



The Institute
of Chartered
Accountants of
India
(Set up by an act of
Parliament)

The Chartered Accountant **STUDENT**

Your monthly guide to CA news, information and events

**SPECIAL
ISSUE ON INTERNATIONAL TAXATION**



*Happy
New Year
2019*



GLIMPSES ||



► **CA Students' Conference, New Delhi:** ICAI President, CA. Naveen N. D. Gupta addressing the students in the presence of the Chairman, Board of Studies, CA. Dhinal A. Shah, Central Council Members, CA. Shyam Lal Agarwal, CA. Vijay Jhalani, Director, Board of Studies, CA. Vandana D. Nagpal.



► **CA Students' Conference, Coimbatore:** ICAI Past President, CA. Amarjeet Chopra addressing the students. ICAI Past President, CA. G. Ramaswamy also seen on Dais among other dignitaries.



► **CA Students' Conference, Ranchi:** CA. Shyam Lal Agarwal, Central Council Member, ICAI lighting the lamp to inaugurate the Conference.

|| PRESIDENT'S COMMUNICATION



Dear Students,

I extend my heartiest best wishes for a blissful, prosperous and productive **New Year 2019**. I sincerely wish that the New Year instills new vigor, vitality, grit and determination in you to accomplish your dreams and aspirations for an illustrious present and bright future. We at ICAI, your alma mater, have always stood by you, have always taken proactive and exemplary initiatives to facilitate best resources, catering to your learning needs be it publications, online lectures, webcasts and mentoring sessions. We have always strived to address your concerns from time to time.

ICAI being the largest accountancy education body in the world is compliant with the principles enlisted in the International Education Standards issued by the IAESB of International Federation of Accountants and the New Scheme of Education and Training which has been launched last year is also in line with the international education standards.

Today, the world is focusing on specialisation and new age successful professionals are the ones who are delivering qualitative services in one area rather than knowing little in every area. To this effect **Electives in the emerging areas** of Risk Management, International Taxation, Financial and Capital Markets, Global Financial Reporting Standards, have been introduced to prepare you as an expert, specialising in your chosen area.

Assessment of electives is based on case studies to sharpen your application, analytical and comprehension skills. In Electives, 40% Multiple Choice Questions (MCQs) based questions have been introduced to reduce subjectivity, steering the system towards objective examination and evaluation. Further, Electives are open book exams and from November 2018 exams, you are allowed to bring your own study material for reference during the exam which you all will appreciate is in itself is a big reform.

Updating the study material is a continuous process. This entails meticulous quality review of the syllabus and contents by subject experts. We, at ICAI, appreciate and acknowledge your concerns over timely availability of the updated study material for preparations & revision. BOS conducts this review exercise periodically and this year syllabus is again reviewed and rationalised. The Board will release the latest editions of rationalised and revised study material in January 2019.

There is a misconception amongst stakeholders, about the results which are declared by the ICAI, that hardly 3-4% of the examinees only clear such exams. I may clarify that it is not so and results are declared in 2 digit category consistently. In this context, it is pertinent to mention that we have a robust examination system with three-tier system of examination for examiners and paper setters. The system has an in-built performance monitoring mechanism preceded by requisite extensive training. Based on regular feedback received from you, several reforms have been implemented by the ICAI to make the process of examination and evaluation more robust, reliable and credible. Some recent ones are listed below:

- ◆ **Digital Evaluation** has been introduced to improve the quality of evaluation of the answer books. With the introduction of e-evaluation, continuous monitoring can be done for each examiner who is checking the respective paper, time taken in evaluating each answer and also in complete answer book which will help in assessing the quality checking by each examiner. The system has an in-built mechanism to check at random intervals as to whether the person who has been entrusted with the task of evaluation, is checking the answer sheets. I am pleased to inform that after successful implementation of e-evaluation system on pilot basis in last two examinations, e-evaluation has now been comprehensively extended to First Group, covering 5 subjects at Intermediate level from November 2018 examinations. I would also like to add that this system will substantially reduce the time in providing you the certified copies.
- ◆ Further, a Pilot Project of **Centralised evaluation** of one paper at the Final level of November 2018 exam is also implemented. In central evaluation, examiners will be evaluating the answer books in the presence of Head Examiner/Associate Head Examiners under their supervision and guidance. Based on the outcome, both the digital and centralised evaluation will be rolled out in the remaining subjects as well.
- ◆ You are very well aware there are certain clauses restricting freedom of students on the usage of the

copies of evaluated answer books provided to you in the scheme for supply of certified copies of evaluated answer books. In order to enable you to take guidance from your seniors, parents, and principal it has been decided in September 2018 that such clauses be deleted to enable sharing of certified copies.

- ◆ There has always been a system of step-wise marking in the answers as per the instructions and guidelines issued to the examiners while evaluating the answer sheets. The system has been further strengthened by bringing in more quality control checks. **In this direction, it has been decided that in case step-wise marks are not awarded to an answer then the answer will be treated as not evaluated as per instructions and step marks would be awarded during the course of verification.** Let's take an example of a paper wherein a question carrying 16 marks is attempted by you. As per the instructions to the examiner, the answer to the said question in all has 4 steps with the marking of 4 marks for each step. If the examiner while checking the answer has not awarded marks for each step so instructed, then this type of evaluation will be treated as "not-evaluated". The steps marks will be awarded for such answers noticed during the course of verification. This is a step towards re-evaluation in substance and the said exercise will take care of such type of anomalies.
- ◆ We are working on the best practices on re-evaluation of answer books and the same will require amendment in the Chartered Accountants Regulations. In this context, we are in direct interaction with University Grants Commission, Ministry of Human Resource and Development and Ministry of Corporate Affairs to draft re-evaluation process of ICAI for onward approvals of the central government and subsequent amendments in regulations.

Besides these reforms, we at ICAI have persistently been working towards making your dream a reality by facilitating resources for knowledge creation as well as for knowledge delivery. Many initiatives have been taken namely:

A pilot project of Live Virtual Classes (LVC) for May and November 2019 examinations was initiated in August 2018 for Intermediate and Final level courses with the participation of 500 students across the country. Through this initiative, you don't have to travel long distances within the city or to other city for your coaching needs. You can view sample recorded lectures for CA Intermediate and Final and decide as to whether to join Live Virtual Classes.

The registration forms of CA Intermediate & Final courses will be updated, providing an option to enable you to

register for LVC. **Considering the encouraging response from your end it has been decided to organise the classes at mass level and also to reduce the fee by 50%.**

The new fee structure is as under:

Level	At the time of Registration		After Registration	
	Single Group	Both Groups	Single Group	Both Groups
Intermediate	2,250	4,000	3,750	6,250
Final	2,500	4,750	4,500	7,500

We have initiated the process of **revamping 2 Reading Rooms** at Vijay Chowk and Lalita Park in New Delhi where I visited recently and interacted with students. Such exercise will be carried out at other reading rooms all across India as well. Similarly, the process for upgrading the infrastructure to transform ITT labs across the nation into high-tech labs has been initiated. **In line with this, 4000+ new computers are being installed in all the IT centres across India.**

On the technology front, I am pleased to share with you that "Virtual ICAI" is being created for your benefit in the form of **Students' Life Cycle Portal**. Using the portal, you all will be able to fill all the forms digitally for all purposes, and check the respective status online. This platform can also be used to make changes in your email, phone number, address, etc. The portal has been developed and will be launched shortly. Once platform is fully operational, there will be no need for you to visit any DCO, Branch, and regional office for any of your queries.

You all will agree, reform is a continuous process. We are in seize of your problems and are continuously working towards resolving your issues. **You will be glad to know that Students registered in the IPCC have been given two more attempts after May 2019 to clear the papers under the old scheme.** As a team, we must work in collaboration to improve systems and practices. We are here for you and will take care of everything. Very soon the results of CA examination held in November 2018 will also be declared. I wish you 'All the Best' and sincerely hope for your success.

Trust me, the quality of our performance depends on the strength of our practice. I hope that the hard work shall pay. Keep radiating optimism.

I wish you all the success in your endeavors.

CA. NAVEEN N. D. GUPTA
PRESIDENT, ICAI, NEW DELHI

|| CHAIRMAN'S COMMUNICATION



Dear Students,

Life is a journey with a mixture of happy and sad moments. Nothing in life remains stagnant. At one point of time, we feel we have failed in life but the very next moment we have sparkling happiness in our eyes with a sense of satisfaction. Time is the only thing, which continues its own pace, neither faster nor slower. It is the only predictable aspect in life. So again, the New Year will arrive at its own perfect time. This edition will reach you in the New Year 2019, with renewed hopes, new aspirations, new commitments, new achievements and new beginning. You need to cherish good moments in the year gone by and make a promise to do even better in this one. With the New Year, the month of results will also come and I wish you all the best for your upcoming results. But remember, nothing is stagnant, if you succeed there is no assurance you will not fail again and if you fail, it's just a stepping stone to your unfulfilled dreams which will be achieved if not now, but in your near future. I hope your hard work and labour is well paid off and you all achieve your dreams, with beautiful smiles on your faces and a feeling of accomplishment in your eyes. As Swami Vivekananda said "**No great work can be achieved by humbug. It is through love, a passion for truth, and tremendous energy, that all undertakings are accomplished.**"

The role of a chartered accountant is evolving continually to assume newer responsibilities in a dynamic environment. There has been a notable shift towards strategic decision making and entrepreneurial roles that add value beyond traditional accounting and auditing. One of the causative factors for the change is globalisation which has led to increase in cross border transactions and consequent business complexities. In order to enable students to explore and specialise in the niche area of International Taxation, the same has been included in the new scheme of education and training as a dedicated part (Part II) for 30 marks in Final Paper 7: Direct Tax Laws & International Taxation. The provisions relating to non-resident taxation, double taxation relief, transfer pricing is dealt therein extensively. Also, the scope of the syllabus includes advance rulings, equalisation levy, overview of model tax conventions, application and interpretation of treaties and Fundamentals of BEPS. The

Capsule on International Taxation published herein is intended to assist you in revising the concepts, principles and provisions of International Taxation, discussed in detail in the September 2018 edition of the Study Material. We hope that the Capsule serves as an effective "quick revision tool" for students appearing in May, 2019 and November, 2019 examinations.

I am happy to inform that beginning from May, 2019 attempt, for students appearing in the Intermediate/IIPCE and Final Examinations under the Old and New Scheme of Education and Training, assessment in selected subjects would be partially based on objective type questions. An announcement in this regard has been hosted at the BoS Knowledge Portal on the Institute's website www.icai.org. In each of the said papers mentioned in the announcement, the weightage for objective type questions would be 30%. The remaining questions i.e., 70% of the paper would be as per the present pattern of assessment. The objective type questions will be in the nature of multiple choice questions. However, there will be no negative marking for wrong answers. I am sure that solving objective type questions would help to further hone your comprehension and analytical skills and enhance your professional competence at the point of qualification.

It has been decided to install Biometric machines at the Regional and Branch offices of ICAI where the member strength is more than 2500 in first phase for the smooth execution of the ITT and Soft skill courses. It has also been decided to update the registration forms of Intermediate & Final courses to provide option to students to concurrently register for Live Virtual Classes. The Institute has decided to retain June 2019 as the last attempt for CPT. However, for IPCC it was decided to give two more attempts to the students. Accordingly, the last attempt for IPCC students would be May 2020.

Several CA student's conferences took place at various places throughout the country in December 2018. The Board of Studies is organising a two-day International Conference at Ahmedabad on 5th and 6th January 2019. The theme of the conference is "*Knowledge & training with ethical quotient-pathway to professional excellence*". An overwhelming response of students from across the country and outside will be very enthusiastic.

As the nation prepares for the 70th Republic Day, I extend my heartiest best wishes to all fellow Indians, on this occasion. I hope that our country will continue to be the fastest growing economy, ahead of China, with an expected growth rate of 7.3 per cent in 2019 to become a Global Economic Powerhouse. I also convey best wishes to the students who have appeared in November 2018 examinations and are awaiting the results.

A handwritten signature in black ink, appearing to read "Dhinal Shah".

CA. DHINAL A. SHAH
CHAIRMAN, BOARD OF STUDIES, ICAI

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**Satisfaction
lies in the
effort, not in the
attainment.**

**MAHATMA
GANDHI**

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SWACHH BHARAT - A STEP TOWARDS CLEANLINESS

ANNUAL SUBSCRIPTION RATES

CA Students	Members and Others	Overseas
₹200	₹500	US \$ 100

Total Circulation: 2,35,355

Check your Address: All students should check their mailing address printed on back cover. In case, there is any change or the PIN Code (Postal Index Code) is either missing or is incorrect, kindly inform immediately the concerned Regional Office, giving full particulars of your address alongwith correct PIN Code. This would enable us to ensure regular and prompt delivery of the Journal.

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Email: writesj@icai.in

Non-receipt of Students' Journal
Email: nosj@icai.in

EDITOR: CA. Dhinal A. Shah

Printed and published by CA. Vandana D. Nagpal, on behalf of The Institute of Chartered Accountants of India, New Delhi.

PUBLISHED at the Institute's Office at Indraprastha Marg, New Delhi and printed at Spenta Multimedia Pvt. Ltd., Plot 15,16 & 21/1, Village Chikholi, Morivali, MIDC, Ambernath (West), Dist. Thane

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INTERNATIONAL TAXATION

International Taxation: A Capsule for Quick Recap

Globalisation, capital mobility and increased trade and services have resulted in the whole world virtually becoming one market and consequently, international taxation has become a key concern area both for business enterprises engaged in cross border transactions as well as for tax administrations of the concerned States. Considering its significance, international taxation has been included as a dedicated part (i.e., Part-II) for 30 marks in Final (New) Paper 7: Direct Tax Laws & International Taxation in the New Scheme of Education and Training.

In this capsule, diagrams, tables and flow charts have been extensively used to help you recap the significant concepts, provisions and principles relating to international taxation, which have been discussed in detail in Module 4 [International Taxation] of September 2018 edition of Study Material of Final (New) Paper 7. The Capsule is divided into eight chapters in line with Module 4 of the Study Material. It may be noted that Chapters 1 to 5 of Module 4 is relevant for Final (Old) Paper 7: Direct Tax Laws also, and to that extent this capsule is relevant for Final (Old) course students also. As indicated in the title, remember that the capsule will only serve as a quick recap for May 2019 and Nov 2019 Examinations. For comprehensive study, read the Study Material and RTP.

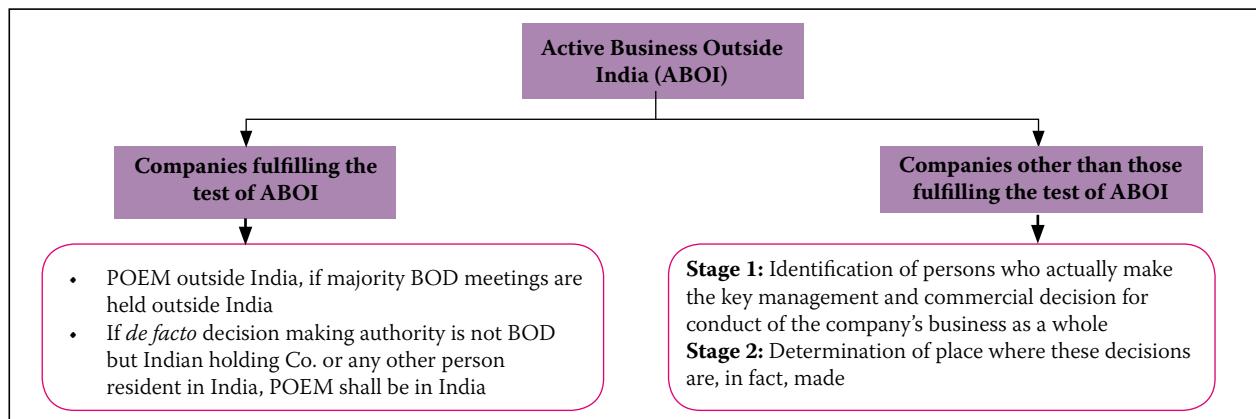
CHAPTER 1: NON RESIDENT TAXATION

The residential status of a person determines the scope of income to be included in his/its total income (TI), which is subject to income-tax in India. The provisions for determining the residential status of a person are contained in section 6 and the scope of TI is defined u/s 5 of IT Act, 1961.

Fig 1.1

RESIDENCE IN INDIA [SECTION 6]						
(I)	INDIVIDUAL					
<p>The residential status of an individual is determined on the basis of the period of his stay in India.</p> <p>Basic conditions:</p> <ul style="list-style-type: none"> (i) He must be present in India for a period of 182 days or more during the previous year (P.Y.); or (ii) He must be present in India for a period of 60 days or more during the P.Y. and 365 days or more during the 4 years immediately preceding the relevant P.Y. <p>Cases where condition (ii) is not applicable:</p> <ul style="list-style-type: none"> (a) Where an Indian citizen leaves India during the P.Y. for the purpose of employment outside India or as a member of the crew of an Indian ship; (b) Where an Indian citizen or a person of Indian origin who, being outside India, comes on a visit to India during the P.Y. <p>Additional conditions:</p> <ul style="list-style-type: none"> (1) He is a resident in at least 2 out of 10 PYs preceding the relevant P.Y.; (2) His stay in India in the last 7 years preceding the relevant P.Y. is 730 days or more. 						
		Resident and ordinarily resident (ROR)				
Must satisfy at least one of the basic conditions [(i) or (ii)] and both the additional conditions [(1) & (2)].		Resident but not ordinarily resident (RNOR)				
		Non-resident (NR)				
		Must not satisfy either of the basic conditions [Neither (i) nor (ii)].				
(II)	COMPANY	Determination of POEM on the basis of ABOI test				
<pre> graph LR A[Is the Co. an Indian Co.?] -- No --> B[Whether POEM of the Co. is in India in the relevant P.Y.?] B -- Yes --> C[The Co. is a resident in India for the relevant P.Y.] B -- No --> D[The Co. is a NR for the relevant P.Y.] E[POEM – Place of Effective Management] </pre>						
		<p>A company is said to be engaged in ABOI, if it fulfills the cumulative conditions:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 5px; vertical-align: top;"> Its passive income* (wherever earned) is 50% or less of its total income </td> <td style="padding: 5px; vertical-align: top;"> Less than 50% of its total assets situated in India </td> <td style="padding: 5px; vertical-align: top;"> Less than 50% of the total number of employees situated in India or are residents in India </td> <td style="padding: 5px; vertical-align: top;"> Payroll expenses incurred on such employees are less than 50% of its total payroll expenditure </td> </tr> </table>	Its passive income* (wherever earned) is 50% or less of its total income	Less than 50% of its total assets situated in India	Less than 50% of the total number of employees situated in India or are residents in India	Payroll expenses incurred on such employees are less than 50% of its total payroll expenditure
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		<p>* Passive income of a company shall be aggregate of:</p> <ul style="list-style-type: none"> (i) Income from the transactions where both the purchase and sale of goods is from/ to its AEs; and (ii) Income by way of royalty, dividend, capital gains, interest (except for banking Cos and public financial institutions) or rental income, whether or not involving AEs. 				

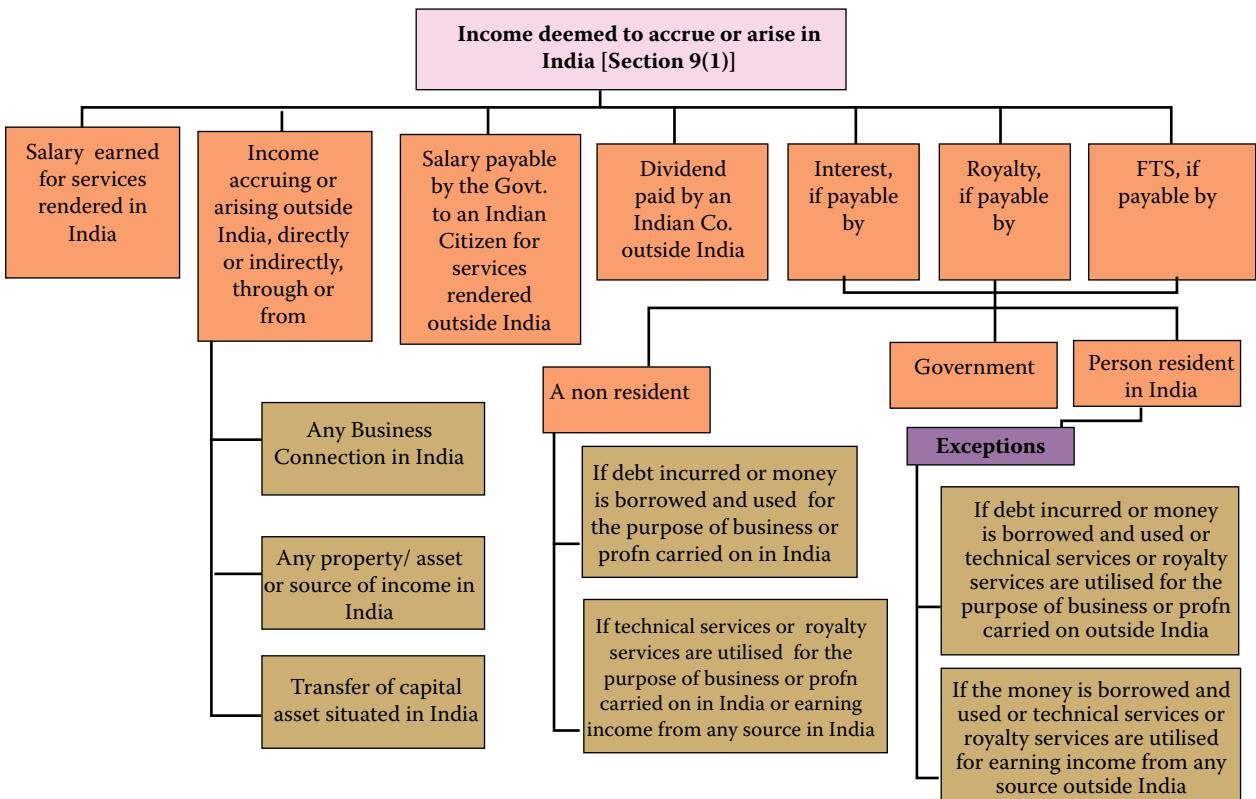
INTERNATIONAL TAXATION



SCOPE OF TOTAL INCOME [SECTION 5]: Whether the following incomes are to be included in TI?

Particulars	ROR	RNR	NR
Income received or deemed to be received in India during the relevant P.Y.	Yes	Yes	Yes
Income accruing or arising or deeming to accrue or arise in India during the relevant P.Y.	Yes	Yes	Yes
Income accruing or arising outside India during the relevant P.Y.	Yes, even if such income is not received or brought into India during the P.Y.	Yes, but only if such income is derived from a business controlled from or profn set up in India; Otherwise, No.	No

Fig 1.2



INTERNATIONAL TAXATION

Fig 1.3

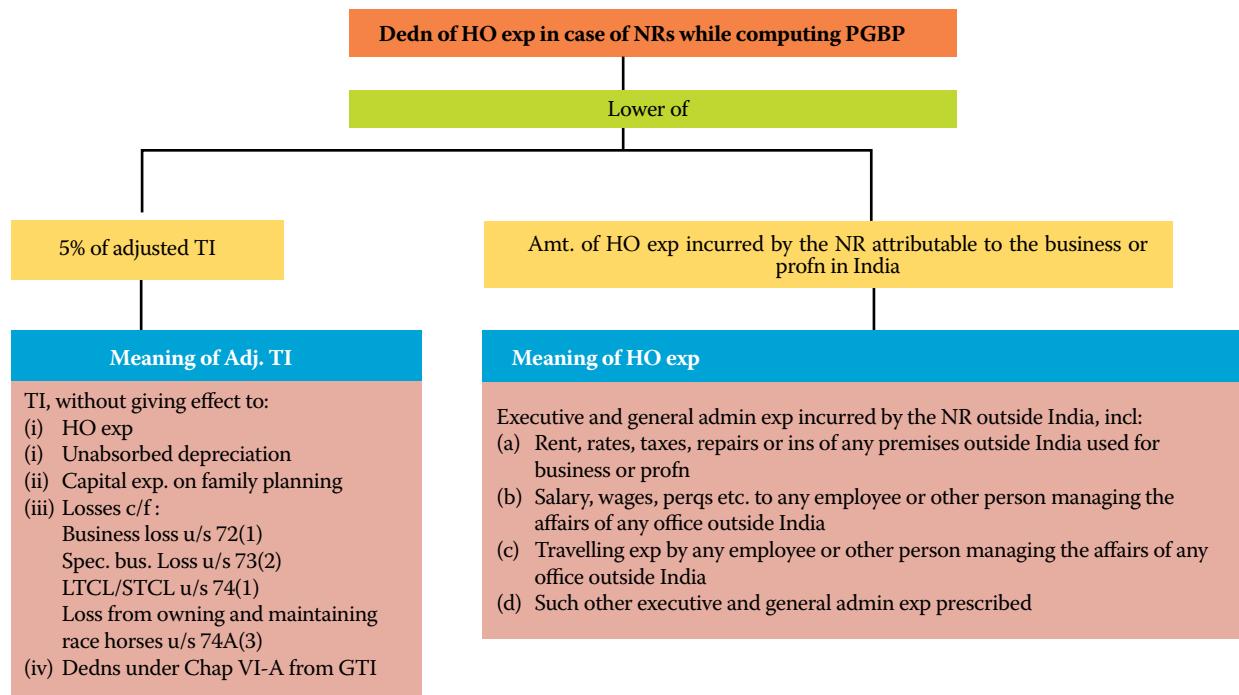
Income exempted specifically in the hands of Non-residents [Section 10]		
Section	Income	Available to
10(4)(ii)	Int on money standing to the credit in a NRE A/c of an individual (indvl) in any bank in India as per the FEMA Act, 1999	Indvl resident outside India (under FEMA Act) or an indvl who has been permitted to maintain said account by RBI
10(6)(ii)	Remuneration (Remn) recd by Foreign Diplomats/ Consulate and their staff Conditions: 1. The remn recd by our corresponding Govt. officials/member of staff resident in such foreign countries should be exempt. 2. The member of staff should be the subjects of the respective countries and should not be engaged in any other business or profn or employment in India.	Indvl (not being a citizen of India)
10(6)(vi)	Remn recd as an employee of a foreign enterprise(FE) for services rendered by him during his stay in India, if: a) FE is not engaged in any trade or business in India; b) His stay in India does not exceed 90 days in aggregate in such P.Y.; and c) Such remn is not liable to be deducted from the income of employer chargeable under IT Act	Indvl - Salaried Employee (not being a citizen of India) of a FE
10(6)(viii)	Salary recd by or due for services rendered in connection with his employment on a foreign ship if his total stay in India does not exceed 90 days in the P.Y.	Indvl - Salaried Employee (NR who is not a citizen of India) of a foreign ship
10(6)(xi)	Remn recd as an employee of the Govt. of a foreign State during his stay in India in connection with his training in any Govt. Office/ State Undertaking/ corporation/ registered society etc.	Indvl - Salaried Employee (not being a citizen of India) of Govt. of foreign State
10(6BB)	Tax paid by Indian Co., engaged in the business of operation of aircraft, which has acquired an aircraft or an aircraft engine on lease, under an approved (by CG) agrmnt, on lease rental/income derived (other than payt for providing spares or services in connection with operation of leased aircraft) by the Govt. of a foreign State or FE.	Govt. of foreign State or FE (i.e., a person who is a NR)
10(6C)	Royalty income or FTS under an agrmnt with the Central Government (CG) for providing services in or outside India in projects connected with security of India	Foreign Co. (notified by the CG)
10(6D)	Royalty income from or FTS rendered in or outside India to, the National Technical Research Organisation (NTRO)	Non-corporate NR and foreign Co.
10(15)(iii)(a)	Int on deposits made by a foreign bank with any scheduled bank with approval of RBI.	Bank incorporated outside India and authorised to perform Central Banking functions in that country.
10(15)(iv)(fa)	Int payable by scheduled bank on deposits in foreign currency (FC) where the acceptance of such deposits is duly approved by RBI. [Scheduled bank does not include co-operative bank]	a) NR or b) Indvl or HUF, being a resident but not ordinarily resident
10(15)(viii)	Int on deposit made on or after 01.04.2005 in an Offshore Banking Unit	
10(48)	Income received in India in Indian currency on a/c of sale of crude oil or any other goods or rendering of services as may be notified by the CG in this behalf. Foreign Co. and agreement (agrmnt) should be notified by the CG in national interest.	Foreign Co. on a/c of sale of crude oil, any other goods or rendering of service. It should not be engaged in any other activity in India.
10(48A)	Income accruing or arsing on a/c of storage of crude oil in a facility in India and sale of crude oil therefrom to any person resident in India. Foreign Co. and agrmnt should be notified by the CG in national interest.	Foreign Co.
10(48B)	Income from sale of leftover stock of crude oil from facility in India after the expiry of agrmt ref u/s 10(48A) or on termination of the said agrmt	Foreign Co.

INTERNATIONAL TAXATION

Fig 1.4

Presumptive Income provisions applicable to NRs				
Particulars	Section 44B	Section 44BBA	Section 44BB	Section 44BBB
Nature of business	Shipping business	Operation of aircraft	Business of providing services or facilities in connection with, or supplying P & M on hire used, or to be used, in the prospecting for, or extraction or production of, mineral oils	Business of civil construction or the business of erection of P&M or testing or commissioning thereof, in connection with turnkey power projects approved by the CG.
Eligible assessee	NR	NR	NR	Only Foreign Co.
Presumptive income	7.5% of specified sum	5% of specified sum	10% of specified sum	10% of specified sum
Specified sum	(i) Amt paid or payable on a/c of carriage of passengers, livestock, mail or goods shipped at/ from any port/place in India; and (ii) Amt recd or deemed to be recd in India on a/c of the carriage of passengers, livestock mail or goods shipped at/ from any port/place outside India	(i) Amt paid or payable on a/c of the provn of such services or facilities for the aforesaid purposes in India; and (ii) Amt recd or deemed to be recd in India on a/c of the provn of services or facilities for the aforesaid purpose outside India.	Amt paid or payable on a/c of such civil construction, erection, testing or commissioning	
Option to declare lower profits	Not available	Lower profits may be claimed u/s 44BB and u/s 44BBB provided the assessee maintains BOA u/s 44AA and gets them audited u/s 44AB.		

Fig 1.5



INTERNATIONAL TAXATION

Fig 1.6

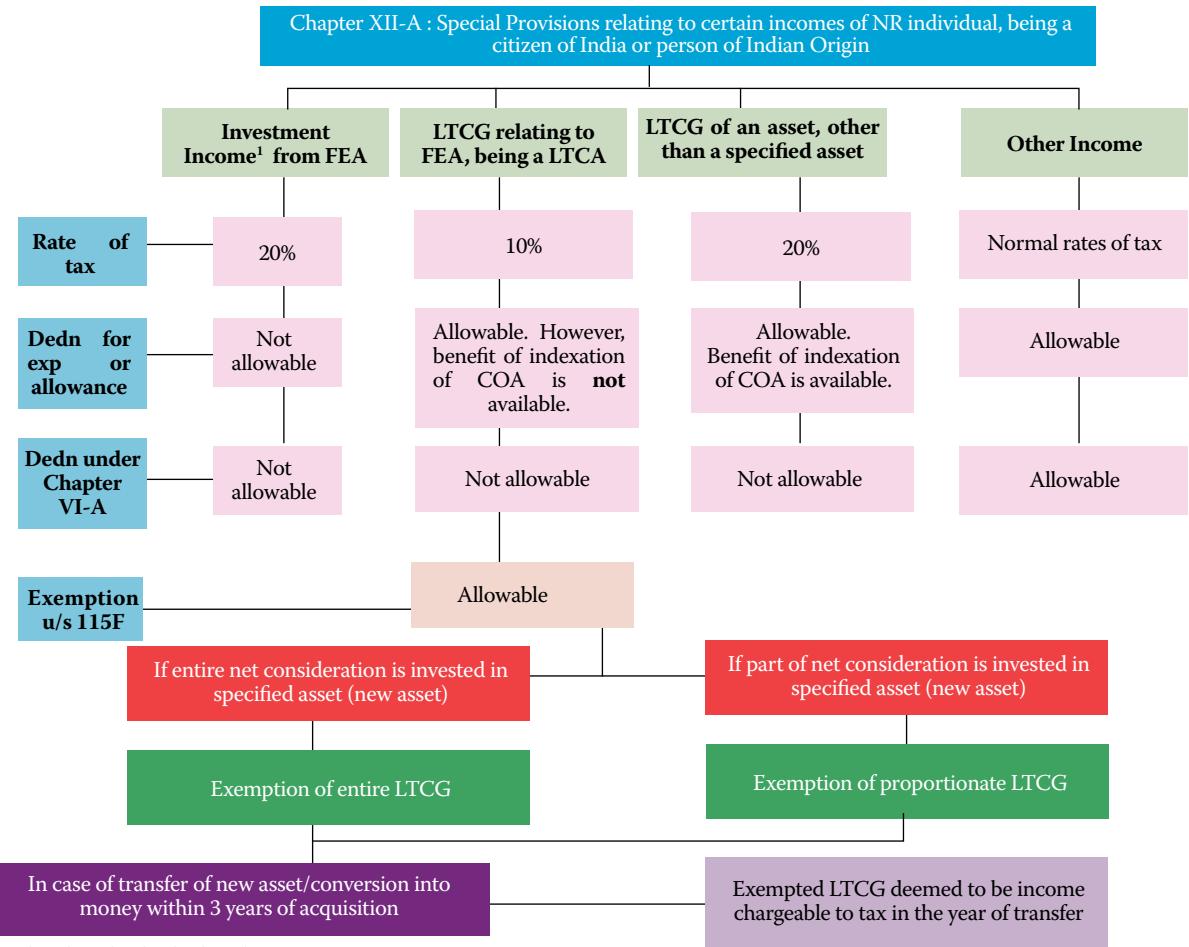


Fig 1.6 (Contd.)

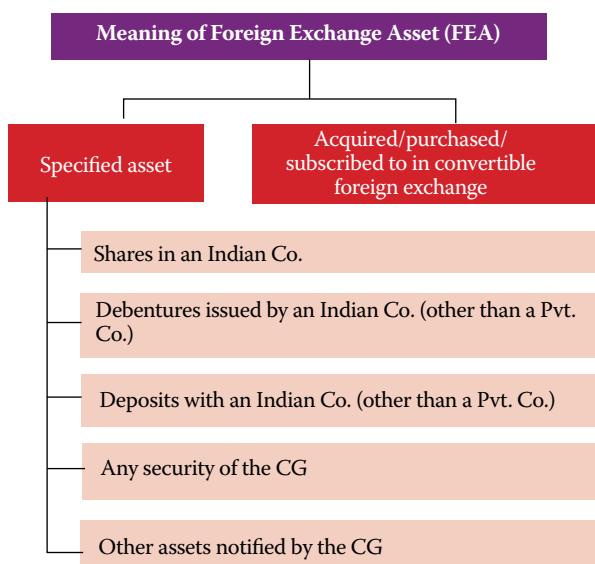


Fig 1.7
Special provisions for computing tax on income by way of interest and dividend [Section 115A]

Where the total income of a NR includes any income by way of	Rate of Tax
(1) Dividends [other than dividend ref u/s 115-O]	20%
(2) Interest recd from the Govt. or an Indian concern on moneys borrowed or debt incurred by the Govt./ Indian concern in FC, other than (3), (4), (5) and (6) mentioned below	20%
(3) Interest received from an infrastructure debt fund ref u/s 10(47)	5%
(4) Interest ref u/s 194LC [Refer Fig. 1.11]	5%
(5) Interest ref u/s 194LD [Refer Fig. 1.11]	5%
(6) Interest ref u/s 194LBA(2) [Refer Fig. 1.11]	5%
(7) Income received in respect of units purchased in FC of a mutual fund (MF) specified u/s 10(23D) or UTI	20%

Notes:

- No dedn in respect of any exp or allowance shall be allowed u/s 28 to 44C and 57.
- Dedn under Chapter VI-A is not available.
- The assessee is not required to furnish a return of his income (ROI) if the following conditions are satisfied:
 - The TI consists of only the abovementioned incomes and
 - TDS has been deducted from such income.

INTERNATIONAL TAXATION ||

Fig 1.8

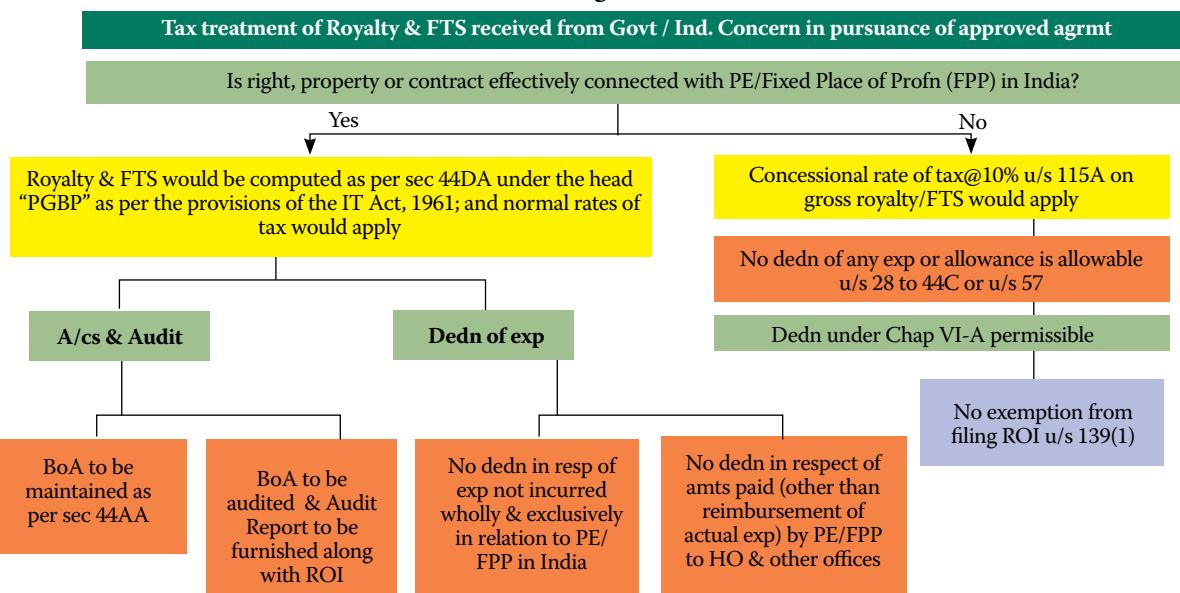


Fig 1.9

Special provisions for computing tax on income of FIIs from securities [Section 115AD]		
S. No.	Income	Rate of Tax
(a)	Income recd in respect of securities other than <ul style="list-style-type: none"> income by way of dividends ref u/s 115-O income on units ref u/s 115AB i.e., units of MF specified u/s 10(23D) or UTI Interest ref u/s 194LD 	20%
(b)	Interest referred u/s 194LD [Refer Fig 1.11]	5%
(c)	Income by way of STCG arising from the transfer of securities (other than STCG u/s 111A)	30%
(d)	Income by way of STCG u/s 111A	15%
(e)	Income by way of LTCG arising from the transfer of securities (other than LTCG u/s 112A)	10%
(f)	Income by way of LTCG u/s 112A exceeding ₹ 1 lakh	10%

Notes:

- No dedn for any exp or allowance shall be allowed u/s 28 to 44C and 57 from income from securities (ref. to in (a) and (b) above).
- Dedn under Chapter VI-A is not allowable in case of income from securities, STCG or LTCG arising from transfer of securities.
- Conversion to foreign currency and indexation benefit would not be available while computing capital gains on transfer of securities.

Fig 1.10

Special provisions for computing tax in case of NR sportsmen or sports associations [Section 115BBA]			
S. No.	Assessee	Income	Rate of Tax
(a)	A sportsman (including an athlete), who is not a citizen of India and is a NR	Any income recd or receivable by way of— (i) participation in India in any game (other than a game winnings wherefrom are taxable u/s 115BB) or sport; or (ii) advertisement; or (iii) contribution of articles relating to any game or sport in India in newspapers, magazines or journals;	20%
(b)	A NR sports association or institution	Any amt guaranteed to be paid or payable to such association or institution in relation to any game (other than a game the winnings wherefrom are taxable u/s 115BB) or sport played in India	
(c)	An entertainer who is not a citizen of India and is a NR	Any income recd or receivable from his performance in India	

Notes:

- No dedn of any exp or allowance shall be allowed under the Act from the income referred above.
- The assessee is not required to furnish a return of his income if the following conditions are satisfied:
 - The TI consists of only above mentioned income and
 - TDS has been fully deducted from such income.
- "Match referee" does not fall within the meaning of "sportsmen" to attract the provisions of sec 115BBA. Therefore, although the payments made to NR 'match referee' are "income" which has accrued and arisen in India, the same are not taxable under the provisions of sec 115BBA. They are subject to the normal rates of tax [Calcutta High Court in *Indcom v. CIT (TDS)(2011) 335 ITR 485*]

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Fig 1.11

WITHHOLDING TAX PROVISIONS IN RESPECT OF PAYTS TO NRs		
Section	Nature of payment	Rate of TDS
192	Salary	Normal Slab rates
192A	Premature withdrawals from EPF, aggregating to ₹50,000 or more	10%
194B	Income by way of winnings from lotteries, crossword puzzles, card games and other games of any sort, where payt to a person > ₹10,000	30%
194BB	Income by way of winnings from horse races, where payt to a person > ₹ 10,000	30%
194E	Specified payts referred u/s 115BBA to NR sportsmen/sports association or an entertainer	20%
194G	Commission etc. on the sale of lottery tickets, where payt > ₹15,000	5%
194LB	Payment of interest on infrastructure debt fund	5%
194LBA(2)	Distribution of any interest income, recd or receivable by a business trust (BT) from a SPV, to its unit holders.	5%
194LBA(3)	Distribution of any income received from renting or leasing or letting out any real estate asset directly owned by the BT, to its unit holders.	At the rates in force
194LBB	Investment fund paying income to a unit holder [other than income chargeable under PGBP which is exempted u/s 10(23FBB)].	
194LBC(2)	Income in respect of investment made in a securitisation trust (specified in <i>Explanation</i> to section 115TCA)	
194LC	Payment of interest by an Indian Co. or BT – - in respect of monies borrowed by an Indian Co. or BT in FC from sources outside India • Under a loan agrmt between 1.7.2012 and 30.6.2020 or • by way of issue of long-term infrastructure bonds (LTIB) between 1.7.2012 and 30.9.2014 or • by way of issue of long-term bonds including LTIB between 1.10.2014 and 30.6.2020 as approved by the CG - in respect of monies borrowed from sources outside India by way of rupee denominated bond (RDB) before 1.7.2020	5
194LD	Interest payable between 1.6.2013 and 30.6.2020 to a FII or QFI on investment made in – - RDB of an Indian Co. - Govt. security	5
195	Payment of any other sum to a Non-corporate non resident or Foreign Co.	At the rates in force
196B	Income from units of a MF or UTI purchased in FC (including LTCG on transfer of such units) payable to an Offshore Fund	10
196C	Income by way of interest on bonds of an Indian Co. or public sector Co. sold by the Govt. and purchased by a NR in FC or dividend on GDRs referred to u/s 115AC (including LTCG on transfer of such bonds or GDRs) payable to a NR	10
196D	Income of FII from securities referred u/s 115AD(1) (not being income by way of interest u/s 194LD, dividend u/s 115-O or capital gain arising from such securities)	20

Notes –

- (i) In all the above cases, the rate of tax would be increased by surcharge, wherever applicable, and health and education cess @4%.
- (ii) The rates in force are specified in the Finance Act, 2018 or in the DTAA entered into u/s 90 or 90A, as the case may be.

INTERNATIONAL TAXATION

CHAPTER 2: DOUBLE TAXATION RELIEF

Fig 2.1

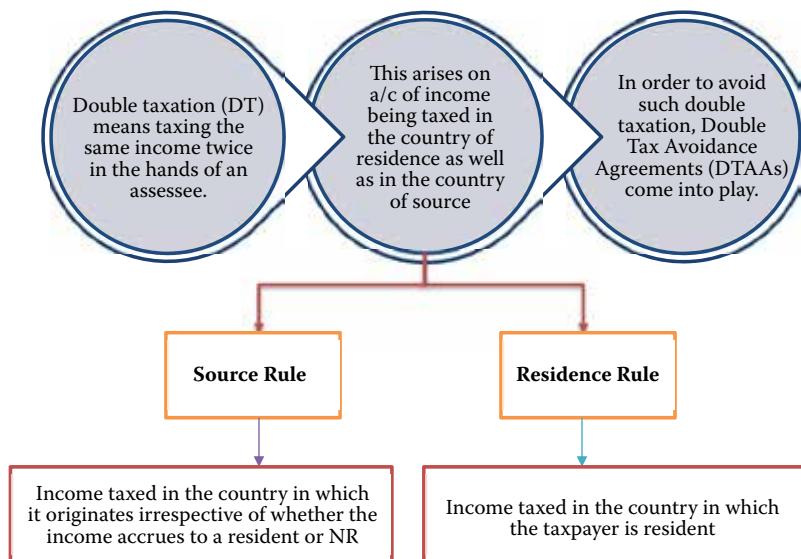


Fig 2.2

DT Relief under the IT Act, 1961

Bilateral Relief [Section 90/90A]

Agrmnt with foreign countries or specified territories

OBJECTIVE

The CG may enter into an agrmnt with the Govt of any country outside India or specified territory or specified assn outside India,—

- for the granting of relief in respect of doubly taxed income
- for the avoidance of DT of income
- for exchange of information for the prevention of evasion or avoidance of income-tax
- for recovery of income-tax

TAXABILITY

Taxability of income would be detd based on DTAA or the IT Act, 1961, whichever is more beneficial.

CHARGE OF TAX ON FOREIGN CO.

The charge of tax in respect of a foreign Co. at a rate higher than the rate at which a domestic Co. is chargeable, shall not be regarded as less favourable charge or levy of tax in respect of such foreign Co.

TAX RESIDENCY CERTIFICATE (TRC)

- In order to claim DT relief, the NR to whom such DTAA applies, has to obtain a TRC from the Govt of that country or specified territory.
- The NR to also provide such other docs and info, as may be prescribed, for claiming treaty benefits.

Unilateral Relief [Section 91]

Countries with which no agrmnt exists

APPLICABILITY

Assessee, who is a resident in India during the PY

CONDITIONS

- The income accrues or arises to him outside India.
- The income is not deemed to accrue or arise in India during the PY.
- The income in question has been subjected to income-tax in the foreign country in the hands of the assessee.
- The assessee has paid tax on the income in the foreign country.
- There is no agrmnt for relief from DT between India and the other country where the income has accrued or arisen.

COMPUTATION OF RELIEF

Doubly taxed income x Indian rate of tax or Rate of tax in the said country, whichever is lower

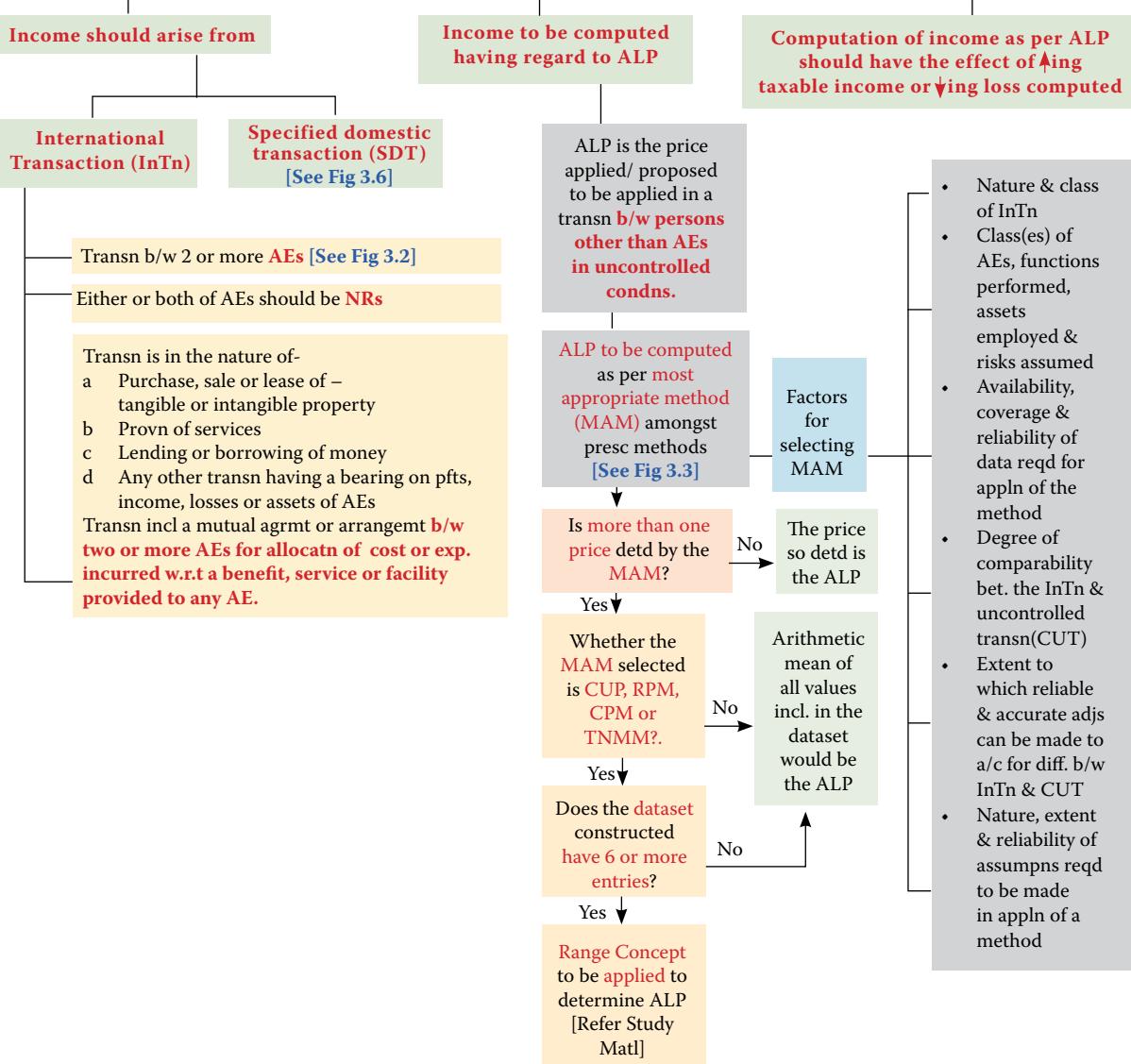
INTERNATIONAL TAXATION

CHAPTER 3 TRANSFER PRICING & OTHER ANTI-AVOIDANCE MEASURES

Multinational Companies (MNC) operating in more than one country transfer physical goods and intangible property or provides services to their associated enterprises (AEs) in another country. Two enterprises are "AEs" if one of the enterprises participates directly or indirectly in the management, control or capital of the other or if both enterprises are under common control. While doing so, the MNC concerned has in mind the goal of minimising tax burden and maximising profits but the two tax jurisdictions have also the consideration of maximising their revenue while making laws that govern such transactions (transns.) It is an internationally accepted practice that such 'transfer pricing' should be governed by the Arm's Length Principle (ALP) and the transfer price should be the price applicable in case of a transaction of arm's length. In other words, the transaction between associates should be priced in the same way as a transaction between independent enterprises to avoid loss of revenue to the concerned tax jurisdictions.

Fig 3.1

Chapter X: Special provisions relating to Avoidance of Tax [Transfer Pricing provisions]



INTERNATIONAL TAXATION ||

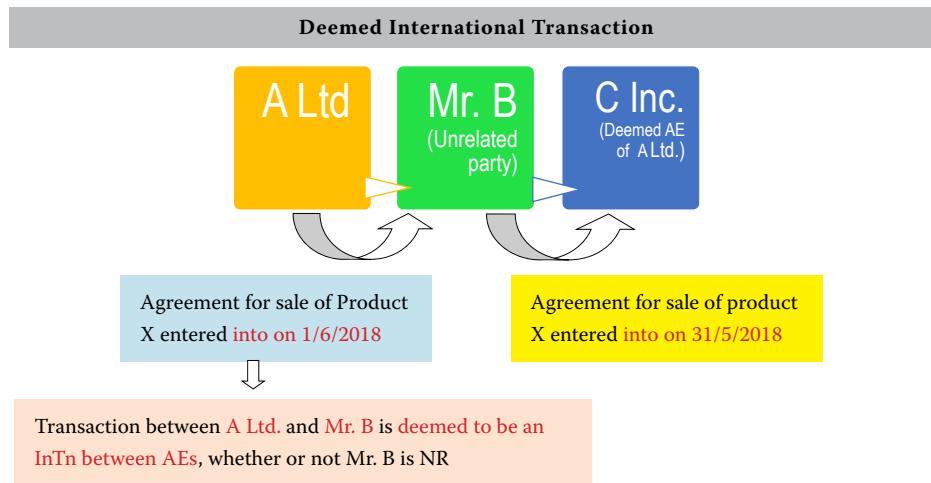


Fig 3.2

Associated Enterprises (AEs) [Section 92A(1)]		
Condition	Example	
(1) An enterprise (entr) which participates, directly (DP) or indirectly (IDP), or through one or more intermediaries, in: <ul style="list-style-type: none"> • Management (mgt) of the other entr (OE), or • control of OE, or • capital of OE 	Where A Ltd. DP in mgt of B Ltd. and B Ltd. DP in mgt of C Ltd. In such situation, A Ltd. has DP in mgt of B Ltd. but has an IDP in mgt of C Ltd. In such scenario, both B Ltd. and C Ltd. would be AEs of A Ltd.	
(2) If one or more persons participates, directly or indirectly, or through one or more intermediaries in: <ul style="list-style-type: none"> • mgt of the two different entrs • control of two different entrs • capital of two different entrs Then, those two entrs are AEs.	Mr. A directly has control in A Ltd. and B Ltd. In such a scenario, both A Ltd. & B Ltd. are AEs since they have a common person i.e. Mr. A, who controls both entities A Ltd. & B Ltd.	

Deemed Associated Enterprises [Section 92A(2)]		
Condition	Situation	Example
Substantial Voting Power (VP)	One entr holds 26% or more of the VP, directly or indirectly, in the other entr (OE).	A Ltd. holds 33% of VP in B Ltd. and B Ltd. holds 40% VP in C Ltd. In above situation, A Ltd. holds 33% of VP in B Ltd. directly and 40% of VP in C Ltd. indirectly (i.e. through B Ltd.). Therefore, both B Ltd. & C Ltd. are deemed AEs of A Ltd.
Substantial VP in two entities by common person	Any person or entr holds 26% or more of the VP power, directly or indirectly, in each of two different entrs.	Mr. A holds 40% of shareholding in both X Ltd. and Y Ltd. where neither X Ltd. has any holding in Y Ltd. nor Y Ltd. has any holding in X Ltd. In this situation, since Mr. A directly holds 40% of shareholding in both X Ltd. and Y Ltd., X Ltd. & Y Ltd. will be deemed AEs.

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Deemed Associated Enterprises [Section 92A(2)]		
Condition	Situation	Example
Advancing of substantial sum of money	One entr advances loan to the OE of an amount of 51% or more of the book value (BV) of the total assets of OE	<i>BV of total assets of Y Ltd. is ₹ 100 crores. X Ltd. advances loan of ₹ 60 crores to Y Ltd.</i> <i>Since, in this case, X Ltd. advances loan which is 60% of the BV of total assets of Y Ltd., X Ltd. & Y Ltd. are deemed AEs.</i>
Guaranteeing borrowings	One entr guarantees 10% or more of the total borrowings of the OE.	<i>P Inc. has total loan of 1 million dollars from XYZ Bank of America. Out of that, A Ltd., an Indian company, guarantees 20% of total borrowings. In such case, P Inc. and A Ltd. would be deemed AEs.</i>
Appointment of majority directors of OE	One Entr appoints more than half of the BoD or members of the governing board (GB), or one or more executive directors (EDs) or executive members (EMs) of the GB of OE .	<i>X Ltd. has 15 directors on its Board. Out of that, Y Ltd. has appointed 8 directors. In such case, X Ltd. and Y Ltd. would be deemed AEs.</i>
Appointment of majority directors of two different entrs by same person(s)	More than half of the directors or members of the GB, or one or more of the EDs or members of the GB of each of the two entrs are appointed by the same person(s) .	<i>Mr. A appointed 9 directors out of 15 directors of X Ltd. and appointed 2 EDs on the board of Y Ltd. In such case, since a common person i.e. Mr. A appointed more than half of the directors in X Ltd. and appointed 2 EDs in Y Ltd., both X Ltd. and Y Ltd. are deemed AEs.</i>
Dependence on intangibles w.r.t which OE has exclusive rights	The manufacture (mfre) or processing of goods or articles or business carried out by one entr is wholly dependent (i.e. 100%) on the know-how , patents, copyrights etc., or any data, documentation, drawing or specification relating to any patent, invention, model etc., of which the OE is the owner or in respect of which the OE has exclusive rights.	
Dependence on RM supplied by OE	90% or more of RMs and consumables required for the mfre or processing of goods or articles or business carried out by one entr, are supplied by the OE , or by persons specified by the OE, where the prices and other conditions relating to the supply are influenced by such OE.	
Dependence on sale	The goods or articles mfrd or processed by one entr, are sold to the OE or to persons specified by the OE, and the prices and other conditions relating thereto are influenced by such OE .	
Control by common individual (indvl)	Where one entr is controlled by an indvl , the OE is also controlled by such indvl or his relative or jointly by such indvl and his relatives.	<i>Mr. A and Mr. B are relatives. Mr. A has control over X Ltd. and Mr. B has control over Y Ltd. In such a case, both X Ltd. and Y Ltd. would be deemed AEs.</i>
Control by HUF or member thereof	Where one entr is controlled by an HUF and the OE is controlled by a member of such HUF or by relative of a member of such HUF or jointly by such member and his relative.	<pre> graph TD HUF((HUF)) <--> Member((Member of HUF/\\ Relative of member\\ of such HUF)) Member -- Control --> A[A Ltd.] Member -- Control --> B[B Ltd.] A <--> B subgraph DEEMED_AE [A Ltd. & B Ltd. are deemed AEs] A B end </pre>
Interest in a firm, AOPs or BOIs	Where one entr is a firm, AOPs or BOIs, the OE holds 10% or more interest in firm/HUF/BOI .	
Mutual interest relationship	There exists b/w the two entrs , any relationship of mutual interest , as may be prescribed .	

INTERNATIONAL TAXATION ||

Fig 3.3

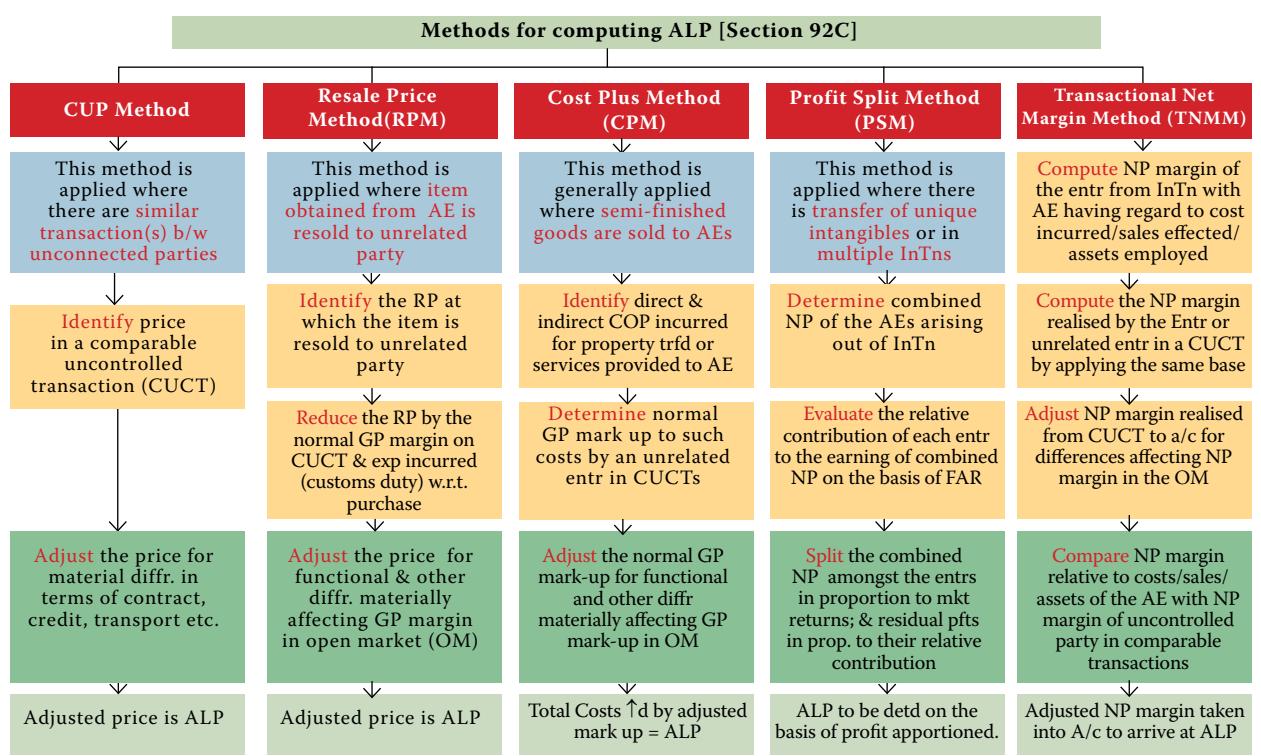


Fig 3.4

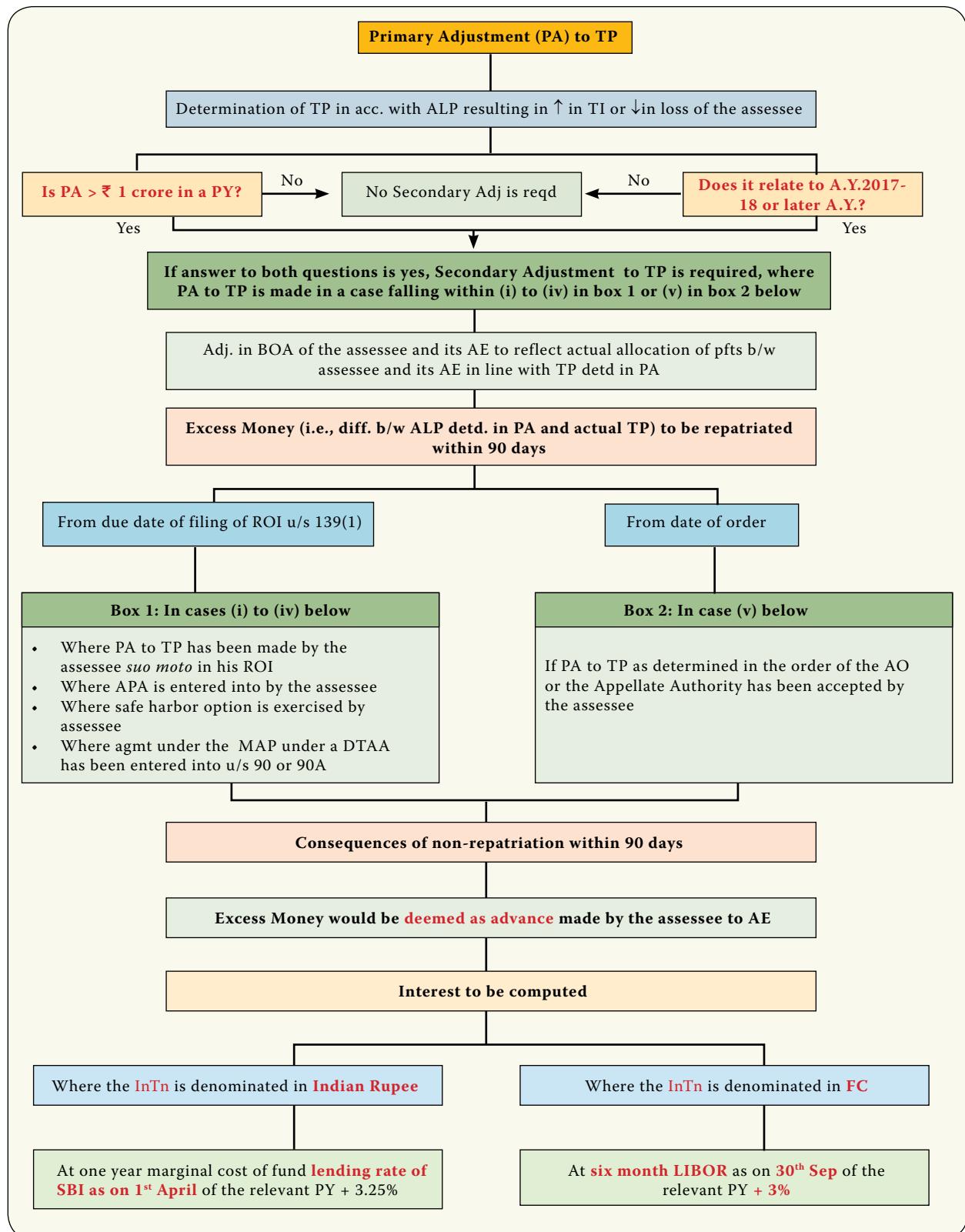
Advance Pricing Agreements [Section 92CC]

Purpose of APA	Detrmn (dtrmn) of ALP or specifying the manner for dtrmn of ALP for an InTn to be entered into.
Manner of dtrmn of ALP in APA	The manner for dtrmn of ALP ref. above may include methods ref. to u/s 92C(1) or any other method with necessary adjustments or variations.
Non-applicability of sec 92C & sec 92CA	Where an APA has been entered for an InTn, then, computation of ALP as per the methods specified u/s 92C and reference to TPO would not apply for such InTn.
Validity of APA	For the period specified in the agrmt which shall not exceed five consecutive PYs. In case of rollback, the total period shall not exceed 9 PYs [4 PY + maximum 5 consecutive PY]
Binding nature of APA	APA will be binding on: <ul style="list-style-type: none"> the person and in respect of the transns. in relation to which, the APA has been entered into; and the PC or C and the ITAs subordinate to him, in respect of the said person and the said transns. The APA, however, would not be binding, if there is any change in law or facts having bearing on such APA.
Conseqs. where APA is obtained by fraud:	<ul style="list-style-type: none"> Where APA obtained by way of fraud or misrepresentation of facts, the Board with the approval of CG can declare APA void ab initio. All the prov of the Act shall apply to such person, as if such APA had never been entered into. The period beginning with the date of such APA and ending on the date of order declaring the APA as void ab initio, shall be excluded for the purpose of compting any period of limitation (POL) under this Act. In case the PoL after exclusion of the above period is less than 60 days, such remaining PoL shall be extended to 60 days.
Prescribed scheme for APA	The Board has prescribed rules 10F to 10T specifying an APA scheme. [For details, refer Study Material]

INTERNATIONAL TAXATION

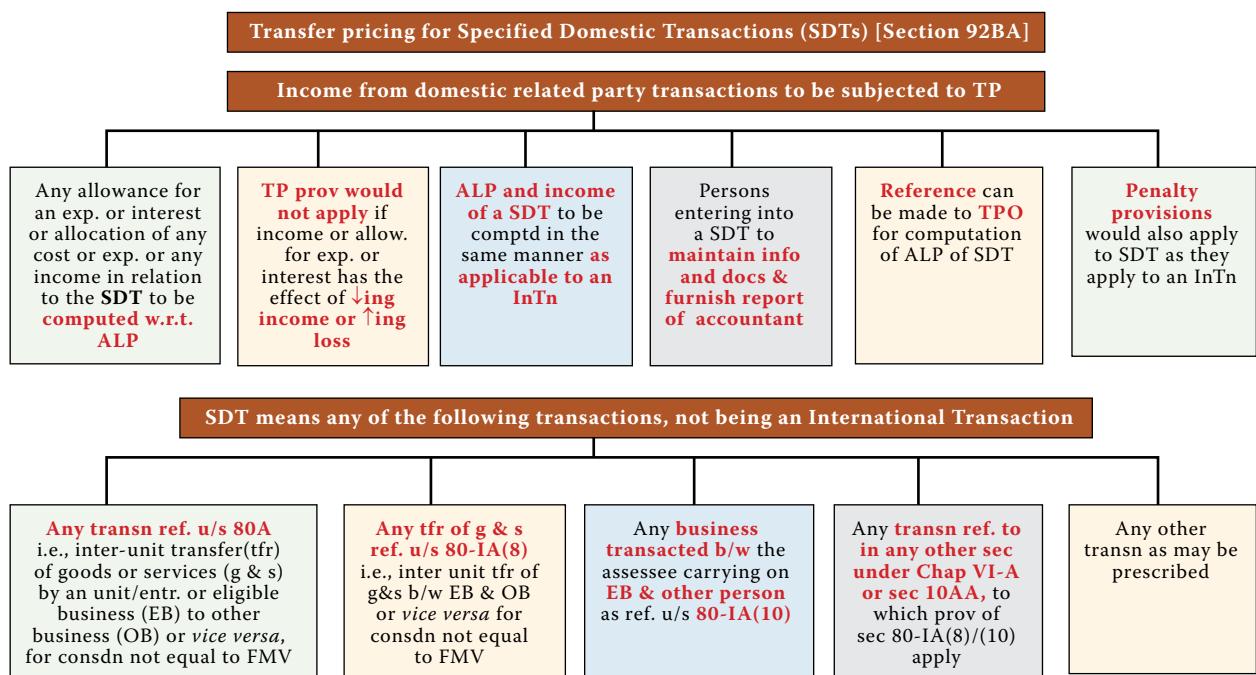
Fig 3.5

Secondary Adjustment [Section 92CE]



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Fig 3.6



Note: However, where *aggregate value of above transactions entered into by the assessee ≤ ₹ 20 crore in the PY*, then, such transactions would **not be treated as SDT**, and consequently TP provisions would not be applicable.

Fig 3.7

Penalty for failure to comply with TP provisions		
Section	Nature of default	Penalty
270A(9)	Failure to report any InTn or Deemed InTn or SDT to which the prov of Chap X applies would constitute 'misreporting of income'	200% of the tax payable on under-reported income
271BA	Failure to furnish a report from an accountant as required by sec 92E	₹ 1 lakh
271G	Failure to furnish info or doc as required by AO or CIT(A) u/s 92D(3) within 30 days from the date of receipt of notice or extended period not exceeding 30 days , as the case may be..	2% of the value of the InTn/SDT for each failure
271AA	(1) Failure to keep and maintain any such doc and info as required by sec 92D(1)/(2); (2) Failure to report such InTn or SDT which is required to be reported; or (3) Maintaining or furnishing any incorrect info or doc.	2% of the value of each such InTn/SDT

Notes:

- The **penalty u/s 271AA shall be in addition and not in substitution of penalty u/s 270A(9) or 271BA.**
- In all the above cases, if the assessee can show that there was **reasonable cause for the failure, no penalty will be leviable.**

CHAPTER 4: ADVANCE RULINGS

For the purpose of saving the high cost and significant time involved in extensive litigations relating to determination of tax liability of a non-resident or tax liability of a resident arising out of high value transactions, an independent quasi-judicial authority, namely, the Authority for Advance Rulings (AAR) has been given the power to pronounce advance ruling in respect thereof relating to a specific question of law or fact. This will help ensure certainty and at the same time will be expeditious and cost effective.

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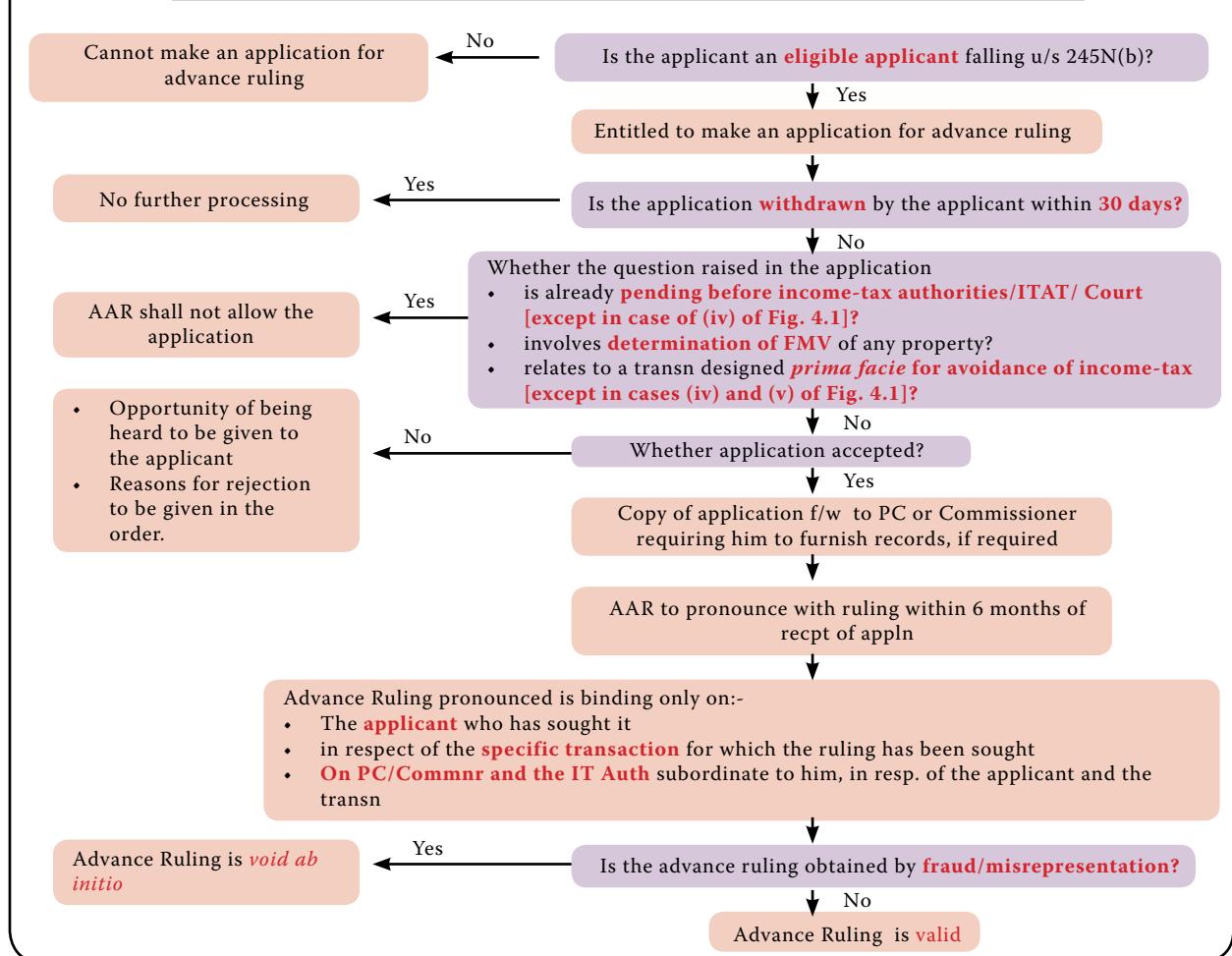
Fig 4.1

Applicant for Advance Ruling

S.No.	Applicant u/s 245N(b)	Advance Ruling u/s 245N(a) means determination by the AAR in relation to
(i)	NR	a transn which has been undertaken (u/t) or is proposed to be u/t by him.
(ii)	Resident	the tax liability of a NR arising out of a transn which has been u/t or is proposed to be u/t by him with such NR and such determination (detmn) shall incl the detmn of any question of law or of fact specified in the application.
(iii)	Resident of class or category of persons notified by CG	the tax liability of a resident applicant, arising out of a transn which has been u/t or is proposed to be u/t by such applicant and such detmn shall incl the detmn of any question of law or of fact specified in the application.
		Note: CG has notified a resident, in relation to his tax liability arising out of one or more transns, valuing ≥ ₹ 100 crore in total.
(iv)	Resident of class or category of persons notified by CG	an issue relating to computation of TI which is pending before any IT Authority or the ITAT and such detmn or decision shall incl the detmn or decision of any question of law or fact w.r.t. such computation of TI specified in the application.
		Note: A Public sector undertaking has been notified by the CG
(v)	Resident or NR	whether an arrangement, which is proposed to be u/t by such applicant, is an impermissible avoidance arrangement as referred to in Chapter X-A or not.

Fig 4.2

Overview of Advance Ruling Procedure



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CHAPTER 5: EQUALISATION LEVY

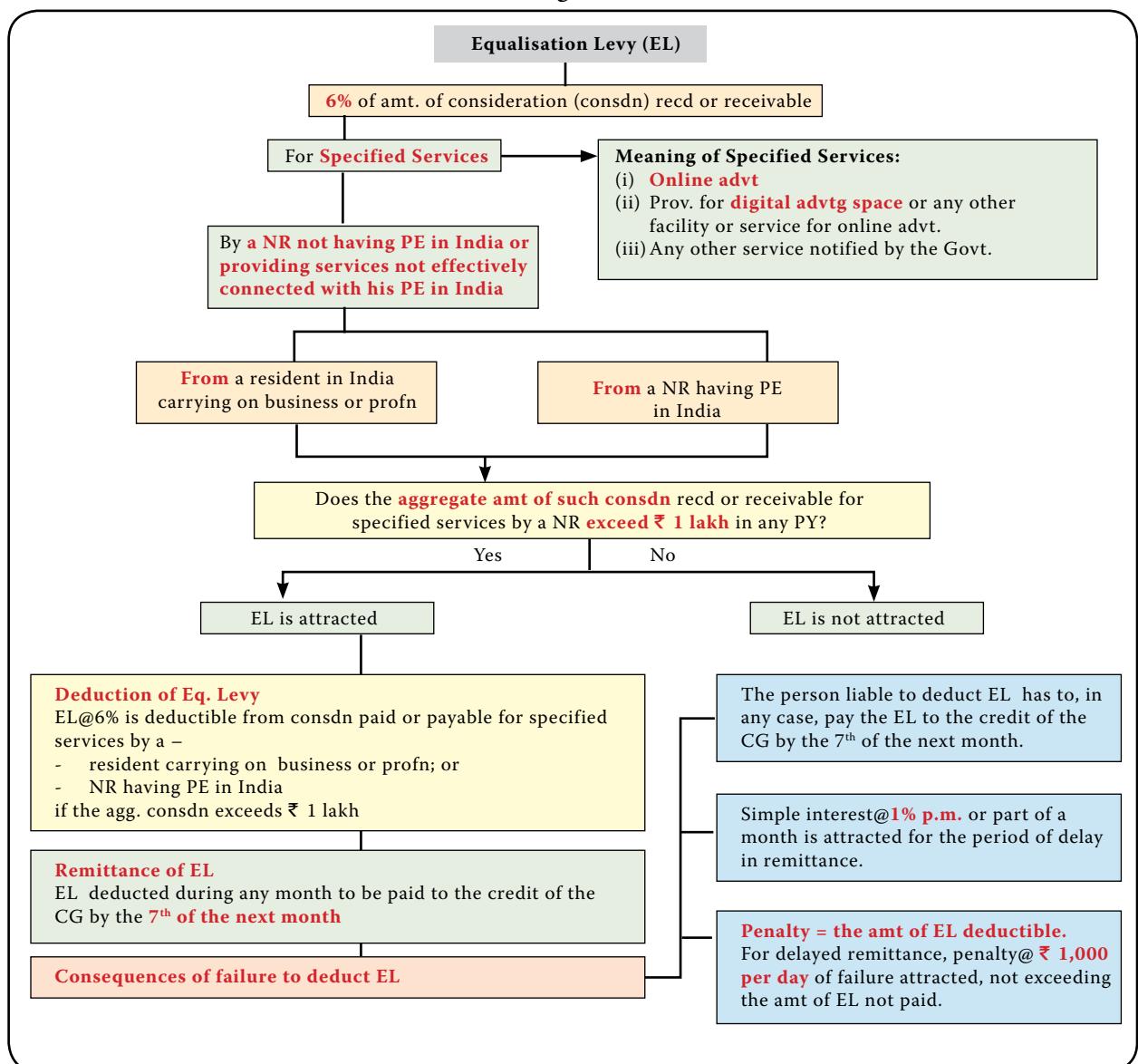
In the digital domain, business may be conducted without regard to national boundaries and may dissolve the link between an income-producing activity and a specific location. The typical taxation issues relating to e-commerce are:

- the difficulty in characterising the nature of payment and establishing a nexus or link between taxable transaction, activity and a taxing jurisdiction,
- the difficulty of locating the transaction, activity and identifying the taxpayer for income tax purposes.

Taking into consideration the potential of new digital economy and the rapidly evolving nature of business operations, it becomes necessary to address the challenges in terms of taxation of such digital transactions.

Chapter VIII of the Finance Act, 2016 addresses these challenges by introducing "Equalisation Levy" on such transactions.

Fig 5.1



INTERNATIONAL TAXATION

CHAPTER 6: OVERVIEW OF MODEL TAX CONVENTIONS

In order to enable various countries to enter into treaties, which are standardised to some extent, the Organisation for Economic Cooperation and Development (OECD) and the United Nations (UN) have developed certain Model Tax Conventions. These Conventions can be used by various countries as a starting point in their negotiations with other countries. While these Models are not legally binding, they have been extensively used by various countries as a reference point while entering into Tax Treaties.

Fig 6.1

Overview of Significant Articles of OECD and UN Model Conventions, 2017

Article		OECD MC <i>vis-à-vis</i> UN MC Common paras & Significant differences						
Chapter I : Scope of the Convention								
1	Persons covered	Resident of CS - For application of treaty, a person has to be a resident of one or both of the Contracting States (CSs). Fiscally transparent entity - Income derived by or through a fiscally transparent entity under the tax law of either CS to be considered to be income of a resident of a CS, to the extent such income is treated, for purposes of taxation by that State, as the income of a resident of that State.						
2	Taxes covered	Taxes on income and capital - The MCs apply to taxes on income and on capital imposed on behalf of a CS or of its political subdivisions or local authorities, irrespective of the manner in which they are levied. Coverage of taxes - Taxes on income and on capital covers: <table border="1" style="margin-left: auto; margin-right: auto; width: fit-content; border-collapse: collapse;"> <thead> <tr style="background-color: #FFDAB9;"> <th style="padding: 5px;">Taxes imposed</th> <th style="padding: 5px;">Taxes included</th> </tr> </thead> <tbody> <tr> <td style="padding: 5px;"> <ul style="list-style-type: none"> On total income On total capital On elements of income or of capital </td> <td style="padding: 5px;"> <ul style="list-style-type: none"> taxes on gains from alienation of movable or immovable property taxes on total amounts of wages or salaries paid by enterprises taxes on capital appreciation </td> </tr> </tbody> </table>			Taxes imposed	Taxes included	<ul style="list-style-type: none"> On total income On total capital On elements of income or of capital 	<ul style="list-style-type: none"> taxes on gains from alienation of movable or immovable property taxes on total amounts of wages or salaries paid by enterprises taxes on capital appreciation
Taxes imposed	Taxes included							
<ul style="list-style-type: none"> On total income On total capital On elements of income or of capital 	<ul style="list-style-type: none"> taxes on gains from alienation of movable or immovable property taxes on total amounts of wages or salaries paid by enterprises taxes on capital appreciation 							
Chapter II : Definitions								
4	Resident	Resident of either CS - A taxpayer has to demonstrate that he is a resident of one or both CSs to be able to gain access to a tax treaty and avail benefits thereunder. Meaning of "Resident of a Contracting State" - Any person who, under the laws of that State, is liable to tax therein by reason of his: <div style="text-align: center; margin-top: 10px;"> <pre> graph TD POI[Place of incorporation (POI)] --> Domicile[Domicile] POI --> Residence[Residence] Domicile --> Residence PlaceMgmt[Place of Mgmt] --> AnyOther[Any other similar criterion] </pre> </div> <p>This term, however, does not include any person who is liable to tax in that State in respect of only income from sources in that State or capital situated therein.</p> <p>Note - OECD MC does not contain reference to place of incorporation.</p> <p>Tie-breaker Rule <u>In case of individuals</u> Where an individual is a resident of both CSs as per domestic tax laws of that CS, then, his residential status shall be determined by applying the tie-breaker rule in the following sequence:</p> <div style="text-align: center; margin-top: 10px;"> <pre> graph LR PH[Permanent Home] --> CVI[Centre of vital interests] CVI --> HA[Habitual abode] HA --> N[Nationality] N --> MACA[Mutual agreement between Competent Authorities of the CSs] </pre> </div> <p>In case of companies</p> <ul style="list-style-type: none"> Dual residence arises where one CS attaches importance to POI and the other CS to the POEM. The tie-breaker test involves a case by case approach considering the no. of tax avoidance cases involving dual resident Cos. Request has to be made by the tax payer through Article 25 (MAP). Competent Authorities will rely on range of factors to resolve the question of dual residency. 						

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5	Permanent establishment (PE) <p>Meaning of PE [Article 5(1)]</p> <ul style="list-style-type: none"> • There should be an “enterprise” (Entr). • Such Entr should be carrying on a “business”; • There should be a “place of business (POB)”; • Such place of business (POB) should be at the disposal of the Entr (may be owned / rented but must be one which the Entr has the effective power to use); • The POB should be “fixed”, i.e., it must be established at a distinct place with a certain degree of permanence • The business of the enterprise is carried on wholly or partially through this fixed POB. <p>A PE does not exist unless all the aforesaid conditions are satisfied.</p> <p>Specific inclusions in the meaning of PE [Article 5(2)]</p>						
Expansion of scope of Agency PE							
	<ul style="list-style-type: none"> • Agency PE targets activities done by a dependent agent (DA) of the Entr in the Source State (SS). • DAPE now includes instances when an agent habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts routinely concluded without material modification by the enterprise. 						
PE of an Insurance Enterprise							
	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center; background-color: #ffd700;">UN MC</th><th style="text-align: center; background-color: #ffd700;">OECD MC</th></tr> </thead> <tbody> <tr> <td style="padding: 5px;">UN MC has an additional Article 5(6) relating to insurance. An insurance Entr of a CS is deemed to have a PE in the other CS if it collects premiums in the territory of that other CS or insures risks situated therein through a person.</td><td style="padding: 5px;">In the absence of similar Article in the OECD MC, a PE of an insurance Entr is to be determined in accord with Article 5(1) or 5(2).</td></tr> </tbody> </table>	UN MC	OECD MC	UN MC has an additional Article 5(6) relating to insurance. An insurance Entr of a CS is deemed to have a PE in the other CS if it collects premiums in the territory of that other CS or insures risks situated therein through a person.	In the absence of similar Article in the OECD MC, a PE of an insurance Entr is to be determined in accord with Article 5(1) or 5(2).		
UN MC	OECD MC						
UN MC has an additional Article 5(6) relating to insurance. An insurance Entr of a CS is deemed to have a PE in the other CS if it collects premiums in the territory of that other CS or insures risks situated therein through a person.	In the absence of similar Article in the OECD MC, a PE of an insurance Entr is to be determined in accord with Article 5(1) or 5(2).						
Chapter III: Taxation of Income							
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INTERNATIONAL TAXATION

11	Interest	Right of CSs to tax interest							
		Para of Article	Right of CS to tax interest						
1 Confers the right to RS to tax interest									
2 Confers right to the SS to tax interest. Generally, interest is taxed in the SS at a given rate on gross basis. However, if the beneficial owner of the interest is a resident of the other CS, the tax so charged ≤ specified % of the gross interest. The specified % as per OECD MC is 10%, but the UN MC leaves this % to be established through bilateral negotiations.									
<p>Defn of interest in OECD & UN MCs - Interest means income from debt claims of every kind,</p> <ul style="list-style-type: none"> • whether or not secured by mortgage and • whether or not carrying a right to participate in the debtor's profits. <p>Specific inclusions in the definition of interest as per OECD & UN MCs</p> <ul style="list-style-type: none"> • income from govt securities • income from bonds or debentures • premiums and prizes attaching to such securities, bonds or debentures. <p>Note - Interest does not include penalty charges for late payment.</p>									
12	Royalties (Roy)	OECD MC	UN MC						
		Right of CS to tax Roy. income Roy. arising in SS and beneficially owned by resident of the RS is taxable only in RS. Thus, RS has exclusive right to tax royalty income.	Roy may also be taxed in the SS. However, if the beneficial owner is a resident of the RS, the tax charged by SS ≤ the specified %, (to be established thro bilateral negotiations) of gross royalty.						
		Defn of Roy Defn of Royalty does not incl: (a) rentals for films/tapes used for radio/ TV broadcasting; and (b) rentals for industrial, commercial or scientific equipment.	Royalty includes: (a) rentals for films or tapes used for radio or TV broadcasting and (b) equipment rentals like rentals for industrial, commercial or scientific equipment.						
12A	FTS	<p>In its 2017 update, the UN MC has inserted a specific article pertaining to Fees for Technical Services (FTS). There is no specific reference to FTS in OECD MC.</p> <p>Right of CS to tax FTS [UN Model]</p> <table border="1"> <tr> <td>Para of Article</td><td>Right of CS to tax FTS</td></tr> <tr> <td>1</td><td>Confers right to the RS to tax FTS. However, does not state that FTS is exclusively taxable in the RS.</td></tr> <tr> <td>2</td><td>Establishes the right of the SS to tax FTS in accordance with its domestic law, subject to limitation on the max. rate of tax, to be established thro bilateral negotiations, if the beneficial owner is a resident of the other CS.</td></tr> </table> <p>Meaning of FTS [UN Model]</p> <p>FTS means pays for managerial, technical or consultancy services</p> <p>Exclusions from the meaning of FTS:</p> <p>i pay to an employee ii pay for teaching in an or by an educational institution iii pay by an individual for services for personal use</p>		Para of Article	Right of CS to tax FTS	1	Confers right to the RS to tax FTS. However, does not state that FTS is exclusively taxable in the RS.	2	Establishes the right of the SS to tax FTS in accordance with its domestic law, subject to limitation on the max. rate of tax, to be established thro bilateral negotiations, if the beneficial owner is a resident of the other CS.
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13	Capital gains	<p>This Article provides for the taxation of income arising from transfer of a capital asset, including transfer of shares.</p> <p>Right of CS to tax income from Cap Gains</p> <ul style="list-style-type: none"> • The right to tax cap gains may be exclusively with the RS, or shared between the RS and SS. • The Article does not specify what is a cap gain and how it is to be computed, this being left to the applicable domestic law. • The Article contains rules for taxation of gains from alienation of dif. assets such as immovable prop., immovable prop. forming part of a PE, ships & aircrafts, etc. • In respect of shares, the 2017 OECD and UN MCs are identical. Rights are conferred to the SS if more than 50% of the value of shares during the preceding 365 days is derived from immovable property in such SS. 							

INTERNATIONAL TAXATION ||

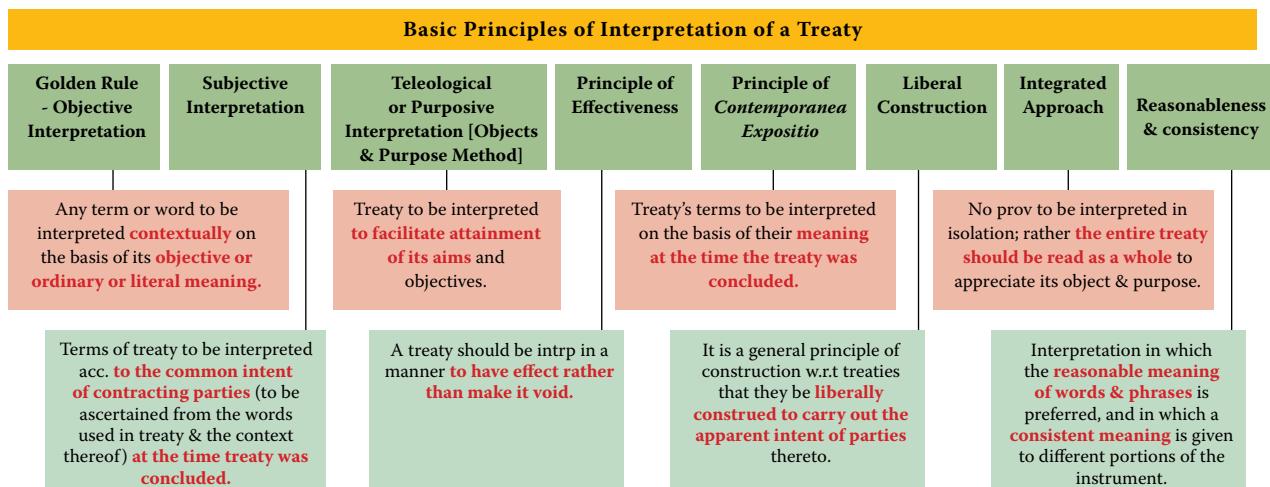
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	Chapter V : Methods for the Elimination of Double Taxation														
23A/ 23B	Exemption method/ Credit method <p>In many cases, the application of tax treaty may result into double taxation (DT) for tax payers. In such a case, Articles 23A and 23B provide for the mechanism through which tax credit/exemption may be available in the RS for taxes deducted in the SS.</p> <p>Two approaches for elimination of DT under MCs:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 50%;">Exemption method (Article 23A)</th><th style="width: 50%;">Credit method (Article 23B)</th></tr> </thead> <tbody> <tr> <td style="width: 50%; background-color: #ffffcc; text-align: center;">Tax exemption may be available in the RS for taxes deducted in the SS.</td><td style="width: 50%; background-color: #ffffcc; text-align: center;">Tax credit may be available in the RS for taxes deducted in the SS.</td></tr> </tbody> </table> <p>These methods are not mutually exclusive and there may be cases where a treaty may adopt exemption method for certain types of income and credit method for other incomes.</p> <p>Juridical DT and Economic DT:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 20%;">Juridical DT</th><th style="width: 80%;">Economic DT</th></tr> </thead> <tbody> <tr> <td style="width: 20%; background-color: #ffffcc; text-align: center;">Meaning</td><td style="width: 80%;">The same income or capital is taxable in the hands of the same person by more than one State</td></tr> <tr> <td style="width: 20%; background-color: #ffffcc; text-align: center;">Example</td><td style="width: 80%;">FTS may be taxable in the hands of the recipient both in the RS as well as in SS, based on the domestic laws of the CSs.</td></tr> <tr> <td style="width: 20%; background-color: #ffffcc; text-align: center;">Type of DT addressed by Art 23A & 23B</td><td style="width: 80%;">Articles 23A & 23B address Juridical DT.</td></tr> <tr> <td></td><td style="text-align: center;">The Articles do not address Economic DT. If two States wish to solve problems of economic DT, they must do so in bilateral negotiations.</td></tr> </tbody> </table>	Exemption method (Article 23A)	Credit method (Article 23B)	Tax exemption may be available in the RS for taxes deducted in the SS.	Tax credit may be available in the RS for taxes deducted in the SS.	Juridical DT	Economic DT	Meaning	The same income or capital is taxable in the hands of the same person by more than one State	Example	FTS may be taxable in the hands of the recipient both in the RS as well as in SS, based on the domestic laws of the CSs.	Type of DT addressed by Art 23A & 23B	Articles 23A & 23B address Juridical DT.		The Articles do not address Economic DT. If two States wish to solve problems of economic DT, they must do so in bilateral negotiations.
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23A/ 23B	Exemption method/ Credit method <p>In many cases, the application of tax treaty may result into double taxation (DT) for tax payers. In such a case, Articles 23A and 23B provide for the mechanism through which tax credit/exemption may be available in the RS for taxes deducted in the SS.</p> <p>Two approaches for elimination of DT under MCs:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 50%;">Exemption method (Article 23A)</th><th style="width: 50%;">Credit method (Article 23B)</th></tr> </thead> <tbody> <tr> <td style="width: 50%; background-color: #ffffcc; text-align: center;">Tax exemption may be available in the RS for taxes deducted in the SS.</td><td style="width: 50%; background-color: #ffffcc; text-align: center;">Tax credit may be available in the RS for taxes deducted in the SS.</td></tr> </tbody> </table> <p>These methods are not mutually exclusive and there may be cases where a treaty may adopt exemption method for certain types of income and credit method for other incomes.</p> <p>Juridical DT and Economic DT:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 20%;">Juridical DT</th><th style="width: 80%;">Economic DT</th></tr> </thead> <tbody> <tr> <td style="width: 20%; background-color: #ffffcc; text-align: center;">Meaning</td><td style="width: 80%;">The same income or capital is taxable in the hands of the same person by more than one State</td></tr> <tr> <td style="width: 20%; background-color: #ffffcc; text-align: center;">Example</td><td style="width: 80%;">FTS may be taxable in the hands of the recipient both in the RS as well as in SS, based on the domestic laws of the CSs.</td></tr> <tr> <td style="width: 20%; background-color: #ffffcc; text-align: center;">Type of DT addressed by Art 23A & 23B</td><td style="width: 80%;">Articles 23A & 23B address Juridical DT.</td></tr> <tr> <td></td><td style="text-align: center;">The Articles do not address Economic DT. If two States wish to solve problems of economic DT, they must do so in bilateral negotiations.</td></tr> </tbody> </table>	Exemption method (Article 23A)	Credit method (Article 23B)	Tax exemption may be available in the RS for taxes deducted in the SS.	Tax credit may be available in the RS for taxes deducted in the SS.	Juridical DT	Economic DT	Meaning	The same income or capital is taxable in the hands of the same person by more than one State	Example	FTS may be taxable in the hands of the recipient both in the RS as well as in SS, based on the domestic laws of the CSs.	Type of DT addressed by Art 23A & 23B	Articles 23A & 23B address Juridical DT.		The Articles do not address Economic DT. If two States wish to solve problems of economic DT, they must do so in bilateral negotiations.
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	The Articles do not address Economic DT. If two States wish to solve problems of economic DT, they must do so in bilateral negotiations.														

INTERNATIONAL TAXATION

Chapter VI : Special Provisions				
25	Mutual agreement procedure (MAP)	Where a tax payer believes that the treatment accorded by either or both CSs is not in accord with the provns of the tax treaty, this Article provides for dispute resolution through bilateral negotiations between competent authorities (CAS) of both CSs.		
		OECD MC	UN MC	
		Request for MAP	The taxpayer may make a request to either CS	
		Time limit	Stipulates a time limit of 2 years from the date when all the info reqd by the CAS in order to address the case need to be provided to both CAS.	
		Who can request for Arbitration?	Arbitration must be requested in writing by the person who initiated the case	
		Departure from arbitration by CAS	No specific provision for departure from arbitration.	
26	Exchange of information (EOI)	<p>Purpose of Article 26 In order to complete tax cases, a country may require certain info which may be available with the treaty partner.</p> <p>Article 26 provides for:</p> <ul style="list-style-type: none"> • the info which may be exchanged • the manner in which such a request has to be made. <p>Importance of Article 26:</p> <ul style="list-style-type: none"> • facilitates effective exchange of information between CSs. • curtails cross-border tax evasion and avoidance, • curtails the capital flight that is often accomplished thro tax evasion & avoidance. This is particularly relevant in the perspective of developing countries. <p>Similar provisions contained in OECD and UN MCs</p> <ul style="list-style-type: none"> • A CS cannot be expected to provide confidential financial info to another CS unless it has confidence that the info will not be disclosed to unauthorised persons. • A CS can avoid the EOI obligations by showing that the info pertains to communication between an attorney and his client which is protected from disclosure under domestic law. • Lack of interest or use in such info cannot, however, form the basis for a CS to not co-operate with the EOI obligations. 		

CHAPTER 7: APPLICATION AND INTERPRETATION OF TAX TREATIES

Fig 7.1



INTERNATIONAL TAXATION

Fig 7.2



Fig 7.3

Principles enunciated in the Vienna Convention on Law of Treaties										
Article No.	Article Heading	Principle enunciated								
26	<i>Pacta Sunt Servanda</i> (in good faith)	Every treaty in force is binding upon the parties and must be followed by them in good faith .								
28	Non-retroactivity of treaties	Unless otherwise provided, treaties cannot have retrospective application .								
29	Territorial Scope of Treaties	Unless a different intention appears from the treaty, a treaty is binding upon each party in respect of its entire territory .								
31	General Rule of Interpretation (intrptn)	<ul style="list-style-type: none"> A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms in the light of its object and purpose. A special meaning shall be given to a term if the parties so intended. 								
32	Supplementary means of intrpr	Recourse may be had to supplementary means of intrptn incl. the preparatory work of the treaty and the circum. of its conclusion, in order to confirm the meaning resulting from the application of Article 31, or to determine the meaning when the intrpt according to Article 31: <ul style="list-style-type: none"> (a) leaves the meaning ambiguous or obscure; or (b) leads to a result which is manifestly absurd or unreasonable. 								
33	Intrp of Treaties Authenticated in two or more languages	When a treaty has been authn. in two or more languages, the text is equally authoritative in each language, unless the treaty provides or the parties agree that, in case of divergence, a particular text shall prevail.								
34	General Rule reg. third states	A treaty does not create either obligations or rights for a third State without its consent.								
60	Termination or Suspension of operatn of treaty as conseq. of breach	A material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part.								
61	Supervening impossibility of performance	<p style="text-align: center;">Impossibility of performance</p> <table border="0" style="width: 100%;"> <tr> <td style="width: 50%; text-align: center;">May be invoked</td> <td style="width: 50%; text-align: center;">May not be invoked</td> </tr> <tr> <td colspan="2" style="text-align: center; background-color: #ffffcc;">as a ground terminating, withdrawing from or suspending the operation of a treaty</td> </tr> <tr> <td colspan="2" style="text-align: center; background-color: #e0f2e0;"> if impossibility results from permanent disappearance or destruction of an object indispensable for execution of the treaty. If impossibility is temporary, it may be invoked only as a ground for suspending its operation. </td> </tr> <tr> <td colspan="2" style="text-align: center; background-color: #e0f2e0;"> if impossibility is the result of a breach by that party either of an obligation under the treaty or of any other international obligation owed to any other party thereto </td> </tr> </table>	May be invoked	May not be invoked	as a ground terminating, withdrawing from or suspending the operation of a treaty		if impossibility results from permanent disappearance or destruction of an object indispensable for execution of the treaty. If impossibility is temporary, it may be invoked only as a ground for suspending its operation.		if impossibility is the result of a breach by that party either of an obligation under the treaty or of any other international obligation owed to any other party thereto	
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62	Fundamental change (Fund. chg) of circumstances (circum.)	<table border="0" style="width: 100%;"> <tr> <td style="width: 50%; text-align: center;">A fund.chg of circum. which has occurred with regard to those existing at the time of the concl. of a treaty, and which was not foreseen by the parties</td> <td style="width: 50%; text-align: center;">May not be invoked</td> </tr> <tr> <td colspan="2" style="text-align: center; background-color: #ffffcc;">as a ground terminating, withdrawing of a treaty</td> </tr> <tr> <td colspan="2" style="text-align: center; background-color: #e0f2e0;"> <ul style="list-style-type: none"> If existence of those circum constituted an essential basis of the consent of the parties to be bound by the treaty; and the effect of the change is radically to transform the extent of obligations still to be performed under the treaty </td> </tr> <tr> <td colspan="2" style="text-align: center; background-color: #e0f2e0;"> <ul style="list-style-type: none"> if the treaty establishes a boundary; or if fund. chg is the result of a breach by the party invoking it either of an obligation under the treaty or of any other international obligation owed to any other party to the treaty </td> </tr> </table>	A fund.chg of circum. which has occurred with regard to those existing at the time of the concl. of a treaty, and which was not foreseen by the parties	May not be invoked	as a ground terminating, withdrawing of a treaty		<ul style="list-style-type: none"> If existence of those circum constituted an essential basis of the consent of the parties to be bound by the treaty; and the effect of the change is radically to transform the extent of obligations still to be performed under the treaty 		<ul style="list-style-type: none"> if the treaty establishes a boundary; or if fund. chg is the result of a breach by the party invoking it either of an obligation under the treaty or of any other international obligation owed to any other party to the treaty 	
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64	Emergence of new peremptory norm of general international law	If a new peremptory norm of general international law emerges, any existing treaty which is in conflict with that norm becomes void and stands terminated								

INTERNATIONAL TAXATION

CHAPTER 8 : FUNDAMENTALS OF BEPS

Base Erosion and Profit Shifting (BEPS) refers to tax planning strategies that exploit gaps and mismatches in tax rules to make profits ‘disappear’ for tax purposes or to shift profits to locations where there is little or no real activity but the taxes are low, resulting in little or no overall corporate tax being paid. This has become a critical issue since governments have to cope with less revenue and a higher cost to ensure compliance. In February 2013, the OECD published a report on “Addressing BEPS” iterating the need for analysing the issue of tax base erosion and profit shifting by global corporation, followed by a draft BEPS Action Plan in July 2013 which came to final fruition in October 2015. The BEPS action plan identifies fifteen actions to address BEPS in a comprehensive manner. Provisions have been incorporated in Indian Tax Laws in line with many of the action plans of BEPS.

Fig 8.1

BEPS Action Plan 1 : Addressing the challenges of the digital economy					
OECD Recommendation	Provision incorporated in Indian Tax Laws				
i Modifying existing PE rule to provide whether an enterprise engaged in fully de-materialised digital activities would constitute a PE if it maintained significant digital presence in another country's economy	<p>“Significant economic presence” (SEP) to constitute “business connection”</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; text-align: center;">Upto A.Y.2018-19</td><td style="width: 50%; text-align: center;">From A.Y.2019-20</td></tr> <tr> <td>As per sec 9(1)(i) of the IT Act, 1961, as it stood prior to amendment by the FA, 2018, physical presence in India was necessary to fall within the scope of “business connection” to attract deemed accrual provisions for income of NR to be subject to tax in India.</td><td>The FA, 2018 has amended section 9(1)(i) to provide that significant economic presence of NR in India would also constitute business connection from A.Y.2019-20.</td></tr> </table>	Upto A.Y.2018-19	From A.Y.2019-20	As per sec 9(1)(i) of the IT Act, 1961, as it stood prior to amendment by the FA, 2018, physical presence in India was necessary to fall within the scope of “business connection” to attract deemed accrual provisions for income of NR to be subject to tax in India.	The FA, 2018 has amended section 9(1)(i) to provide that significant economic presence of NR in India would also constitute business connection from A.Y.2019-20.
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ii A virtual fixed place of business PE when the enterprise maintains a website on a server of another enterprise located in a jurisdiction & carries on business thro that website.					
iii Imposition of a final withholding tax on certain pays for digital goods or services provided by a foreign e-commerce provider					
iv Imposition of a EL on consideration for certain digital transactions received by a NR from a resident or NR having PE in the other CS	<p>Equalisation Levy [Ref. Fig. 5.1]</p> <p>Chapter VIII of the Finance Act, 2016 provides for Equalisation levy@6% of the amt of consdn for specified services recd or receivable by a NR not having PE in India or providing services not effectively connected with PE in India, from:</p> <ul style="list-style-type: none"> • a resident in India who carries on business or profn or • from a NR having PE in India. <p>The Resident or NR having PE in India has to deduct EL@6% from consdn for specified services paid to NR and remit the same to the Central Govt. within the prescribed time.</p>				

Fig 8.2

BEPS Action Plan 3: Strengthen CFC rules	
OECD Recommendation	Provisions incorporated in the Income-tax Act, 1961
<p>CFCs are foreign subsidiaries in tax havens in which the taxpayer has controlling interest. Since tax is generally levied on distributed dividend, tax in parent country could be avoided until the tax haven country actually paid dividend to the shareholders. The OECD regards CFC Rules as important in tackling BEPS and has made a series of best practice recommendations in relation to the building blocks of an effective CFC regime.</p> <pre> graph TD A[Rules to prevent or eliminate Double Taxation] --- B[Rules for attributing CFC Income] A --- C[Defn of a CFC & Control] B --- D[CFC Exemptions & Threshold reqmt] B --- E[Rules for computing CFC Income] C --- F[Defn of CFC Income] </pre>	<p>There are no CFC Rules in the IT Act, 1961. However, Sec 115BBD has been inserted in IT Act, 1961 to encourage repatriation of profits by IndCos which have significant voting power in foreign Cos.</p> <div style="border: 1px solid black; padding: 10px; margin-bottom: 10px;"> Tax on dividend (Divd) recd by an Indian Co. (IndCo) from a Foreign Co. </div> <div style="border: 1px solid black; padding: 10px; background-color: #e0f2e0;"> Does the IndCo hold 26% or more in the nominal value of Eq. share cap. of the Foreign Co.? </div> <div style="display: flex; justify-content: space-around; align-items: center;"> Yes No </div> <div style="display: flex; justify-content: space-around; align-items: center;"> <div style="border: 1px solid black; padding: 5px; background-color: #fce4ec;"> Divd recd is taxable @15% u/s 115BBD </div> <div style="border: 1px solid black; padding: 5px; background-color: #fce4ec;"> Divd is taxable@25% or 30%, as the case may be, app to Ind Co. </div> </div> <div style="display: flex; justify-content: space-around; align-items: center;"> <div style="border: 1px solid black; padding: 5px; background-color: #e0f2e0;"> No dedn is allowable in computing divd income </div> <div style="border: 1px solid black; padding: 5px; background-color: #e0f2e0;"> Any reasonable commn or remn for realisation of divd allowable as dedn </div> </div> <div style="border: 1px solid black; padding: 10px; margin-top: 20px;"> Is the foreign Co. a subsidiary of IndCo.? </div> <div style="display: flex; justify-content: space-around; align-items: center;"> Yes No </div> <div style="display: flex; justify-content: space-around; align-items: center;"> <div style="border: 1px solid black; padding: 5px; background-color: #fce4ec;"> Divid recd from foreign Co. can be reduced from divd distributed by IndCo, for payt of DDT </div> <div style="border: 1px solid black; padding: 5px; background-color: #fce4ec;"> Divid recd from foreign Co. cannot be reduced from divd distributed by IndCo., for payt of DDT </div> </div>

INTERNATIONAL TAXATION

Fig 8.3

BEPS Action Plan 4: Interest deductions and other financial payments										
Common Approach in 2015 Report										
<p>The common approach which directly links an entity's net interest dedns to its level of economic activity, based on taxable EBITDA includes three elements:</p> <table border="1"> <thead> <tr> <th>Rule</th> <th>Basis</th> </tr> </thead> <tbody> <tr> <td>i Fixed Ratio Rule</td> <td>based on benchmark net interest/EBITDA Ratio</td> </tr> <tr> <td>ii Group Ratio Rule</td> <td>allows an entity to deduct more interest exp based on the position of its world wide group</td> </tr> <tr> <td>iii Targeted Rules</td> <td>address specific risks</td> </tr> </tbody> </table>		Rule	Basis	i Fixed Ratio Rule	based on benchmark net interest/EBITDA Ratio	ii Group Ratio Rule	allows an entity to deduct more interest exp based on the position of its world wide group	iii Targeted Rules	address specific risks	<p>Sec 94B – Limitation of interest deduction [based on Fixed Ratio Rule]</p> <pre> graph TD A[Is the borrower an IndCo or a PE of a Foreign Co?] -- Yes --> B[Is the borrower a bank or Ins. Co.?] A -- No --> C[Does the int pd to NR AE exceed Rs.1 crore?] B -- Yes --> D[Sec 94B would not apply] B -- No --> E[Excess Interest not allowable as deduction] C -- Yes --> E C -- No --> F[Disallowed interest can be c/f for 8 A.Y.s for dedn against PGBP income to the extent of max. allowable interest exp.] E --> G[Excess interest: Total interest paid or payable* in excess of 30% of EBITDA or int paid or payable to AE for that P.Y., whichever is less.] F --> G </pre> <p>*Total interest paid or payable may also be interpreted to mean interest paid or payable to NR AE.</p>
Rule	Basis									
i Fixed Ratio Rule	based on benchmark net interest/EBITDA Ratio									
ii Group Ratio Rule	allows an entity to deduct more interest exp based on the position of its world wide group									
iii Targeted Rules	address specific risks									

Fig 8.4

BEPS Action Plan 5: Counter harmful tax practices	
OECD BEPS Action 5 Report	Provisions incorporated in the Income-tax Act, 1961
<p>Action 5 report identifies factors for determining a potential harmful tax practice that results in low or no effective tax rate, lack of transparency, negotiable tax rate or base etc.</p> <p>For instance, in case of R&D activities, the nexus approach recommended by the OECD under BEPS Action 5 requires attribution and taxation of income arising from exploitation of IP in the jurisdiction where substantial R &D activities are undertaken instead of the jurisdiction of legal ownership.</p>	<p>Sec 115BBF of the IT Act, 1961 – Tax on income from patent</p> <p>Where the TI of the eligible assessee includes any income by way of royalty in respect of a patent developed & regd in India, then, such royalty is taxable@ 10% (plus app. surcharge & cess @4%).</p> <pre> graph TD A[Applicability of concessional rate of 10% u/s 115BBF] --> B[Assessee should be a person resident in India, who is a patentee] A --> C[Income must be from a patent developed & registered in India] A --> D[Option for taxation of income u/s 115BBF to be exercised by assessee on or before due date u/s 139(1) for filing ROI] B --> E[Meaning of developed] E --> F[The invention should be one for which patent is granted under the Patents Act, 1970] E --> G[At least 75% of the exp for such invention must be incurred in India] </pre>

Fig 8.5

BEPS Action Plan 6: Preventing treaty abuse	
OECD Minimum Standard	LoB clause incorporated in Indian Tax Treaties
<p>Given the risk to revenues posed by treaty shopping, countries have committed to ensure a minimum level of protection against treaty shopping by including in their treaties:</p> <ul style="list-style-type: none"> (i) the combined approach of Limitation of Benefits (LOB) and Principal Purpose Test (PPT) rule, (ii) the PPT rule alone, or (iii) the LOB rule supplemented by a mechanism that would deal with conduit financing arrangements not already dealt with in tax treaties 	<p>LoB clause in India-Mauritius Tax Treaty</p> <ul style="list-style-type: none"> • On 10.5.2016, the India-Mauritius tax treaty was amended and for the first time, it has been provided that gains from the alienation of shares acquired on or after 1.4.2017 in a Co. which is a resident of India may be taxed in India. • The tax rate on such capital gains arising from 1.4.2017-31.3.2019 should, however, not exceed 50% of the applicable tax rate on capital gains in India. • LOB Clause provides that a resident of a CS shall not be entitled to the benefits of 50% of the tax rate app. in transition period if its affairs are arranged with the primary purpose of taking advantage of concessional rate of tax. • A shell or a conduit Co. claiming to be a resident of a CS shall not be entitled to this benefit. • A shell or conduit Co. is any legal entity falling within the meaning of resident with negligible or nil business operations or with no real and continuous business activities carried out in that CS. <p>LoB clause in India-Singapore Tax Treaty</p> <ul style="list-style-type: none"> • The India-Singapore tax treaty has been amended to provide that capital gains on alienation of shares would be taxable in a similar manner as laid out in India-Mauritius tax treaty, subject to LoB clause. • The transition period benefit is also similar to that contained in India-Mauritius Tax Treaty.

INTERNATIONAL TAXATION

Fig 8.6

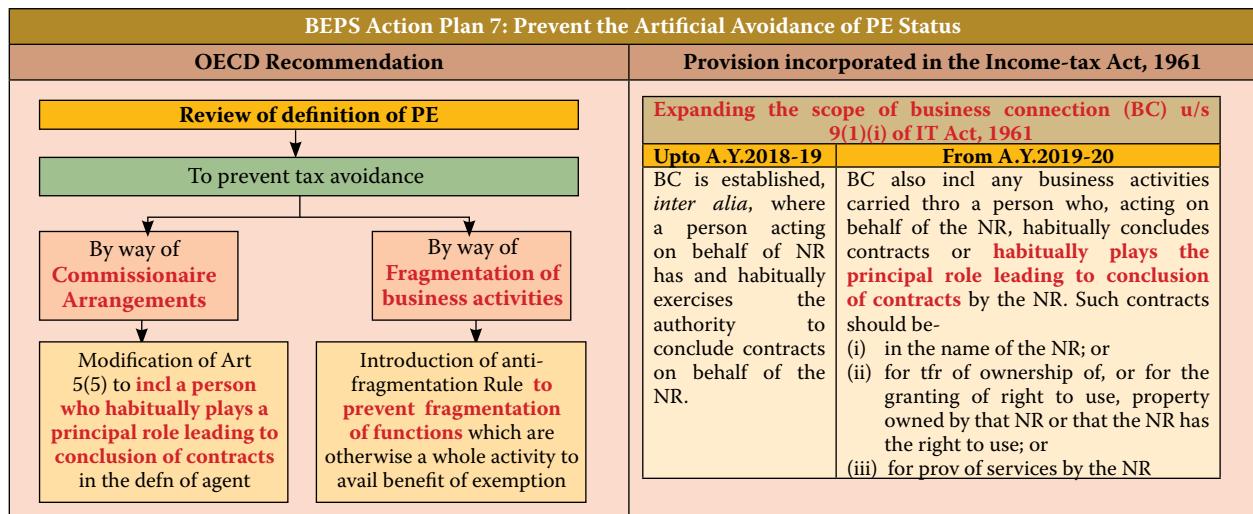


Fig 8.7

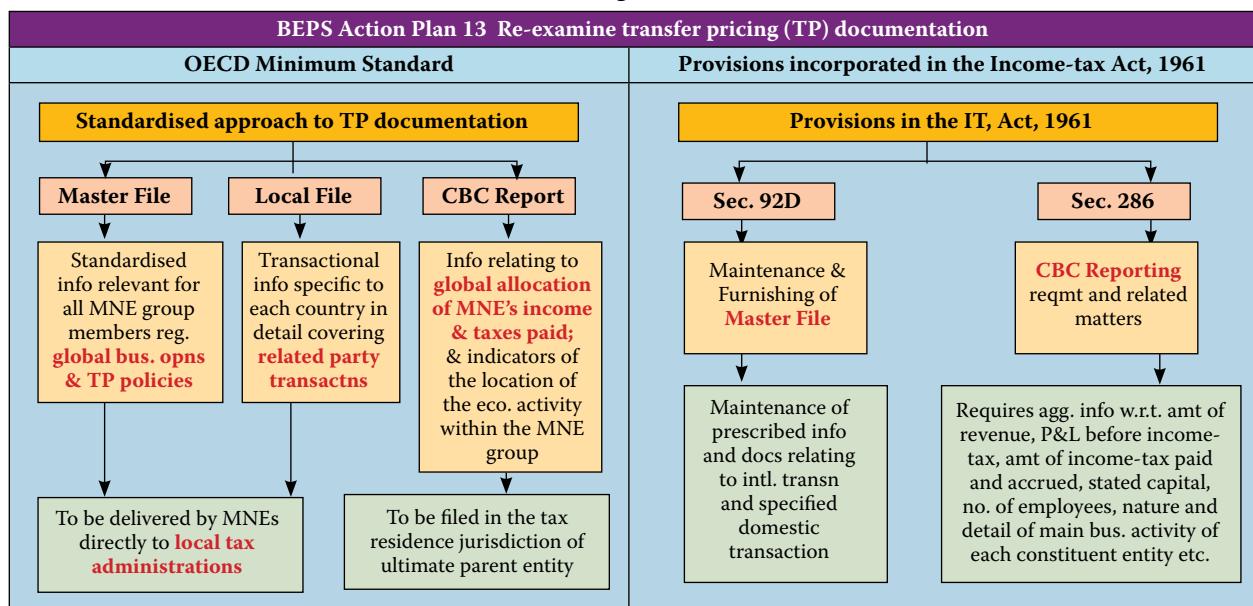


Fig 8.8

BEPS Action Plan 15 Developing a Multilateral Instrument (MLI)	
<p>BEPS Report</p> <p>The MLI helps fight against BEPS by implementing tax treaty-related measures developed thro the BEPS Project in existing bilateral treaties in a synchronised and efficient manner to –</p> <ul style="list-style-type: none"> • prevent treaty abuse, • improve dispute resolution • prevent the artificial avoidance of PE status • neutralise the effects of hybrid mismatch arrangements. <p>The MLI is flexible instrument which modifies tax treaties that are “Covered Tax Agreements”. A Covered Tax Agreement is an agreement for the avoidance of double taxation that is in force between Parties to the MLI and for which both Parties have made a notification that they wish to modify the agreement using the MLI.</p>	<p>Provisions incorporated in the Income-tax Act, 1961</p> <ul style="list-style-type: none"> • In order to prevent BEPS, the recommendations under BEPS Action Plan 7 have been included in Article 12 of Multilateral Convention to implement Tax Treaty Related Measures (MLI), to which India is also a signatory. • Consequently, these provisions will automatically modify India's bilateral tax treaties covered by MLI, where treaty partner has also opted for Article 12. As a result, the DAPE provisions in Article 5(5) of India's tax treaties, as modified by MLI, became wider in scope than the erstwhile provisions in <i>Explanation 2 to section 9(1)(i)</i>. • Similarly, the anti-fragmentation rule in Article 5 of the OECD MTC, 2017 has narrowed the scope of the exception under Article 5(4), thereby expanding the scope of PE in DTAA <i>vis-a-vis</i> domestic provisions contained in <i>Explanation 2 to section 9(1)(i)</i>. • In effect, the relevant provisions in the DTAAs became wider in scope than the domestic law. • In view of the above, section 9(1)(i) has been amended to align the same with the provisions in the DTAA as modified by MLI so as to make the provisions in the treaty effective.

ANNOUNCEMENT FOR ICAI-CAMPUS (FEBRUARY-MARCH, 2019) ASPIRANTS

Completion of AICITSS (MCS) Course is mandatory for taking part in ICAI Campus Placement Programme, meant for Newly Qualified CAs. Accordingly, to cater to the needs of the Students appeared for the Final Examination in Nov' 2018 but are yet to complete AICITSS (MCS)Course, students are advised to enroll through the Online Portal- www.icaionlineregistration.org and undergo the course before the Interview Process begins in the month of February, 2019.

For any Campus related query may kindly contact at 011- 30110555, AICITSS(MCS) related query - 0120-3045915

Committee for Members in Industry & Business (CMI&B) of ICAI

**Attend Student Conferences across the Country
The Board of Studies has planned the following Conferences for
CA Students as on date For January, 2019**

S. No.	Branch	Nomenclature of the Programme	Approved Dates
1	Ahmedabad	International Conference	5 th - 6 th January, 2019
2	Pondicherry	CA Student Conference	9 th - 10 th January, 2019
3	Calicut	CA Students Conference	24 th - 25 th January, 2019
4	Patna	CA Students Conference	11 th - 12 th January, 2019
5	Amritsar	CA Students Conference	11 th - 12 th January, 2019
6	Mumbai/WIRC	National Conference	12 th & 13 th January, 2019
7	Bhubaneshwar	CA Students Conference	18 th - 19 th January, 2019

Students Eligible to attend the Students Conference: Students who have registered as IPCC/Intermediate Students/ Students who are pursuing their Article ship Training/ Students who have completed their Practical Training but could not qualify their final examinations may attend the conference till next one year from the date of completion of Practical Training. (CPT Students and Students who have completed one year beyond their Articleship training will not be eligible to register for these Conferences)

It may however be noted that during April, 2018 - March, 2019, the students can be Paper Presenters for max 2 Students Conferences. Best paper presenters (overall category) of National Conference can be permitted to present technical papers in International CA Students Conference where the limit of two programmes per year will not be applicable.

Please visit <https://bosactivities.icai.org/> for details.

CA STUDENTS CONFERENCE- PONDICHERRY

Organised by: Board of Studies, ICAI

Hosted by: Pondicherry branch Jointly with Kanchipuram branch of SIRC of ICAI

THEME: "KNOWLEDGE & TRAINING WITH ETHICAL QUOTIENT - PATHWAY TO PROFESSIONAL EXCELLENCE"

9TH & 10TH JANUARY, 2019

PONDICHERRY

DAY-1

10.00 am to 10.30 am	Inaugural Session
10.30 am to 12.15 pm	Technical Session I : GST GST Amendment Act, 2018; GST Audit, Input Tax Credit under GST Regime - Apportionment and Block Credits; Provision of TDS and TCS under GST, E - Way Bill.
12.15 pm to 1.00 pm	Special Session I : Interaction with Board of Studies. How to crack CA Examination
1.00 pm to 1.45 pm	Special Session II : Motivational Session "How CA Profession help the student to reach on Self - Actualisation stage" by Maslow Need Hierarchy Theory
2.30 pm to 4.00 pm	Technical Session II : Income Tax Chapter VI A Deductions, Clubbing of income; Acceptance of Deposits and Repayment of loans as per section 269SS, 269STand 269T, Expenses not allowable, TDS.
4.00 pm to 5.00 pm	Special Session III : Importance of Article Training & Article Assessment Test

DAY-2

10.00 am to 11.30 am	Technical Session III : Company Law Amendments in Company Law, Loan given to Director as per section 185 & 186 of Companies Act 2013, Managerial remuneration.
11.30 am to 12.30 pm	Special Session IV : Special Address by HR Executives/CFOs/Faculties of IIMs and IITs/IRS/IAS Additional Short Sessions by CAs in Industry / Practice with some achievements or on high posts or Rank Holders.
12.30 pm to 1.45 pm	Technical Session IV : Accounting Standards and Auditing Standards
2.30 pm to 4.00 pm	Technical Session V : Information Technology Overview of Data Privacy Laws in India and Aspects of Data Protection; Digital India; Cyber Crime: The Challenges in Forensic Accounting.
4.00 pm to 4.30 pm	Valedictory Session

Registration Fee	₹ 500/-per student	Accommodation (if required) @ Rs. 750 per student
Payment Mode	The student has to register & make the payment online on the Portal itself, the link will be http://bosactivities.icai.org/	

For registration queries contact: Pondicherry Branch of the ICAI, Address: The Institute of Chartered Accountants of India, ICAI Bhawan, No.8, Second Main Road, Ilango Nagar, Pondicherry - 605 011.
Email pondicherry@icai.org, Phone :0413 -4308081

NATIONAL CONFERENCE FOR CA STUDENTS - MUMBAI

Organised by: Board of Studies, ICAI

Hosted by: WIRC of ICAI

THEME: "KNOWLEDGE & TRAINING WITH ETHICAL QUOTIENT - PATHWAY TO PROFESSIONAL EXCELLENCE"

12TH & 13TH JANUARY, 2019

**Y B CHAVAN AUDITORIUM,
CHURCHGATE, MUMBAI**

DAY-1

9.45 am to 10.30 am	Inaugural Session
10.30 am to 11.30 am	Open House with Board of Studies
11.30 pm to 01.00 pm	Technical Session I: Technology- Fintech- The Way ahead; Blockchain Technology. –Shaping the Economy; Artificial intelligence Contributing to our profession.
01.00 pm to 03.00 pm	Special session I: Read Fast & Memorise - The Hidden Power of Mind
03.00 pm to 04.30 pm	Technical Session II: Domestic and International Tax- General Anti-Avoidance Rule (GAAR); Ind AS and its impact on Minimum Alternate Tax (MAT); Place of Effective Management (POEM): Its impact on Cross Border Transactions.
04.30 pm to 05.30 pm	Special Session: II: Motivational Speech by an Eminent Personality.

Day 2

10.00 am to 11.30 am	Technical Session III: GST-GST Provisions for Audit; Exemptions to various industries under GST; Matching concept under GST law
11.30 am to 01.00 am	Special Session III: Navi Soch Naye Raste, Promising Career Path- Open Doors After Chartered Accountancy.
02.00 pm to 03.00 pm	Special Session IV: Journey of Indian Economy from Fragile 5 to Top 5- Eminent Faculty
03.00 pm to 04.30 pm	Technical Session IV: Audit and Accounts-Importance of Standard Operating Procedures in a professional assignment; Forensic Audit; Audit of special entities (Alternate investment fund or Venture capital fund or Real estate investment Trust)
04.30 pm to 05.30 pm	Valedictory Session

Registration Fee	₹ 600/-per student	Outstation Students, accommodation is available on extra payments, students are requested to inform by sending email to wicasa@icai.in & register in advance
Payment Mode	The student has to register & make the payment online on the Portal itself, the link will be http://bosactivities.icai.org/	

For registration queries contact:-WIRC of ICAI
Phone 022-33671424/17& Email wircevents@icai.in Website www.wirc-icai.org

CA STUDENTS CONFERENCE-CALICUT

Organised by: Board of Studies, ICAI

Hosted by: Calicut Branch of SIRC and Calicut Branch of SICASA of ICAI

THEME: "KNOWLEDGE & TRAINING WITH ETHICAL QUOTIENT - PATHWAY TO PROFESSIONAL EXCELLENCE"

24TH & 25TH JANUARY, 2019

**TAGORE CENTENARY HALL,
CALICUT, KERALA**

DAY-1

10.00 am to 10.30 am	Inaugural Session
10.30 am to 12.15 pm	Technical Session I : GST Audit under GST Regime, E-Way bill under GST and its effects on Economy, GST on Service
12.15 pm to 01.00 pm	Special Session: I: Interaction with Board of Studies. Ethical Values in the Profession
01.00 pm to 01.45 pm	Special Session II : Motivational Session
02.30 pm to 04.00 pm	Technical Session II : Income Tax E –Assessment procedures under IT Act, Presumptive Taxation, ICDS
04.00 pm to 05.00 pm	Special Session: III: Session on Nation building

Day 2

10.00 am to 11.30 am	Technical Session III : Stock Market An introduction to stock market & its scope for CA's, Stock trading and taxation, Role of SEBI in stock Market
11.30 am to 12.30 am	Special Session IV: Special Address Short Sessions by CAs in Industry / Practice with some achievements or on high posts or Rank Holders.
12.30 pm to 01.45 pm	Technical Session IV: Technology and CA Effect of Bitcoin and blockchain technology on the economy, Technology for Auditing – Boon or Bane, Cloud Computing
02.30 pm to 04.00 pm	Technical Session V: Auditing & Law Audit and Accounts of Companies, Prevention of Money Laundering Act, RERA Act, 2016
04.00 pm to 04.30 pm	Valedictory Session

Registration Fee	₹ 500/- per student	Accommodation (if required) @ ₹ 1600/- per student per day
Payment Mode	The student has to register & make the payment online on the Portal itself, the link will be http://bosactivities.icai.org/	

CROSSWORD SOLUTION - DECEMBER 2018

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◀ **CA Students' Conference, Hubli:** Shri D. D. Malagi, Chairman, Sri Siddharoodha Swamy Mutt Trust Committee, Hubli inaugurating the Conference in the presence of branch office bearers and Dr. P. T. Giridharan, Additional Director, ICAI.



▶ **CA Students' Conference, Trivandrum:** Branch SICASA Committee members lighting the lamp to inaugurate the Conference in the presence of Chief Guest, Dr. Vasuki IAS, District Collector, Thiruvananthapuram.

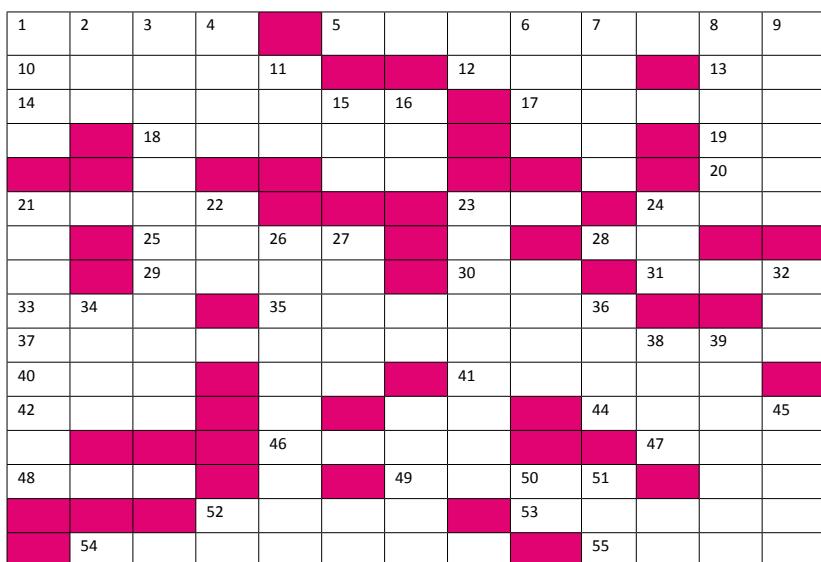


◀ **CA Students' Conference, Bangalore:** Shri B.M. Vijay Shankar IAS, Deputy Commissioner, Bangalore Urban District, Dr. S. Japhet, Vice Chancellor, Bangalore University and other dignitaries and office bearers at the inaugural ceremony.



▶ ICAI President, CA. Naveen N. D. Gupta and Central Council Member, CA. S. B. Zaware with the participants of the Residential Programme on Professional Skills Development at CoE, Hyderabad.

CROSSWORD - JANUARY 2019



ACROSS

1. An organization that has a low relative market share position and competes in a slow-growth industry is referred to as a ____.
5. Labour is a ----- cost.
10. Broadcasted
12. A business practice in which one organization hires another company to perform a task that the hiring organization requires for its own business to successfully operates.
13. Opposite of out.
14. Free -----: moving in a continuous, steady stream.
17. Smell from kitchen
18. Cuts
19. Pulse
20. ___ Sir, with love.
21. Maintained
23. ___ with the flow.
24. A self-regulating business model that helps a company be socially accountable.
25. Absorbed
28. Comes with either
29. Monster
30. Exist
31. A line of seats in a theatre
33. Switch position?
35. Bared
37. Under the -----model, the goals or critical success factors for the business are referred to as Dimensions.
40. Until now
41. Enemy
42. A cryptographic protocol that provides end-to-end communications security over networks and is widely used for internet communications and online transactions.
43. A member of the ICAI is allowed to use ___ before his/her name.
44. A furniture giant recently opened its outlet in Bangalore, India.
46. Peccadillo
47. A German software company whose products allow businesses to track customer and business interactions.
48. A method of investing a fixed sum, regularly, in a mutual fund scheme.
49. Companies that produces parts and equipments that may be marketed by another manufacturer.
52. If cost price is more than the selling price, we get -----.
53. Sharp-pointed duelling swords.
54. Unanimity
55. Portable canvas shelter

DOWN

1. Foolish
2. One of important import items of India
3. Performance measures for investment centres don't include-----.
4. Stitched
6. Tablet developed and marketed by Apple Inc.
7. The largest artery in the body.
8. ___ are essential to calculus and are used to define continuity, derivatives, and integrals.
9. Captivate
11. Roman numeral for 502.
15. A ___ is one which is not driven by profit but by dedication to a given cause that is the target of all income beyond what it takes to run the organization.
16. An Indirect Tax which has replaced many Indirect Taxes in India.

21. Smallest units of measurement greater than bytes.
22. Label
23. _____ pricing would be most common at maturity stage of the product life cycle.
24. The share of a bank's total deposit that is mandated by the RBI to be maintained with the latter in the form liquid cash.
26. Horizontal integration is concerned with -----.
27. Lukewarm
32. Fry pan
34. Something providing energy
36. Roman numeral for 556.
38. Arenas
39. Neater
43. Annoyed
45. Crazy
50. I, __ and mine
51. Stool pigeon

If undelivered, please return to: The Institute of Chartered Accountants of India, ICAI Bhawan, Indraprastha Marg, New Delhi-110104