

NRI Taxation



**Full day seminar on International Taxation
Hosted by ICAI Nagpur Branch**

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What are your expectations/questions from the session ?

① Start presenting to display the poll results on this slide.

Rules for the session

- **Why This Matters:**

- International taxation opens doors to global opportunities.

- **What We'll Cover:**

- NRI taxation is the foundation for building expertise in this domain.

- **How We'll Do It:**

- Head-by-Head Taxation: Simplified breakdown of rules.
- Procedural Formalities: Practical steps for seamless compliance.

- **Session Vibes:**

- Interactive and Fun: Open discussion, ask anything.
- No Wrong Questions: Every question adds value.

- **Kick-off:**

- We'll start with discussion on a Movie to set the stage!

Topics to be discussed



- Section 5,6,9 and 90
- Long term and short term Capital gain
- Dividend Income
- Interest Income
- Salary Income
- Taxation on Non-Resident returning to India
- Filing of Return of income for Non Residents



Basics – Recap



Sec 5: Taxability of Income based on residential status

Taxability of Income	Resident	Resident but not ordinary	Non-Resident
Income received or deemed to be receive in India	Taxable	Taxable	Taxable
Income accrue/ arise or deemed to accrue/ arise in India	Taxable	Taxable	Taxable
Income (other than above) earned outside India from Business controlled from India or profession set up in India	Taxable	Taxable	Non-Taxable
Income accrue or arise outside India	Taxable	Non-Taxable	Non-Taxable

Sec 6- Residential status- Individual

Clause	Individual	Condition	Resident- No. of Days	Condition R-NOR Status
1)	Any Individual	-	- 182 Days or more OR - 60 days + 365 days in 4 PY	- NR in 9/10 PY or - 729 days or less in 7 PY
Clause (a) of Ex 1	COI (leaves India)	-India Ship Crew Member or -For the purpose of Employment outside India	182 +365 days in 4 PY	
Clause (b) of Ex 1	COI/POI	- Visits India from outside India -Total Income other than FI)of Rs 15 Lakh or more	182 +365 days in 4 PY 120 +365 days in 4 PY	The Period of 120 days to 181 days
(1A)	COI	Total Income other than FI) of Rs 15 Lakh or more and not liable to tax in any other country	-	Always R-NOR

Sec 9- Income deemed to accrue or arise in India



■ The following income shall be deemed to accrue or arise in India:

In	With
<ul style="list-style-type: none">▷ All income accruing or arising, whether <u>directly or indirectly</u>, through or from<ul style="list-style-type: none">▷ any business connection in India, or▷ any property in India, or▷ any asset or source of income in India, or▷ through the transfer of a capital asset situate in India.▷ Income chargeable under the head "Salaries" payable by the Government to a citizen of India for service outside India.	<ul style="list-style-type: none">▷ A dividend paid by an Indian company outside India.▷ Income by way of interest.▷ Income by way of royalty.▷ Income by way of fees for technical services.▷ Income arising outside India, being any sum of money referred to in sub-clause (xvii) of clause (24) of section 2 (gift income relating to immovable property), paid on or after the 5th day of July, 2019 by a person resident in India to a non-resident, not being a company, or to a foreign company.

Sec 90- Beneficial Provision

- **Sec- 90(2)** - Where the Central Government has entered into an agreement with the Government of any country outside India or specified territory outside India, as the case may be, under sub-section (1) for granting relief of tax, or as the case may be, avoidance of double taxation, then, in relation to the assessee to whom such agreement applies, the **provisions of this Act shall apply to the extent they are more beneficial to that assessee.**

- **Both for Scope and Rate**

IT ACT	DTAA	IT Act	DTAA
Sec- 115A Royalty @20.8% 	As per DTAA- Royalty @ 25%	Sec - 115A(1)(b) FTS @20.8% plus surcharge	As per DTAA FTS @10% 


Beneficial Provision

- In case of **contradiction** between the **provisions of the Act and DTAA**, the **provisions of the Act shall apply to the extent that they are more beneficial** to the assessee to whom such agreement applies.
- Where the tax liability is imposed by the Act, the DTAA may be resorted to either for reducing the tax liability or altogether avoiding the tax liability.

“CIT v. P.V.A.L. Kulandagan Chettiar [2004] 267 ITR 654/137 Taxman 460”

- If the payment made by assessee is not be covered under 'royalty' under DTAA agreement and since more beneficial provisions are to be applied to the assessee, then as per DTAA terms, the assessee cannot be held to be liable for payment of TDS under the provisions of section 9(1)(vi) of the Act.

“John Deere Equipment P. Ltd. v. Dy. DIT(IT) (ITA Nos. 905 and 906/Pune/2015) (Pune Tribunal)”



TRC is a certificate issued by the authorities of tax. TRC is needed in order to benefit from the application of double tax treaties and comply with local tax regulations. TRC is documentary evidence for claim relief under DTAA.

Tax Residency Certificate (TRC)

Status of the assessee i.e. Individual, company, firm, etc.

Nationality in case of individual and country of registration in other cases

Assessee's **tax identification number** in its resident country

Period for which Residential status will be calculated

Address of the assessee in the country or specified territory outside India



Information generally provided in TRC

According to sub-rule 2 of Rule 21AB, Form 10F is not required to be filed if all of the information provided in TRC

WHAT IS FORM 10F?

- ❖ A person who earns any income from India but is a non-resident in India, might be required to pay tax in both countries as per laws and provisions prevailing in those respective countries.
- ❖ To avoid such double taxation, DTAA (Double Taxation Avoidance Agreement) was introduced.
- ❖ In order to claim the benefit of DTAA in India a non-resident has to provide **a tax residency certificate (TRC), and Form 10F as prescribed in section 90(5) read with rule 21AB.**
- ❖ Form 10F is not mandatory if the TRC provided by deductee contains the details such as Status, Nationality, TIN or any other identification number, Residency & address of the non-resident **(As mentioned in Rule 21AB(1))**
- ❖ **Form 10F is a self declaration** which should contain details as prescribed in clause 1 of rule 21AB that the person is a tax resident of a country other than India.



BEFORE

Non Resident prepares Form 10F

Gives it to the deductor

Form 10F was not required to be submitted to the Income Tax Department
It remained with deductor only .

Deductor considers Form 10F as supporting document to decide taxability for Non Resident



E-filing of
Form 10F

AFTER

Non Resident files Form 10F on Income Tax Portal

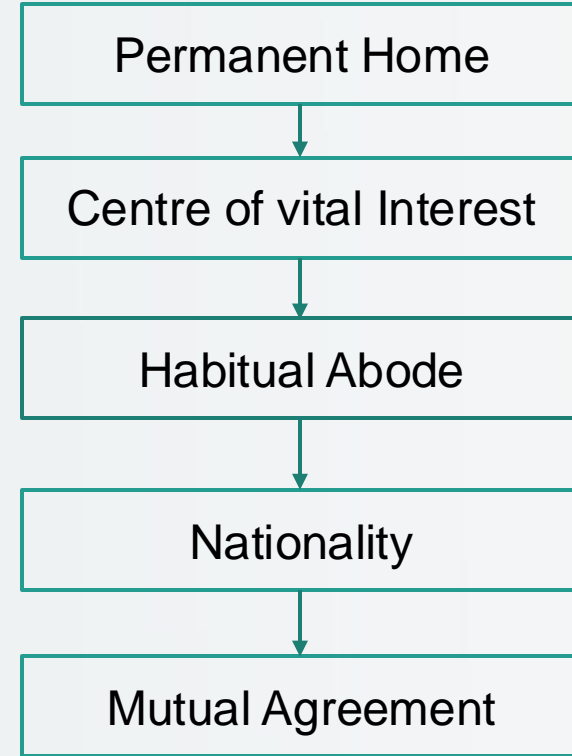
Acknowledgement is generated after filing the form

Now, Form 10F will be in the records of Income Tax Department

Non Resident gives this electronically filed form to deductor for further procedure .



Tie Breaker Rule- For Individual under DTAA



To opt for Tie breaker rule

- Practical difficulty while filing ITR- there is **no provision in the ITR** for individuals to claim status as 'tax treaty non-residents' if they are residents under the provisions of the Income Tax Act .
 - It has become mandatory to provide details of period of stay in India in the ITR and, therefore, issues shall arise in cases where stay in India exceeds 182 days but the tie-breaker results in non-residence in India. **Could lead to misrepresentation of facts**
 - There may not be any tie to break – as they may not qualify as resident of foreign country – due to short number of days spent in that country (For USA – resident is on citizen based and for UAE – resident is based on number of days spent in the country)
-



Capital Gains



Short Term Capital Asset –Shares

	Capital asset	Holding period to qualify as Short term capital asset
1.	Listed security in India , Zero coupon bonds	12 months or less
2.	Equity oriented Mutual funds/ Units of UTI	
3.	Unlisted shares	24 months or less
4.	Units of debt oriented mutual funds, market linked debentures and others	Always short term

Long Term Capital Asset



Taxability

Type of Asset	Capital asset	Condition	Rate
STCG	<ul style="list-style-type: none"> ❖ Equity shares ❖ Units of equity oriented mutual fund ❖ Units of Business trust 	❖ Subject to STT paid on sale	❖ 20% (plus surcharge and health and education cess)- Sec 111A
	❖ Others		❖ Normal rate applicable
LTCG	❖ Unlisted securities	❖ Without applying first & second proviso to sec 48 (indexation benefit and foreign currency conversion rule)	❖ 12.5% (without Indexation) - Sec 112
	❖ Equity shares	❖ STT Paid on acquisition and on sale	❖ 12.5% (without Indexation) - Sec 112A (on amount exceeding 125000)
	<ul style="list-style-type: none"> ❖ Units of equity oriented mutual fund ❖ Units of Business trust 	❖ Subject to STT paid on sale	❖ 12.5% (without Indexation)
	<ul style="list-style-type: none"> ❖ Listed securities (other than a unit) ❖ Zero coupon bond 		❖ 12.5% (without Indexation)
	❖ Others		❖ Normal rate applicable

Special provisions for Non-residents on calculation of capital gain

	Conversion Rate	Date of conversion
Cost of Acquisition	Average of TTBR and TTSR	Date of Acquisition
Expenditure on transfer		
Sales consideration	TTBR	Date of transfer
Capital gains		

- ✓ TTBR- Telegraphic Transfer Buying Rate - State Bank of India
- ✓ TTSR- Telegraphic Transfer Selling Rate - State Bank of India

- Mandatory to compute capital gain as per method prescribed in 1st proviso to sec 48 read with rule 115A:
- Applicable for **shares/debentures/bond, acquired in foreign currency**, whether listed or unlisted.
- Convert cost of acquisition, expenditure incurred, sales consideration received or accrued into foreign currency by applying rule 115A.
- The capital gain so computed in foreign currency shall be reconverted into Indian currency.



1st Proviso to Section 48

Example: An assessee purchased share for Rs. 500000 and sell the shares for Rs. 1000000

TT buying rate on date of purchase, 1\$ = Rs.49

TT selling rate on date of purchase, 1\$ = Rs.51

Average rate on date of purchase, 1\$ = Rs.50

TT buying rate on date of sell, 1\$ = Rs.84

TT selling rate on date of sell, 1\$ = Rs.86

Average rate on date of sell, 1\$ = Rs.85

Capital Gain

Sale consideration	=	Rs. 10,00,000
Purchase	=	Rs. <u>5,00,000</u>
Capital gain	=	Rs. <u>5,00,000</u>



1st Proviso to Section 48

Example: An assessee purchased share for Rs. 500000 and sell the shares for Rs. 1000000

TT buying rate on date of purchase, 1\$ = Rs.49

TT selling rate on date of purchase, 1\$ = Rs.51

Average rate on date of purchase, 1\$ = Rs.50

TT buying rate on date of sell, 1\$ = Rs.84

TT selling rate on date of sell, 1\$ = Rs.86

Average rate on date of sell, 1\$ = Rs.85

Conclusion – Hence, assessee is not required to pay tax on foreign exchange gain because of this proviso

Impact of Proviso

Sale consideration = \$11764.71
(Rs.1000000/ Rs.85)

Purchase = \$10000

(Rs.500000/ Rs.50)

Capital gain = \$1764.71

Now,

Capital gain = \$1764.71*84

= Rs. 1,48,235.29

Exemptions available to Non-residents against capital gain from transfer of securities

Section	Applicable to	Transfer of capital asset	Invest in
54F	All assessee being an individual	Long term capital asset other than house property	One residential house in India and the person should not own more than 1 house before that



Let us understand through an example impact of indexation benefit on sale of immovable property

Capital asset	Land sold by Non-Resident	
Purchase Date	01-04-2015	
Purchase Value	Rs.10,00,000	
Sell Value	Rs.16,85,000	
Sell Date	22-07-2024	24-07-2024

Particulars	Scenario-I (With Indexation)	Scenario-II (Without Indexation)
Sale Value	Rs. 16,85,000	Rs. 16,85,000
Purchase cost	Rs.10,00,000	Rs.10,00,000
Indexed Cost	Rs.14,29,134 {(1000000/254)*363}	-
Capital Gain	Rs. 2,55,866	Rs. 6,85,000
Applicable capital gain Tax Rate	20%	12.5%
Tax Payable	Rs. 51,173	Rs. 85,625



Since, benefit of indexation was available to non-resident only if asset was sold before amendment

Taxability under IT Act – Sale of Immovable Property



Long term VS Short term

- ❖ If a property is sold after two years from its acquisition, it would attract long-term capital gains (LTCG) tax, else STCG.
- ❖ In case an NRI is selling an inherited property, the holding period would be calculated from the period when the original owner acquired the immovable asset.
- ❖ **Benefit of indexation is not available for non-resident in relation to sale of assets after 23.07.2024.**

Section	Applicable to	Transfer of capital asset	Invest in
54	NRIs	Capital gain on sale of residential house property	Residential house property
54B	NRIs	Long term capital asset being Land for agriculture purpose	Agricultural Land
54EC	NRIs	Immovable Property	NHAI/RECL/PFCL/IRFCL Bonds

Income from Immovable Property

IT Act



Taxability of income from property is specifically governed by **Section 9(1)(i)** of the IT Act. The relevant extract of the Section is reproduced below:

- “9. (1) The following incomes shall be deemed to accrue or arise in India:
- (i) all income accruing or arising, whether directly or indirectly, through or from any business connection in India, **or through or from any property in India**, or through or from any asset or source of income in India, **or through the transfer of a capital asset situate in India.**”
-

DTAA



Article 6 of the Organization for Economic Co-operation and Development ('OECD'), United Nations ('UN'), and United States ('US') Model Conventions deal with income from immovable property

Article 13 of the Organization for Economic Co-operation and Development ('OECD'), United Nations ('UN'), and United States ('US') Model Conventions deal with income from Capital Gains including immovable property

Income from Immovable Property

UN vs. OECD vs. US Model Conventions

UN Model



Income from “Immovable Property” may be taxed in source country.

Exhaustive meaning to immovable property.

Ships, Boats, Aircrafts not regarded as immovable property.

Form of exploitation is not relevant.

OECD Model



Income from “Immovable Property” may be taxed in source country.

Exhaustive meaning to immovable property.

Ships, Boats, Aircrafts not regarded as immovable property.

Form of exploitation is not relevant.

US Model



Income from “Real Property” may be taxed in source country.

Meaning as given in source country laws.

Ships, Boats, Aircrafts not regarded as real property.

Option to compute income on net or gross basis.

DTAA Aspect

Under DTAA, capital gain from sale of share are taxable as follows:

Article	Model	Property	State where generally taxable
13(4)	UN & OECD	Shares in a co. of which > 50% assets consist of immovable situated in State S	'May be taxed' in the state where immovable property is situated (Shared right)
13(5)	UN	Shares in a company- except Art.13(4)	'May be taxed' in the state where the company is Resident (Shared right)
13(6)	UN & OECD	Any other property (say, mutual fund units, CCDs)	'Shall be taxed only' in resident country (Exclusive right to resident country)

These are for illustrative purposes, kindly refer respective country's DTAA for taxation of capital gain



Withholding tax rate on income from Immovable property

The rate at which tax is to be withheld on payments made to a non-resident is dependent on whether the recipient of income is a non-resident individual or a non-resident company.

Type	Description	WHT Rate
Other Income (Eg.- rental income)	If payments are made to a Non-Resident COMPANY	40%
Other Income (Eg.- rental income)	If payments are made to a Non-Resident INDIVIDUAL	30%
Gain	Long term Capital Gain	12.5%
Gain	Short term Capital Gain	30% (highest as per slab rate)

Note - All the rates prescribed u/s 195 of the act would be applied after adding cess & surcharge.



Lower Deduction Certificate



Normally section 195 talks about withholding 12.5%+surcharge +cess on long term capital gain income however, many a times the seller is not willing to share the gain amount and accordingly the buyer is required to calculate and pay tax at 12.5% on the sale amount. Hence, to save such huge withholding, seller takes an option to apply for LDC (Lower deduction certificate) with his Assessing officer which could take anywhere between 2-3 months, however if seller shares all documents of purchase and cost of property with buyer they can calculate long term capital gain and **withhold 12.5% tax on same rather than withholding 12.5% on sale value.**



Section 195(2)- Application to AO by Payer

Where the person **responsible for paying** any such sum chargeable under this Act (other than salary) to a **non-resident** considers that the whole of such sum would not be income chargeable in the case of the recipient, he may **make an application** in such form and manner to the Assessing Officer, to determine in such manner, as may be prescribed, the appropriate proportion of such sum so chargeable, and upon such determination, tax shall be deducted under sub-section (1) **only on that proportion of the sum which is so chargeable.**

Section 195(3)- Application to AO by Recipient

Subject to rules made under sub-section (5), **any person entitled to receive** any interest or other sum on which income-tax has to be deducted under sub-section (1) may make an application in the prescribed form to the Assessing Officer for the **grant of a certificate** authorising him to receive such interest or other sum **without deduction of tax** under that sub-section, and where any such certificate is granted, every person responsible for paying such interest or other sum to the person to whom such certificate is granted shall, so long as the certificate is in force, make payment of such interest or other sum without deducting tax thereon under sub-section (1).



ARTICLE 13 CAPITAL GAINS

1. Gains from the alienation of immovable property, as defined in paragraph (2) of article 6, may be taxed in the Contracting State in which such property is situated.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base, may be taxed in that other State.
3. Notwithstanding the provisions of paragraph (2) of this article, gains from the alienation of ships and aircraft operated in international traffic and movable property pertaining to the operation of such ships and aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

Change in Article 13 for gains from the alienation of shares

Before 1st April, 2017

Gains derived by a **resident** of a Contracting State from the alienation of any property other than those mentioned in paragraphs (1), (2) and (3) of this article **shall be taxable only in that State**

01/04/2017 to 31/03/2019

Gains from the alienation of shares acquired on or after 1st April 2017 in a company which is resident of a Contracting State and **arising during the period beginning on 1st April, 2017 and ending on 31st March, 2019 shall not exceed 50%** of the tax rate applicable on such gains in the State of residence of the company whose shares are being alienated.

After 31st March, 2019

Gains from the alienation of shares acquired in a **company which is resident of a Contracting State** may be taxed in that State.

ARTICLE 13 CAPITAL GAINS

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in paragraph (2) of Article 6 and situated in the other Contracting State may be taxed in that other State.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such fixed base may be taxed in that other State.
3. Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State.
4. Gains from the alienation of shares other than those mentioned in paragraph 3 in a company which is a resident of a Contracting State may be taxed in that State.
5. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3 and 4 above shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 13 CAPITAL GAINS

Except as provided in Article 8 (Shipping and Air Transport) of this Convention, each Contracting State may tax capital gains in accordance with the provisions of its domestic law.



Dividend Income



Dividend Income

Under ITA-

As per Section 115A of the Income Tax Act, 1961 dividend received from an Indian Company is taxable at the rate of 20% + Surcharge & Cess.

Under DTAA-

As per **USA-DTAA**, the tax so charged shall not exceed :









(a) **15 per cent** of the gross amount of the dividends if the beneficial owner is a company which **owns at least 10 per cent of the voting stock** of the company paying the dividends.

(b) **25 per cent** of the gross amount of the dividends in all other cases

***Further refer to respective DTAA's for tax rates**

Dividend Income

Treaties with lower rates for Dividend Income

Country	Tax Rate on Dividend as per Treaty
United States 	15%/25%
United Kingdom 	15%/10%
Switzerland 	10%
Singapore 	10%/15%
Mauritius 	5%/15%
Colombia 	5%
Slovenia 	5%
Lithuania 	5%

Trivia in relation to dividend income

If a resident of UAE earns dividend on mutual fund from India then as per Income tax act dividend will be taxable in India at 20%+cess+surcharge, however, if you look at the **definition of dividend in Article 10 of India UAE DTAA**,

*“3. The term "dividends" as used in this Article means **income from shares** of other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.”*

then it does **not cover dividend from mutual fund** therefore, assessee have to show dividend from mutual funds in other sources in DTAA and accordingly such income will only be taxable in resident state i.e. UAE and accordingly not taxable in India.



Interest Income





Interest Income as per IT Act:

01

02

03

Rate of tax shall be **20%** under Section 115A on interest received by a **foreign company or a non-resident non-corporate assessee** from Government or an Indian concern on moneys borrowed or debt incurred by Government or the Indian concern in foreign currency.

Rate of tax shall be **10%** under Section 115AC on income from **bonds of an Indian company** issued in accordance with such scheme as the Central Government may, by notification in the Official Gazette, specify in this behalf, or on **bonds of a public sector company** sold by the Government, and purchased by non-resident in foreign currency.

Rate of tax shall be **5%** in following cases:

- ❖ Interest received from an **infrastructure debt fund** as referred to in **section 10(47)**
- ❖ Interest received from an Indian company specified in **section 194LC***
- ❖ Interest of the nature and extent referred to in **section 194LD** (applicable from the assessment year 2014-15)**.
- ❖ Distributed income being interest referred to in **section 194LBA(2)**

❖ ***Applicable on loans issued till 01.07.2023 and**

❖ ****Applicable on interest payable till 01.07.2023**



Interest Income as per DTAA:

- Article 11(2) of the UN Model reads as follows:
*“However, such interest may also be taxed in the **Contracting State in which it arises** and according to the **laws of that State**, but if the **beneficial owner** of the interest is a **resident of the other Contracting State**, the tax so charged **shall not exceed** ___ % (the percentage is to be established through bilateral negotiations) of the **gross** amount of the interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.”*
- Article 11(2) of OECD Model is similar to Article 11(2) of UN Model. However, OECD Model specifies the percentage at 10%.
- **Right to Source State**
Provides right to tax interest to Source State as per the domestic laws or at the concessional tax rate subject to fulfilment of following conditions:
 - ❖ Recipient of interest - resident of other State
 - ❖ Beneficial owner of interest
- **Taxation of gross basis – no deduction can be claimed**

Salary Income





**Salary
Income as
per IT Act:**

As per section 17 of IT Act salary income includes:

- Wages
- any annuity or pension
- any gratuity
- any fees, commissions, perquisites or profits in lieu of or in addition to any salary or wages
- any advance of salary
- Leave encashment
- contribution made by the Central Government or any other employer in the previous year
- contribution made by the Central Government in the previous year, to the Agniveer Corpus Fund account

As per section 9(1)(ii) of IT Act salary income includes:

Income which falls under the head "Salaries", if it is earned in India and **includes income of the nature service rendered in India**; and any rest period or leave period which is preceded and succeeded by services rendered in India and forms part of the service contract of employment

ARTICLE 16

Dependent Personal Services

1. Subject to the provisions of Articles 17 (Directors' Fees), 18 (Income Earned by Entertainers and Athletes), 19 (Remuneration and Pensions in respect of Government Service), 20 (Private Pensions, Annuities, Alimony and Child Support), 21 (Payments received by Students and Apprentices) and 22 (Payments received by Professors, Teachers and Research Scholars), salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.
2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State, if :

(a)	the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the relevant taxable year ;
(b)	the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State ; and
(c)	the remuneration is not borne by a permanent establishment or a fixed base or a trade or business which the employer has in the other State.

Taxation on Non-Resident returning to India

NRI



Exempt Investment Income- Some Pointers



Interest income - Exempt U/s 10(4)(ii)

Residency to be seen with **respect of FEMA.**

1 Interest on NRE Account

2

Interest on FCNR & RFC A/c

To non-resident or **Not Ordinarily Resident**


Exempt U/s - 10(15)(iv)(fa)

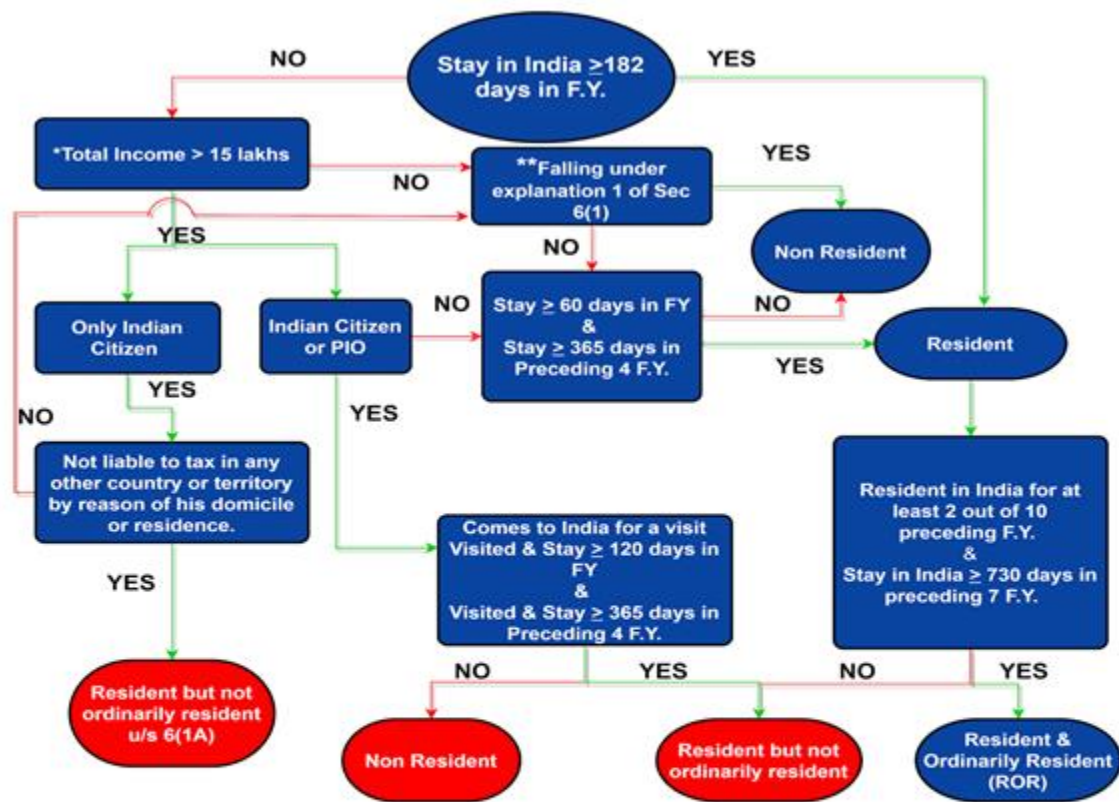
Tax on non resident returning to India

Tax on income earned outside India while returning to India

Income tax act taxes the income of assessee on accrual basis and thus if assessee has earned any income when he was a non-resident and later brings that money in India same will **not be taxable in India on receipt basis** as he would have already paid tax on it when it accrued outside India and since at the time of accrual he might be a non-resident such income will not be taxable in India.

Further, **any income which accrues after the non-resident returns to India** such income will **not be taxable till the time assessee becomes an ordinary resident and normally it takes 2 years for a non-resident to become ordinary resident.**





Will affect returning Indians

*Total income other than income from foreign sources

** Falling under explanation 1 Sec 6(1):

Explanation 1(a). Leaves India for the purpose of employment outside India or as a member of the crew of an Indian ship

Explanation 1(b). Comes to visit to India excluding Indian Citizen or PIO having total income excluding income from foreign sources more than 15 Lakhs

PIO- Person of Indian Origin

F.Y.- Financial Year

Filing of return of Income



Non-residents not required to file return in India



Section 115A(5):

It shall not be necessary for a **non-resident** (not being a company) or of a **foreign company** to **furnish** under sub-section (1) of section 139 a **return** of his or its income if—

- a) his or its **total income** in respect of which he or it is assessable under this Act during the previous year consisted only of income referred to in clause (a) [or clause (b)] of sub-section (1); and
- b) the tax deductible at source under the **provisions of Part B of Chapter XVII** has been deducted from such income and the rate of such deduction is not less than the rate specified under clause (a) or, as the case may be, clause (b) of sub-section (1).

- **Clause (a) - Dividend and Interest**
- **Clause (b) - Royalty & Fees for technical services**

Amendment in Sec 115A(5)

Before Finance Act, 2020

After Finance Act, 2020

5) It shall not be necessary for an assessee referred to in sub-section (1) to furnish under sub-section (1) of section 139 a return of his or its income if—

- a) his or its **total income** in respect of which he or it is **assessable under this Act** during the previous year consisted only of income referred to in clause (a) of sub-section (1); and
- b) the **tax deductible** at source under the provisions of **Chapter XVII-B** has been deducted from such income.

Section 115A(5): It shall not be necessary for a **non-resident** (not being a company) or of a **foreign company** to furnish under sub-section (1) of section 139 a return of his or its income if—

- a) his or its **total income** in respect of which he or it is assessable **under this Act** during the previous year consisted only of income referred to in clause (a) **[or clause (b)] of sub-section (1); and**
- b) the **tax deductible** at source under the provisions of **Part B of Chapter XVII** has been deducted from such income and

the rate of such deduction is not less than the rate specified under clause (a) or, as the case may be, clause (b) of sub-section (1).

Amended provision:

1. **Coverage extended** from only dividend and interest income with **Royalty, or FTS Income** and
2. Additional condition for **the rate of such deduction is not less than the rate specified** under clause (a) or, as the case may be, clause (b) of sub-section (1). – **Rate restricted.**



Section 115G



It shall not be necessary for a **non-resident Indian** to furnish under sub- section (1) of section 139 a return of his income if—

(a) his **total income** in respect of which he is assessable under this Act during the previous year **consisted only of investment income or income by way of long-term capital gains** or both; and

(b) the **tax deductible at source** under the provisions of Chapter XVII-B has been **deducted** from such income.

- The voluntary filing of a return by a non-resident Indian is exempted where he **has only "investment income"** or "LTCG", as defined in **section 115C** and tax has been **deducted under Chapter XVII B** in respect thereof.
- These **conditions are cumulative**.

Judicial view on requirement to file return by non-resident

As far as judicial viewpoint is concerned, there are various conflicting judgements by Authority of Advance Rulings (AAR). Relevant judgements of AAR are tabulated as under:

Have to file return



Do not have to file return

VNU International B.V. (2011) - 10 Taxmann.com 157 – New Delhi

- **Fact of the case:** A Netherlands company sold shares of wholly owned Indian company's shares to another Swiss company.
- **Not taxable in India-** The same income is not taxable in India as per the DTAA between the India-Netherlands company.
- **Filing return- Ruling-**
- In section 139(1), there is **no expression for company as 'exceeded the maximum amount which is not chargeable to income-tax'**.
- As per the third proviso, every company is required to file its return of income, whether it has an income or a loss.
- Foreign company is covered within the definition of a company under section 2(17) of the Act.

Vanenburg Group B.V. [2007] 159 Taxman 219 – New Delhi

- **Fact of the case-** Netherlands company sold shares of its entire shares of Indian subsidiary company to another Netherlands company for its corporate reorganization.
- **Not taxable in India-** The same income is not taxable in India as per the DTAA between the India-Netherlands company.
- **Filing return- Ruling-**
- Liability to pay tax is founded upon sections 4 & 5 of the Act, which are the charging sections. Section 139 and other sections are merely **machinery sections** to determine the amount of tax. There would be no occasion to call a machinery section in aid where there is no liability at all
- Therefore, not be required to furnish any tax return.



Judicial view on requirement to file return by non-resident

Have to file return



Do not have to file return

Deere & Co. [2011] 11 taxmann.com 388 (AAR)- New Delhi

- **Fact of the Case:** The assessee is a USA based entity, who has sold entire shareholding of Indian entity **without any consideration** to another Singapore company for restructuring of group.
- **Taxability in India-** No taxability arises u/s 45 of the IT Act.
- **Return filing requirement-** applicant is bound to file return of income under section 139 notwithstanding that there is no taxability under Act

Factset Research Systems Inc [2009] 182 Tax-man 268

- **Fact of the Case:** The assessee maintains database located outside India and receives subscription fees from its customers outside India.
- **Taxability in India:** Will not be considered as Royalty under the IT Act.
- **Return Filing requirement- Ruling-**
- Since the income is not taxable under the IT Act as well as D TAA, there is no obligation to file the return.



Judicial view on requirement to file return by non-resident

Have to file return



Do not have to file return

SmithKline Beecham Port Louis Ltd [2012] 24 taxmann.com 153- New Delhi

- **Fact of the case:** The assessee, a Mauritius company sold its shares held in an Indian company to another foreign company.
- **Taxability in India:** Not taxable as per DTAA between Mauritius – India.
- **Return filing requirement – ruling-** Once there is chargeability to tax under the Act, the return of income will have to be filed under section 139, even if the benefit of the Double Taxation Avoidance Convention (DTAC) is claimed or a ruling is given on that basis. The applicant will therefore have the obligation to file a return of income in terms of section 139.

Dow Agro Sciences Agricultural Products Ltd [2016] 65 taxmann.com 245

- **Fact of the case:** The assessee a Mauritius company sold its entire shareholding of Indian company to another Singapore company for restructuring.
- **Taxability in India-** Not taxable in India.
- **Filing return-** Since transfer of shares not subject to tax in India therefore no not required to file return.



Requirement to obtain PAN



- ❖ For NRs Section 139A stipulates that any person, including non-residents, must obtain a PAN if they fall under specific conditions. The key circumstances include:
 - **Income Tax Liability:** If the non-resident has income that is chargeable to tax in India
 - **Business Transactions:** If the non-resident is involved in business or professional activities in India that necessitate filing an income tax return.
 - **Specified Financial Transactions:** Engaging in transaction specified by the Central Board of Direct Taxes (CBDT) where quoting a PAN is mandatory, such as:
 - a) Payments exceeding Rs. 50,000 in a for the **purchase of mutual fund units.**
 - b) **Opening a bank account in India.**
 - c) Purchasing or selling **immovable property.**

Benefits of Filing ITR

1. **Claiming refund** of TDS if tax liability is less than tax deducted at source.
2. Filing an ITR allows an assessee to **carry forward losses** (such as business losses or capital losses) to future years, **which can be set off against future income**, reducing the tax liability in subsequent years.
3. **Establishing Financial Record:-** Filing an ITR helps establish a **financial record and proof of income in India**. This can be useful for various financial transactions, such as applying for loans, visas, or credit cards.
4. Regularly filing ITRs helps in maintaining a clean legal record and avoids potential future legal issues related to tax evasion or non-compliance.



Refund

- In order to get refund of tax deposited, NRs have to open an Indian bank account (NRO a/c) and the same will be verified in the portal.
- For refund of taxes, bank a/c mandatorily required to be pre-validated.
- For successful pre-validation, you must have a valid PAN registered with e-Filing, and an active bank account linked with the PAN.
- The pre-validation process is automatic. Once your request is submitted, it is sent to your bank. The validation status is updated in your e-Filing account within 10 - 12 working days.
- Some banks also open **SNRR accounts (Special Non-Resident Rupee Account)** for NRs specifically for taking income tax refunds.

Source- <https://www.incometax.gov.in/iec/foportal/help/my-bank-account-faq>

Refund- Reissue

■ Prerequisites for refund re-issue-

- ▷ Failure of refund
- ▷ Pre-validated bank a/c

■ Steps for refund-reissue

- ▷ Step 1: Log in to the e-Filing portal using your user ID and password.
- ▷ Step 2: On your Dashboard, click Services > Refund Reissue.
- ▷ Step 3: On the Refund Reissue page, the details and status of refund reissue requests you have raised is displayed. To create a new request for refund reissue, click Create Refund Re issue Request.
- ▷ Step 4: On the Create Refund Reissue Request page, select the record for which you want to submit request of refund reissue and click Continue.
- ▷ Step 5: On the Select a Bank Account page, select the bank account where you would like to receive the refund and click Proceed to Verification.
- ▷ Step 6: After successful verification of the bank details, select your preferred option on the **e-Verify** page.

Refund- Reissue

■ E-Verify

- **Aadhaar OTP** - NRs generally don't have Aadhaar
- **Electronic Verification Code (using bank account / demat account)**- you should have Indian mobile no. for OTP.
- **Electronic Verification Code (using Bank ATM - offline method)**-
- **Net Banking**-
- **Digital Signature Certificate**- If DSC is with other person in India- there can be identity theft issue or it can be misused.


Consequences of Non-filing of Return of Income



■ Penalty Provision:

- ▷ Sec 234F: Rs.5,000 if ITR is reported before 31st December of the Assessment Year, Rs.10,000 if ITR is reported after 31st December but before 31st March of the Assessment Year.
- ▷ Misreporting - residential status
- ▷ Tax Audit - Non-compliance of tax audit regulations by taxpayers attracts a penalty of whichever is lower from the following:
 - 0.5% of total sales or Turnover or Gross receipts or
 - Rs. 1,50,000
- ▷ TP Report - Minimum penalty of INR 100,000

Investment in Provident Fund

- An NRI cannot invest in PPF, however, if one's residential status subsequently changes to NRI, the account is allowed to be run till maturity. PPF is a 15-year scheme, which can be extended indefinitely in blocks of five years. However, for a resident turned NRI, the extension is not allowed. Therefore, Non- Resident Indians are not eligible to extend/continue PPF account after maturity.
 - NRIs can withdraw their investment prematurely but after five years from account opening. The amount is not taxable in India. But it is taxable in the country of residence.
 - U/s 10(11), any payment from a provident fund to which the Provident Funds Act, 1925 applies is exempt, this sub-section does not bifurcate into payment made by resident and non-resident. Therefore, amount received by non-resident on maturity would be exempted.
-
- 

Do NRIs Have to Pay Advance Tax?

- If your tax liability exceeds Rs 10,000 in a financial year, you are required to pay advance tax. Interest under Section 234B and Section 234C is applicable when you don't pay your advance tax.
 - Non-residents are also obliged to pay advance tax voluntarily, if there is such liability even in respect of book profit. - P.No. 14 of 1997, In re (1998)234 ITR 335 (AAR).
-



Sec 115AC

Tax on income from bonds or Global Depository Receipts purchased in foreign currency or capital gains arising from their transfer:

It shall not be necessary for a non-resident to furnish under sub-section (1) of section 139 a return of his income if—

- (a) his total income in respect of which he is assessable under this Act during the previous year consisted only of income referred to in clauses (a) and (b) of sub-section (1); and
- (b) the tax deductible at source under the provisions of Chapter XVII-B has been deducted from such income.

Income includes for this section-

- (a) income by way of interest on bonds of an Indian company issued in accordance with such scheme as the Central Government may, by notification in the Official Gazette, specify in this behalf, or on bonds of a public sector company sold by the Government, and purchased by him in foreign currency; or
- (b) income by way of dividends on Global Depository Receipts—



Relevant Schedules in Filing Return



Residential Status

- While choosing residential status in new e-filing portal you will get the option to choose yourself as ‘resident but not ordinarily resident’ due to sec 6(6)(c) and 6(6)(d).

The screenshot displays the ITD e-Filing portal interface. At the top, there is a navigation bar with 'Home' and 'Help' links. The main header includes the e-Filing logo, the text 'Income Tax Department, Government of India', and 'Desktop Utility (ITR 1 - 4)'. On the right, there are links for 'Call Us', 'English', font size controls, and a status indicator 'ITD e-Filing-DU-v1.0.20 Utility connected Online'.

The main content area is titled 'Residential Status in India *'. It features a dropdown menu currently set to 'Resident but not Ordinarily Resident'. To the right, a 'Conditions for Residential Status *' dropdown is open, showing two options: 'Select' and 'You are a citizen of India, who is not resident'. The text for the second option reads: 'origin, being outside India, who comes on a visit to India, and has total income other than the Income from foreign sources exceeding Rs. 15 lakh and been in India for a period or periods amounting in all to 120 days or more but less than 182 days during the previous year [section 6(6)(c)]'.

Below the dropdowns, there are two questions with radio button options:

- 'Do you want to claim the benefit under section 115 (applicable in case of resident)' with 'No' selected.
- 'Are you governed by Portuguese Civil Code as per section 5A?' with 'No' selected.

At the bottom, there is a section for 'Details of representative assessee' with the question 'Whether this return is being filed by a representative assessee?' and 'No' selected.

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Schedule AL

3.22 Schedule AL

If your total **income exceeds ₹50 lakh**, it is mandatory to disclose the details of movable and immovable assets in Schedule AL along with liabilities incurred in relation to such assets.

It will include Indian as well as Foreign assets even though same has been shown under Schedule FA.

For Non-resident or 'resident but not ordinarily resident': only the details of assets located in India are to be mentioned.

The screenshot shows the e-Filing portal interface for Schedule AL. The user is Jatin Mishra, an individual. The form is for the year 2021-22 (ITR-2). The total income is ₹14,00,000. The form is divided into sections A, B, and C.

A. Details of immovable assets (Total: ₹14,00,000)

B. Details of movable assets (Total: ₹64,000)

Sl. No. (1)	Description (2)	Amount (3)
i	Archaeological collections, drawings, paintings, sculpture, any work of art	₹14,000
ii	Financial Assets	
	a. Bank (including all deposits)	₹10,000
	b. Shares and securities	₹10,000
	c. Insurance policies	₹10,000
	d. Loans and advances given	₹10,000
	e. Cash in hand	₹10,000

Do you want to add more movable assets?

Total amount: ₹64,000

C. Liabilities in relation to Assets at (A + B): ₹

Schedule EI

3.16 Schedule Exempt Income (EI):

In Schedule EI, you need to provide your details of exempt income i.e., income not to be included in total income or not chargeable to tax.



Whether income which is not chargeable to tax as per DTAA, is exempted in come?

Income Tax Department, Government of India

Call Us | English | A+ | A- | Jatin Mishra Individual

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Dashboard / e-File / File Income Tax Return / Filing returns for A.Y. 2021-22 (ITR-2) / Schedule EI

Schedule EI

Removed "2. Dividend Income" * indicates mandatory fields

Details of exempt income (income not to be included in total income or not chargeable to tax) Expand all Collapse all

1. Interest income	₹ 14,000
2. Agricultural income	
Add Details	
3. Other exempt income (including exempt income of minor child)	₹ 0
4. Income not chargeable to tax as per DTAA	₹ 0
5. Pass through income not chargeable to tax (Schedule PTI) ⓘ	₹ 0
Please ensure that corresponding income is reflected in schedule PTI	
6. Total Exempt Income (1 + 2 + 3 + 4 + 5)	₹ 0

[Back to Schedules](#) [Confirm](#)

Schedule TR- Not applicable

3.19 Schedule TR:

In Schedule TR, you need to provide a summary of tax relief which is being claimed in India for taxes paid outside India in respect of each country.

This schedule captures a summary of detailed information furnished in Schedule FSI.

Only in case of Resident

Dashboard / e-File / File Income Tax Return / Filing returns for A.Y. 2021-22 (ITR-2) / Schedule TR

Schedule TR

Summary of tax relief claimed for taxes paid outside India (Available in case of resident)

* indicates mandatory fields

1. Summary of tax relief claimed

Country Code (a)	Taxpayer Identification Number (b)	Total taxes paid outside India (c) (1)	Total tax relief available (d) (1)	Tax Relief Claimed under section (e) (1)
2- United States of America	3456TYR34456	total of 'c' of Schedule FSI in respect of each country	total of 'd' of Schedule FSI in respect of each country	Specify 90, 90A or 91
Total		₹ 50,000	₹ 50,000	

2. Total tax relief available in respect of country where DTAA is applicable (section 90/90A) (1) Part of total of 1(d) ₹ 50,000

3. Total tax relief available in respect of country where DTAA is not applicable (section 91) (1) Part of total of 1(d) ₹ 40,000

4. Whether any tax paid outside India, on which relief was allowed in India, has been refunded/credited by the foreign tax authority during the year?

Yes No

Amount of Tax Refunded ₹ 1,43,400

Assessment Year in which tax relief allowed in India 2018-19

< Back to Schedules Confirm

Schedule FA- Not Applicable

3.20 Schedule FA:

In Schedule FA, you need to provide details of **foreign asset or income from any source outside India.**

This Schedule need not be filled up if you are 'not ordinarily resident' or a 'non-resident'

Dashboard / e-File / File Income Tax Return / Filing returns for A.Y. 2021-22 (ITR-2) / Schedule FA

Schedule FA

Details of foreign assets and income from any source outside India ⓘ

Expand all | Collapse all

▼ A1. Details of Foreign Depository Accounts held (including any beneficial interest) at any time during the relevant accounting period

<input type="checkbox"/>	Sl. No. (1)	Country Name & Code (2)	Name of the Financial Institution (3)	Address of the Financial Institution (4)	ZIP Code (5)	Account Number (6)	Status (7)	Account Opening Date (8)	Peak balance during the period (9)	Closing balance (10)
<input checked="" type="checkbox"/>	1	United States of America	JP Morgan	Lorem ipsum dolor sit amet, consectetur adipiscing elit	21452	214523675678	Owner	12-Mar-2019	₹ 10,000	₹ 10,000

Do you want to add more foreign assets?

Schedule FSI- Not applicable

3.18 Schedule Foreign Source Income (FSI):
In Schedule Foreign Source Income (FSI), you need to report the details of income, which is accruing or arising from any source outside India.

This schedule is applicable for residents only.

The screenshot shows the e-Filing portal interface for Schedule FSI. It displays two sections: one for the United States of America and one for Australia. Each section includes a table with columns for Sl. No., Heads of Income, Income from outside India, Tax paid, Tax payable, Tax relief, and Relevant article of DTAA. The United States section shows a total income of ₹ 14,00,000 with ₹ 50,000 in tax paid and ₹ 14,00,000 in tax payable, resulting in ₹ 50,000 in tax relief. The Australia section shows a total income of ₹ 28,00,000 with ₹ 1,00,000 in tax paid and ₹ 28,00,000 in tax payable, resulting in ₹ 1,00,000 in tax relief. The interface also includes navigation buttons like 'Back to Schedules' and 'Confirm', and a 'Do you want to add more TIN?' prompt.

Schedule FSI
Details of income from outside India and tax relief (Available in case of resident)

2 - United States of America Edit Delete

Tax Identification Number
3456TYR34456

Sl. No.	Heads of Income (a)	Income from outside India offered for tax in India (b) (1)	Tax paid outside India (c)	Tax payable on such income under normal provisions in India (d)	Tax relief available in India (e) (1)	Relevant article of DTAA if relief claimed u/s 90 or 90A (f)
i	Salary	₹ 14,00,000	₹ 50,000	₹ 14,00,000	Lower of c & d	Article 13
Total		₹ 14,00,000	₹ 50,000	₹ 14,00,000	₹ 50,000	

61 - Australia Edit Delete

Tax Identification Number
3456TYR34456

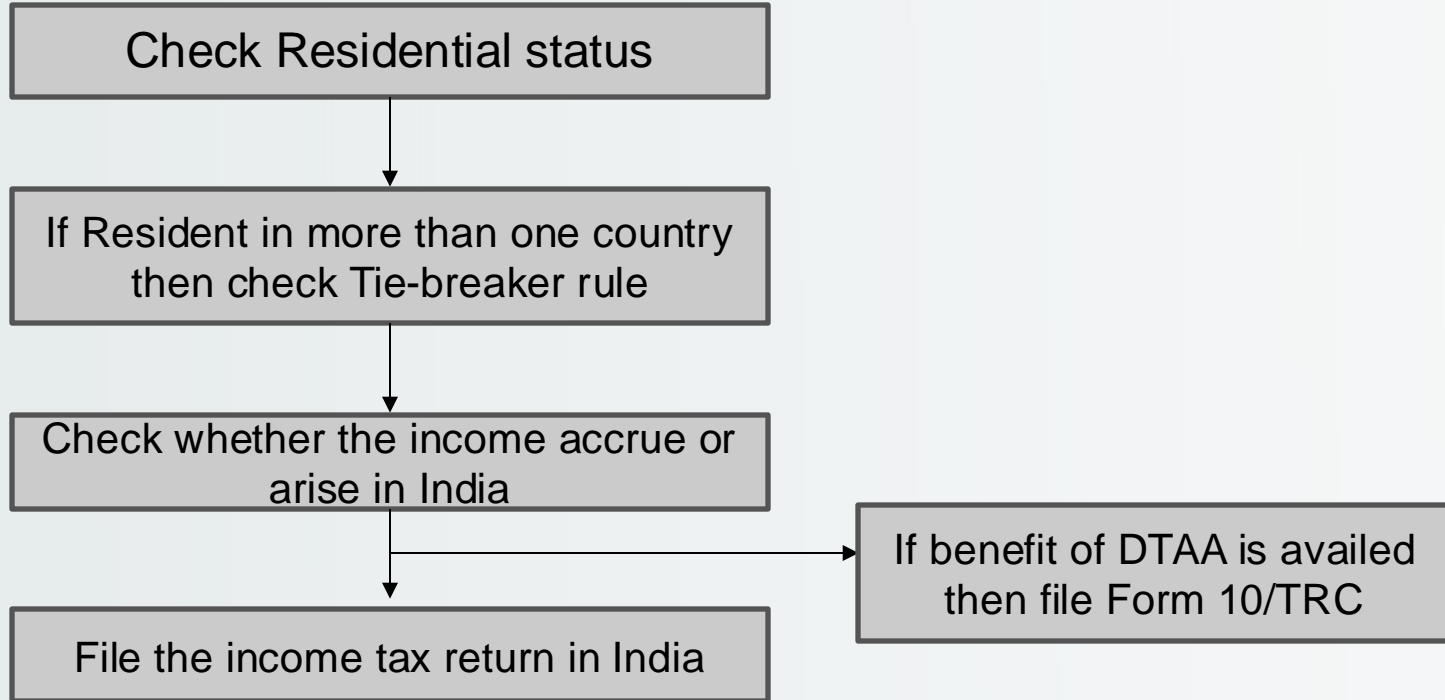
Sl. No.	Heads of Income (a)	Income from outside India offered for tax in India (b) (1)	Tax paid outside India (c)	Tax payable on such income under normal provisions in India (d)	Tax relief available in India (e) (1)	Relevant article of DTAA if relief claimed u/s 90 or 90A (f)
i	Salary	₹ 14,00,000	₹ 50,000	₹ 14,00,000	Lower of c & d	Article 13
ii	House Property	₹ 14,00,000	₹ 50,000	₹ 14,00,000	₹ 50,000	Article 13
Total		₹ 28,00,000	₹ 1,00,000	₹ 28,00,000	₹ 1,00,000	

Do you want to add more TIN? 1 of 1 items < >

+ Add Another

< Back to Schedules Confirm

Summary when income is taxable in India



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