



Back to Basics – Educational Series on Income Tax

Section 4, 5,6 and 9

- CA K Prasanna

Section 5 - Scope of Total Income

- Under Section 5 of the Income-tax Act, 1961 ('the Act'), the scope of income subject to tax in India depends on the residential status of the individual. The taxability of income in India based on residential status – Refer table
- Any item has to satisfy the test of income before it falls under the scope of total income
- Income is computed for the relevant previous year (exception is proviso to Section 4) – E.g., S. 174, 174A
- Income could be from 'whatever' source. The type of source is not significant. The location of the source is not of relevance (except certain situations)
- Section 5 deals with place, timing, and person with respect to income.
- In general all income has a source – exception could be Sec. 56(2)(x), Section 41(1)
- Charge is on total income and not on scope of total income

Scope of Total Income - Summary

Residential Status	Income accrued/deemed to accrue in India	Income received/deemed to be received in India	Income accrued and received outside India
ROR	Taxable	Taxable	Taxable
NOR/NR	Taxable	Taxable	Not Taxable*

* Unless it is derived from a business controlled in India or a profession set up in India in the case of NOR

- Income not forming part of Section, but may deemed to be chargeable to tax – E.g. 47A, 41, 56(2)(ix) etc
- Application of Section 5 comes after an item passing the test of income
- Section 5 is subject to the provisions of the Act. It yield to other provisions including Section 90(2) - DTAA

Section 5 - Scope of Total Income

Source vs Accrual

- Source of income is different from Income
- Place of Accrual vs Source of Income – Is it the same? - Ahmedbhai vs. Umarbhai [1950] 18 ITR 472 (SC) – Judgement of CJ Kania. Refer to the table for a discussion
- Situs of the source of income – relevant in 9(1)(i), exception being business, where activities are tested.

#	Instrumentality	Source of Income	Place of Accrual
1	House	Agreement	Place where the right to receive rent
2	Skill of Employee	Employment Contract	Where the right to receive salary
3	Shares	Transfer Agreement	Where the right to receive consideration

Table source – Book on Decoding Section 5

Business Controlled in India

- Derived should bring first-degree relationship – (1948) 16 ITR 325 (SC)
- Direct nexus should be there between income and the business controlled in India
- The nature of control to be looked at is *defacto* and *dejure*.
- To what extent of control exercised is relevant
- It should not be confused with business connection

Meaning of certain terms in Section 5

Received and Deemed to be received

- Received – not only covers direct receipt but also covers receipts ‘on behalf of the assessee’
- Constructive receipts are also covered – e.g., Settlement of obligations of a person directly by another, setting of each other dues
- Section 5(1)(a) – Covers first receipt – Keshav Mills (1953) 23 ITR 230
- Receipt outside India – Whether covered?
- Income taxed already under accrual cannot be taxed again on receipt basis
- Deemed to be received – Section 7 and 198 of the Act – Deems non-receipt as a receipt.

Meaning of certain terms in Section 5

Accrue or Arises and deemed to accrue or arise

- Supreme Court in E.D. Sassoon & Co Ltd (1954) 26 ITR 27 – “‘accruing’ is synonymous with ‘arising’ in the sense of springing as a natural growth or result....while the word ‘arises’ comes into existence or notice or presents itself. The former connotes the idea of growth or accumulation and the latter of the growth or accumulation with a tangible shape so as to be receivable”.
- Excel Industries (2013) 358 ITR 295 (SC) - An income accrues when it becomes due but it must also be accompanied by a corresponding liability of the other party to pay the amount. Only then it can be said that for the purposes of taxability said income is not hypothetical and it has really accrued to the assessee.
- Does not use the phrase ‘on behalf of’ - accrual is a legal right to receive income – E.g., Agency and Principal. Exception- Section 64 (clubbing of income)
- Place of accrual of income is critical
- Accrual vs Arisal vs Receipt

Section 6 – Residential Status of Individual

Citizen of India (COI) or Person of Indian Origin (POI) – Visiting India or leave for the purpose of employment

Nature of income	Stay in India	Residential Status	
Indian/ Foreign	≥182 days	Resident in 2 out of 10 Yrs Stay in India is >729 days over last 7 Pys	Satisfy both – Resident (R) Not satisfy either or both – Not Ordinary Resident (RNOR)
Indian Income > 15 Lakhs	120 days in FY + 365 days in 4 PYS	RNOR	
	<120 days in FY or <365 days in 4 PYS	Non – Resident (NR)	
Indian Income < 15 lakhs	<182 days	NR	

Other than COI or POI – leave India for the purpose of other than employment

Nature of income	Stay in India	Residential Status	
Indian/ Foreign	a) ≥182 days (or)	b) Res in 2 out of 10 Yrs and Stay in India is >729 days over last 7 PYS	Satisfy both – R Not satisfy either or both – RNOR
	(i) 60 days in FY + 365 days in 4 Pys		
	(ii) <60 days in FY or <365 days in 4 Pys	-	NR

Section 6 – Certain Nuances

- Computation of period of stay in India
 - ✓ Is continuous presence in India a must? – *physical presence is required, there is no requirement of continuous stay*
 - ✓ Inclusion of date of arrival vs date of departure?
 - *Both days to be included* - OECD MC para 5 to Art 15 and AAR ruling in Petition No 7 of 1995 (1997) 90 Taxman 62
 - *Arrival date to be excluded* – Gautam Banerjee (ITA NO 2374/Mum/2004); Manoj Kumar Reddy ([2009] 34 SOT 180) approved by Karnataka HC in (2011) 201 Taxman 30; Pradeep Kumar Doshi [2021] 133 taxmann.com 283 (Ahem ITAT)
 - *Sec. 9 of the General Clauses Act* – Commencement and termination of time – use of word “from” and “to”
 - *Departure date to be included* – Manoj Kumar Reddy (supra)
 - ✓ Exclusion of any specific days (e.g. non-working days, holidays etc)? - *OECD MC - Para 5 to Art 15 – all days of physical presence to be included.*
 - ✓ Substitution of 60 days with 182 days
 - Applicable in the year of leaving or even in the year of return? – *Applicable in the year return of Shri Anurag Chaudhary (AAR 839 of 2009); Against in Manoj Kumar Reddy (supra) – better view is available only in the year of leaving*
 - Manner of computing 60 days in the year of return permanently? Any earlier visits to be excluded? – *The earlier visits during the employment should be excluded if the person returns permanently – Manoj Kumar Reddy (Supra)*
- Purpose of Employment
 - ✓ Whether temporary visits are considered? – *No K.Y. Patel (1990) 33 ITD 714 (Bom); Abott Laboratories [1989] 31 ITD 183 (Bom)*
 - ✓ Whether self employment/business or profession/vocation is included? – *Yes [Abdul Razak [2011] 337 ITR 267 (Ker HC)*
 - ✓ Individuals leave India for deputation/secondment? – *British Gas India Pvt Ltd (2006) 155 Taxman 326 (AAR)*
- Split Residency – Recent Delhi ITAT in the case of Sameer Malhotra [TS-1010-ITAT-2022(Del)]

Section 6(1A) – Deemed Residence

(1A) Notwithstanding anything contained in clause (1) an individual, being a citizen of India, having total income, other than the income from foreign sources, exceeding fifteen lakh rupees during the previous year shall be deemed to be resident in India in that previous year, if he is not liable to tax in any other country or territory by reason of his domicile or residence or any other criteria of similar nature

- Applies only to Citizen of India
- Total Income other than foreign source income is greater than Rs. 15 Lakhs
- He is not liable to Income-tax in any country or territory by reason of his domicile/residence/other criteria. (Stateless Person).
- Deemed to be Resident despite not even spending a day in India

Anti Abuse Provisions

- **Reduction from 182 days to 120 days**
- **Section 6(1A)- Stateless Income**
 - Golden Passport Schemes
 - HNWI
 - Multi billion dollar Industry
 - Post Covid, huge demand.

- Liable to tax – Section 2(29A) - in relation to a person and with reference to a country, means that there is an income-tax liability on such person under the law of that country for the time being in force and shall include a person who has subsequently been exempted from such liability under the law of that country;
- “income from foreign sources” means income that accrues or arises outside India (Except income derived from a business controlled in or a profession set up in India) and *which is not deemed to accrue or arise in India.

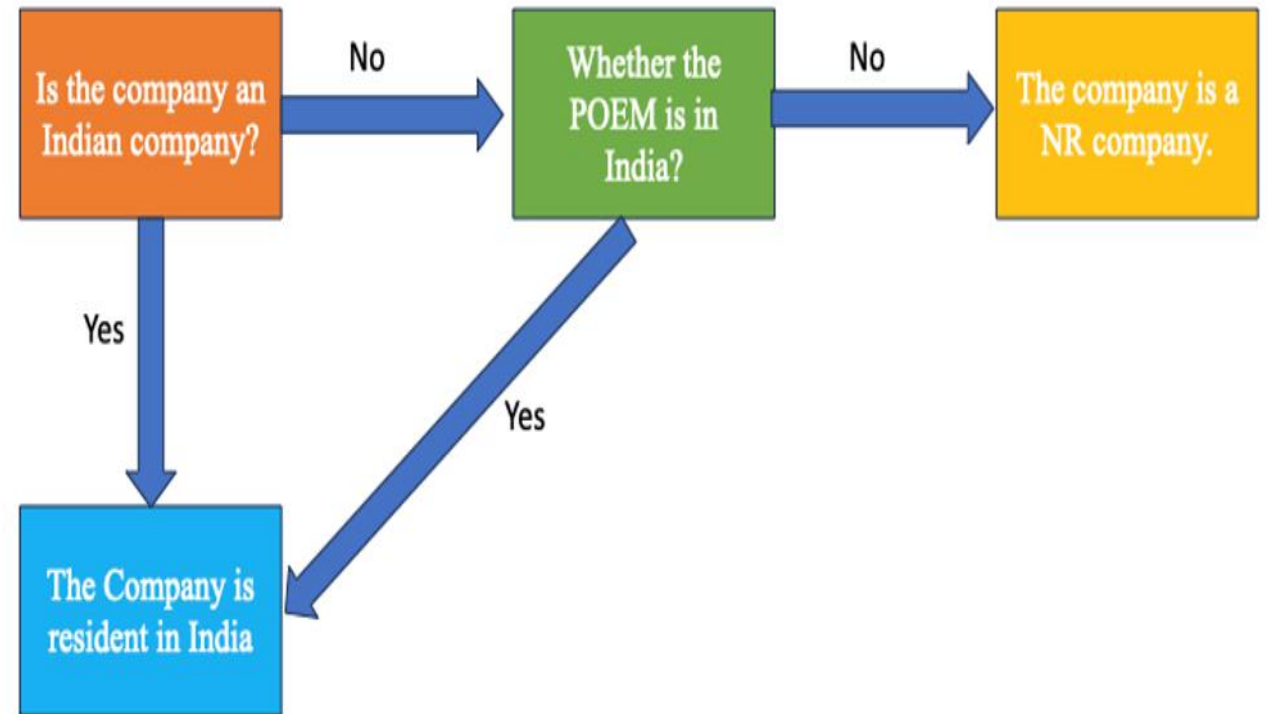
Impact of Section 6(1A) – RNOR – Certain benefits may not be available (e.g. 112(1)(c), Treaty rate for dividend, Section 115A etc

Section 6 – Residence of a Company

A company is said to be a resident in India in any previous year, if—

- (i) it is an Indian company; or
- (ii) its place of effective management, in that year, is in India.

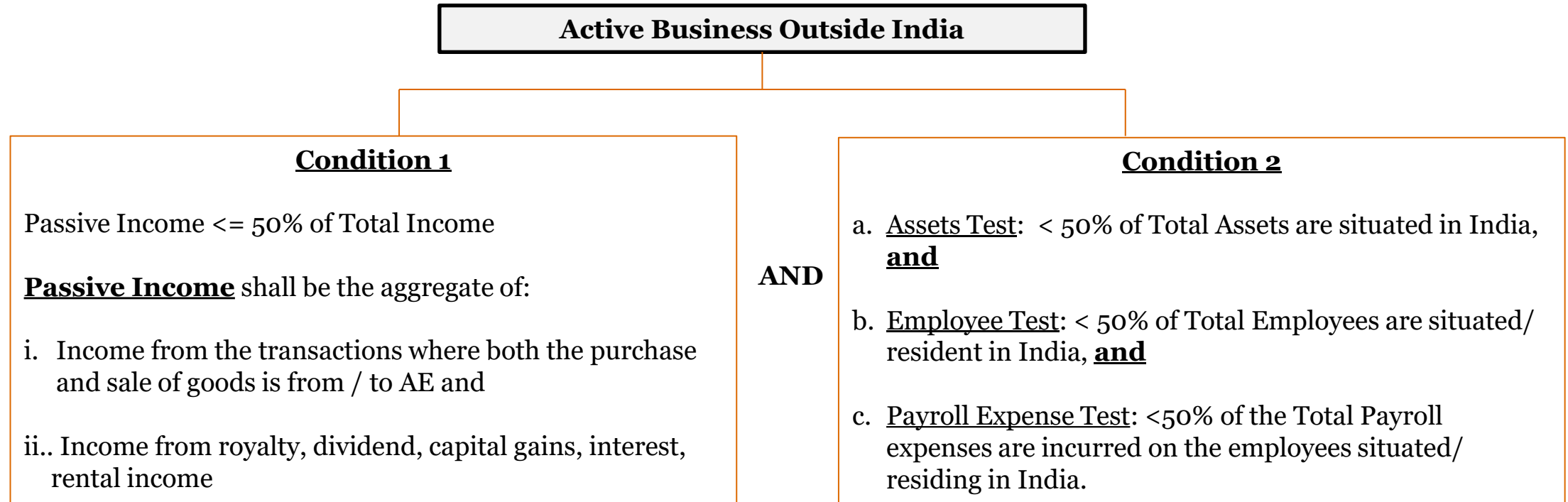
Explanation.—For the purposes of this clause, "place of effective management" means a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole are, in substance, made.



Circular 8/2017 dt. 23 Feb 2017 – PoEM Guidelines not applicable to a company having turnover or gross receipts INR 50 Crores or less in a financial year

POEM Guidelines – in brief

- Test for ABOI: A company is said to be engaged in ABOI if the all the below-mentioned conditions are cumulatively satisfied as depicted in the diagram below`



To determine ABOI test, the average of 3 years data shall be taken into account. In case the company is in existence for shorter period, then data of such period can be considered.

POEM Guidelines – in brief

Whether ABOI test is satisfied?

Yes

Place where majority of Board meetings take place **

** If decisions are not taken by Board

In India?

Yes

POEM in India

No

POEM is outside India

No

2 Step Process

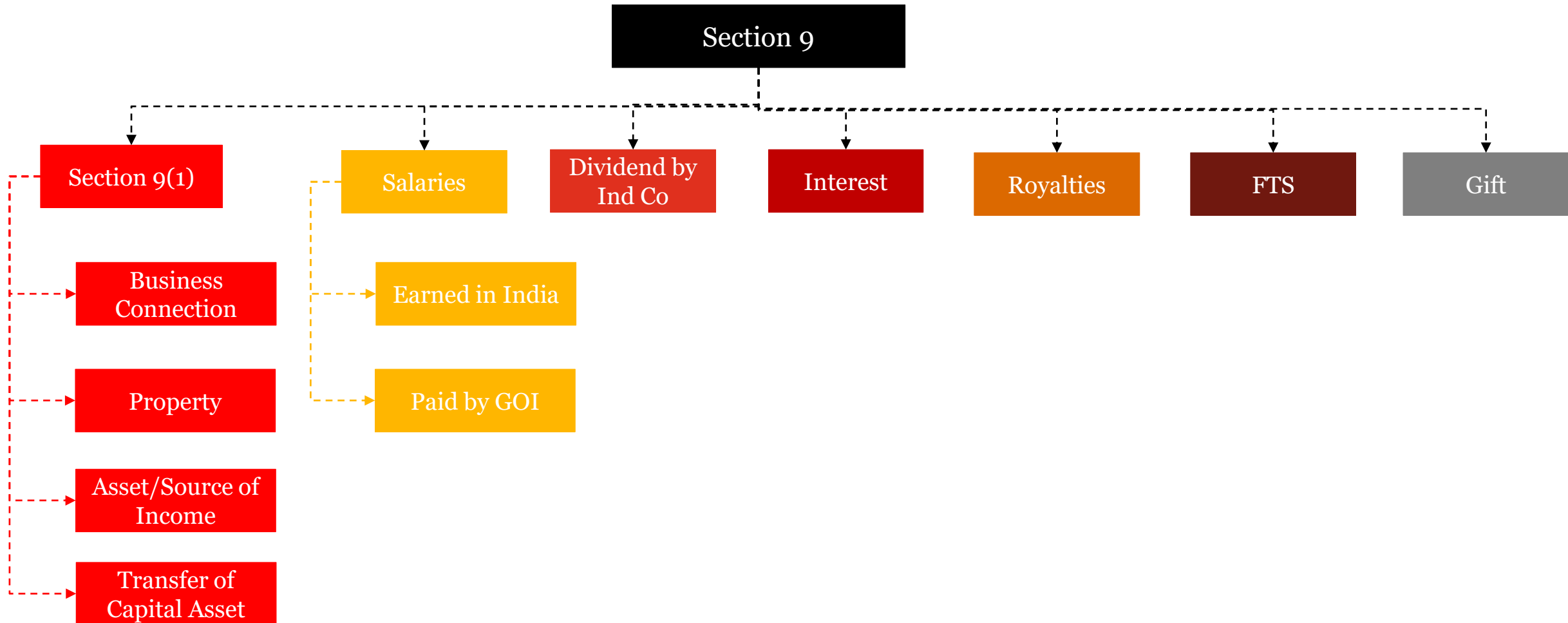
- 1) Identification of person(s) who actually make the key management decisions for conduct of company's business as a whole
- 2) The place where such decisions are actually made by the person(s) identified above. The place where such decisions are taken is more important than the place where these decisions are implemented.

Guiding principles:

- a) Place where board regularly meets and decides (provided board makes key management decisions and powers are not delegated)
- b) Location of committees / people to whom the powers of decision are delegated.
- c) Location of Company's Head Office (ie where senior management and support staff are located or predominantly based).
- d) Where the senior management team is decentralized and decisions are taken over telephone or video conference or any other modern technology, place where highest level management are located
- e) If senior management is decentralized and decisions are taken through technology without physical meeting, place where the decision makers reside.

If above guidelines do not lead to clear identification of PoEM, then determination is based on place where main/ substantial activity of the company is carried or where accounting records are kept.

Section 9 – deemed to accrue or arise in India



Section 9 – Cardinal Principles

- Creates as fiction as to the place of accrual – The role of Sec. 9 is only to shift the place of accrual based on various nexus.
- If the income is already accrued in India by virtue of Sec.5, then deeming fiction does not come into play – Performing Rights Society v CIT (1977) 106 ITR 11 (SC)
- It cannot fasten accrual of income, unlike provisions of deemed receipt.
- Not applicable in case of income received or deemed to be received in India.
- Relevant for Non-Resident and RNOR – In the case of ROR – Accrual outside India is already covered in Sec 5

Section 9(1)(i) – Business Connection

- Business connection was not defined until 2003, and it was explained/interpreted by Courts.
- BC is explained in an inclusive manner – the inclusive definition is similar to dependent agency
- Rangoon High Court in CIT v. P.V.R.M. Visalakshi Achi (1937) 5 ITR 448 - *The expression "business connection" must denote something, which produces profits or gains and not a mere state or condition which is favourable to the making of profit.....The word "business" must have the significance indicated in section 2(4) of the Act, and the word "connection" must have been used in the sense of "that with which one is connected".*
- Not every business transaction between NR and R involves a business connection – some activity has to be undertaken **in India** to trigger a business connection
- Principles from R.D Aggarwal & Co (1965) 56 ITR 20 (SC) –
 - The expression "business connection" undoubtedly means something more than "business".
 - Business carried on by a non-resident which yields profits or gains
 - Element of continuity is required; a stray or isolated transaction is normally not to be regarded as a business connection.
 - Business connection may take several forms
 - Each case must be determined on the facts and circumstances of the case.

Section 9(1)(i) – Business Connection

- Professional Connection is also covered – Barendra Prasad Roy vs ITR (1981) 129 ITR 295
- Andhra Pradesh High Court in G.V.K. Industries Ltd (1998) culled out the principles from various rulings as follows:
 - (i) Whether there is a BC between an Indian person and a non-resident is a mixed question of fact and law which has to be determined on the facts and circumstances of each case;
 - (ii) The expression 'BC' is too wide to admit of any precise definition; however, it has some well-known attributes;
 - (iii) The essence of 'BC' is the existence of close, real, intimate relationship and commonness of interest between the non-resident and the Indian person;
 - (iv) Where there is control or management or finances or substantial holding of equity shares or sharing of profits by the non-resident of the Indian person, the requirement of principle (iii) is fulfilled;
 - (v) To constitute 'BC', there must be continuity of activity or operation of the nonresident with the Indian party, and a stray or isolated transaction is not enough to establish a BC.
- Intangible Business Connection - Volkswagen Finance Pvt. Ltd [TS-172-ITAT-2020(Mum)]

Business Connection - Exceptions

- Purchase for exports - no income shall be deemed to accrue or arise in India to him through or from operations which are confined to the purchase of goods in India for the purpose of export;
- Purchase for sale in India – Not excluded
- Exclusion for purchase for exports cannot be rescued when the income is accrued under Section 5 – Mushtaq Ahmed [2008] 307 ITR 401 (AAR) – *“Clause (b) of the Explanation acts as an embargo against attributing any income to those operations which are carried out in India and are confined to the purchase of goods meant for export. It must be noted that the Explanation 1(b) does not altogether arrest the deemed accrual of income under clause (i) of section 9(1), read with clause (a) of the Explanation”.*
- Explanation is available to assessee who provides services to foreign and Indian buyers, Indian manufacturers to export goods as per the specification of foreign buyers – DIT vs. Mondial Orient Ltd [2014] 226 Taxman 187 (Kar)
- Exclusion from news agencies or shooting of cinematographic films

Business Connection - Precedents

#	Parameters	Rulings
1	Continuity	<ul style="list-style-type: none">• CIT v Metro Goldwyn Mayer (India) Ltd [1939] 7 ITR 176 (Bom)• Jamnadas Brij Mohan V CIT [1962] 46 ITR 233 (All)• Bikaner Textile Merchants Syndicate Ltd v CIT [1965] 58 ITR 169 (Raj)• Bangalore Wollen, Cotton & Silk Mills Co Ltd v CIT [1950] 18 ITR 423, 433 (Mad)• Bikaner Textile Merchants Syndicate Ltd v CIT [1965] 58 ITR 169 (Raj);• A P Damodara Shenoy v CIT [1954] 26 ITR 650 (Bom)
2	Real and Intimate Connection	<ul style="list-style-type: none">• CIT v. R. D. Aggarwal & Co., 56 ITR 20 (SC)• Blue Star Engg. Co. (Bom) (P) Ltd v CIT [1969] 73 UTR 283, 291 (Bom)• CIT v Hindustan Shipyard Ltd. [1977] 109 ITR 158, 170 (AP)• CIT v Jiyajeerao Cotton Mill Ltd [1979] 118 ITR 72 (Cal)• Anglo French Textile Co Ltd v CIT [1953] 23 ITR 101 (SC)

Agency Business Connection – Expl 2 to 9(1)(i)

Before 2018

For the removal of doubts, it is hereby declared that “business connection” shall include any business activity carried out through a person who, acting on behalf of non-resident

- has and habitually exercises in India, **an authority to conclude contracts on behalf of NR**, unless his activities are limited to the purchase of goods or merchandise for the non-resident; or
- ***has no such authority, but habitually maintains in India a stock of goods or merchandise*** from which he ***regularly delivers*** goods or merchandise on behalf of the NR; or
- ***habitually secures orders in India***, mainly or wholly for the NR or for that NR and other NRs controlling, controlled by, or subject to the same common control, as that NR.

After 2018

- has and habitually exercises in India, an authority to conclude contracts on behalf of NR or ***habitually concludes contracts or habitually plays the principle role leading to conclusion of contracts by NR and the contracts are –***

(i) in the name of NR; or (ii) for the transfer of the ownership of, or for the granting of the right to use, property owned by that NR or that NR has the right to use; or (iii) for the provision of services by the NR; or

Maintenance of stock of goods and securing orders in India remained intact

- Exemption for purchase activities are withdrawn
- Expanded the scope of authority to conclude contracts - India’s position on erstwhile OECD MC – Para 33

Need for amendment in 2018

- ✓The scope of "business connection" under the Act is similar to the provisions relating to Dependent Agent Permanent Establishment (DAPE) in India's Double Taxation Avoidance Agreements (DTAAs). In terms of the DAPE rules in tax treaties, if any person acting on behalf of the non-resident, is habitually authorised to conclude contracts for the non-resident, then such agent would constitute a PE in the source country. However, in many cases, with a view to avoid establishing a permanent establishment (hereafter referred to as 'PE') under Article 5(5) of the DTAA, the person acting on the behalf of the non-resident, negotiates the contract but does not conclude the contract.....
- ✓ The OECD under BEPS Action Plan 7 reviewed the definition of 'PE' with a view to preventing avoidance of payment of tax by circumventing the existing PE definition by way of commissionaire arrangements or fragmentation of business activities.....
- ✓ Further, with a view to preventing base erosion and profit shifting, the recommendations under BEPS Action Plan 7 have now been included in Article 12 of Multilateral Convention to Implement Tax Treaty Related Measures (herein referred to as '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, shall become wider in scope than the current provisions in Explanation 2 to section 9(1)(i).....
- ✓ In view of the above, it is proposed to amend the provision of section 9 of the Act so as to align them with the provisions in the DTAA as modified by MLI so as to make the provisions in the treaty effective.

Key Terms

- **‘Acting on behalf’ :**
 - when that person involves the enterprise to a particular extent in business activities in a state concerned. A person cannot be said to be acting on behalf of an enterprise if the enterprise is not directly or indirectly affected by the action performed by that person.
- **Habitually :**
 - The presence which an enterprise maintains in contracting state should be more than a transitional.
 - The extent and frequency of activity necessary to conclude that the agent is “habitually” concluding contracts will depend on the nature of contracts and the business of the principal.
- **Person said to have authority to conclude contracts if :**
 - Has sufficient authority to bind FE and decide the final terms
 - Can act independently, without control from the principal
 - Is authorized to negotiate all elements and details of the contract
 - Where approval of contract by foreign enterprise is mere formality
 - Lack of active involvement by an enterprise in a transactions is indicative of a grant of authority **(Para 32.1 of OECD MC 2014)**

Principle Role leading to Conclusion of Contracts

- ❖ The rule intends to include arrangements where the conclusion of a contracts **directly results** from the action that person performs in a Source State on behalf of the principal, though the contract is not concluded by the person in that state.
- ❖ The test focuses on **substantive activities** directly resulting in conclusion of contracts for FE. It is aligned with the persons who habitually plays the principle role in conclusion of contracts, which is linked to the sales force, persons who actually approach and convince the customer, notwithstanding lack of authorities with the agent to conclude the contract.
- ❖ Activities must be tested in light of the object and purpose of para 5, which is to cover where the activities of the persons are intended to result in regular conclusion of contracts being performed by the FE.
- ❖ The exercise is a fact sensitive one and must be determined on the basis of the commercial realities of the situation.
- ❖ A person who negotiates in a State all elements and details of a contract in a way binding on the enterprise can be said to conclude the contract in that State even if that contract is signed by another person outside that State (Para 87 of OECD MC 2017)

Authority to Conclude Contracts - Precedents

- **Galileo International Inc., 19 SOT 257 (Del)** - As long as the agent has an authority to conclude contracts which are binding on the enterprise, it is not necessary that he should enter into contracts “literally” in the name of the enterprise; the case would be covered within this Article even if those contracts are not actually in the name of the enterprise.
- **In TVM Ltd., 237 ITR 230 (AAR)** - the Mauritian company had an Indian subsidiary through which it was carrying out some of its activities. Although it was its subsidiary, it did not have authority to conclude contracts. Only the Mauritian company had the authority. Based on the facts of the case, the Authority ruled that there was no PE in this case.
- **GE Energy Parts Inc (Del)** – The intricate nature of activities it has carefully designed, where technical officials having varying degree of authority involve themselves along with the local managerial and technical employees, in contract negotiation, often into core or ‘key’ areas, modification of technical specifications and the negotiations for it, to fulfill local needs and even local regulatory requirements, the complexities of price negotiation, etc. clearly show that the assessee carries out through the PE business in India. These activities also intersect and overlap with the content of the principle of dependent agent, inasmuch it is evident that these agencies work solely for the overseas companies, in their core activities.
- **Brown and Sharpe Inc (All)** - The nature of the incentive plan of the assessee would clearly indicate that the purpose of the liaison office in India was not merely to advertise the products of the assessee or to act as a link of communication between the assessee and a prospective buyer but involved activities of assessee traversed the actual marketing of the products of the assessee in India because it was on the basis of the orders generated that an incentive was envisaged for the employees.

Independent Agent – Characteristics and Test

Legal independence	Economic independence	Ordinary course of business
<ul style="list-style-type: none"> The degree of control exerted by principals on the conduct of the businesses of agents determines whether or not the agents are legally independent. This control should not be of a degree as that in an employer-employee relationship. Agents must not be subject to detailed instructions and control with respect to the conduct of their business. Principals should not be in a position to exert a decisive influence on the business of their agents. Agents must be able to conduct their business according to their own viewpoints, competence and methodologies. 	<ul style="list-style-type: none"> Agents should be able to conduct their businesses independently and not be dependent on their principals for their economic viability. They should bear the risk of loss arising from their activities. They should not be wholly and exclusively dependent on their principals. The number of principals represented by an agent determines its economic independence. 	<p>Where an agent undertakes to conduct the activities of the principal in its normal course of business, this should not constitute a PE of the agent (foreign company) in India.</p> <p>The key principles:</p> <ul style="list-style-type: none"> Conduct of an agent vis-à-vis that of the principal Comparison of an agent's activities with those of other agents undertaking similar agency functions Whether activities engaged in by agents are customary to their trade as brokers, commission agents, etc. <p>Agents should not undertake activities that form an economic component of the range of activities engaged in by their principals.</p>

- As per 1st proviso to Expl 2, the term used is independent agent acting in the ***ordinary course of his business***.
- Works mainly or wholly on behalf of NR or NR and other NRs under common control

- Acting in ***ordinary course of that business***.
- As per MLI – Acts exclusively or almost exclusively on behalf of one or more enterprises to which it is closely related
- Article 15 define the term ‘closely related’

Independent Agents - Precedents

- Test of Dependence – To be looked at from the perspective of agent – **Speciality Magazines (144 Taxman 153 [2005] [AAR]); Morgan Stanley & Co International Ltd – 142 Taxman 630 (AAR)**. Contrary in **DHL Operations BV (142 Taxman 1)**.
- A newspaper company, collecting advertisements for other foreign newspapers, acts in the “ordinary course” of its business when it enters into a solicitation agreement with foreign principals [**Al Nisr Publishing, In re, 239 ITR 879 (AAR)**]
- The Department of Posts accepts money orders for the transfer of funds within India, Engaging itself in the same type of business with international ramifications, i.e., money transfer services across international borders, is just an extension of its business and hence, is in the “ordinary course of its business” [**Western Union Financial Services Inc., 101 TTJ 56 (Del)**]
- Which business to be considered for test of independence – Entire business of the Agent to considered – B4U International Holding Ltd (Bombay); Contrary Galileo International Inc.

Amendment to Explanation 1(a) - impact

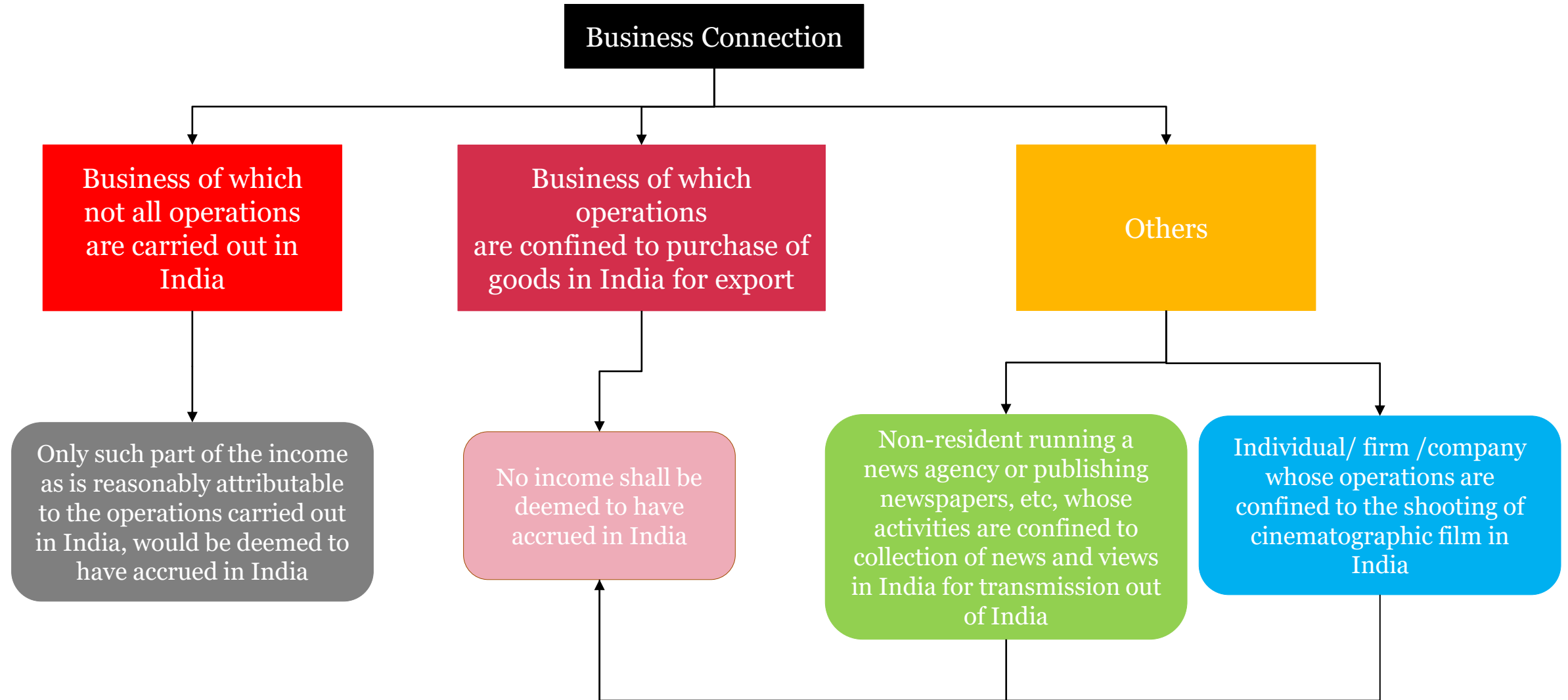
Amendment

Explanation 1 (a) – in the case of business, **other than the business having business connection in India on account of significant economic presence**, of which all the operations are not carried out in India, the income of the business deemed under this clause to accrue or arise in India shall be only such part of the income reasonably attributable to the operations carried out in India.

Impact

- If BC is triggered on account of Explanation 2 i.e. Agency relationship – possible to apply explanation 1(a)
- In case of BC on account of SEP - attribution is confined to operations/activity carried out in India;
- Activity carried outside India vis-à-vis activity in India not relevant for determining SEP;
- Concept of 'business in India' vs 'business with India' – eliminated;
- Transfer of risk and rewards outside India is not relevant anymore – Explanation 2A r.w proviso;

Section 9 – Business Connection in summary



Need for Significant Economic Presence – Memorandum 2018

- ✓ *Taxation of business profits on the basis of economic allegiance has always been the underlying basis of existing international taxation rules. Economists gave primacy to the economic allegiance rather than physical location and made it clear that physical presence was important only to the extent it represented the economic location*
- ✓ *For a long time, nexus based on physical presence was used as a proxy to regular economic allegiance of a non-resident. However, with the advancement in information and communication technology in the last few decades, new business models operating remotely through digital medium have emerged. Under these new business models, the non-resident enterprises interact with customers in another country without having any physical presence in that country resulting in avoidance of taxation in the source country. Therefore, the existing nexus rule based on physical presence do not hold good anymore for taxation of business profits in source country. As a result, the rights of the source country to tax business profits that are derived from its economy is unfairly and unreasonably eroded.*
- ✓ *OECD under its BEPS Action Plan 1 addressed the tax challenges in a digital economy wherein it has discussed several options to tackle the direct tax challenges arising in digital businesses. One such option is a new nexus rule based on “significant economic presence”. As per the Action Plan 1 Report, a non-resident enterprise would create a taxable presence in a country if it has a significance economic presence in that country on the basis of factors that have a purposeful and sustained interaction with the economy by the aid of technology and other automated tools. It further recommended that revenue factor may be used in combination with the aforesaid factors to determine 'significance economic presence'*

Significant Economic Presence (SEP)

Finance Act 2018

“Explanation 2A.—For the removal of doubts, **it is hereby clarified** that the significant economic presence of a non-resident in India shall constitute “business connection” in India and “significant economic presence” for this purpose, shall mean—

- (a) transaction in respect of any goods, services or property **carried out by a non-resident in India** including provision of download of data or software in India, if the aggregate of payments arising from such transaction or transactions during the previous year exceeds such amount as may be prescribed; **or**
- (b) systematic and continuous soliciting of business activities or engaging in interaction with such **number of users** as may be prescribed, **in India through digital means:**”

Finance Act 2020

Explanation 2A - For removal of doubts **it is hereby declared** that the significant economic presence of a non-resident in India shall constitute “business connection” in India and “significant economic presence” for this purpose, shall mean—

- (a) transaction in respect of any goods, services or property **carried out by a non-resident with any person in India** including provision of download of data or software in India, if the aggregate of payments arising from such transaction or transactions during the previous year exceeds such amount as may be prescribed; **or**
- (b) systematic and continuous soliciting of business activities or engaging in interaction with **such number of users in India**, as may be prescribed:

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

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

Provided further that only so much of income as is attributable to the transactions or activities referred to in clause (a) or clause (b) shall be deemed to accrue or arise in India.’;

Limb (a) to Explanation 2A

- ❖ Although, OECD proposal discussed combination of transaction based and user based to create nexus, India had implemented transaction based and user based as separate condition;
- ❖ Traditional business connection and SEP is mutually exclusive; interplay between BC and SEP.
- ❖ Limb (a) to explanation 2A covers all modes of transactions – goods, property and services. Therefore, operation of the section is very wide;
- ❖ Non resident is not required to carryout any activity in India - NR transact with any person in India;
- ❖ Stray or isolated activity could be covered under limb (a) – if it exceeds the threshold proposed to be prescribed
- ❖ Download of data/software in India – Interplay with provisions of section 9(1)(vi) and Explanation to section 9(2)
- ❖ Aggregate of payment from such transaction or transactions
 - possible mismatch between accrual and payment?
 - Transaction taxable under special provisions – Royalty/FTS should be included for determining the limit for determining SEP?

Limb (b) to Explanation 2A

- ❖ Systematic and Continuous – solicitation should be organized and repetitive. Similar to parameters held by rulings in the context of business connection.
- ❖ Engaging in interactions – what constitutes interactions?
- ❖ As per new explanation the solicitation and interactions not necessarily carried out through digital means
- ❖ User – Active/Passive?
- ❖ Who is relevant? - user in India vs target customer in India
- ❖ Act of solicitation/interaction – does it generate income all the time?
- ❖ Interplay of limb (b) vs limb (a)

Explanation 3A and ramifications

Explanation 3A.—For the removal of doubts, it is hereby declared that the **income attributable to the operations carried out in India, as referred to in Explanation 1**, shall include income from—

- (i) such advertisement which **targets a customer who resides in India** or a **customer who accesses the advertisement** through internet protocol address located in India;
- (ii) sale of data collected from a person who **resides in India** or from a person who uses internet protocol address located in India; and
- (iii) sale of goods or services using data collected from a person who **resides in India** or from a person who uses internet protocol address located in India.”;

- Extending the source rule vs amending the source rule – Conundrum in explanatory memorandum;
- Transaction between two NR is could be covered under the Ambit of Explanation 3A. (e..g Apple approaching google for advertisement to target customers in India);
- Targets a customer – From whose point this has to be seen. Advertiser or Advertisee? i.e. above e.g. Google vs Apple; What if the advertisement is general? – Does it excluded from scope;
- Resides in India vs Residence in India;

- Sale of data – raw data vs further data analytics – How to attribute income to data collected
- Sale of data between two NR – covered under Expl 3A
- Primary sale vs secondary sale of data
- Interplay of Explanation 2A vs 3A
- Operative date of Explanation 3A vs Explanation 2A – Effect of proviso

Property or Asset or Source of income in India

Property in India

- ❖ Not refer to property deal with Section 22
- ❖ Covers both movable and immovable property
- ❖ It covers all class of income mentioned in Section 14
- ❖ Income from hiring of furniture in India – arising from property in India – CIT vs. Currimbhoy Ebrahim Sons Ltd (1935) 3 ITR 395 (PC)
- ❖ Positives and negatives of films of motion pictures will be property, and the income derived from hiring of such films will fall under this section. CIT v Metro Goldwyn Mayer (India) Ltd (1939) 7 ITR 176 (Bom).

Asset in India

- ❖ Asset is to be understood more broadly than property
- ❖ All properties are assets but not vice versa
- ❖ Idea may to be leave no gap in the coverage
- ❖ Will also covers intangible property
- ❖ merely because the debtor is in India, the situs of the debt due by him to a non-resident is not an asset or source in India - CIT v Saurashtra Cement & Chemical Industries Ltd (1975) 101 ITR 502 (Gujarat).

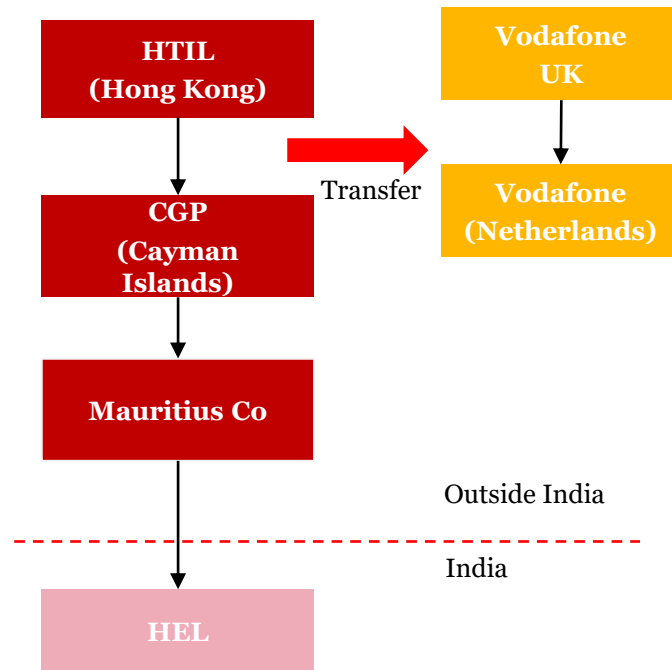
Source in India

- ❖ Source of income – Covers Section 56 or otherwise
- ❖ Idea being that all incomes payable to a non-resident arising in a primary sense from Indian sources should be subjected to taxation in India - Lakhmichand Muchhal v CIT (1961) 43 ITR 315

Transfer of Capital Asset in India

- ❖ To tax the capital gains earned by the non resident from a transfer of his capital asset situated in India
- ❖ Fiction is created because of the connection i.e. situs of capital asset in India
- ❖ Capital Asset – Section 2(14); Transfer – 2(47)
- ❖ Situs of Shares – place where the company is incorporated
- ❖ Situs of intangible property? –Delhi High Court in CUB Pty Ltd – (2016) 388 ITR 617 (Del) – ‘*mobilia sequuntur personam*’
- ❖ Indirect transfer provisions were introduced in 2012.
- ❖ Meaning of the term “through” has been added u/s 9(1)(i) to clarify that the term mean and include "by means of", "in consequence of" or "by reason of"
- ❖ Introduction of Explanation 5 – 7 and relevant rules
- ❖ Overseas Dividend paid by Foreign Company deriving substantial value from India? – Circular 4/2015
- ❖ Valuation for determining FMV is prescribed under Rule 10UB
- ❖ Attribution of Income – Rule 10UC – in proportion to value derived from India

Indirect Transfer – Vodafone International 341 ITR 1 (SC)



- Vodafone International B.V., Netherlands (Vodafone), sought to expand its footprint in the Indian Telecom market by acquiring the entire stake in CGP which in turn held the stake in the Indian subsidiary, HEL
- The Indian Tax Authorities ('ITA') sought to bring the said transaction between two non-residents under India tax net by contending that effectively the interest in HEL got indirectly transferred and consequently, the same was chargeable to capital gains tax as per India tax laws
- Vodafone filed writ petition the Hon'ble High Court of Bombay ('BHC') challenging the notice issued to it by the ITA. BHC dismissed the writ petition stating deeming accrual provisions in the tax statute were wide enough to include within its ambit the said transaction
- Vodafone filed an appeal to the Hon'ble Supreme Court which delivered a landmark decision in favour of Vodafone

Transfer of Capital Asset in India

Explanation 5

- Does the explanation 5 extend to intangible asset?
- Tax the gains derived from transfer of capital asset that derives its value substantially from assets located in India. Asset located in India also includes assets located outside India (i.e. owned by Indian entity)
- A proviso to Explanation 5 was inserted by Finance Act 2017 - Exclude investment held by non-residents in a FII or in a Category-I or Category-II FPI.

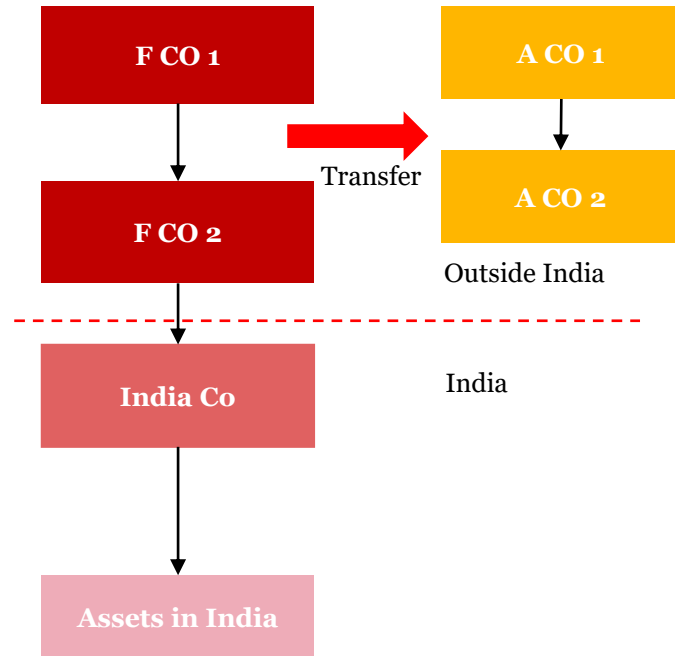
Explanation 6)

- Substantial value is explained – (i) value of asset located in India > 10 Crores and (ii) value of Indian assets represent atleast 50% of total assets of the Company –
- Specified date for determination of value
- Interpretation of the term ‘Substantial’ before 2015 - DIT v. Copal Research Ltd. [2015] 371 ITR 114

Explanation 7

- Small shareholder exemption – upto 5% - Augustus Capital Pte. Ltd [2024] 296 Taxman 398 (Del) – to be read retrospectively along with the Explanation 5

Indirect Transfer – Vodafone International 341 ITR 1 (SC)



Step1: Determination of Specified Date:

- To be determined on the basis of book value of assets of F.Co.2 of which shares are being transferred

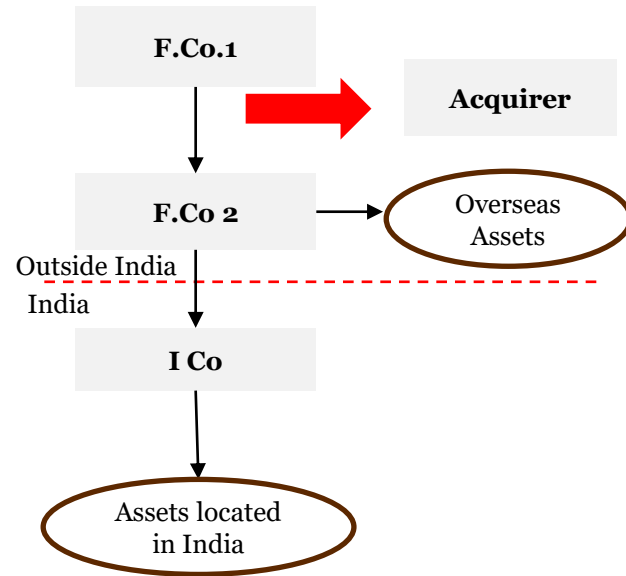
Step 2: Determination of Fair Market Value (FMV):

- Determination of FMV of India located assets and FMV of all assets of F Co.2 as on specified date
- Determine if FMV of India located assets is more than Rs 10 crores and $\geq 50\%$ of FMV of all assets of F.Co2 as on specified date, as determined in Step 1

Step3: Proportionality Test

- If Step2 satisfied, amount reasonably attributed to assets located in India to be determined as per prescribed method to determine taxability

Indirect Transfer – Vodafone International 341 ITR 1 (SC)



➤ Specified Date means

The last date of the accounting period of the company / entity immediately preceding the date of transfer;

OR

Date of transfer, if the book value ('BV') of assets of the company / entity on the date of transfer exceeds BV as on the last date of the immediately preceding accounting period by 15%

➤ Illustration: Date of transfer is 24.03.2024

Particulars	Case 1	Case 2	Case 3
BV of assets of F.Co2 as on 31.03.2023	500	500	500
BV of assets of FCo2 as on 24.03.2024	525	600	450
Whether exceed 15% of BV	No	Yes	No
Specified Date	31.03.2023	24.03.2024	31.03.2023

- If BV has increased by more than 15%, FMV to be considered as on the date of transfer
- BV is only to consider on what date should the substantial value be considered
- BV is not relevant for determining the income
- BV is not relevant for determining whether substantial value is in India or not

Specified Date is relevant for determining the FMV of assets

Salary earned in India

- ❖ Interplay of Section 5, 6, 9 and 15
- ❖ Section 15 – due or paid basis depending on nature of salary
- ❖ Salary income of a non resident – Where does it accrue? - ***(a) the place where the contract is made, or (b) the place where the payment for the employment is to be made.***
- ❖ Connecting factor with India – Earned in India. Explanation was inserted to clarify what is earned in India – Equated with service rendered in India
- ❖ Subject to short stay exemption under Sec 10(6)
- ❖ Shifts place of accrual of salary for employment based outside India to India where the salary is earned in India, i.e., services are rendered in India

Salary earned in India

Various Scenarios of Taxation for a Non Resident

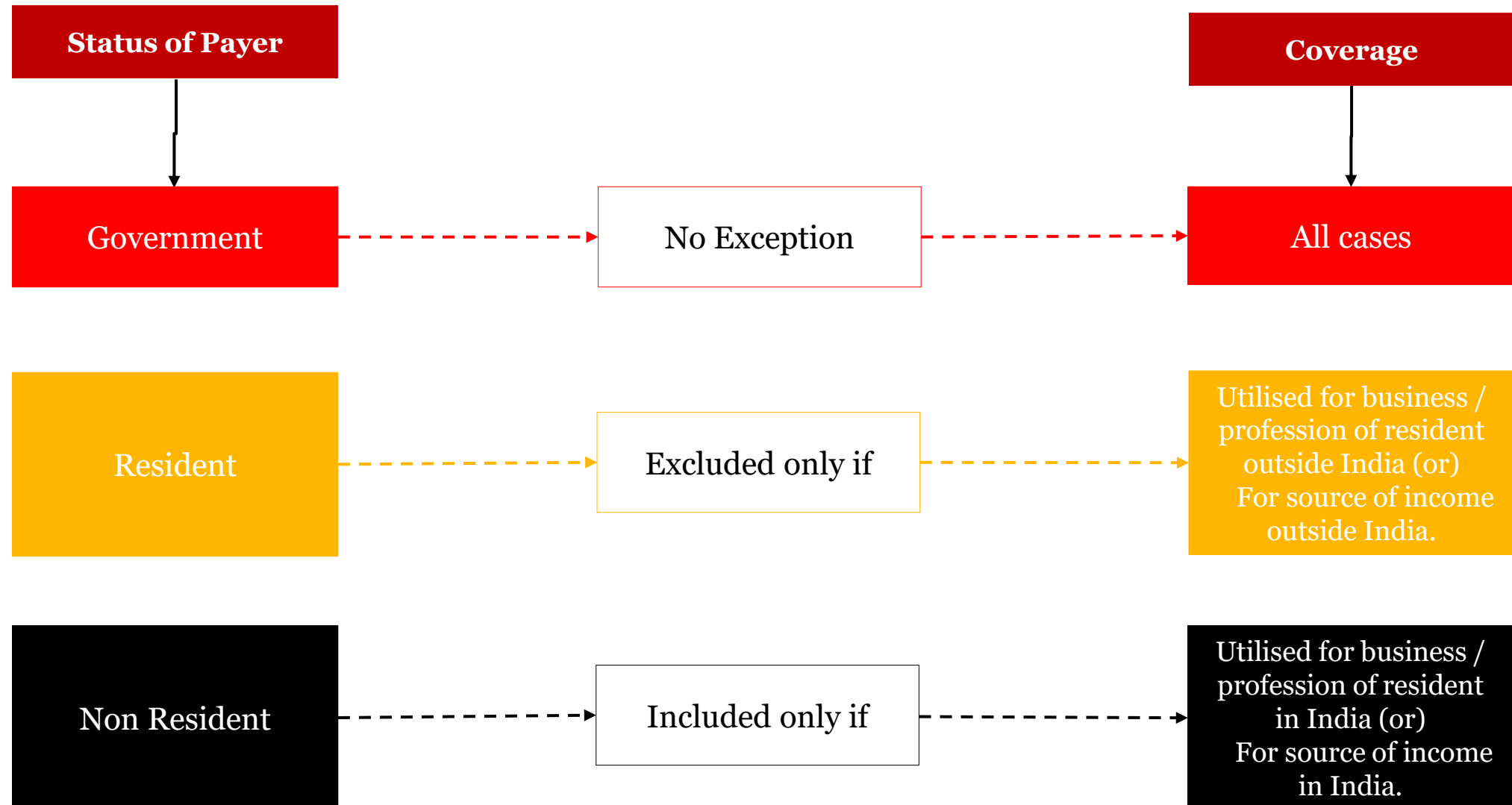
Employer based	Services rendered	Salary Received	Taxability
In India	In India	In India and/or outside India	Taxable in India as per Section 5 and 9(1)(ii), credit of Indian taxes should be available in COR
Outside India	In India	In India and/or outside India	Taxable in India only in respect of services rendered in India as per Section 9(1)(ii) subject to short-stay exemption
Outside India	Outside India	Outside India	Not taxable in India
		In India in same year	Taxable in India on receipt basis
		In India in later year(s)	Not liable to tax in India in year of accrual; not taxable in year of receipt as already subject to tax
In India	Outside India	In and/or outside India	Taxable in India under Section 5 as employment base in India

Source: Section 9 – CA Rutvik Sanghvi and CA Ganesh Rajagopalan

Dividend

- A dividend paid by an Indian company outside India
 - Situs of accrual of dividend may be different from the situs of the shares
 - Indian company as defined in sec. 2(26)
 - Section 8 – deemed to be the income of the previous year in which it so declared, distributed or paid
 - Interim dividend – amount of dividend is unconditionally made available by the Company
 - Dividend from foreign company which has received dividends from its Indian subsidiary not covered [*P-5 of 1995 (1997) 223 ITR 379 (AAR)*]
 - Dividend paid by Foreign Company having PoEM in India, whether covered?
 - Section 2(22) defines the term ‘dividend’

Source rule for 9(1)(v)/(vi)/(vii)



Certain aspects

- Priority of clause (v)/(vi)/(vii) over business connection - Lex specialis to clauses (v), (vi) and (vii) – embodied in explanation to Section 9 (2)
- Source rule exceptions – discussed later as part of FTS
- Exclusion from definition vs. exclusion from rule
 - If a transaction is not covered under these clauses, then other clauses shall apply – E.g. Business Connection or SEP
 - If falls under exception, then other clauses cannot be applied

Interest

✓ Interest under section 2(28A) of the Act...

Interest payable in any manner in respect of moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) and includes any service fee or other charges in respect of any credit facility that has not been utilized

✓ Interest on Securities under section 2(28B) of the Act...

Interest on any security of the Central Government or State Government

Interest on debentures or other security for money issued by or on behalf of a local authority or a company or a corporation established under a Central, State or Provincial Act

✓ For the purposes of making or earning any income in India for NR not covered

- If NR A borrows from B (also NR) and invests in shares in Indian companies, interest receivable by B not deemed to accrue/arise in India [Cir. No.202 dated 5-7-1976]

✓ Payment of interest by branch to its Head Office is deemed to accrue or arise – introduced by Finance Act 2015 – Earlier to the amendment the payment is not taxable - Special Bench Ruling in Sumitomo Mitsui Banking Corporation (2012) 145 TTJ 649 (Mum.)(SB)

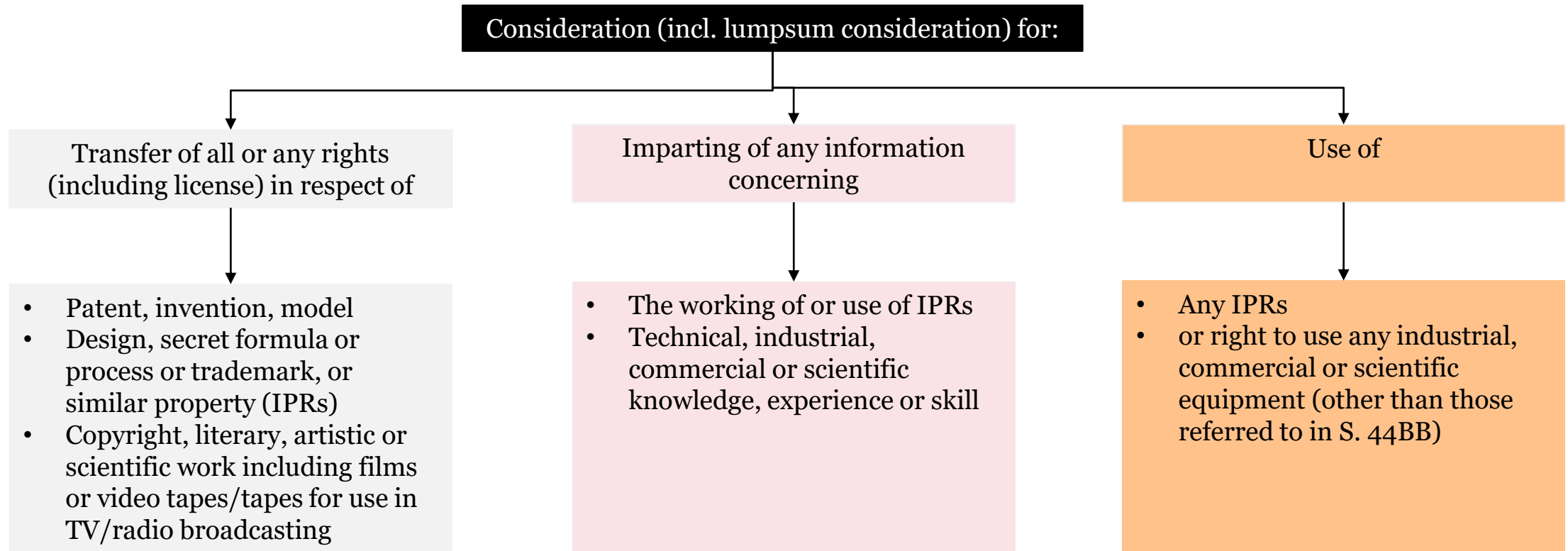
Royalty - Basics

- Payment reserved by the grantor of a patent, lease of a mine or similar right, and payable proportionately to the use made of the right by the grantee
- Payment to a person who has exclusive right for allowing another to make use in respect of thing which can be:
 - Physical / tangible (e.g. equipment, mining)
 - Intellectual Property Rights (IPRs) / Intangibles
- Covers protected as also unprotected IPRs
- Recipient need not be owner / creator of IPR - Could be legal heir and Includes authorised licensee / assignee
- Generally, encompasses ‘negative rights’ i.e. prohibition unless authorized
- Providing use of intellectual right for commercial exploitation gives rise to royalty. Purchase of product embedding / based on IPR is not for use of IP
- ‘Pre-dominant purpose test’ applies
 - Identify the element for which payment is essentially made
 - Incidental / ‘de minimis’ factors not to affect characterisation
 - If mixed contracts, fair allocation to different components

Product vs Underlying IPR

Product	Embedded IPR content	What does Licence of IPR expect?	What does Purchaser of product get?
Medicines / Drugs	Patent	Licence to manufacture	Ownership of drugs
Books	Copyright	Publishing house wants right of reproduction	Ownership of book
Packaged drinking water	Trademark	Franchisee wants right to manufacture and sell under trademark	Ownership of product

Royalty – Definition under the Act



Rendering of any services in connection with each element included

Consideration chargeable under the head “Capital gains”

Use of Equipment

- ✓ Use of equipment vs. Services
- ✓ Consideration for use of or right to use industrial, commercial or scientific equipment
- ✓ Am I acquiring use of Equipment vs Am I availing service where Equipment is used by the service provider?
 - Physical possession, custody and control of property with user.
 - Significant economic or possessory interest
 - Equipment at user disposal
 - No concurrent use by others
 - Risk of operation is with the User.
- ✓ Asia Satellite Telecommunications (2011) 332 ITR 340 (Del) – Pre Amendment
- ✓ Explanation 5 - For the removal of doubts, it is hereby clarified that the royalty includes and has always included consideration in respect of any right, property or information, whether or not—
 - (a) the possession or control of such right, property or information is with the payer;
 - (b) such right, property or information is used directly by the payer;
 - (c) the location of such right, property or information is in India.



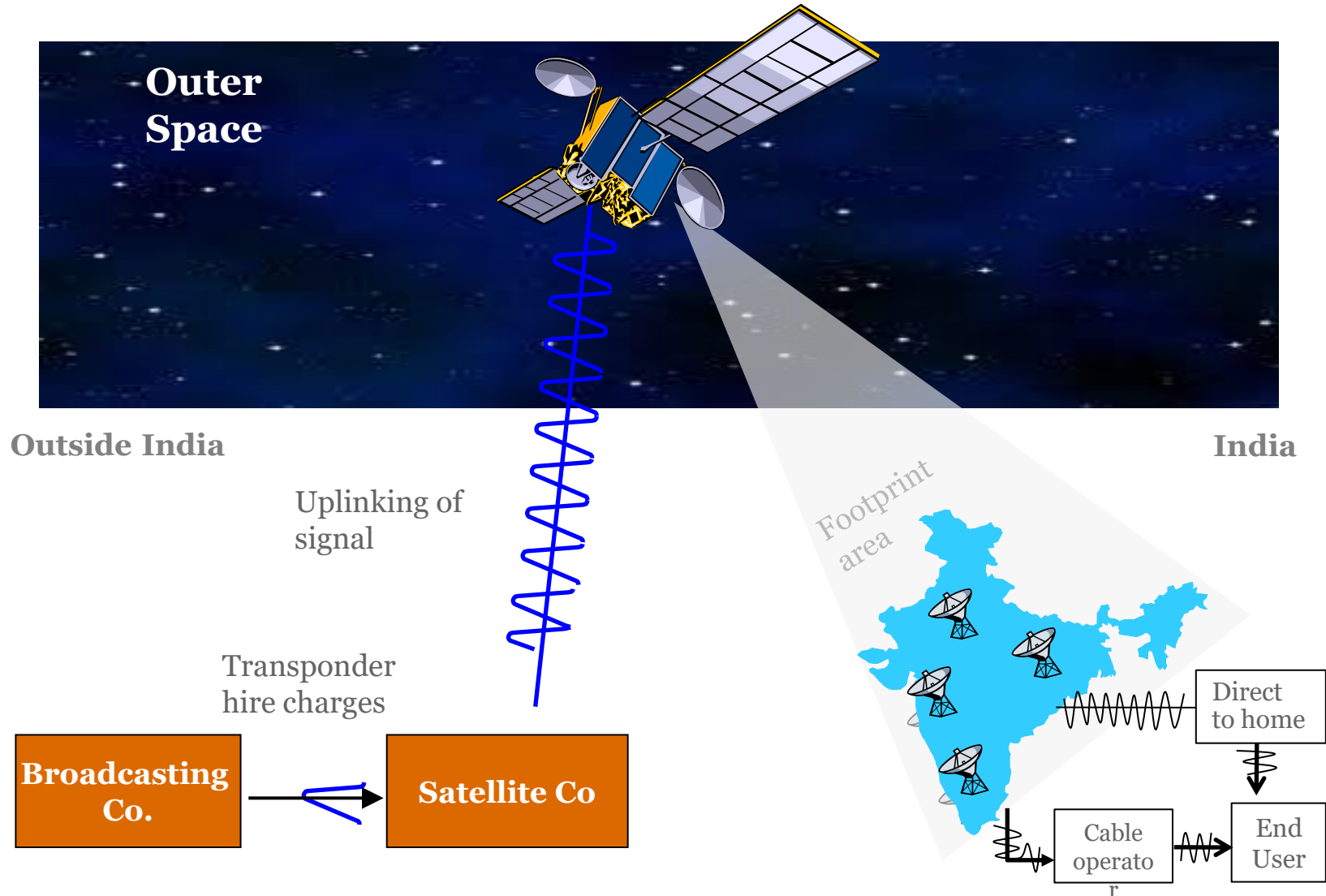
Information Concerning ICS experience

- ❑ Alludes to the concept of know-how
- ❑ Know-how is all the undivulged technical information, whether capable of being patented or not, that is necessary for the industrial reproduction of a product or process, directly and under the same conditions; inasmuch as it is derived from experience, know-how represents what a manufacturer cannot know from mere examination of the product and mere knowledge of the progress of technique

(Association des Bureaux pour la Protection de la Propriete Industrielle’)

- ❑ Corresponds to undivulged information arising from previous experience
- ❑ Information that is not publicly available and cannot be known from mere examination of product and mere knowledge of the process and technique
- ❑ Experience giving rise to some form of intellectual property rights
- ❑ Supply of logic, algorithms or programming techniques or languages of computer program may get covered
- ❑ One’s own experience v/s compilation of data relating to experience of others
- ❑ Use of Database Subscription – Whether Royalty? - Salesforce.com Singapore Pte. ([2022] 137 taxmann.com 3 (Delhi - Trib.); Dun & Bradstreet Espana S A [2004] (272 ITR 99)

Process Royalty



Explanation 6 to section 9(1)(vi)

For the removal of doubts, it is hereby clarified that the expression "process" includes and shall be deemed to have always included transmission by satellite (including up-linking, amplification, conversion for down-linking of any signal), cable, optic fibre or by any other similar technology, whether or not such process is secret

- Asia Satellite Telecommunications (2011) 332 ITR 340 (Del) – Pre Amendment

Software Payments

- ❖ Software controversy-
 - ✓ Use of computer software amounts to use of copyright in the software, royalty – Karnataka High Court
 - ✓ Copyright to be distinguished from copyrighted article - Infrasoftware (Delhi HC)

- ❖ Amendment vide Finance Act 2012 - Explanation 4 to section 9(1)(vi) (effective 1.4.76)

“For the removal of doubts, it is hereby clarified that the transfer of all or any rights in respect of any right, property or information includes and has always included transfer of all or any right for use or right to use a computer software (including granting of a licence) irrespective of the medium through which such right is transferred”

- ❖ Computer software as defined in Explanation 3

“For the purposes of this clause, “computer software” means any computer programme recorded on any disc, tape, perforated media or other information storage device and includes any such programme or any customized electronic data”

- ❖ Supreme Court in Engineering Analysis Centre of Excellence [(2021) 125 taxmann.com 42 (SC)]
 - ✓ Use of computer software not use of copyright
 - ✓ No use of copyright by distributors of shrink-wrapped software
 - ✓ Explan 4 not retrospective

Fees for Technical Services

- ✓ Consideration (including lump sum consideration) for rendering of:
 - ❑ Managerial
 - ❑ Technical
 - ❑ Consultancy Services
- ✓ Includes provision of services of technical or other personnel
- ✓ Excludes consideration for:
 - ❑ Construction, assembly, mining or like project; or
 - ❑ Amount chargeable as salaries
- ✓ Exclusion in respect of services incidental to / inextricably linked to sale of equipment

Managerial Services

- **OECD TAG Report:**

- services rendered in performing management functions
- Need to give ordinary commercial meaning
- Involves functions related to how a business is run as opposed to functions involved in carrying on that business
- Management includes the act of managing by direction or regulation or superintendence. Thus, managerial service essentially involves controlling, directing or administering the business. [R. Dalmia v/s. CIT (106 ITR 895)(SC)]
- As an illustration, whilst the functions of hiring and training commercial agents would relate to management, the functions performed by these agents (i.e. selling) would not.

- *M/s UPS SCS (Asia) Limited v ADIT (2012) 18 taxmann.com 302 (Mum)*

“Ordinarily the managerial services mean managing the affairs by laying down certain policies, standards and procedures and then evaluating the actual performance in the light of the procedures so laid down.

Technical Services

- **Dictionary defines ‘technical’ as:**

“Involving or concerned with the mechanical arts and applied sciences”

- A ‘technical’ service means a service requiring expertise in technology – *MOU to the India USA tax treaty*

- **OECD TAG Report**

- Involves special skills or knowledge related to a technical field
- use of technology in providing a service is not determinative
- delivery of a service via technological means does not make the service technical

Consultancy Services

- **Dictionaries**

“ The act of asking the advice or opinion of someone (such as lawyer)”; “.... seek from a presumably qualified personal or an advice, opinion, etc”

- Approved by the Supreme Court in G.V.K Industries (2015) 371 ITR 453 (SC)

- **OECD TAG Report** - Services constituting in the provision of advice by someone, such as a professional, who has special qualifications

- The Supreme Court has also referred to the observation of Delhi High Court in Bharti Cellular Ltd (2009) 319 ITR 139 that the word "consultant" is a derivative of the word "consult" which entails deliberations, consideration, conferring with someone, conferring about or upon a matter. Service of consultancy necessarily entails human intervention. The consultant, who provides the consultancy service, has to be a human being. A machine cannot be regarded as a consultant.

- The Delhi Tribunal has held that not all kinds of advisory qualify as technical services. For any consultancy to be treated as technical services, it would be necessary that a technical element is involved in such advisory. Thus, the consultancy should be rendered by someone who has special skills and expertise in rendering such advisory - Le Passage to India Tours & Travel (P.) Ltd. [2014] 369 ITR 109 (Delhi ITAT)

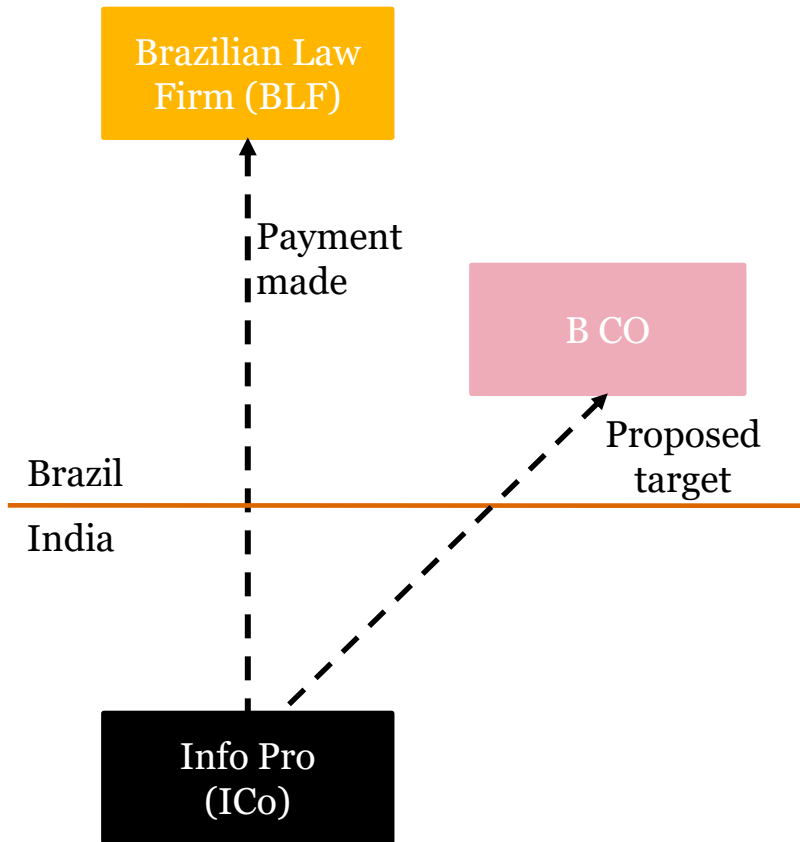
Other aspects

- ❖ Thrust is on “Services”
 - ❖ Distinguish : Product (v/s) Services
 - Created (v/s) Person agrees to create, develop
 - Anticipated Demand (v/s) work begins after settling specifications
 - ❖ Distinguish : Technical service (v/s) Technology driven service
 - ❖ Significance of Human intervention - Bharti Cellular (330 ITR 239) decision and CBDT Instruction 5 of 2011
 - ❖ Technology driven service – Observation of the Apex Court in Kotak Securities Ltd [2016] 383 ITR 1
- ❖ Services of technical or other personnel – mandates some sort of work through act of services of technical or other personnel – Abbey Business Services India (P) Ltd vs. DCIT (2015) 53 SOT 401 (Bang)
 - ❖ Intention of carving out Construction, assembly – Rio Tinto Technical Services (2012) 340 ITR 507 (Del)
 - ❖ Mere supervision or rendering services cannot avail carveout – Hotel Scopevision Ltd (2007) 18 SOT 183 (Del)
 - ❖ Prospecting, extraction or production of mineral oil – CBDT instruction 1862 dated 22 October 1990

Services that are not FTS

- Standard cellular telephone service - Skycell Communications Ltd and Another vs. DCIT and Another [2001] (251 ITR 53) (Mad)
- Interconnect charges paid to telecom service providers - Idea Cellular Ltd vs. DCIT [2008] (313 ITR 55) (Delhi ITAT)
- Sales/Sourcing commission & incidental services - Adidas Sourcing Ltd. [2019] 102 taxmann.com 469 (Delhi - Trib.)
- Sales Promotion & Marketing Fee - Rich Graviss Products (P.) Ltd. vs. Addl CIT [2014] 49 taxmann.com 531 (Mumbai ITAT)
- Underwriting services
- Insurance
- Guarantee Fee
- Logistics, transportation, freight forwarders - UPS SCS (Asia) Ltd vs ADIT (2012) 18 taxmann.com 302 (Mumbai ITAT),
- Liaison Services
- Provision of bandwidth or internet - Geo Connect Ltd. Vs DCIT [2017] 88 taxmann.com 758 (Delhi - Trib.)

Source Rule under the Act



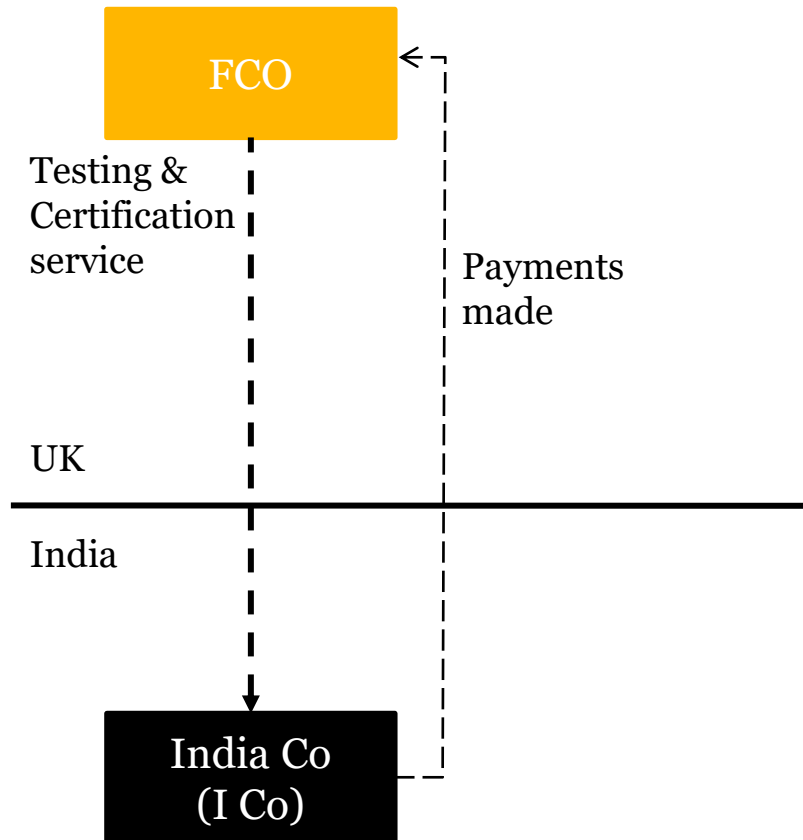
* Ignore treaty provisions for the time being.

- Info-Pro (ICO) proposes to acquire existing company in Brazil (B Co).
- It engaged a professional firm from Brazil (BLF) to undertake feasibility & due diligence analysis
- Based on the report, a decision is taken after the year end not to acquire B Co
- Is BLF liable to pay tax in India?

Services for acquiring sugar mills in Brazil, a Brazilian subsidiary set up- assessee contemplating to create a source in Brazil- covered within the phrase 'for the purpose of making or earning outside India' which doesn't require an existing source [*Bajaj Hindustan (2011) 13 taxmann.com 13 (Mum)*]

There should be pre-existing business - *Shriram Capital (2020) 425 ITR 207 (Mad)*

Source Rule under the Act



- An Indian company (ICo), exports its products to UK.
- Sale of products in the UK is allowed only if such products are certified and allowed fit for use in UK as per the specified certification procedures
- ICo availed certification services of FCo
- Export contracts concluded in India , goods manufactured and exported from India
- ICo claims certification services utilised for business or source of income outside India
- Please advise

Testing services for export market – Source of income are export contracts which are concluded in India. Importer not a source of income, only source of receipt –services not utilized in earning from a source outside India [*Havells India [(2012) 253 CTR 271 (Delhi)]*]

* Ignore treaty provisions for the time being.

Gift

- *“income arising outside India, being any sum of money referred to in sub-clause (xviiia) of clause (24) of section 2, 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.”*
- Covers payment of sum of money without/inadequate consideration
- Rationale for insertion of clause (viii)
 - Scope of total income of NR- does not include income received outside India
 - Sec. 9 deems place of accrual or arising of listed income to be India
- Income arising outside India
 - ‘Accrual’ not used- a gift cannot accrue
 - Income arising when received
- Includes only a sum of money
 - Transfer of property not covered
 - Covers sums received outside India;



Questions?

Thank You

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