

# BUSINESS CONNECTION

## **SECTION 9(1)(i): INCOME DEEMED TO ACCRUE OR ARISE IN INDIA**

- 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
- **shall be deemed to accrue or arise in India**

### **EXPLANATION 1 TO SECTION 9(1)(i)**

For the purposes of this clause—

- (a) **in the case of a 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 as is reasonably attributable to the operations carried out in India;

**Finance Act, 2020 provides that for determination of income derived from operations carried out in India by Non-Resident,**

- (i) **Safe Harbour Rules will be prescribed, or**
- (ii) **Assessee can enter into an Advance Pricing Agreement with CBDT to determine such income.**

- (b) **in the case of a non-resident, 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;**

- (c) **in the case of a non-resident**, being a person engaged in the business of **running a news agency or of publishing newspapers, magazines or journals**, no income shall be deemed to accrue or arise in India to him through or from activities which are confined to the **collection of news and views in India for transmission out of India**.
- (d) **in the case of a non-resident**, being—  
(1) an **individual** who is **not a citizen** of India ; or  
(2) a **firm** which does **not have any partner** who is a citizen of India or who is resident in India; or  
(3) a **company** which **does not have any shareholder** who is a citizen of India or who is resident in India,

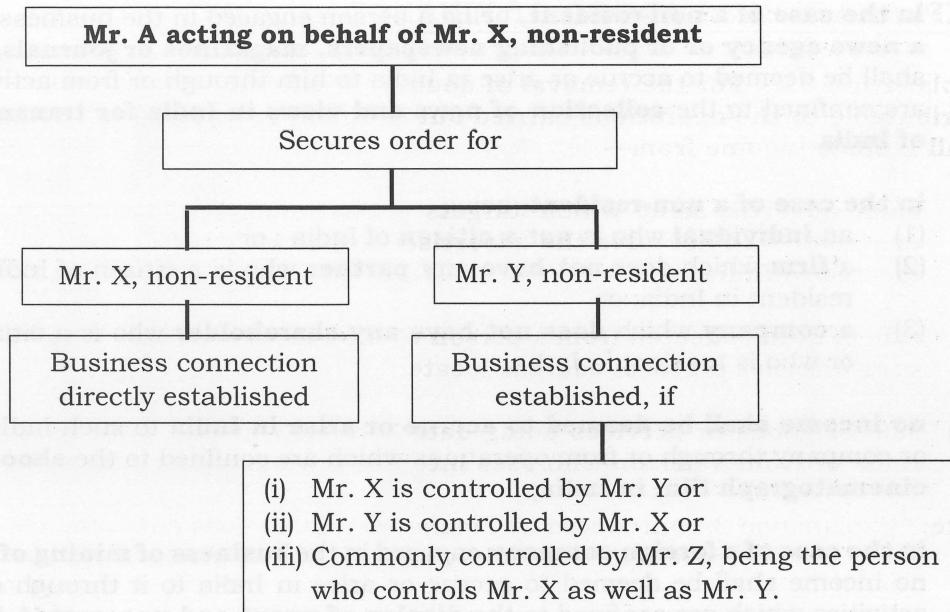
**no income shall be deemed to accrue or arise in India** to such individual, firm or company through or from operations which are confined to the **shooting of any cinematograph film in India**;

- (e) **in the case of a foreign company** engaged in the **business of mining of diamonds**, no income shall be deemed to accrue or arise in India to it through or from the activities which are confined to the **display of uncut and unassorted diamond in any special zone** notified by the Central Government in the Official Gazette in this behalf.

#### **EXPLANATION 2 TO SECTION 9(1)(i): BUSINESS CONNECTION**

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 the non-resident,—

- (a) **has and habitually exercises in India, an authority to conclude contracts on behalf of the non-resident or habitually concludes contracts or habitually plays the principal role leading to conclusion of contracts by that non-resident and the contracts are—**
- (i) **in the name of the non-resident; or**  
(ii) **for the transfer of the ownership of, or for the granting of the right to use, property owned by that non-resident or that non-resident has the right to use; or**  
(iii) **for the provision of services by the non-resident; or**
- (b) **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 non-resident; or**
- (c) **habitually secures orders in India, mainly or wholly for the non-resident or for that non-resident and other non-residents controlling, controlled by, or subject to the same common control, as that non-resident:**



## **EXPLANATION 2A TO SECTION 9(1)(i)**

**(Added by Finance Act, 2020 w.e.f. 01.04.2022)**

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 ₹ 2 crores; or
- (b) systematic and continuous soliciting of business activities or engaging in interaction with 3 lakh users in India, through digital means;

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

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

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.

## **EXPLANATION 3A ADDED BY FINANCE ACT, 2020**

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**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.

**Note:** Explanation 3A introduced by Finance Act, 2020 does not seem to be relevant in view of concept of equalisation levy introduced by Finance Act, 2020