

# **TAXABILITY OF ROYALTY, FEE FOR TECHNICAL SERVICES AND INTEREST**

## **SECTION 9: INCOME DEEMED TO ACCRUE OR ARISE IN INDIA**

**The following incomes shall be deemed to accrue or arise in India:—**

- (i) Discussed in Business Connection chapter;
- (ii) income which falls under the head "**Salaries**", if it is earned in India.

**Explanation.—**For the removal of doubts, it is hereby declared that the income of the nature referred to in this clause payable for—

- (a) service rendered in India; and
- (b) the rest period or leave period which is preceded and succeeded by services rendered in India and forms part of the service contract of employment,

**shall be regarded as income earned in India ;**

- (iii) income chargeable under the head "Salaries" payable by the Government to a citizen of India for service outside India ;

**Note:** **Section 10(7):** Any allowances or perquisite paid or allowed as such outside India by the Government to a citizen of India for rendering services outside India shall be exempt from tax.

- (iv) a dividend paid by an Indian company outside India;

- (v) **income by way of interest payable by—**

- (a) **the Government;** or
- (b) **a person who is a resident**, where the interest is payable in respect of any debt incurred, or moneys borrowed and used, for the **purposes of a business or profession carried on by such person in India** or for the purposes of making or earning any income from any source in India;
- (c) **a person who is a non-resident**, where the interest is payable in respect of any debt incurred, or moneys borrowed and used, for the **purposes of a**

~~business or profession carried on by such person in India or for the purposes of making or earning any income from any source in India;~~

**Note:** Interest on money borrowed by the non-resident for any purpose other than a business or profession, will not be deemed to accrue or arise in India:

**Example:** If a non-resident 'A' borrows money from a non-resident 'B' and invests the same in shares of an Indian company, interest payable by 'A' to 'B' will not be deemed to accrue or arise in India.

**(vi) income by way of royalty payable by—**

- (a) **the Government;** or
- (b) **a person who is a resident**, where the royalty is payable in respect of any right, property or information used or services utilised for the purposes of a business or profession carried on by such person in India or for the purposes of making or earning any income from any source in India;
- (c) **a person who is a non-resident**, where the royalty is payable in respect of any right, property or information used or services utilised for the purposes of a business or profession carried on by such person in India or for the purposes of making or earning any income from any source in India;

**(vii) income by way of fees for technical services payable by—**

- (a) **the Government;** or
- (b) **a person who is a resident**, where the fees are payable in respect of services utilised in a business or profession carried on by such person in India or for the purposes of making or earning any income from any source in India;
- (c) **a person who is a non-resident**, where the fees are payable in respect of services utilised in a business or profession carried on by such person in India or for the purposes of making or earning any income from any source in India;

**(viii) income arising outside India, being any sum of money referred to in section 56(2)(x) paid by a person resident in India to a non-resident, or to a foreign company. (Discussed in Income from Other Sources)**

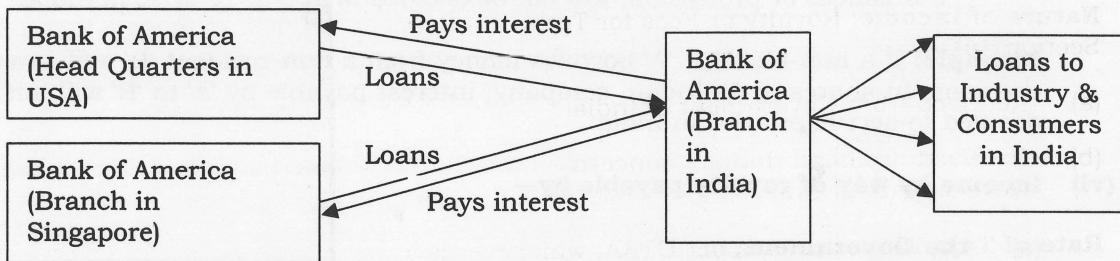
**EXPLANATION TO SECTION 9: INCOME DEEMED TO ACCRUE  
OR ARISE IN INDIA**

**In case of a non-resident engaged in the business of banking,**

- any interest payable by the permanent establishment in India of such non-resident
- to the head office or any permanent establishment of such non-resident outside India
- shall be deemed to accrue or arise in India and shall be chargeable to tax in India.
- The permanent establishment in India shall be deemed
- to be a person separate and independent of the non-resident person of which it is a permanent establishment

- and the provisions of the Act relating to computation of total income, determination of tax and collection and recovery shall apply accordingly.

♦ ANALYSIS ♦



- Interest payment by BOA (Indian Branch) to BOA (H.O.USA) and BOA (Singapore), although amount to payment to self, but is deductible as an expense in hands of BOA (Indian Branch) as per provisions of DTAA.
- BOA (India) shall be treated as separate PE and its income is taxable in India from banking operations in India. Interest paid to BOA (USA) and BOA (Singapore) is allowed as deduction while computing the income of BOA (India) as per DTAA.
- Several court decisions have held that this interest income is not taxable in India in hands of BOA (H.O. USA) and BOA (Singapore) as it is payment to self. DTAA do not talk about taxability of this income as per court decisions.
- Now, this interest income is taxable in hands of Non-Resident i.e., BOA (USA) and/or BOA(Singapore), i.e., to the entity abroad to whom interest is paid. BOA(India) has to deduct TDS on such interest and failure to deduct TDS will result in:
  - Disallowance of such interest in hands of Indian P.E. i.e., BOA India.
  - Levy of interest and penalty for non-deduction of TDS on interest.

**EXPLANATION TO SECTION 9: INCOME DEEMED TO ACCRUE  
OR ARISE IN INDIA**

Royalty and fees for technical services paid to a non-resident / foreign company for acquiring know-how shall be **taxable in India** in hands of Non-resident / Foreign Company if the know-how has to be utilized in India. It is irrespective whether

- know-how is delivered outside India or technical services are rendered outside India; or
- payment is made to Non-resident/ Foreign Company outside India; or
- non-resident / foreign company has a place of business in India/ residence in India/ business connection in India or not; or
- know-how or technical services are made available in India or outside India.

**WHAT IS RELEVANT IS THAT KNOW-HOW OR TECHNICAL SERVICES SHOULD BE UTILISED IN INDIA and in that case the royalty / fees for technical services paid to Non-Resident/ foreign company is taxable in India in hands of Non-resident / Foreign Company.**

## **SECTION 115A: TAX ON ROYALTY AND TECHNICAL SERVICES FEE IN CASE OF NON-RESIDENTS & FOREIGN COMPANIES**

**Nature of Income:** Royalty or Fees for Technical Services other than income Referred in Section 44DA:

- (a) Received from Government of India
- (b) Received from an Indian concern in pursuance of an agreement approved by Government of India.

**Rate of Tax:** 10% or rate as per DTAA, whichever is lower.

**Note 1:** Royalty includes rent/ hire charges/ lease charges of machinery and equipment but does not include hire charges of oil rigs covered by section 44BB.

**Note 2:** Royalty includes consideration received for the transfer of all or any rights (including the granting of a license) in respect of any copyright, literary, artistic or scientific work including films or video tapes for use in connection with radio broadcasting, ~~but not including consideration for the sale, distribution or exhibition of cinematography films.~~ THEREFORE CONSIDERATION FOR THE SALE, DISTRIBUTION OR EXHIBITION OF CINEMATOGRAPHY FILMS WILL BE TREATED AS ROYALTY.

(Amended by Finance Act, 2020)

**Note: 3 Explanation 4 to section 9 clarifies that payment received for transfer of:**

- All or any right to use a computer software
- Including granting of a license for computer software
- is royalty.

Therefore, if a resident imports a software from abroad/get a license to use the software from abroad, then the payment received by foreigner shall be treated as royalty. Since the software is to be used in India, the royalty shall be taxable in hands of foreigner in India and the Indian entity making the payment shall deduct TDS under section 195 @ 10% as given in section 115A. This shall not be taxable in hands of foreigner if there is a DTAA as per judgement given in Note 4 below.

**Note 4: Engineering Analysis Centre of Excellence P. Ltd v. Supreme Court**

**Issue:** Would the amounts paid by resident Indian end-users/ distributors to non-resident computer software manufacturers/ suppliers, as consideration for the use/resale of the computer software through End-User Licence Agreement (EULAs) /distribution agreements, be considered as payment of royalty for the use of copyright in the computer software? If yes, is it liable for deduction of tax at source u/s 195?

**Analysis and Decision:** The Apex Court observed that as per the definition given in Explanation 2(v) to section 9(1)(vi) of the Income-tax Act, 1961, "royalty" means consideration for, inter alia, the transfer of all or any rights (including the granting of a licence), in respect of any copyright, literary, artistic or scientific work. As per Explanation 4 thereto, such transfer of all or any rights includes transfer of all or any right for use or right to use a computer software (including the granting of a licence). As per the meaning assigned in the DTAA with Singapore, for example,

**"royalty"** means payment of any kind received as consideration for "the use of, or the right to use, any copyright" of a literary, artistic or scientific work. The meaning of royalty in India's DTAA with other countries like Australia, Canada, France, Italy, USA, Netherlands, Sweden, Taiwan, Japan, China etc. is similar if not identical.

The Apex Court observed the following four categories of cases, in which the distribution agreements and end-user licence agreements did not create any interest or right to such distributors or end-users, which would amount to the use of or right to use any copyright:

- (i) where computer software is purchased directly by an end-user, resident in India, from a foreign, non-resident supplier or manufacturer.
- (ii) where resident Indian companies acting as distributors or resellers, purchase computer software from foreign, non-resident suppliers or manufacturers and then, resell the same to resident Indian end-users.
- (iii) where the distributor happens to be a foreign, non-resident vendor, who, after purchasing software from a foreign, non-resident seller, resells the same to resident Indian distributors or end-users.
- (iv) where computer software is affixed onto hardware and is sold as an integrated unit/equipment by foreign, non-resident suppliers to resident Indian distributors or end-users.

In all the above cases, the Apex Court held that the amount paid by resident Indian end-users or distributors to non-resident computer software manufacturers or suppliers, as consideration for the resale or use of the computer software through end-user licence agreements or distribution agreements, is not royalty for the use of copyright in the computer software.

The provisions contained in the Income-tax Act, 1961 [namely, section 9(1)(vi) read along with Explanations 2 and 4 thereof], which deal with royalty, not being more beneficial to the assessee, have no application in the facts of these cases. Consequently, the consideration paid to the non-resident computer software manufacturers or suppliers would not be chargeable to tax India. Hence, no tax is required to be deducted at source under section 195.

#### **Note 5: TAX TREATMENT IN HANDS OF PAYER OF ROYALTY**

Section 40(a)(i) and section 40(a)(ia) provides that **deduction for any expenditure by way of royalty** [including deduction for purchase of computer, software under section 37(1)] paid to non-resident and resident respectively, **shall be allowed if TDS is deducted/paid** as per the conditions specified therein.

#### **Note 6: Explanation 5 to section 9: Indian Banks make use of servers of foreigners**

for credit card transactions. For any credit card transaction where a swipe is made, the swipe transaction is verified by a **server of foreigner which is located outside India**. Indian banks make payment to this foreigner for all such swipes.

**Section 9 clarifies the payment made to foreigner shall be treated as royalty even if:**

- (i) Possession of server is not with Indian Bank i.e., in India.

- (ii) Server is not used directly by Indian bank.
- (iii) The location of server is outside India.

Therefore, on such payments, TDS shall be deducted under section 195.

**Note 7:** Explanation 6 to section 9(i): Indian T.V. channels make use of satellite of foreigner to transmit their programs. Now the payment made to foreigner for transmission of programs by satellite is treated as royalty liable to tax deduction under section 195.

**Note 8: CIT v. Alcatel Lucent Canada (Del)**

In this case, the assessee, a company incorporated in France, was engaged in manufacture, trade and supply equipment and services for GSM Cellular Radio Telephones Systems. It supplied hardware and software to various entities in India. Software licensed by the assessee embodied the process which is required to control and manage the specific set of activities involved in the business use of its customers. The Assessing Officer contended that the consideration for supply of software embedded in hardware is 'royalty' under section 9(1)(vi).

**The High Court, held that what was sold by the assessee to its Indian customers was a GSM which consisted of both hardware and software.** The High Court had also observed that –

- (i) The software that was loaded on the hardware did not have any independent existence;
- (ii) The software supply is an integral part of GSM mobile telephone system and is used by the cellular operators for providing cellular services to its customers;
- (iii) The software is embedded in the system and there could not be any independent use of such software;
- (iv) This software merely facilitates the functioning of the equipment and is an integral part of the hardware.

**The High Court held that where payment is made for hardware in which the software is embedded and the software does not have independent functional existence, no amount could be attributed as 'royalty' for software in terms of section 9(1)(vi).**

### **TAX ON INTEREST IN CASE OF NON-RESIDENTS & FOREIGN COMPANIES**

<b>Nature of Income</b>		<b>Rate of Tax</b>
I	Interest received from Government or Indian concern on moneys borrowed by Government or Indian concern in <b>FOREIGN CURRENCY</b> other than II, III, IV, V below	20% of such interest
II	Interest received under section 194LB from an infrastructure debt fund referred in section 10(47) [ <b>NO CONDITION OF INVESTMENT IN FOREIGN CURRENCY</b> ]	5% of such interest
III	<b>(A)</b> Interest payable by Indian company or Business trust on moneys borrowed in <b>FOREIGN CURRENCY</b> through	5% of such interest

	INSTRUMENT		TIME PERIOD OF BORROWING MONEY	
	(1)	Loan agreement	01.07.2012 to 30.06.2023	
	(2)	Rupee-denominated bond	upto 30.06.2023	
	(3)	Any other Long-term Bond	01.10.2014 to 30.06.2023	
	<b>(B) Where instruments referred in (2) &amp; (3) above are issued on or after 01.04.2020 and are listed ONLY on a recognised stock exchange located in any IFSC.</b>			4% of such interest
IV	Interest payable to Foreign Institutional Investor or a Qualified Foreign Investor in respect of investment made in: <b>(NO CONDITION OF INVESTMENT IN FOREIGN CURRENCY)</b>			
	INSTUMENT		TIME PERIOD OF PAYMENT OF INTEREST	
	(1)	Rupee Denominated Bond of Indian Company	01.06.2013 to 30.06.2023	5% of such interest
	(2)	Government Security	01.06.2013 to 30.06.2023	
	(3)	Municipal Debt Security	01.04.2020 to 30.06.2023	
V	Distributed income in nature of interest from SPV received from Business trust <b>(NO CONDITION OF INVESTMENT IN FOREIGN CURRENCY)</b>			5% of such interest

**Note 1:** As per section 10(15) introduced by Finance Act, 2019, interest payable to a Non-resident or a foreign company by a unit located in International Financial Services Centre in respect of moneys borrowed by it on or after 1.09.2019 is completely exempt for tax.

**Note 2:** As per section 10(4C) introduced by Finance Act, 2019, interest on Rupee Denominated Bonds issued by an Indian company or business trust during the period 17.9.2018 and ending on 31.3.2019 is completely exempt from tax.

#### **TAX ON DIVIDENDS AND INCOME RECEIVED ON UNITS IN CASE OF A FOREIGN COMPANY OR A NON-RESIDENT**

	PAYEE AND NATURE OF INCOME	TAX RATE AND SECTION	TDS RATE AND SECTION	OBLIGATION TO FURNISH RETURN
1.	<b>NON-RESIDENT OR FOREIGN COMPANY</b>  Dividend on shares purchased in Indian currency or foreign currency	20% as per section 115A	20% as per section 195	No

2.	<b>NON-RESIDENT OR FOREIGN COMPANY</b>  Distributed income from business trust comprising of dividend received from on SPV opting to be taxed as per section 115BAA	20% as per section 115A	10% as per section 194LBA(2)	Yes
3.	<b>NON-RESIDENT OR FOREIGN COMPANY</b>  Income on units of Mutual Fund and / or on units of specified company purchased in foreign currency	20% as per section 115A	20% as per section 196A	No
4.	<b>NON-RESIDENT OR FOREIGN COMPANY</b>  Income on units of Administrator purchased in foreign currency	20% as per section 115A	Nil	Yes
5.	<b>NON-RESIDENT OR FOREIGN COMPANY</b>  Income on units of Mutual Fund, Specified company, Administrator purchased in Indian currency	Normal Tax Rates	20% as per section 196A	Yes
6.	<b>NON-RESIDENT INDIAN OR NON-RESIDENT HUF</b>  Income on units of Specified company or Administrator acquired from UTI out of the funds in Non-resident (External) Account maintained with any bank in India or by remittance of funds in foreign currency, in either case, as per Foreign Exchange Management Act, 1999	20% as per section 115A	Nil	Yes

**NOTES:**

1. Mutual Fund means Mutual Fund referred in section 10(23D).
2. Specified Company means a company formed on splitting of Unit Trust of India.
3. Administrator means a person or body of persons formed on splitting of Unit Trust of India.

## COMPARISON OF COMMON POINTS

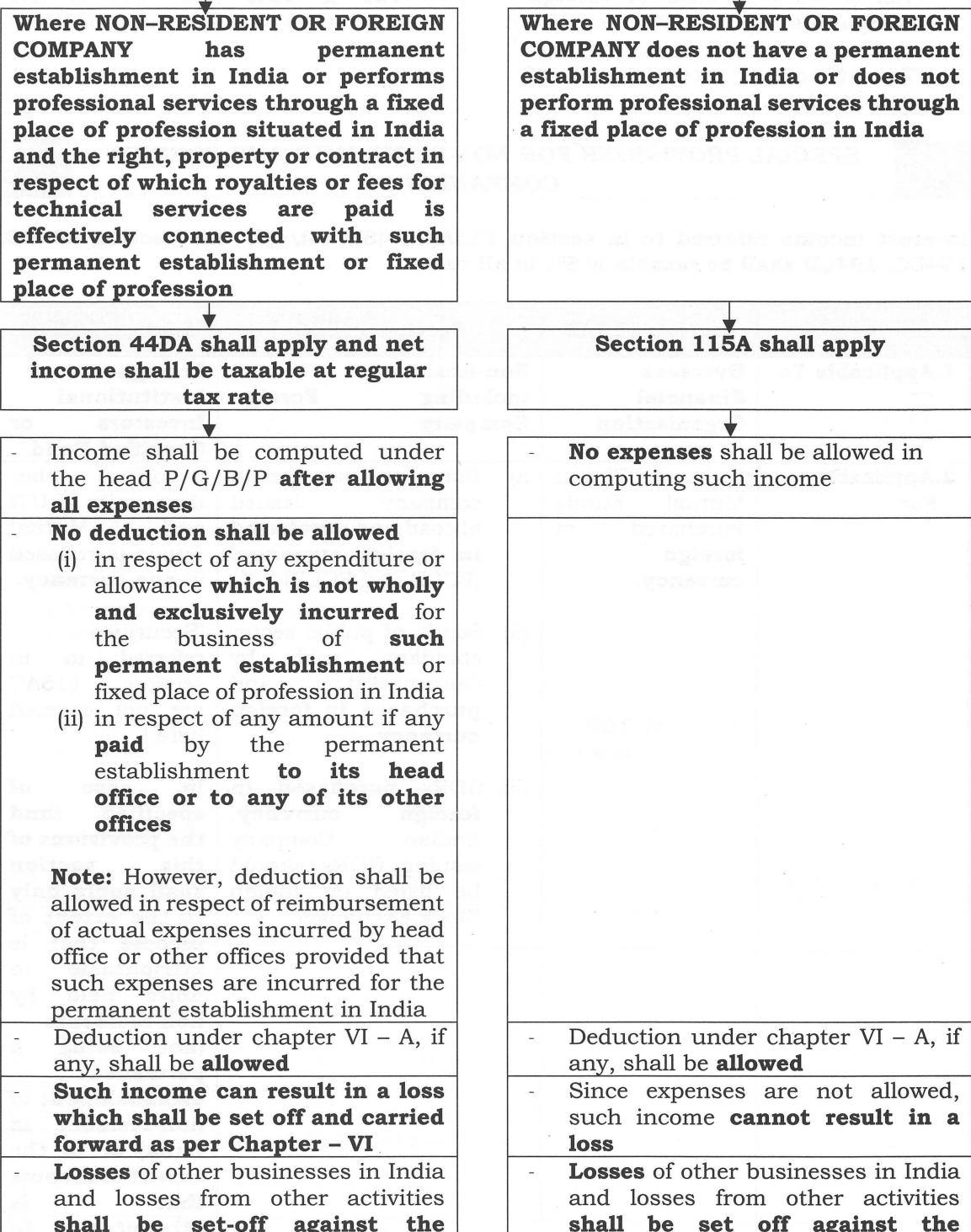
NATURE OF INCOME	ROYALTY & FEES FOR TECHNICAL SERVICES	INTEREST	DIVIDEND AND INCOME RECEIVED ON UNITS
Slab benefit	Not available	Not available	Not available
Deduction under section 28 to 44C and section 57 (in respect of such income)	No	No	No
Deduction under Chapter VI-A in respect of such incomes	<b>Available</b>	Not available See Note 2	Not available See Note 2
Provisions of Chapter VI i.e., set-off, Carry forward and set-off of Losses	Applicable	Applicable	Applicable
Unabsorbed Depreciation	Cannot be set-off	Cannot be set-off	Cannot be set-off
Filing of Return of Income	<b>Not necessary if:</b> (a) Total income includes only royalty income or fees from Technical services AND (b) TDS is fully deducted. <small>(Finance Act, 2020)</small>	Not necessary if: (a) Total income includes only interest AND (b) TDS is fully deducted.	<b>Not necessary if:</b> (a) Total income includes only dividend income or income on units AND (b) TDS is fully deducted.

**Note 1:** If total income of Non-Resident/ foreign company includes royalty and/ or FTS and/ or interest and/ or dividend income on shares and units and TDS has been fully deducted on such incomes, then there is no obligation to file ROI.

**Note 2:** The Finance Act, 2019 has amended section 115A to provide that deduction under section 80LA shall be available to the unit of the foreign company or non-resident located in International Financial Centre. Section 80LA provides for a 100% deduction of profits of unit located in IFSC for 10 assessment years out of block of 15 assessment years. Therefore if foreign company/non-resident has set up a unit in IFSC and that unit gives loans to/subscribes to bonds of Indian Company in foreign currency and earns interest in foreign currency referred to in section 115A, then the entire interest earned is allowed as deduction under section 80LA.

**SECTION 44DA: SPECIAL PROVISIONS FOR COMPUTING  
INCOME BY WAY OF ROYALTIES, ETC., IN CASE OF  
NON-RESIDENTS AND FOREIGN COMPANIES**

**TAXABILITY OF ROYALTY AND FEES FOR TECHNICAL SERVICES IN HANDS OF  
FOREIGN COMPANY OR A NON-RESIDENT**



<b>incomes referred in section 44DA subject to Chapter VI</b>	<b>incomes referred in section 115A subject to Chapter VI</b>
- Compulsory maintenance of books of accounts and other documents	- No such requirement
- Compulsory audit requirement and report of audit	- No such requirement
<b>Tax @ 40% in case of foreign companies</b> (plus 2% or 5% surcharge) plus 4% education cess <b>Tax at normal rates in case of non-resident.</b>	<b>Tax @ 10% (plus 2% or 5% surcharge) plus 4% education cess.</b>

### **SPECIAL PROVISIONS FOR NON-RESIDENTS AND FOREIGN COMPANIES**

Interest income referred to in section 115A(2)/ (3)/ (4)/ (5) i.e. section 194LB, 194LC, 194LD shall be taxable @ 5% in all cases.

	<b>Section 115AB</b>	<b>Section 115AC</b>	<b>Section 115AD</b>
<b>1.Applicable To</b>	<b>Overseas Financial Organisation</b>	<b>Non-Resident including Foreign Company</b>	<b>Foreign Institutional Investors or Specified Fund</b>
<b>2.Applicable For</b>	Units of UTI and Mutual Funds Purchased in <b>foreign currency.</b>	<p>(i) Bonds of an Indian company issued abroad and <b>purchased in foreign currency.</b> (FCCB and FCEB)</p> <p>(ii) Bonds of public sector company sold by Government and <b>purchased in foreign currency.</b></p> <p>(iii) GDRs <b>purchased in foreign currency.</b> (Indian Company issuing GDRs should be listed on Indian Stock Exchange)</p>	<p>Securities other than units of UTI and Mutual Funds purchased in <b>any currency.</b></p> <p>[Securities referred to in section 115AC are not covered here.]</p> <p>In case of specified fund the provisions of this section shall apply only to the extent of income that is attributable to units held by non-residents (not being a permanent establishment of non-resident in India) or to the extent of income that is attributable to</p>

			<b>investment division of banking unit.</b>
<b>3. Tax Rates</b>	LTCG – 10%  Dividend Income on units- 10%	LTCG– 10%  Note: Transfer of bonds or GDRs represented by equity shares of LISTED Indian Companies by a non-resident to another non-resident outside India is exempt from capital gains tax.  Interest – 10%  Dividend – 10%  Note: Dividend means dividend on GDRs: (a) Issued against initial issue or re-issued against existing shares of Indian Co. (b) issued against shares of public sector company sold by Government.	LTCG – 10%  LTCG referred in Section 112A-10% in excess of ₹ 1,00,000.  STCG – 30%  STCG referred in section 111A - 15%  Interest & Dividend- 20% in case of FII  Interest & Dividend- 10% in case of Specified Fund
<b>4. Section 28 to 44C, Section 57</b>	Not allowable	Not Applicable.	Not Applicable.
<b>4A. Chapter VI-A</b>	Not allowable	Not allowable.	Not allowable.
<b>5. First Proviso to section 48</b>	Not Applicable	Not Applicable.	Not Applicable.
<b>6. Second Proviso to section 48</b>	Not Applicable	Not Applicable	Not Applicable
<b>7. Set off, C/F &amp; Set off of losses [C/Y and B/F] against the incomes referred to in section</b>	Possible subject to Provisions of Chapter VI.	Possible subject to Provisions of Chapter VI.	Possible subject to Provisions of Chapter VI.
<b>8. Other Incomes</b>	Chapter VI-A available. Normal provisions and normal tax rates shall apply.	Chapter VI-A available. Normal provisions and normal tax rates shall apply.	Chapter VI-A available. Normal provisions and normal tax rates shall apply.
<b>9. Exemption from filing of ROI</b>	Not Applicable	No ROI required to be filed if (ii) Total income includes only	Not Applicable

		<b>Interest and dividend referred in section 115AC and (ii) TDS deducted on such income.</b>	
<b>10. TDS Provisions</b>	As per section 196B, person responsible for making payment in the nature of <b>dividend on units or LTCG arising from the transfer of units referred to in section 115AB shall, deduct TDS @ 10% at the time of credit of such income to the account of the payee or at the time of payment, whichever is earlier.</b>	As per section 196C, person responsible for making payment in the nature of <b>interest or dividend in respect of bonds or GDRs referred to in section 115AC or LTCG from transfer of such bonds or GDRs shall, deduct TDS @ 10% at the time of credit of such income to the account of the payee or at the time of payment, whichever is earlier.</b>	As per section 196D, person responsible for making payment in the nature of <b>interest or dividend in respect of securities referred to in section 115AD shall, deduct TDS @ 20% (FII) or 10% (specified fund) respectively at the time of credit of such income to the account of the payee or at the time of payment, whichever is earlier.</b>  <b>No TDS on capital gains in case of FII.</b>

**Note on Section 115AD:** Where Foreign Institutional Investor is not a foreign company but is a foreign fund, then the surcharge on interest, dividend, short term capital gains and long term capital gains referred to in section 115AD shall not exceed 15%.

**IF SPECIAL SECTIONS 115AB, 115AC, 115AD ARE NOT APPLICABLE, THEN APPLY THE GENERAL PROVISIONS i.e., SECTION 112 AND SECTION 115A.**

#### **SPECIAL PROVISIONS FOR NRIs**

In case of NRIs, there is an option to choose:

- a. General provisions i.e. section 112 and 115A
- b. Specific Provisions contained in Chapter XII-A i.e. section 115C-115-I

The differences in general provisions (i.e. section 112 & 115A) and specific provisions (i.e. section 115C to 115-I) are as under:

1. Under specific provisions benefit of section 115F is available.
2. **Under specific provisions,** First proviso to section 48 is available for LTCG on unlisted shares, listed shares sold off market and listed shares sold on stock exchange.

**Under the general provisions:**

- (i) First Proviso to section 48 is not available for unlisted shares.
  - (ii) First Proviso is applicable for listed shares sold-off market.
  - (iii) First Proviso is not applicable for listed shares sold on stock exchange.
- It may be noted that Second Proviso to section 48 is not applicable in any of the above cases, whether assessee opt for Chapter XII-A or for normal provisions.**

3. **Under Specific Provisions, exemption of ₹1,00,000 is not available for LTCG. Whereas under General Provisions, exemption of ₹1,00,000 is available for LTCG referred to in section 112A.**

## **SUMMARY OF CHAPTER XII-A [SECTION 115C TO SECTION 115-I]**

### **Section 115C: Definitions**

<b>NRI</b>	: Individual + Citizen of India/Person of Indian origin + Non-Resident
<b>Specified Assets</b>	: Shares of Indian Company (Private or Public) Debentures of Public Limited Indian Company. Deposits in Public Limited Indian Company Government Securities.
<b>Foreign Exchange Assets</b>	: Specified Assets purchased in convertible foreign exchange
<b>Long Term Capital Gains</b>	: LTCG from foreign exchange assets.
<b>Investment Income</b>	: Dividend and interest from foreign exchange assets.

### **Section 115D: Method of Computation**

<b>(1) Investment Income</b>	: Sections 28 to 44C, Section 57 and Chapter VI-A are not available
<b>(2) Long Term Capital Gains</b>	: Chapter VI-A not available.
<b>(a) First Proviso to Section 48</b>	: Available.
<b>(b) Second Proviso to Section 48</b>	: Not Available.

**(3) Other Incomes** : Normal Provisions.

### **Section 115E: Tax Rates**

<b>Long Term Capital Gains</b>	: 10%
<b>Investment Income</b>	: 20%
<b>Other Incomes</b>	: Normal Tax Rates.

### **Section 115F: Exemption**

- NRI derives LTCG
- Within Six months from the date of transfer
- Invests the net consideration in specified assets
- then

LTCG × Cost of new asset / Net consideration

- is not taxable
- New asset should be retained for 3 years from the date of its acquisition.
- If transferred/converted into money before 3 years, then the LTCG exempted earlier taxable as LTCG in the year in which the new asset is transferred.

### **Section 115G: Exemption from condition of filing ROI**

ROI not to be filed if:

1. Total income includes only Investment Income and/or LTCG.
2. TDS is deducted.

### **Section 115H: Chapter to apply even if NRI becomes resident**

- NRI Becomes Resident.
- Can file declaration with ROI of Assessment Year in which he becomes resident.
- To the effect that he wants to be governed by the provisions of this chapter.
- Chapter to apply for interest income from foreign exchange asset (no deduction of any expense, no deduction under Chapter VI-A and Tax Rate Flat 20%).
- Dividend and Long-Term capital gains from foreign exchange assets to taxed normally.
- Chapter to apply for subsequent Assessment Years also till the time the assets are transferred/converted into money.

### **Section 115-I: Chapter is optional**

## **ILLUSTRATIONS**

#### **Illustration 1:**

A non-resident Indian furnishes the following data for computation of his income for the previous year ended 31-3-2023.

#### **Purchases from stock exchange:**

Reliance	1-1-2022	₹ 5,00,000 (US \$ sent)
TISCO	1-1-2022	₹ 6,00,000 (US \$ sent)
TELCO	2-2-2020	₹ 8,00,000 (Indian Rupees)

#### **Sales:**

Reliance	4-1-2023	₹ 12,00,000
TISCO	6-6-2022	₹ 9,30,000
TELCO	4-1-2023	₹ 12,00,000

<b>Company</b>	<b>Dividend</b>	<b>Interest cost on Borrowed Funds</b>
Reliance	5,00,000 (declared on 12.4.2022)	20,000
TISCO	9,00,000 (declared on 12.5.2022)	20,000
TELCO	7,00,000 (declared on 12.12.2022)	10,000

On 31.3.2023, out of the sale proceeds of Reliance, ₹6,00,000 is invested in shares of GRASIM and out of the sale proceeds of TISCO ₹4,50,000 is invested in ACC on 3.12.2022. Also, out of the sale proceeds of TELCO, ₹10,00,000 is invested in shares of LML on 29.3.2023. Compute the total income of the non-resident Indian to the best of his advantage. All the shares mentioned above are listed on the stock exchange.

	<b>TTBR</b>	<b>TTSR</b>
1.1.2022	24	26
6.6.2022	30	32
4.1.2023	29	31

Securities Transaction Tax has been paid on purchase and sale of above shares.

**Answer:**

### **CASE 1**

#### **IF NRI OPTS FOR CHAPTER XII-A**

#### **CAPITAL GAINS:**

##### **(i) LTCG as per Chapter XII-A on shares of Reliance**

Period of holding	01.01.2022 to 03.01.2023	Long Term
Sales Price	₹ 12,00,000 @ 30	\$ 40,000
Cost of Acquisition	₹ 5,00,000 @ 25	\$ 20,000
<b>Long Term Capital Gain</b>		<b>\$ 20,000</b>
<b>Long Term Capital Gain</b>	<b>\$ 20,000 × 29</b>	<b>₹ 5,80,000</b>

##### **Less: Exemption under section 115F**

$$5,80,000 \times \frac{6,00,000}{12,00,000} = ₹ 2,90,000$$

##### **Long Term Capital Gain as per Chapter XII-A**

**₹ 2,90,000**

##### **(ii) STCG on TISCO: [Section 111A is applicable]**

Period of holding	01.01.2022 to 05.06.2022	Short Term
Sales Price	₹ 9,30,000 @ 31	\$ 30,000
<b>Short Term Capital Gain</b>		<b>\$ 24,000</b>
<b>Short Term Capital Gain</b>	<b>\$ 6,000 × 30</b>	<b>₹ 1,80,000</b>

Exemption under section 115F is not available since it is available on LTCG from foreign exchange assets.

##### **(iii) LTCG on TELCO: [Section 112A is applicable]**

Period of holding	02.02.2020 to 03.01.2023	Short Term
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Sales Price	₹ 12,00,000
<b>Less:</b> Cost of Acquisition (Indexation is not available as per section 112A)	₹ 8,00,000
	<b>₹ 4,00,000</b>

Benefit of section 115F is not available since TELCO is not a foreign exchange asset.

**₹ 8,70,000**

### Total Capital Gains

### INCOME FROM OTHER SOURCES

Dividend Income-	₹ 21,00,000
<b>GROSS TOTAL INCOME</b>	<b>₹ 29,70,000</b>

### COMPUTATION OF TAX

(i) Tax on LTCG of ₹ 2,90,000 @ 10% u/s 115E	29,000
(ii) Tax on LTCG of ₹ 4,00,000 on TELCO @ 10% u/s 112A (₹ 1 lakh is not taxable under section 112A)	30,000
(iii) Tax on ₹ 1,80,000 under section 111A @ 15%	27,000
(iv) Tax on dividend income of ₹ 14,00,000 @ 20% under section 115E and dividend income of ₹ 7,00,000 @ 20% under section 115A	4,20,000
<b>Total Tax</b>	<b>5,06,000</b>
<b>Add:</b> 4% Health & Education cess	<b>20,240</b>
<b>Total Tax Payable</b>	<b>5,26,240</b>

### CASE 2

### IF NRI DOES NOT OPT FOR CHAPTER XII-A

#### CAPITAL GAINS

LTCG on Reliance	7,00,000
STCG on TISCO	1,80,000
LTCG on TELCO	4,00,000
<b>Capital Gains</b>	<b>12,80,000</b>

#### INCOME FROM OTHER SOURCES

Dividend Income –	21,00,000
<b>GROSS TOTAL INCOME</b>	<b>33,80,000</b>

### COMPUTATION OF TAX

(i) Tax on LTCG of ₹ 11,00,000 on Reliance and TELCO @ 10% u/s 112A (₹ 1 lakh is not taxable under section 112A)	1,00,000
(ii) Tax on ₹ 1,80,000 under section 111A @ 15%	27,000
(iii) Tax on dividend income of ₹ 21,00,000 @ 20% under section 115A	4,20,000
<b>Total Tax</b>	<b>5,47,000</b>
<b>Add:</b> 4% Health & Education cess	<b>21,880</b>
<b>Total Tax Payable</b>	<b>5,68,880</b>

**SECTION 115ACA: TAX ON INCOME FROM GLOBAL DEPOSITORY RECEIPTS PURCHASED IN FOREIGN CURRENCY OR CAPITAL GAINS ARISING FROM THEIR TRANSFER**

(1) Where the total income of an assessee, being an **individual**, who is a **resident** and an **employee of an Indian company** engaged in **specified knowledge based industry** or service, or an employee of its subsidiary engaged in specified knowledge based industry or service (hereafter in this section referred to as the resident employee), includes—

- (a) income by way of **dividends on Global Depository Receipts** of an Indian company engaged in specified knowledge based industry or service, issued in accordance with such Employees' Stock Option Scheme as the Central Government may, by notification in the Official Gazette, specify in this behalf and **purchased by him in foreign currency**; or
- (b) income by way of **long-term capital gains** arising from the transfer of Global Depository Receipts referred to in clause (a),

the income-tax payable shall be the aggregate of—

- (i) the amount of income-tax calculated on the income by way of **dividends** in respect of Global Depository Receipts referred to in clause (a), if any, included in the total income, at the rate of **ten per cent**;
- (ii) the amount of income-tax calculated on the income by way of **long-term capital gains** referred to in clause (b), if any, at the rate of **ten per cent**; and
- (iii) the amount of income-tax with which the resident employee would have been chargeable had his total income been reduced by the amount of income referred to in clauses (a) and (b).

**Explanation.**—For the purposes of this sub-section,—

- (a) "**specified knowledge based industry or service**" means—
  - (i) information technology software;
  - (ii) information technology service;
  - (iii) entertainment service;
  - (iv) pharmaceutical industry;
  - (v) bio-technology industry; and
  - (vi) any other industry or service, as may be specified by the Central Government, by notification in the Official Gazette;
- (b) "**subsidiary**" shall have the meaning assigned to it in section 494 of the Companies Act, 1956 and includes subsidiary incorporated outside India.

- (2) No deduction shall be allowed in respect of dividend referred in 1(a) above.
- (3) Nothing contained in the first and second provisos to section 48 shall apply for the computation of long-term capital gains arising out of the transfer of long-term capital asset, being Global Depository Receipts referred to in clause (b) of sub-section (1).

**Explanation.**—For the purposes of this section,—

- (a) "**Global Depository Receipts**" means any instrument in the form of a depository receipt or certificate (by whatever name called) **created by the Overseas Depository Bank outside India [or in an International Financial Services Centre]** and [issued to investors against the issue of,—
- (i) ordinary **shares of issuing company**, being a **company listed** on a recognised stock exchange in India; or
- (ii) **foreign currency convertible bonds of issuing company];**
- (iii) **ordinary shares of issuing company, being a company incorporated outside India, if such depository receipt or certificate is listed and traded on any International Financial Services Centre;**
- (b) "**information technology service**" means any service which results from the use of any information technology software over a system of information technology products for realising value addition;
- (c) "**information technology software**" means any representation of instructions, data, sound or image, including source code and object code, recorded in a machine readable form and capable of being manipulated or providing inter-activity to a user, by means of an automatic data processing machine falling under heading information technology products but does not include non-information technology products;
- (ca) "**International Financial Services Centre**" shall have the meaning assigned to it in clause (q) of section 296a of the Special Economic Zones Act, 2005;
- (d) "**Overseas Depository Bank**" means a bank authorised by the issuing company to issue Global Depository Receipts against issue of Foreign Currency Convertible Bonds or ordinary shares of the issuing company.

## **SECTION 115BB: TAX ON Winnings FROM LOTTERIES, CROSSWORD PUZZLES, RACES INCLUDING HORSE RACES, CARD GAMES AND OTHER GAMES OF ANY SORT OR GAMBLING OR BETTING OF ANY FORM OR NATURE WHATSOEVER (RESIDENTS & NON-RESIDENTS)**

Where the total income of an assessee includes any income by way of **winning from any Lottery/ Crossword Puzzle / Race including horse race** (not being income from owing & maintaining race horse) / Card game / Other game of any sort / Gambling of any form or nature.

The income tax payable shall be aggregate of:

- **30% of the income by way of such winning (Slab benefit not available)**
- Normal tax rates on the balance income

### **Notes:**

- **No deduction of any expenditure or allowance shall be allowed under section 58.**

- If any % of such income is payable to Govt. or the agency conducting the lotteries, such % is deductible while computing the **Lottery income** and while calculating TDS from such income.

- **Losses cannot be set off against the income referred under this section.**

### **CIT v. Manjoo and Co.**

The High Court held that the receipt of **winnings from lottery by the distributor on unsold ticket** was not on account of any physical or intellectual effort made by him and therefore cannot be said to be "income earned" by him in business. Hence, the receipt of the prize money is not in his capacity as a lottery distributor but as holder of the lottery tickets which won the prizes. Therefore, **section 115BB and section 194B shall apply to such income and it shall be taxable @ 30%. TDS shall also be deducted @ 30%.**

**SECTION 194B:** Person responsible for paying to any person any income by way of winnings from any lottery or crossword puzzle or card game and other game of any sort in an amount **exceeding ₹10,000** shall, at the time of payment thereof, deduct income-tax thereon at the rate of **30%**. (In case of Non-Resident TDS shall be deducted under section 195 @ 30% without the slab of ₹ 10,000)

## **SECTION 115BBA: TAX ON NON-RESIDENT SPORTSMEN OR SPORTS ASSOCIATIONS**

<b>Where the total income of an assessee -</b>	<b>Applicable rate of tax</b>
(a) <b>being a sportsman (including athlete) who is not a citizen of India and is a non-resident,</b> includes any income received/receivable by way of –  (i) participation in India in any game (other than the games referred to in section 115BB) or sport; or (ii) advertisement, or (iii) contribution of articles relating to any game or sport in India in newspapers, magazines or journals; or	<b>20% of such income</b>

(b) being a <b>non-resident sports association or institution</b> , includes any amount guaranteed to be paid or payable to such association or institutions in relation to any game (other than the games referred to in section 115BB) or sport played in India;	<b>20% of such income</b>
(c) <b>being an entertainer, who is not a citizen of India and is a non-resident, includes any income received or receivable from his performance in India</b>	<b>20% of such income</b>

**Notes:**

1. Special rate of tax is applicable on the above mentioned incomes only. Balance income of the assessee will be chargeable to tax at normal rates applicable to assessee.
2. **No deduction or allowance shall be allowed in computing income referred to in (a), (b) and (c).**
3. **It shall not be necessary for the assessee to furnish return under section 139 if—**
  - (i) **The total income of the assessee consist of only the incomes referred to in (a) and (b) above** and
  - (ii) Tax at source has been deducted from such income.
4. **Indcom v. Commissioner of Income-tax (TDS)**  
**Non-resident match referees and umpires in the games played in India do not fall within the meaning of sportsmen to attract taxability under the provision of section 115BBA**, and consequently does not attract the TDS provision under section 194E in the hands of the payer. However, same shall be covered by section 195.
5. **SECTION 194-E:** Person responsible for paying to any **non-resident sportsman (including an athlete) or an entertainer non-resident sports association or institution** any income referred to in section 115BBA shall, at the time of credit of such income to the account of the payee or at the time of payment, whichever is earlier, **deduct income-tax thereon at the rate of 20%**.

**SECTION 10(48): EXEMPTION IN RESPECT OF INCOME RECEIVED BY CERTAIN FOREIGN COMPANIES**

Any income received in India in Indian currency by a foreign company on account of **sale of crude oil**, to any person in India shall be **exempt** from tax.

**Provided that—**

- (i) receipt of such income in India by the foreign company is pursuant to an **agreement entered into by the Central Government or approved by the Central Government**;
- (ii) having regard to the **national interest**, the foreign company and the agreement are notified by the Central Government in this behalf; and
- (iii) **the foreign company is not engaged in any activity, other than receipt of such income, in India.**

## **SECTION 10(48A): INCOME EXEMPT FROM TAX**

Any income accruing or arising to a foreign company on account of **storage of crude oil in a facility in India and sale of crude oil therefrom** to any person resident in India, shall be **exempt** from tax.

Provided that —

- (i) the storage and sale by the foreign company is pursuant to **an agreement** or an arrangement **entered into by the Central Government or approved by the Central Government**; and
- (ii) having regard to the **national interest**, the foreign company and the agreement or arrangement are notified by the Central Government in this behalf.

## **SECTION 10(48B): INCOME EXEMPT FROM TAX**

Any income accruing or arising to a foreign company on account of sale of leftover stock of crude oil, if any, from the facility in India after the **EXPIRY** of the agreement or the arrangement referred to in clause (48A) or on **TERMINATION** of the said agreement or arrangement in accordance with terms mentioned therein, shall be exempt from tax.

## **SECTION 10(48C): EXEMPTION ON INCOME ARISING TO INDIAN STRATEGIC PETROLEUM RESERVES LIMITED ON REPLENISHMENT OF CRUDE OIL**

Any income accruing or arising to the Indian Strategic Petroleum Reserves Limited, being a wholly owned subsidiary of the Oil Industry Development Board under the Ministry of Petroleum and Natural Gas, as a result of arrangement for replenishment of crude oil stored in its storage facility in pursuance of directions of the Central Government in this behalf, shall be exempt from tax.

Provided that nothing contained in this clause shall apply to an arrangement, if the crude oil is not replenished in the storage facility within three years from the end of the financial year in which the crude oil was removed from the storage facility for the first time;

## **SECTION 10(48D): INCOME ACCRUING OR ARISING TO AN INSTITUTION ESTABLISHED FOR FINANCING THE INFRASTRUCTURE AND DEVELOPMENT**

Any income accruing or arising to an institution established for financing the infrastructure and development, set up under an Act of Parliament and notified by the Central Government for the purposes of this clause, shall be exempt from tax for a period of ten consecutive assessment years beginning from the assessment year relevant to the previous year in which such institution is set up.

Clause (viae) has also been added to section 47 to provide that there shall be no capital gains on transfer of capital asset by India Infrastructure Finance Company Limited to an institution established for financing infrastructure and development set up under an Act of Parliament and notified by the Central Government.

## **SECTION 10(48E): INCOME ACCRUING OR ARISING TO A DEVELOPMENTAL FINANCING INSTITUTION**

Any income accruing or arising to a developmental financing institution, licensed by the Reserve Bank of India under an Act of the Parliament referred to in clause (48D) and notified by the Central Government for the purposes of this clause, shall be exempt from tax for a period of five consecutive assessment years beginning from the assessment year relevant to the previous year in which the developmental financing institution is set up.

Provided that the Central Government may, by issuing notification under this clause, extend the period of exemption under this clause for a further period, not exceeding five more consecutive assessment years, subject to fulfilment of such conditions as may be specified in the said notification;

### **EXPLANATION 1 TO SECTION 9(1)(i): INCOME NOT TO BE DEEMED TO ACCRUE OR ARISE IN INDIA**

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.

**Note:** A "Special Notified Zone" (SNZ) had been created to facilitate shifting of operations by foreign mining companies (FMC) to India and to permit the trading of rough diamonds in India by the leading diamond mining companies of the world. The activity of FMC of mere display of rough diamonds even with no actual sale taking place in India may lead to creation of business connection in India of the FMC.

### **NON-RESIDENTS AND FOREIGN COMPANIES ARE NOT REQUIRED TO FILE THE RETURN OF INCOME EVEN IF THE INCOME EXCEEDS THE TAXABLE LIMIT IN THE FOLLOWING FOUR CASES:**

- 1. SECTION 115A**
- 2. SECTION 115AC**
- 3. SECTION 115G**
- 4. SECTION 115BBA**

**PROVIDED** appropriate tax has been deducted on such incomes as TDS.