

Seminar on Tax Planning, Investment & Compliances by NRIs

Tax Planning for NRIs

ICAI Towers, BKC, Mumbai

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Remittances by NRI'S*

<u>Country</u>	<u>Remittances</u>
India	\$ 4,963,082,154 (i.e. 4.9 bn)
China	\$4,273,597,674
Philippines	\$162,000,000
Pakistan	\$30,440,000
Bangladesh	\$11,936,031
Nigeria	\$38,872,764
Egypt	\$292,700,000
Lebanon	\$4,207,812,255

*Source: World Bank 2012

CHARGE OF INCOME - TAX

(Section - 4)

Section 4 is a Charging Section.

Income is chargeable at the rates prescribed in the Budget provided:

- a) it comes within scope of Total Income under Section 5 and
- b) it is not exempt under Section 10

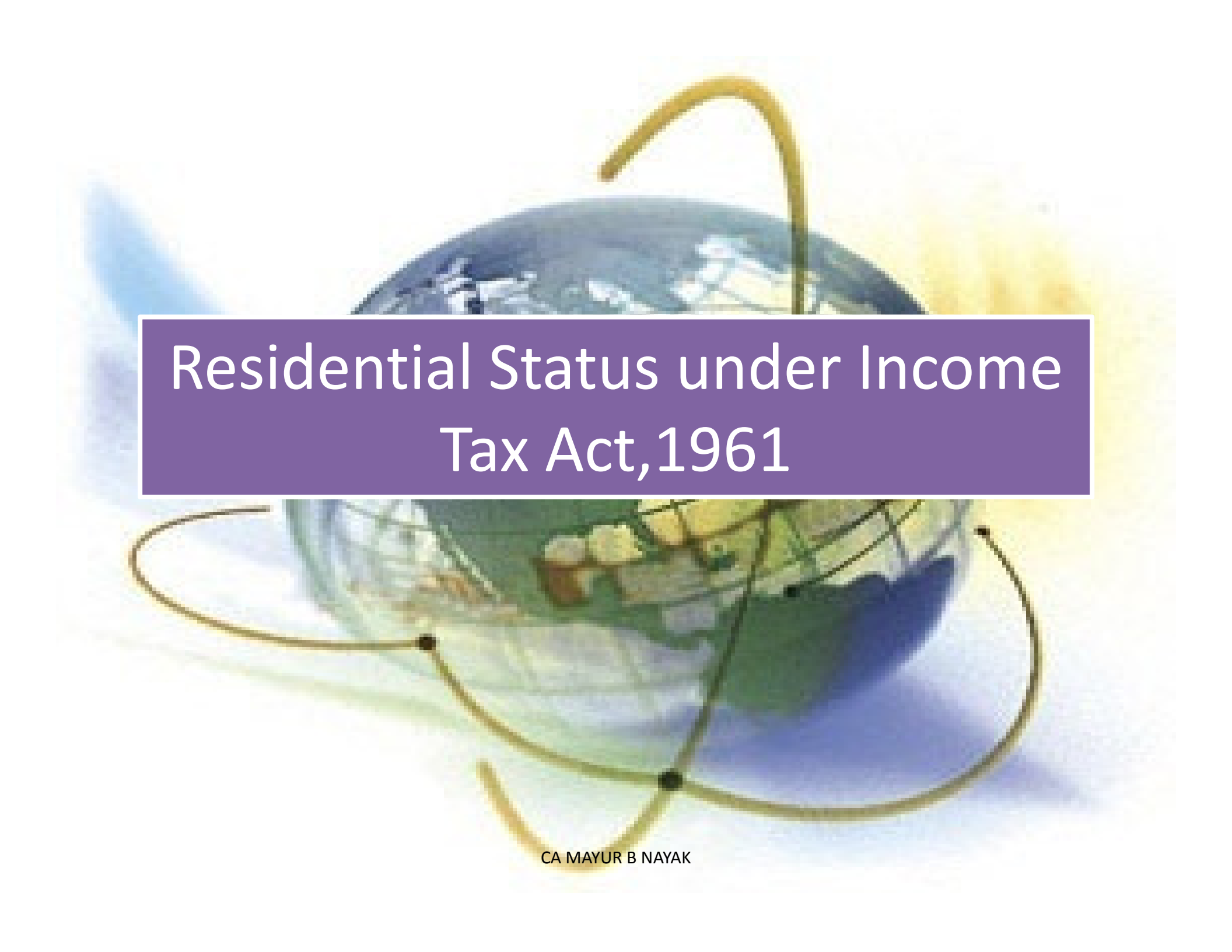
SCOPE OF TOTAL INCOME

(Section - 5)

Incidence of tax depends upon a person's Residential Status and also upon the place and time of accrual and receipt of income

Enabling Provisions for taxing NR`s income in India

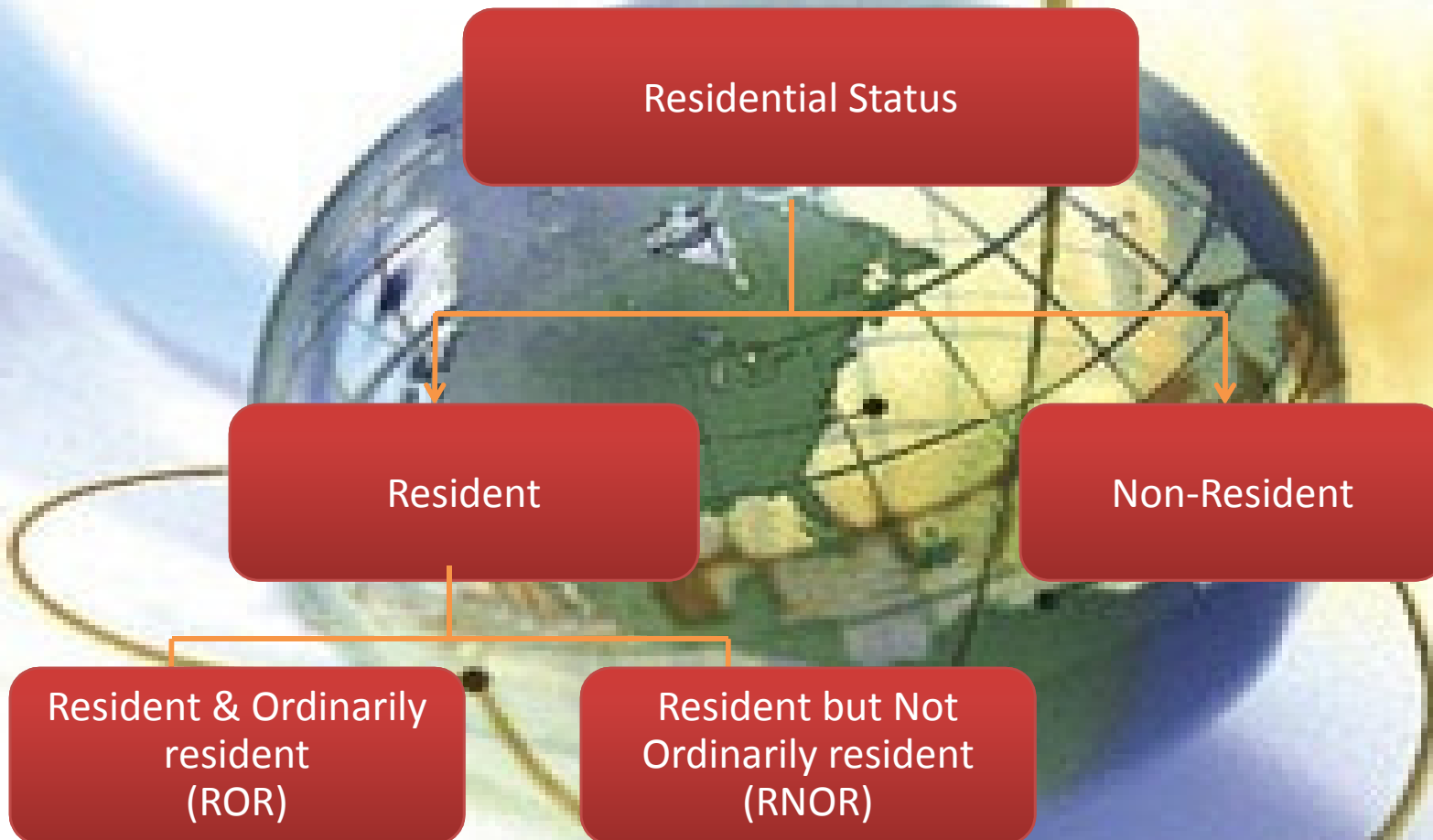
- Income is received or deemed to be received in India {Section 5(2)(a)}
- Income accrues or arises in India {Section 5(2)(b)}
- Income is deemed to accrue or arise in India {Section 5(2)(b)}



Residential Status under Income Tax Act, 1961

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Residential Status is Determined as follows:-



Residency in India is determined by physical number of days presence in India

Determination of Residential Status:

Basic Conditions

(a) 182 days or more in a financial year; **OR**

(b) 60 days* or more in a financial year plus 365 days or more in four financial years preceding the relevant financial year

Anyone one of the two conditions satisfied

ROR/RNOR

None of the conditions satisfied

NR

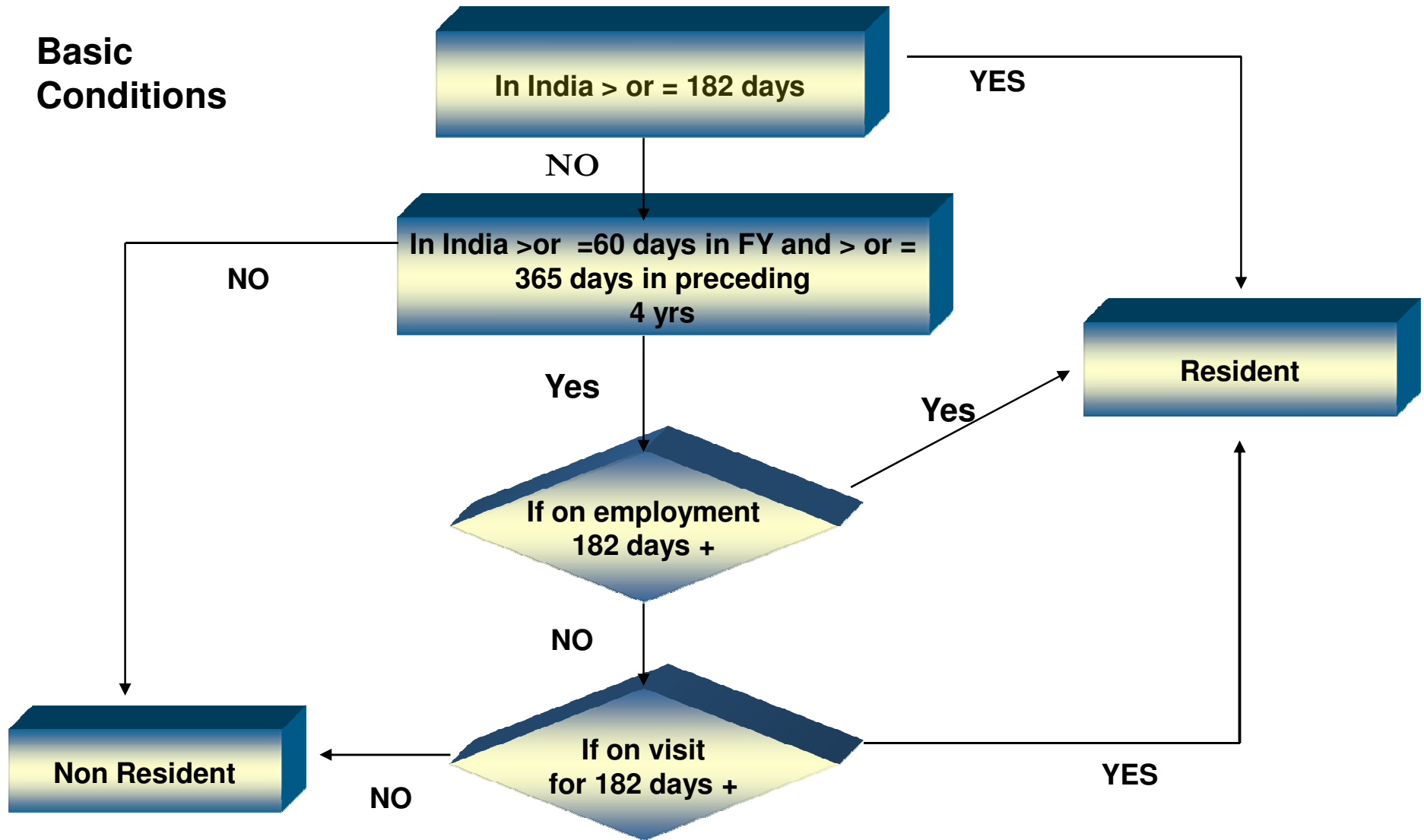
**60 days substituted for 182 days for-*

1. Indian citizen leaving India as a member of a crew of an Indian ship or for the purpose of employment outside India

2. Indian citizen or Person of Indian origin comes on visit to India

Determining Residential Status for Outbound Assignees

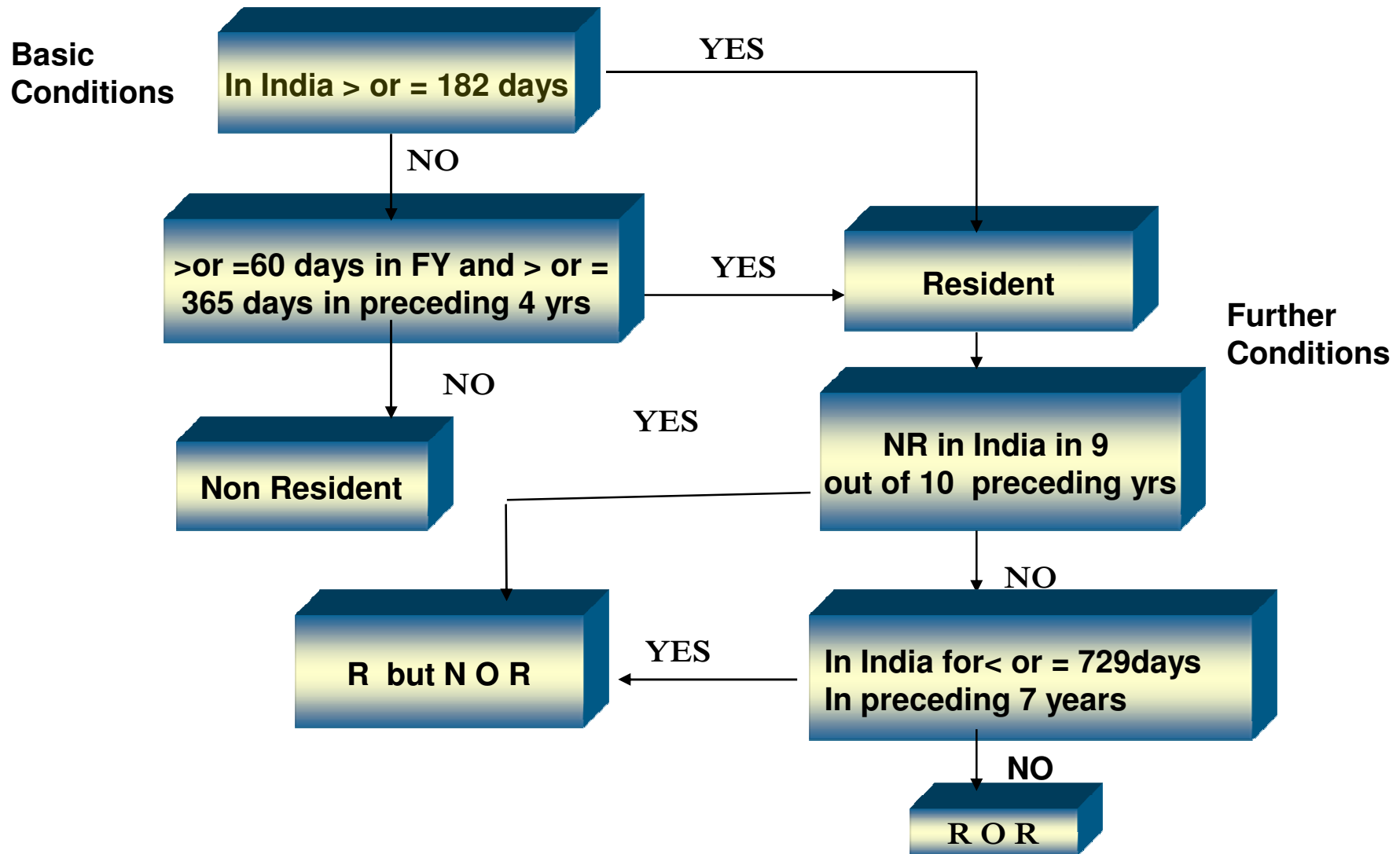
Basic Conditions



Meaning of Employment Outside India

- Employment outside INDIA would mean a case where the employee is posted outside INDIA either temporarily or for a long period and would not include the case of an employee who has gone abroad for few days though posted in INDIA.
- **Second ITO v. K.Y. Patel (33 ITD 714) (Mum).**
 - Held resident as traveling abroad for 218 days was in connection with and not for the purpose of employment
- **ITO v. Abbott Laboratories Pvt. Ltd. (31 ITD 183)(Mum).**
 - When employee goes abroad for few days, though posted in India can not be considered as employment outside India
- **CIT Vs. Indo Oceanic Shipping Co. Ltd 114 Taxmann 722 (Mum)**
 - Place where contracts are entered is not material in determining the place of employment

Determining Residential Status for Inbound Expatriates



RESIDENTIAL STATUS UNDER INCOME TAX ACT & TAX INCIDENCE (Section -6)

Resident and Ordinarily Resident	World Income Taxable
Resident but not ordinarily Resident	Foreign income is taxable only if derived from business controlled in India Passive world income like Dividend, Interest, Capital Gain etc. are not taxable
Non Resident	Only Indian income is taxable

PRACTICAL CONSIDERATIONS AND PLANNING FOR NRs

1. Previous Year is from April 1st. to 31st March number of days stay in India is to be counted during this period
2. Day of arrival into India and the day of departure from India are counted as one day each in India (i.e. 2 days stay)
3. Dates stamped on Passport are normally considered as proof of dates of departure from and arrival to India
4. NRI must keep photo copies of passport pages
5. NRI must ensure that date on passport stamped is legible
6. NRI must Keep track of number of days in India from year to year and check the same before making the next trip to India in order to plan his residential status

PRACTICAL CONSIDERATIONS AND PLANNING FOR NRIs:

7. In the 1st year of leaving India for employment one must ensure that one leaves before Sept. 28th otherwise total income (including foreign income) will be taxable if it exceeds exemption limits.
8. During one's last year abroad, on final return to India one should try always to come back on or after Feb. 1st (or Feb. 2nd in case of a leap year). Since return before this date will result one's stay in *India* exceeding 59 days in any case. However, a person whose stay in India in past 4 previous years does not exceed 365 days stay will be allowed 181 days in India without loss of status. He may return after Sept. 28th.

DEEMING PROVISIONS UNDER SECTION 9(1) OF THE ACT

- Income accrues directly or indirectly from any “Business Connection”/Property or Assets situated in India or any source of income in India (Sec 9(1)(i))
- Income from Salaries earned in India or paid by the Government to a citizen for services rendered outside India (Sec 9(1)(ii)/(iii))
- Dividend paid by an Indian company outside India (Sec 9(1)(iv))
- Interest, Royalties or Fees for Technical Services paid by the Govt or paid by a resident or non-resident subject to conditions (Sec 9(1)(v)/(vi)/(viii))

Business Income-Computation

- Computation Method
(Section 28 to 43C)
- Presumptive Taxation
(Sec 44B, 44BB, 44BBA, 44BBB and 115A)
- Proportionate Method- Rule 10



Various Exemptions available to NRIs under the Income Tax Act

INCOME TAX BENEFITS / EXEMPTIONS

10 (4)(ii): Interest on NRE / FCNR Account

Exempt for Individuals who are NRI under FERA/FEMA. This exemption is available only up to interest income paid or credited.

INCOME TAX BENEFITS / EXEMPTIONS

10(6)(vi) : Remuneration of Foreign Employees

Remuneration received by employees of a foreign enterprise which is not engaged in any trade or business in India and when their stay does not exceed 90 days and the payment is not borne by Indian base.

INCOME TAX BENEFITS / EXEMPTIONS

10(6)(viii) : Employment Aboard a Foreign Ship

Salaries received or due to a non-resident from employment on a foreign ship is exempt if the stay in India does not exceed 90 days in a previous year

10(8A) : Fees Earned by a Consultant

Fees earned by a consultant out of funds made available by an international organization under a technical assistance grant agreement with the Government of foreign state

INCOME TAX BENEFITS / EXEMPTIONS

10(15) (iv) (fa) : Interest earned by NRI who is a NR or R but NOR

Interest earned by NRI who is a NR or R but NOR (As per Income tax Act) on deposits in foreign currency with a Scheduled - Bank is tax free where acceptance of such deposits is approved by RBI.

e.g. RFC Deposits

INCOME TAX BENEFITS / EXEMPTIONS (Contd...)

10(33): Income arising out of transfer of capital asset on or after 1st April 2002 being units of UTI Unit Scheme 1964 is exempt.

10(34): Income by way of dividends referred to in Section 115 O is exempt from tax.

10(35): Income from units of a Mutual Fund or from specified company.

INCOME TAX BENEFITS / EXEMPTIONS (Contd...)

Sec 10(38) - Long Term Capital Gains on equity share in a company or units of an equity oriented Mutual fund on which Securities Transaction Tax (STT) is paid.



Taxation of Interest and Capital Gains

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CAPITAL GAINS ON SHARES & DEBENTURES OF INDIAN COMPANY

[Section 48 and Section 112] Applicable for LTCG on which no STT paid

- 1 Section 48 provides mode of Computation of Capital Gains tax and Section 112 deals with rates of taxation
- 2 According to Section 48 r.w. Section 112 (1)(C)-

In case of NR capital gains from transfer of Shares & debentures of an Indian Company shall be computed by converting the Cost of acquisition, expenses incurred in connection with the transfer, and full value of consideration, in the same foreign currency as was initially utilised for purchase.

Tax Payable on such gain, if any @ 20%.

FA 2012 : 112 (1) (c) (iii) LTCG on Unlisted Securities @ 10%

CAPITAL GAINS ON SHARES & DEBENTURES OF INDIAN COMPANY (Contd. ...)

3. Example

Mr. A purchased Shares of L & T worth \$ 10,000 in 1985, amounting to Rs.1,80,000 /-

He sold the same for Rs. 6,20,000/- in 2014.
What would be his tax liability ?

	Rs.	\$
Sale (\$ 1= Rs.62) in 2012	6,20,000	10,000
Purchase (\$1= Rs. 18) in 1985	<u>1,80,000</u>	<u>10,000</u>
	<u>4,40,000</u>	<u>NIL</u>

No capital gains tax in the instant case as the gains in \$ term is NIL

Capital Gains on Shares & Debentures of Indian Company (Contd....)

- 4 **BENEFIT OF INDEXATION OF COST** is not available to NRs
[Sec. 48 2nd Provision]
- 5 **All types of Non - Residents Viz NRIs. Foreign Companies Foreigners & Non-resident Non-corporate entities like AOP, BOI, HUF would now be taxed at a flat rate of 10% on long- term Capital Gains other than on which STT is paid (i.e. unlisted securities) [Sec. 112 (1) (c) (iii)].**
However, offshore funds are taxed @ flat rate of 10% u/s 115AD.
- 6 **CHAPTER XIIA or Section 112 ?**
Chapter XIIA is better for
 - i) Benefit of tax exemption if capital gains are reinvested in six months of transfer date and
 - ii) No need to file return if proper tax is deducted at source.
 - iii) Tax rate under Chapter XII-A is reduced to 10% w.e.f. A.Y. 1998-99.However, long term capital gains of listed shares on which STT is paid is exempt under section 10 (38) of the Act.

CAPITAL GAINS ON SHARES & DEBENTURES OF INDIAN COMPANY (Contd....)

Taxation of Income from Shares/Units of Mutual Fund on which Securities Transaction Tax (STT)

Income from sale of shares / units of Mutual Funds on which STT has been paid and the transactions is entered into in a registered stock exchange is taxable at a special tax rate :

Long Term Capital Gain- Exempt under Section 10(38) of Act

Short Term Capital Gain-15% (Section 111A)

Sec.115A DIVIDEND / INTEREST (GOI/ F.C.) / ROYALTIES & Fees for Technical Services (FTS)

1 Income Covered

- i) Dividends (other than referred to in Section 115-O)
- ii) Interest from Govt. of India or from Indian Concern on monies borrowed or debt incurred by GOI or from Indian Concern in Foreign Exchange
- iii) Interest received from Infrastructure debt fund referred in Sec. 10(47)
- iv) Interest as referred in Section 194LC.
- v) Interest as referred in Section 194LD.
- vi) Income from Units PURCHASED IN FOREIGN CURRENCY of a Mutual Fund Specified under Clause (23D) of Section 10 of the Income Tax Act, or units of the UTI

Sec.115A DIVIDEND / INTEREST (GOI/ F.C.) / ROYALTIES & Fees for Technical Services (FTS)

- ❑ Dividend Income (Other than Dividends exempt u/s 115O) → 20%
- ❑ Interest Generally → 20%
- ❑ Interest on loans specified u/s 194LC → 5%
- ❑ Interest received on Infrastructure Debt Fund referred to in section 10(47) → 5%
- ❑ Interest of the nature referred to in section 194LD → 5% **(Amendment by F.A.2013)**
- ❑ Royalty & Technical Fees → Foreign Companies → 25% in case of agreements entered into on or after 1st June 2005 and in other case 20% **(Amendment by F.A.2013 Rate of royalty changed from 10 % to 25%.)**

Sec.115A DIVIDEND / INTEREST (GOI/ F.C.) / ROYALTIES & FTS (Contd...)

2. Units of UTI & other MF need to be purchased in foreign currency. However shares may be purchased in Indian Currency.

However, in respect of equity oriented mutual funds, tax on long term capital gains on sale of units would be exempt if Securities Transaction Tax is paid on such units. [Section 10 (38)]

3. Dividend received from UTI by NRI or NR HUF is completely exempt from the Income Tax Act under Section 32 (1) (aa) of the UTI Act, 1963.

Sec.115A DIVIDEND / INTEREST (GOI/ F.C.) (Contd...)

6. Return Need not be Filed

If assessee does not have any other income besides dividend and interest income as referred above and the tax is deducted at Source then there is no need of filing return of income.

7. 115A is compulsory

Unlike Chapter XII-A, assessee does not have liberty to opt for applicability of Sec. 115A. It is mandatory. In other words, if an assessee opts for not to govern by chapter XII-A, then he would be governed by Section 115A and accordingly his income would be taxable as per this section.

SPECIAL INCOME TAX BENEFITS TO ALL NON-RESIDENTS (SEC. 115 AC)

1. Interest and Dividends
 2. Long term Capital Gains on Bonds or Shares issued Abroad by Indian Companies and Purchased in Foreign Currency (FCCB and/or ADRs/GDRs)
- TAXED AT ONLY 10% ON GROSS INCOME**

GROSS INCOME MEANS NO DEDUCTION ALLOWED FOR

1. Business Expenses
2. Expenses on Transfer
3. Other Expenses

SPECIAL INCOME TAX BENEFITS TO ALL NON-RESIDENTS (SEC. 115 AC)

MOREOVER

1. First Proviso to S 48 - Computation of Capital Gains in Foreign Currency

AND

2. 2nd Proviso to S 48 - Indexation of cost will not apply

HOWEVER

Transfer of Bonds/GDRs outside India Between NRs Inter Se- Not Liable to Capital Gains Tax [Section 47 (viiia)]

FINALLY

Filing of Return Of Income by NRI not necessary if :

1. Total Income consists only of such Interest and Dividend

AND

2. Necessary Tax has been deducted at Source (10% u/s 196C)



Special Tax Regime for NRIs(Chapter XII-A)

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CHAPTER XIIA

SEPARATE TAX REGIME FOR NRIs

- 115C** Definition
- 115D** Computation Provision
- Non allowances of Expd., Cost inflation Index, Chapter VI A
- 115E** Tax on L. T. C. G. and Investment income
- 115F** Benefit of Reinvestment
- 115G** No need to file return of Income
- 115H** Continuation of benefits upon becoming “ Resident”
- 115I** Choice to Opt for the Chapter.



SEPARATE TAX REGIME FOR NRIs (Contd...)



Entities Covered:

- ❖ ONLY NRIs
- ❖ FOREIGN COs. ARE NOT COVERED

Types of Income Covered:

- ❖ Investment Income → Taxed @ 20%
- ❖ Long Term Capital Gains → Taxed @ 10%
(LTCEG other than on which STT paid)

SEPARATE TAX REGIME FOR NRIs (Contd...)

1. DEFINITIONS FOR CONCEPTUAL UNDERSTANDING (Section 115C)

- A.
 - Foreign Exchange Asset
 - Specified Asset acquired in foreign exchange

- B.
 - Specified Assets
 - i) In case of Public Company, shares, debenture, deposits
 - ii) In case of Private Company only shares
 - iii) Notified Central Government Security.

SEPARATE TAX REGIME FOR NRIs (Contd...)

- C. - Investment Income and Long Term Capital Gains
 - Derived from Specified Asset other than dividend referred to in section 115-0.

- D. -Long term Capital Gains
 - Income Chargeable under the head "capital Gains" relating to a foreign exchange asset which is not a short-term capital asset.

- E. Non Resident Indian
 - Individual (Other excluded)
 - Citizen or Person of Indian Origin
 - Who is Non Resident under Income Tax Act and not under FEMA

SEPARATE TAX REGIME FOR NRIs (Contd...)

2. NO DEDUCTIONS FOR EXPENSES, ALLOWANCES WHILE COMPUTING INCOME (Section 115D)

i) NO EXPENSES -

- a) Interest on O/D
- b) Bank Charges for collection

BUT

Expenses incurred wholly and exclusively in connection with transfer of Long-term Capital Asset allowed.



ii) NO ALLOWANCES

3. NO BENEFIT OF COST INDEXATION

SEPARATE TAX REGIME FOR NRIs (Contd...)

4. COMPUTATION OF TAX(Section 115E)

Investment Income as a separate block - 20% Flat Rate.

1st proviso to Sec. 48 applies- Method for Computing Capital Gains in foreign currency available.

CONDITIONS FOR EXEMPTION FOR LONG TERM CAPITAL GAIN(Section 115F)

Re-investment within 6 months into any specified asset or in any saving certificates referred to in 10(4B).

Net consideration to be reinvested.

Pro-rata Exemption (for part Investment)

New Asset not be transferred for 3 years.

If transferred within 3 years then in the year of transfer capital gains exempted earlier would be taxable.

Planning : Always Opt for exemption even if you plan not to hold new asset for 3 years as you will be able to postpone your present tax liability to a future date.

SEPARATE TAX REGIME FOR NRIs (Contd...)

5. RETURN OF INCOME(Section 115G)

Not to be filed if there is only investment income and long term capital gain AND tax has been duly deducted at source.

6. EXTENSION OF BENEFITS EVEN AFTER NRI BECOMES RESIDENT(Section 115H)

- On filling declaration with the Return opting for the continuance of the benefits
- Only on investment income excepting dividend from shares will be allowed
- Option once exercised continues until transfer or conversion into money of such assets

SEPARATE TAX REGIME FOR NRIs (Contd...)

7. SEPARATE TAX REGIME NOT TO APPLY IF NRI OPTS OUT BY DECLARATION IN TAX RETURN(Section 115-I)

For availing benefits NRI has to declare in his return his decision to opt for Chapter XII A.

This option is on a year to year basis.

SOME ISSUES

Q. 1 Whether Income on Bank deposits Converted in to Rupee Account by returning Indians would be eligible for concessional tax rate of 20% under Chapter XII A ?.

Ans: Section 115C of Chapter XII A deals with this question. Accordingly deposits with an Indian Company which is not a Private Company as defined in the Companies Act, 1956 would be covered.

- **Co-operative Banks** ==> Not eligible
- **Foreign Banks** ==> Not eligible if the bank is operating only on the basis of license from RBI.
- **Nationalised Bank** ==> They are deemed company vide Section 11 of the Banking Companies (Acquisition & Undertaking Act, 1980) hence eligible.
- **Non- nationalized Banks** ==> Eligible if the bank has been registered as A Company under the Companies Act, 1956.

Planning :- Before returning NRI should ensure that his deposits are placed with eligible entities.

SOME ISSUES

Q. 2 Whether concessional tax- treatment would be eligible in the event of **Renewal of deposit** after becoming Resident?

Ans: The concessional tax-treatment would be denied in respect of the renewed deposit as it can not be said to have been acquired out of convertible foreign exchange.

Planning :-The returning NRI should deposits his funds for longer terms before returning to India.

SOME ISSUES

Q.3. Whether **Sales of Bonus & Rights shares** received by NRI would qualify for special tax treatment under Chapter XII-A ?

Ans: Bonus shares will be treated as foreign exchange assets if the shares on the basis of which the bonus shares have been issued are "Foreign Exchange Asset." [FEA]. If rights are subscribed / purchased in convertible foreign exchange then they too would constitute "Foreign Exchange Asset" and qualify for concessional tax treatment.

SOME ISSUES

Q.4. Whether “ **Specified Assets**” **gifted or inherited** will be considered as Foreign Exchange Asset if Original owner has acquired them in convertible foreign exchange ?

Ans: Specified Assets gifted or inherited will not be considered as “Foreign Exchange Asset”. As, to qualify for exemption, the asset should be acquired in foreign exchange by the assessee himself.

Filing of Income Tax Return by NR Individuals

- Chapter XIIA for NRIs- Not Required if tax deducted
- Threshold exemption- Whether available to Individual NRIs?

Filing of Income Tax Return by Foreign Company

- Companies regd. with SEBI as FIIs- advisable to file return even if no business in India
- Permanent Establishment of a - foreign company required to file return of income
- Royalties or Fees for Technical Services whether mandatory to file return of income?

WEALTH TAX

- i. Assets located abroad of Non-Resident / Not Ordinarily Resident are exempt from Wealth tax

- ii. Assets located abroad of Non Indian Citizens are exempt from Wealth tax (irrespective of Residential Status)

WEALTH TAX

- iii. Money and assets acquired, by a person of Indian Origin or a citizen of India residing abroad, within one year immediately preceding the date of his return to India is exempt from wealth – tax. This exemption continues for 7 successive Assessment Years following the date of return.

Wealth Tax is now virtually abolished except on few specified assets -

(motor cars, cash in hand in excess of Rs. 50,000 /- urban land, yatches, aircraft, jewellery, bullion etc.)

The basic exemption limit is Rs. 30 lakhs & thereafter wealth tax is levied @ 1% flat rate

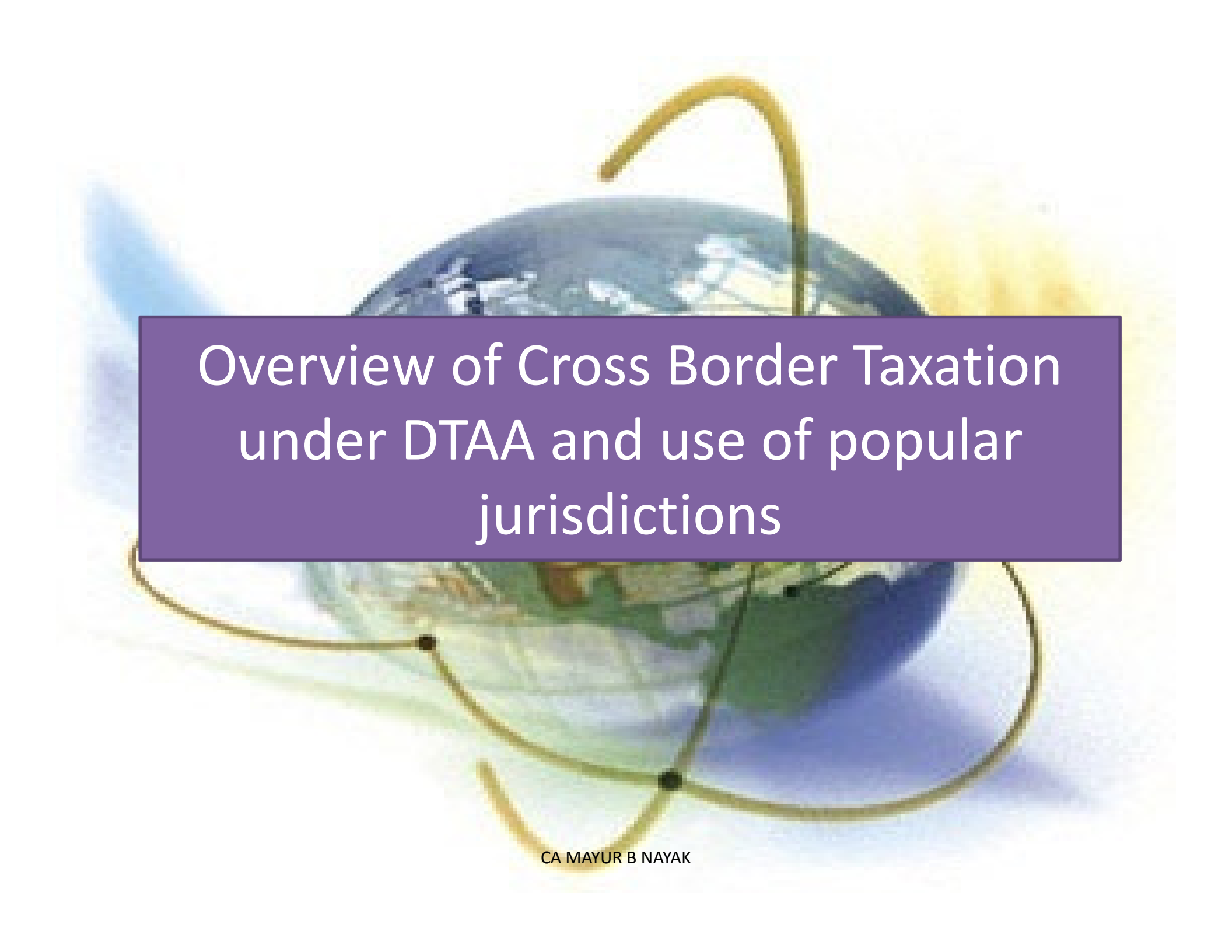
Gifts to and from NRI's



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Gift Tax

- Donee based Taxation
- Residential Status is of no importance
- Precautions



Overview of Cross Border Taxation under DTAA and use of popular jurisdictions

Recent Amendments by the Finance Act, 2012 & 2013

- Section 9 of the Income tax Act: Expl. 5 to Sec. 9(1)(i) (w.e.f. 1.4.1962)
- Definition of Royalty to include Software: Expl. to 9(1)(vi) (w.e.f. 1.4.76)
- Domestic Transfer Pricing: Sec. 92BA
- Borrowings in Foreign Currency : S.115A r.w. Sec. 194LC

Recent Amendments by the Finance Act, 2012 & 2013.

- Prior Approval of AO for Remittances: Sec. 195(7) (Power of Board to notify such provision)
- LTCG on unlisted securities @ 10% for NRs (w.e.f. 1.4.2013)
- Tax Residency Certificate (w.e.f. 1.4.2013)
- Annual statement in respect of LO: Sec. 285 (Rule 114 DA and Form 49C)
- Tax on royalties and Fees for Technical services u/s 115A in case of agreement entered into after 1st June 2005- 25%

Recent Amendments by the Finance Act, 2012 & 2013.

- Insertion of New section 194LD by F.A.2013 and consequent amendment in section 115A- Taxability of Interest on certain bonds and Government securities @ 5%.

(Note: Applicability of section 194LD w.e.f 1-6-2013)

Recent Case Laws

- Receipt of salary in Indian bank account by NRI employed outside India is not taxable in India.

[Arvind Singh Chauhan v. ITO [2014] 42 Taxmann.com 285 (Agra)]

- Receipt of gift without genuine relationship, occasion and justification of natural, love and affection held to be undisclosed income of the donee.

[Hanuman dass vs. Commissioner of Income-tax, Jalandhar [(2014) 41 taxmann.com 497 (Punjab & Haryana)]



Thank You

**Contact Details
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