4. Domestic refrigerators of capacity above 300 litres or its equivalent 5. Deep freezer 6. Video camera 7. Television receiver 8. Sound recording or reproducing apparatus 9. Video reproducing apparatus 10. Cinematographic film of 35 mm and above 11. Gold or silver in any form (other than ornaments)	1. Video Cassette Recorder / Video Cassette Player / Video Television Receiver / Video Cassette Disk Player 2. Digital Video Disc player 3. Music system 4. Air-conditioner 5. Microwave oven 6. Word Processing Machine 7. Fax Machine 8. Portable Photocopying Machine 9. Washing Machine 10. Electrical or Liquefied Petroleum Gas Cooking Range 11. Desktop/Laptop/Notebook 12. Domestic Refrigerator of capacity up to 300 litres or its equivalent



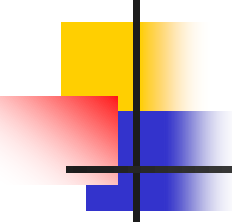
Custom Baggage Rules (contd.)

- PIO returning to India as non tourist can bring in 20gms (for men)/40gms(for women) of Gold(value cap INR 50,000/1,00,000) – Duty-free
- Each Individual above 18 years can carry a laptop/notebook duty-free
- In case the value of one item exceeds the duty free allowance, the duty shall be calculated only on excess amount
- Value of duty free allowance cannot be clubbed with other family members or group travelling together



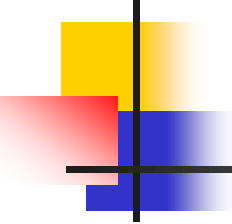
Benami Property Transactions Act, 2016

- An arrangement is a benami transaction where a property is transferred to, or is held by, a person, and the consideration for such property has been provided, or paid by, another person; and the property is held for the immediate or future benefit, direct or indirect, of the person who has provided the consideration
- For Example: X purchases a property however, the property is purchased in the name of 'Y', though the consideration has flown-in from X only. This would be a classic Benami Transaction and the property is called a "benami property"
- Usually, any Benami Transaction would have two parties a beneficial owner (Mr.X, in our example) and a Benamidar (Y)
- Benami Act encompasses all kinds of properties, whether movable or immovable, tangible or intangible, which has been the subject matter of a Benami transaction. It also includes the consideration received from such property. Benami property would also include the right or such other document evidencing title or interest in such property



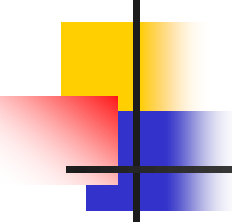
Exceptions to Benami Transactions

- Property is held by a member of the HUF for the benefit of the HUF and the consideration is paid from the known sources of income of such HUF
- A person who holds the property in a fiduciary capacity for the other person – for example, a trustee for the trust, a director for his company, a depository/depository participant for a trader (holder of shares in demat form) etc.
- An individual holding property in the name of his spouse or child and where the consideration is paid from the known sources of such individual
- An individual holding property jointly with a brother, sister or lineal ascendant/descendant and where the consideration is paid from the known sources of such individual



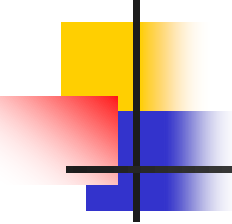
Implications of entering into a Benamidar Transaction

- Confiscation of Benami property
- Where a Benami transaction has been entered into to defeat the provisions of any law, avoid payment of statutory dues or avoid payment to creditors, any person who enters or abets/induces another person to enter into such a transaction would be punishable with:
 - Imprisonment between 1 to 7 years and
 - Fine up to 25% of the fair market value of the property
- Where a person who is required to provide information under this Act provides false information, he shall be punishable with:
 - Imprisonment between 6 months to 5 years and
 - Fine up to 10% of the fair market value of the property

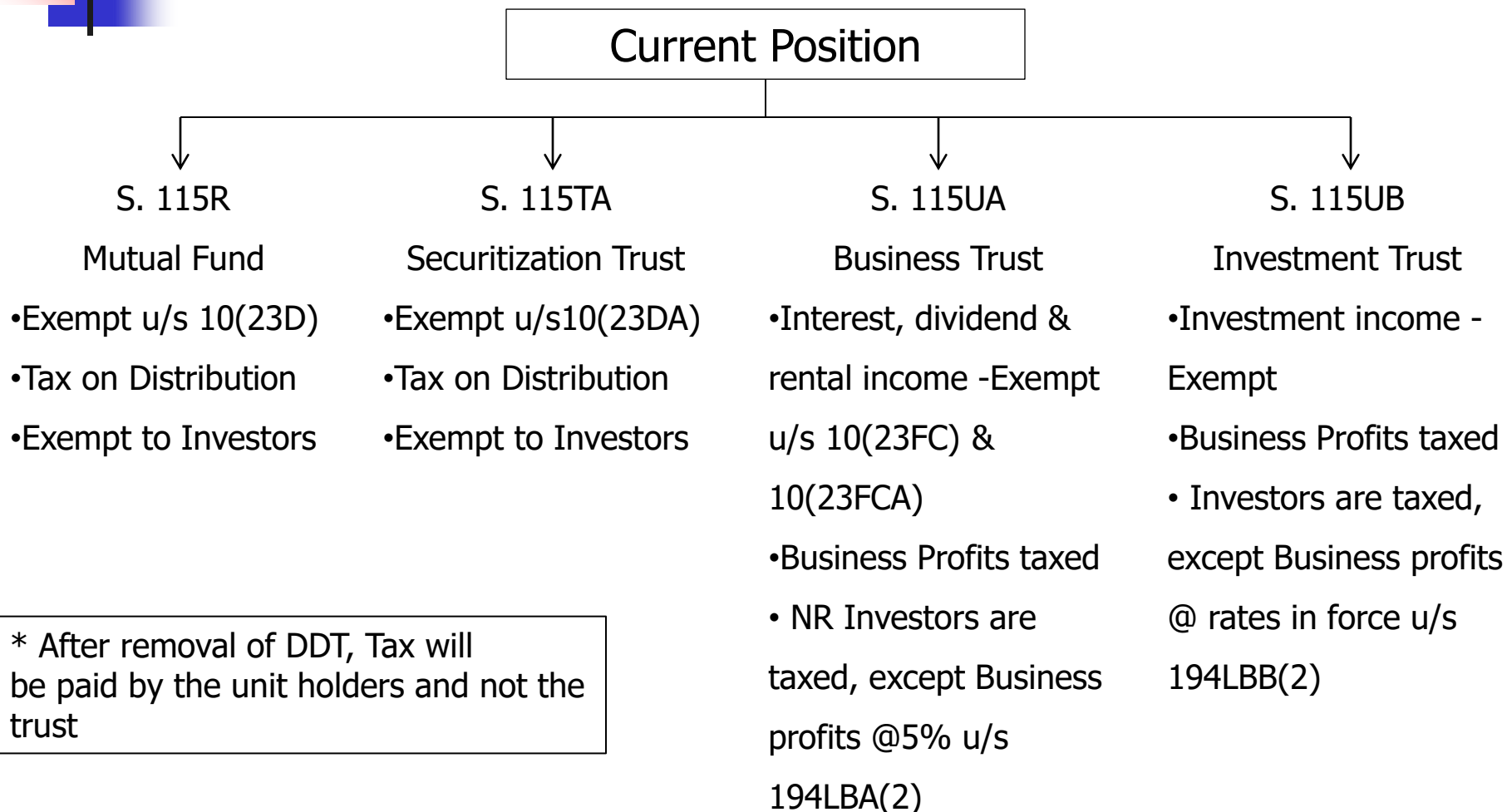


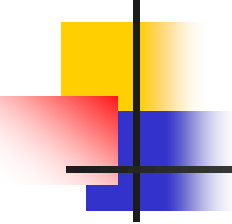
Presumptive Taxation

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



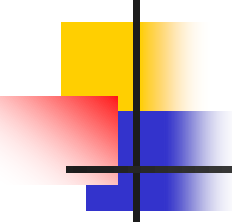
Taxation of Trust & Investors





TDS from income of NRs

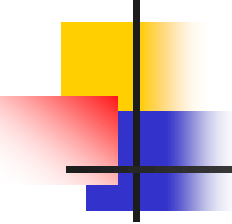
- S 192, in case of payment of salaries
- S 195, all other payments (except as under) sum chargeable to tax
- S 196B: Payments of income by MFs to Overseas Financial Organization @ 10%, however, no TDS is provided for LTCG
- S 196C: Dividend, Interest & LTCG from Bonds/GDR @ 10%
- S 196D: Income of FII & not LTCG @ 20%
- S 119 : Where the assessee fails to deduct TDS u/s 195, the AO cannot treat the whole sum remitted to the non-resident as being chargeable to tax but he has to determine the appropriate proportion of the sum chargeable to tax as mentioned in s. 195(1) for treating the assessee as being in default u/s 201 [CBDT Instruction No 02/2014 dated 26.02.2014 r.w. judgements of the Supreme Court in Transmission Corp of A. P. 299 ITR 587 and GE India Technology Pvt. Ltd 327 ITR 456]



Form 15CA

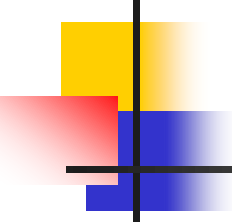
- A Declaration by Remitter – used as a tool to collect information in respect of payments made to non residents whether chargeable to tax in their hands in India
- Upto 31.05.2015 - Form 15CA was required only for reporting payments of interest, salary or any other sum chargeable to tax in India
- W.e.f 01.06.2015, Form 15CA is required for reporting any payments made of interest, salary or any other sum whether or not chargeable to tax in India.
- Rule 37BB specifies **33** types of payments for which no Form 15CA/CB is to be furnished

(Refer Press Release issued on 17.12.2015 which is w.e.f 01.04.2016)



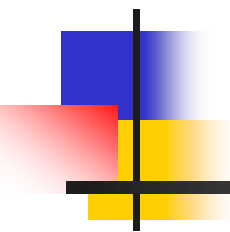
Form 15CA

- Form 15CA is divided into 4 parts;
- Part A – Payment or aggregate of payments chargeable to tax & not exceeding Rs. 5,00,000 (No requirement to obtain CA certificate)
- Part B – Payment or aggregate of payments chargeable to tax & not exceeding Rs. 5,00,000 – after obtaining certificate from AO u/s 197 or 195 (2)/(3)
- Part C - Payment or aggregate of payments chargeable to tax & exceeding Rs. 5,00,000 - after obtaining certificate under Form 15CB from Chartered Accountant
- Part D – For all payments not chargeable to tax under Income Tax Act [other than those exempted under Rule 37BB(3)]



Form 15CB

- A certificate from Chartered Accountant on the basis on information provided by client in Form 15CA to determine the chargeability of income
- Form 15CB requires detailed enumeration of the taxability of the amount under the Income-tax Act, without giving any effect to the DTAA.
- Where DTAA provisions are sought to be applied, the details of the Tax Residency Certificate, applicable DTAA and its relevant article, as also tax liability under the DTAA are to be furnished.
- The nature of remittance is divided as — for royalties, FTS, interest, dividend; on account of business income; on account of short-term and long-term capital gains; and any other remittance.



Thank You
