

# ***BHUJ BRANCH OF WIRC OF ICAI***

**E-NEWSLETTER FOR THE MONTH OF AUGUST-2018**

**(FOR PRIVATE CIRCULATION ONLY)**

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## ***CHAIRMAN'S COMMUNICATION***

Respected Colleagues,

As I write this communication, we find ourselves right in the middle of the busiest quarter of the Financial Year. The quarter comprising of July, August and September has two significant deadlines for the profession, 31<sup>st</sup> July for normal Income Tax Returns and 30<sup>th</sup> September for Income Tax Returns with Tax Audit. To add to the excitement, this year we already have two "extensions," one for the date of filing and the other in the scope of the tax audit report! With the arrival of GST, I believe, we have developed some kind of "friendship" with deadlines! Hopefully, we have learnt to enjoy the pressure rather than getting overwhelmed by it.

The days that passed by since we last met on this page had some historical significance for Bhuj Branch. We had the privilege of receiving the Hon'ble Vice President of The Institute of Chartered Accountants of India at our Branch. Shree Prafulla Chhajed, the Vice President of the ICAI visited our Branch on 3<sup>rd</sup> of August and participated in a CPE lecture delivered by CA Anil Bhandari, the Central Council Member. The respected Vice President had an intensive and engaging interaction with members and students present at the event.

## **CHAIRMAN'S COMMUNICATION**

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*The same event was also graced by the presence of Respected Vice Chancellor of KSKV Kachchh University. Both the dignitaries, in their respective capacities as premiers of educational institutions, talked about the possibilities of initiating a new era of cooperation between the ICAI and KSKCKU in the field of education. Friends, now the onus is on us to make sure that this noble idea is carried to its logical conclusion for the benefit of the region as a whole.*

*The results of CA examinations were declared during the past month. We did congratulate those who tasted success and encouraged those who could not make it there. We also had the chance to welcome Nine students who qualified themselves to become member of the ICAI by clearing the CA Final examination. They were felicitated and welcome at the worthy hands of the Vice President of the ICAI.*

*Two days after the visit by the Hon'ble Vice President, we had the good fortune to play host to the entire WIRC Team comprising of Chairman CA Sandeep Jain, RCM CA Purshottam Khandelwal, RCM CA Aniket Talati, also accompanied by CA Nikam Sanjay, Chairman Navi Mumbai Branch. The WIRC team attended the CPE lecture By CA Jignesh Parikh from Ahmedabad where he discussed important case laws as well as changes proposed in form 3CD. The WIRC Chairman and other visiting dignitaries also interacted with members and students and encouraged the Branch.*

*Towards the later part of July, we had a unique kind of a CPE event where CCM CA Tarun Ghia and CA Avinash Ravani addressed to the members of our Branch through a specially organized Video Conferencing or Web Cast. One more CPE was held on 17<sup>th</sup> August where CA Vishal Doshi, from Vadodara discussed the ICDS with reference to the requirements of Tax Audit*

*The most important day for an Indian also fell during this period, the 15<sup>th</sup> of August, India's Independence Day. As usual, we joined with the Income Tax Office family to pay our respect to the Nation through saluting the Flag.*

*Before I conclude, how can I forget the Annual General Meeting of the Branch! We had our Third Annual General Meeting held on 26th July, reminding us that we are now officially 3 years old and that we should now try and "walk" more confidently, more "independently," so that we may start "running" as soon as possible.*

*Thank you.*

**CA Darshan Khandol**  
**Chairman**  
**Bhuj Branch of WIRC of ICAI**

## **AMENDMENT TO FORM 3CD**

### **A STUDY OF SELECTED CLAUSES**

**CA Vruxi Mahek Shah**

**B.Com., ACA, CS**

Form 3CD has undergone some changes through a recent notification. The changes are to come into effect from 20<sup>th</sup> August, 2018. An effort has been made here to discuss a few of the amended clauses.

#### **29A: Reporting of amount chargeable u/s 56(2)(ix) under the head Income from other source**

##### **About Clause 29A:**

Clause 29A talks about Section 56(2)(ix) which says that w.e.f 01/04/2015 when the transferor of the capital assets receives ANY amount in advance in relation to negotiation for the transfer of capital asset and afterwards transfer transaction does not get materialized for any reason resulting into forfeiture of advance money then such forfeited amount would be taxed in the hands of the receiver of such amount/transferor of the capital asset in the year of receipt under the head 'Income from other Sources'.

##### **What Clause 29A of Form no. 3CD requires:**

<b>Clause</b>	<b>Particulars</b>	<b>Requirement of the clause</b>
29A (a)	Whether any amount is to be included as income chargeable under the head 'income from other sources' as referred to in clause (ix) of sub-section (2) of section 56?	It means assessee need to answer whether he has forfeited ANY amount received in relation to transaction of sale/transfer of capital asset and afterwards transaction did not result in sale? (Ans. : Yes/No)
(b)	If yes, please furnish the following details: (i) Nature of income:	It can be <ul style="list-style-type: none"><li>• Advance money received or</li><li>• Any amount received for guaranteeing the performance of contract which is not part of sale consideration or</li><li>• Any amount received due to agreement to sale or</li><li>• Any other</li></ul>
	(ii) Amount (in Rs.) thereof	Amount forfeited during the year

##### **How to get details in books of accounts?**

The above disclosure needs to be made if it is applicable to the assessee. Auditor needs to check in the books of accounts that any amount is received during the year in course of

negotiation of transfer of capital assets or not. If any such amount is traceable, verify the relevant document on basis of which amount is received in advance and possibility of fulfillment of terms to the negotiation. If there is any ground to believe that transfer may not take place, get it confirmed with the assessee and disclose accordingly, if required.

### **29B: Reporting of amount chargeable u/s 56(2)(ix) under the head Income from other source**

#### **About Clause 29B:**

Clause 29B talks about Section 56(2)(x) which says that if *ANY PERSON* receives any sum of money/property from any person with inadequate or without consideration, then such amount would be chargeable to tax in the hands of recipient in a year of receipt subject to some of the condition.

Here, property means Capital assets (i) Immovable property being land or building or both (ii) movable property being shares and securities or, jewellery or archeological collection or drawings or painting or sculpture or any work of art or bullion.

Which amount is chargeable to tax under 'Income from other sources'?

<b>Sr. No</b>	<b>What is Received?</b>	<b>Consideration</b>	<b>Condition/Consequences</b>
1	Sum of Money as a gift (Cash/Cheque/draft)	No	<ul style="list-style-type: none"> <li>Amount received from one or more person during the previous year,</li> <li>Aggregate amount exceeds 50,000/-,</li> </ul> <p><i>The whole of the amount is taxable.</i></p>
2	Immovable Property	No	<ul style="list-style-type: none"> <li>The stamp duty value of the property exceeds Rs. 50,000</li> </ul> <p><i>Stamp duty value is taxable.</i></p> <p>(Note: Ceiling of Rs. 50,000/- should be considered per single transaction)</p>
3	Immovable Property	Yes	<ul style="list-style-type: none"> <li>Stamp duty value of the property exceeds considerations</li> <li>The difference is more than 50,000/-</li> </ul> <p><i>The difference amount is taxable.</i></p> <p>(Note: Ceiling of Rs. 50,000/- should be considered per single transaction)</p>
4	Movable Property	No	<ul style="list-style-type: none"> <li>Aggregate fair market value of all properties during the previous year exceeds Rs. 50,000</li> </ul> <p><i>Total aggregate amount is taxable.</i></p>
5	Movable Property	Yes	<ul style="list-style-type: none"> <li>Aggregate fair market value exceeds</li> </ul>

			consideration <ul style="list-style-type: none"> <li>• The difference is more than 50,000</li> </ul> <i>Difference amount is taxable.</i>
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**Exemptions to above provisions:**

Any Person receives any sum of money/property

1. From a Relative or
2. On the occasion of marriage (for Individuals) or
3. By way of will/inheritance or
4. In contemplation of death of the payer or
5. From a local authority
6. From any fund , foundation, university, other educational institute, hospital, medical institution, any other specified trust or institutions or
7. From registered charitable institutions or
8. Being shares, at the time of business reorganisation of co-operative bank/demerger/amalgamation or (received on or after 1.4.2016)
9. Being shares , at the time amalgamation /demerger of foreign companies; being property , by way of distribution at the time of total of partial partition of HUF/by an Indian holding company from its 100 % subsidiary company or property received by an Indian subsidiary company from its 100% holding company/in a scheme of amalgamation/demerger/amalgamation of banking company/at the time of business reorganisation of co operative bank( received on or after 1.4.2017)
10. From an individual by trust created /established only for the benefit of relative of the individual. ( received on or after 1.4.2017)

**What Clause 29B of Form no. 3CD requires:**

Clause	Particulars	Requirement of the clause
29B (a)	Whether any amount is to be included as income chargeable under the head 'income from other sources' as referred to in clause (x) of sub-section (2) of section 56?	It means assessee need to answer whether he has received any sum of money/property with inadequate or without consideration and can be taxed as income as per provision given above (Ans. : Yes/No)
(b)	If yes, please furnish the following details: (i) Nature of income:	It can be <ul style="list-style-type: none"> <li>• A sum of Money</li> <li>• An immovable property without consideration</li> <li>• An immovable property with inadequate consideration</li> <li>• A movable property without consideration</li> <li>• A movable property with inadequate consideration</li> </ul>
	(ii) Amount (in Rs.) thereof	Amount which can be considered as income from other sources

### How to get details in books of accounts?

If you find any amount in cash/cheque/draft or by any other mode credited to books of accounts with no consideration then confirm with the assessee the source of such amount and reason of such receipt and derive such amount as taxable income subject to exemptions.

If you find any immovable property being capital asset debited in books of accounts during the previous year without any payment for such property or with the verification of property documents you come to know that amount paid towards purchase of above said property is less than stamp duty value of property, then derive amount chargeable to tax subject to conditions and exemption as explained above.

If, while getting overview of books of accounts, you find any movable property being capital asset purchased or received without consideration means as a gift, then derive aggregate fair market value of all such movable property with considering ceiling limit of 50,000 and disclose it as taxable income. If movable property is purchased or received with consideration then even check it whether the same is purchased from registered dealer means through bill/invoice then compare with the amount of such document and if the property is debited with the same value no need to disclose anything. But if capital asset is debited with lower value than amount in document disclose as per the provision .

### **Clause 30A: Reporting details of Primary Adjustments to Transfer Price u/s 92CE(1)**

#### **About clause 30A:**

Clause 30A talks about section 92CE (1) which says that if assessee has filed the return of income for any assessment year relevant to the previous year to which the issue of transfer pricing pertains to, and thereafter when transfer price is determined by the assessee himself or by transfer Pricing officer , by his own or under “Advance pricing Agreement” or otherwise, with considering arms length price principals, resulting into increase in total income or reduction in loss, which is called primary adjustment, then assessee should make secondary adjustment.

Secondary adjustment means after deriving primary adjustment, effect of difference amount between arms length price determined and the price at which international transaction has actually been made is to be given in the books of accounts of the assessee and its associated enterprise. The purpose of secondary adjustment is to reflect appropriate allocation of profits between them for removal of the imbalance between cash accounts and actual profit of the assessee.

The above provision shall apply only when below given two conditions are fulfilled:

1. The amount of primary adjustment made in any previous year exceeds 1 crore **AND**
2. The primary adjustment is for the A.Y. 2017-18 onwards.

### What Clause 30A of Form no. 3CD requires:



Clause	Particulars	Requirement of the clause
30A.(a)	Whether primary adjustment to transfer price, as referred to in sub-section 1) of section 92Ce, has been made during the previous year?	Answer in yes, if assessee's Total income of the relevant assessment year has been increased/Loss has been decreased, due to deference in transfer price determined and actual price of international transaction, otherwise answer in No.
(b)	(i) Under which clause of sub-section (1) of section 92CE primary adjustment is made?	Mention the applicable sub clause out of following: Where a primary adjustment to transfer price,— (i) has been made suo moto by the assessee in his return of income; (ii) made by the Assessing Officer has been accepted by the assessee; (iii) is determined by an advance pricing agreement entered into by the assessee; (iv) is made as per the safe harbour rules; or (v) is arising as a result of resolution of an Assessment by way of the mutual agreement procedure under an agreement entered into for avoidance of double taxation,
	(ii) Amount (in Rs.) of primary adjustment:	Mention difference amount between transfer price determined and actual price of international transaction.
	(iii) Whether the excess money available with the associated enterprise is required to be repatriated to India as per the provisions of sub-section (2) of section 92CE? (Yes/No)	Answer in Yes if as a result of primary adjustment to transfer price, assessee's total income gets increased/loss decreased and excess amount with associated enterprise is receivable, otherwise answer in No.
	(iv) If yes, whether the excess money has been repatriated within the prescribed time (Yes/No)	Answer in Yes, if excess amount to be repatriated to India has been received within time as may be prescribed, otherwise answer in No.
	(v) If no, the amount (in Rs.) of imputed interest income on such excess money which has not been repatriated within the prescribed time:	If Excess amount to be received are not received within prescribe time, Mention the amount of interest on such excess amount considering it as advance given by the assessee to Associated Enterprise in prescribed manner.

**How to get details from the assessee and books of accounts?**

If assessee deals with any enterprise being associated enterprise for any international transaction as per relevant provisions of section, then verify correctness of arms length price of the transactions with calculation work, relevant documents such as order of the transfer pricing officer etc. to determine primary and secondary adjustment requirement to transfer price and books of accounts of the assessee. Check whether excess amount has been booked as advance to associated enterprise and charged interest thereon as applicable or amount to be repatriated in India is credited in books or not.

**Clause 30B: Reporting details of interest expenditure incurred exceeding one crore rupees as referred u/s 94B(1)****About clause 30B:**

This clause talks about section 94B which emphasis on limitation on interest deduction in certain cases. According to this provision, except banking and insurance company ,when any Indian Company or fixed business place of foreign company borrows any debt from its associated enterprise being Non Resident or from any unassociated lender to whom implicit or explicit guarantee is given by associated enterprise, and payment of interest or similar nature in relation to such debts exceeds 1 crore Rs. Then Such Interest or similar nature expenditure is not deductible under the head 'profit and gains from business and profession' to the extent that it arises from excess interest.

Here, excess interest means amount of total interest paid/payable in excess of 30% of EBITDA or interest paid /payable to associated enterprise for that previous year, whichever is less.

In case, any *deductible* interest is not wholly deducted against income under 'profit/gain from business/profession', then such undeducted interest can be carried forward for the following assessment year/assessment years and it shall be allowed as a deduction against profit of ANY business/profession of it.

**What Clause 30B of Form no. 3CD requires:**

Clause	Particulars	Requirement of the clause
30B (a)	Whether the assessee has incurred expenditure during the previous year by way of interest or of similar nature exceeding one crore rupees as referred to in sub-section (1) of section 94B? (Yes/No.)	Answer in Yes, If assessee has borrowed any debt as per above provision and interest or similar nature expenditure on such debt is paid/payable exceeds 1 Crore, Otherwise answer in No.
(b)	If yes, please furnish the following details:— (i) Amount (in Rs.) of expenditure by way of interest or of similar	Mention the amount of Interest or similar nature expenditure.



	nature incurred:	
	(ii) Earnings before interest, tax, depreciation and amortization (EBITDA) during the previous year (in Rs.):	Mention the amount of EBITDA from Profit and loss statement for the relevant Assessment Year.
	(iii) Amount (in Rs.) of expenditure by way interest or of similar nature as per (i) above which exceeds 30% of EBITDA as per (ii) above :	Mention the amount in excess on 30% of EBITDA as calculated in (ii)
	(iv) Details of interest expenditure brought forward as per sub-section (4) of section 94B: <ul style="list-style-type: none"> <li>• A.Y:</li> <li>• Amount in Rs.:</li> </ul>	Any deductible interest not wholly allowed as deduction against Income in relevant assessment year and brought forwarded in current year, mention Assessment year to which such interest amount pertains to and amount of such interest or similar nature expenditure.
	(v) Details of interest expenditure carried forward as per sub-section (4) of section 94B: <ul style="list-style-type: none"> <li>• A.Y.:</li> <li>• Amount (in Rs.)</li> </ul>	Any deductible interest not wholly allowed as deduction against Income in current assessment year or of any preceding assessment year , mention Assessment year to which such interest amount pertains to and amount of such interest or similar nature expenditure.

**How to get details from the assessee and books of accounts?**

As an auditor verify the books of accounts whether assessee, being borrower has borrowed any debt in previous year from associated enterprise or not with respect to above provision. If yes, verify the correctness of allowable interest expenditure with respect to calculation of appropriate EBITDA. Verify proper carry forward and brought forward of allowable interest with respect to Relevant provisions.

**Clause 30C: Reporting details of impermissible avoidance arrangements, as referred to in section 96**

**About Clause 30C:**

Clause 30C Talks about section 96 which describes meaning of impermissible avoidance agreement. Impermissible avoidance agreement is an arrangement made for the purpose of obtaining Tax benefit. In addition to that such arrangement creates rights/obligations which are not ordinarily created between the persons dealing at arm's length price; The same is made to misuse or abuse provisions directly/indirectly; The arrangement may lacks commercial substance or deemed to lack commercial substance; they are made in such a manner that they are not ordinarily employed for *bona fide* purpose.

An arrangement can be said impermissible avoidance agreement if it can be derived that main purpose or part of such arrangement is to obtain tax benefit though the main purpose

of *whole* arrangement is not to obtain a tax benefit, in fact. If proved by the assessee of not being impermissible avoidance agreement, the same may be considered accordingly.

**What Clause 30C of Form no. 3CD requires:**

Clause	Particulars	Requirement of the clause
30C (a)	Whether the assessee has entered into an impermissible avoidance arrangement, as referred to in section 96, during the previous year? (Yes/No.)	Answer in Yes if assessee has made any arrangement to obtain tax benefit as per above provision, Otherwise answer in No.
(b)	If yes, please specify:— (i) Nature of impermissible avoidance arrangement:	Describe the nature of such impermissible avoidance agreement if derived from the information and documentation verified.
	(ii) Amount (in Rs.) of tax benefit in the previous year arising, in aggregate, to all the parties to the arrangement:	Mention the Total amount of tax benefit borne by impermissible avoidance agreement during the previous year.

**How to get details from the assessee and books of accounts?**

As an auditor, to derive conclusion regarding this provision, one has to study in depth regarding every arrangement made or agreement entered into by the assessee. With the discussion with assessee and deriving purpose of such agreement auditor can come to conclusion.

# RERA

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### 3. REVOCATION OF REGISTRATION & REGISTRATION OF REAL ESTATE AGENTS

In the previous article, we had discussed the fundamentals of registration of Real Estate Project. Registration once granted can be lapsed(expired) or revoked. There is wide difference between these terms. Registration is said to get lapsed if the period of which it is granted is completed but the real estate project is not yet completed. However, there are provisions in the act regarding extending the period of registration. Revocation of registration means cancellation of registration. Registration can be revoked during the validity of the project (real estate project) or when the project is completed. In this article, we will only discuss about who has the authority to revoke the registration granted to the project and what would be its consequences on its revocation.

The RERA Authority has power to revoke the registration granted to Promoter. Authority can exercise this power either suo-motu or on any complaint received against any Real Estate Project or the Promoter of the Real Estate Project and where the Authority is satisfied that the promoter has:



- Defaulted in doing any act which was required to be done under the RERA Acts or its Rules;
- Violates the terms or conditions of approval which was levied by the RERA Authority at the time of granting registration under RERA;
- Is involved in unfair practice or irregularities for the promoting sale or development of real estate project;

then, the RERA Authority may revoke the registration of such project. Before revoking the registration, the Authority needs to issue a show cause notice in writing stating why the registration of the project shall not be revoked? On receipt of such show cause notice, the Promoter should reply to the Authority within the period of 30 days. If the reply made by the Promoter is found suitable, then the Authority may either not take any actions or may impose further terms and conditions on existence of registration of the project to protect the interest of the allottees. If the reply of the Promoter is not found suitable then in worst case, the Authority may cancel the registration of project.

On Revocation of such project, the Authority will take all the necessary actions as it deems fit to protect the interest of public or allottees and remaining development work, if any, will be carried by competent authority or by association of allottees after consulting to appropriate government. However, the association of allottees will be having right of refusal for carrying out remaining

development work. The Authority will also take harsh actions against the promoter by debarring the promoter from accessing its website and displaying promoter's name and photograph in the list of defaulters on its website. The Authority will also freeze the bank account of the project as stated in Form A at the time of registration for facilitating the remaining development work as may be required.

The Authority also has power to extend the validity of registration of real estate project. However, the total extension that can be granted by the RERA Authority is of 1 year in total. This extension in the period of registration will be granted by the RERA Authority only in reasonable circumstances or due to *force majeure*. For this, the promoter needs to apply in Form E and is required to pay fees for such extension as stated by the authority.



Now moving toward real estate agents. The role of Real Estate Agent with relation to Real Estate Project is very interesting. RERA states that, " No real estate agent shall facilitate sale or purchase of any plot, apartment or building in a real estate project, registered under this act, being sold by the promoter in any *planning area* without obtaining registration. This means that where any agent (real estate) who want to facilitate any purchase or sale of real estate project which is in planning area and the project also registered with the RERA Authority, then in such case, agent should also apply for his registration with the RERA Authority otherwise he cannot indulge in facilitating purchase and sale of registered real estate projects. This simply means that "where project is registered, agents need to be registered".

But at the same time, registration process of agents with the RERA Authority is simple enough as compared to the promoter. Agents desirous for applying for registration needs to apply in Form G both online and offline (in triplicate copies) along with payment of registration fees. Registration fees as prescribed by the Authority is Rs. 10,000/- in case of Individual and Rs. 50,000/- in any other cases. Along with Form G, agents need to submit the ITR for 3 preceding financial years (If applicant was exempted from filing ITR then declaration to such effects) and its address proof of place of business.

If the application of agent is found satisfied by the Authority than it will grant single registration number which will be valid for entire state or union territory as the case may be. This registration number is required to be quoted by such agent in every sale facilitated by him under this Act. Here also, the Authority has power to revoke or suspend the registration granted to agent for such period as it thinks fit if it is satisfied that any registered real estate agent:

- has commits breach of any terms or conditions under this act;
- registration has been secured through misrepresentation or fraud.

after providing an opportunity of being heard shall be given to the real estate agent.

On agent being registered with the Authority, he shall NOT facilitate the sale or purchase of any plot, apartment or building being sold by the promoter in any planning area, which is not registered with the Authority. The agent should also require to maintain and preserve such books of account, records and documents as may have prescribed by the RERA Authority. The agent should also not involve himself in any unfair trade practices but should facilitate the possession of all the information and documents, as the allottee, is entitled to, at the time of booking of any plot, apartment or building, as the case may be.

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### ***NRI TAXATION AND TDS THEREON***

CA Neesha Ramjibhai R.Patel

M.Com., ACA

We all know that taxes collected from citizens are the foundation of Indian Economy. NRI taxation in India is a constant matter of concern for the vast number Indians living all over the world who have to send money home to their loved ones or make investments planning for themselves and their families. The Indian Tax Laws are very harsh when it comes to NRI's. Any payment made to NRI is required to be made after deduction of TDS even if his income is less than Rs. 2.5 Lakhs (i.e. in the 0% Income tax slab) However, the NRI can later claim a refund of the excess TDS Deducted at the time of filing of his Income Tax Return.

An NRI's income taxes in India will depend upon his residential status for the year. If his/her status is 'resident,' his global income is taxable in India. If his status is 'NRI,' his income which is Earned or accrued in India is taxable in India. Salary received in India or salary for service provided in India, income from a house property situated in India, capital gains on transfer of asset situated in India, income from fixed deposits or interest on savings bank account are all examples of income earned or accrued in India. These incomes are taxable for an NRI. Income which is earned outside India is not taxable in India. Interest earned on an NRE account and FCNR account is tax-free. Interest on NRO account is taxable for an NRI.

#### **Definition of NRI as per Income Tax Act**

Income Tax Act has not directly defined NRI. Section 6 contains detailed criteria of who is considered as Resident in India and provides that anyone who doesn't meet these criteria is Non-Resident.

An individual will be treated as a Resident in India in any previous year if he/she is in India for:

1. At least 182 days in that year, OR
2. At least 365 days during 4 years preceding that year AND at least 60 days in that year.

An individual who does not satisfy both the conditions as mentioned above will be treated as "non-resident" in that previous year.

Definition of Resident is relaxed by dropping Condition 2 given above (i.e. only Condition 1 is applicable), for the following cases:

1. An Indian citizen who leaves India in any year for the purpose of employment outside India or as a crew member of an Indian ship,
2. An Indian citizen or a person of Indian origin who resides outside India and who comes on a visit to India. Note that a person shall be deemed to be of Indian origin if he, or either of his parents or any of his grand-parents, was born in undivided India.

#### **Taxation of NRI Income in India**

Only the income which is earned in India is taxed in India. Such income would typically include salary received in India, rental income from properties in India, interest on bank deposits or other securities, dividend income, capital gains etc.

### Why are TDS rates for NRIs so high?

If an income is not taxable such as long term capital gains on sale of equity shares or mutual funds, then TDS is not deducted.

If the income/gain is taxable in India, TDS is deducted at the highest possible income tax rate at which such income is taxed (unless the TDS rate is explicitly provided).

The rationale is that it may be difficult to pursue NRI tax-payers if they fail to (or choose not to) file their income tax returns. That's why TDS is deducted at the maximum possible rate for that particular type of income.

Once the TDS has been deducted and deposited with Government, claiming the refund of excess TDS is NRI's problem. The Government has got its money.

### **1. TDS on Interest on NRO/NRE, FCNR(B) Deposits**

Interest on NRE or FCNR (B) deposits is exempt from tax in India. Hence, TDS is not applicable. Interest on NRO deposits is taxed as per the income tax slab of the investor. TDS on such interest income will be deducted at 30% for NRI investors. **For residents**, there is no TDS on interest on savings account. On fixed deposits, TDS is applicable only when the interest income on fixed deposits (across the bank) exceeds Rs. 10,000 (Rs. 50,000 for senior citizens from AY 2019-20) during a financial year. But, for non-residents, there is no such threshold. Interest income on NRO accounts is subject to TDS irrespective of the interest amount.

### **2. TDS on Dividend Income received by NRIs**

Dividend income (mutual funds and equity shares) is exempt from tax in the hands of the investor. Hence, there is no TDS deducted. If the dividend from equity shares in a particular financial year exceeds Rs. 10 lakhs, dividend in excess of Rs. 10 lakhs shall be taxed at 10%. Dividends other than as referred to in [Section 115-O](#) shall be taxed at 20% (**Sec. 115A (1) (a) (i)**)

### **3. TDS on Rental Income earned by NRIs in India**

In case the person receiving the rent is an Indian resident, TDS on rent @ 10% is required to be deducted by the person paying the rent. However, in case person receiving the rent is a NRI, TDS in such case would be deducted @ 30% under section 195 of IT Act, 1961.

### **4. TDS on Capital Gains on Sale of Equity Mutual Funds/Equity shares by NRIs**

The STCG tax rate on equity funds is 15%. (**Sec. 111A**)

The LTCG tax rate on equity funds is NIL.



The finance minister in his Budget 2018-19, has proposed to tax long term capitals gains of over Rs 1 lakh at 10% without indexation benefit. *(Sec. 112A)*

*Do note an AMC does not know about NRIs gains from other AMCs. Therefore, it will deduct TDS at 10% irrespective of whether NRIs total LTCG for the year exceeds Rs. 1 lakh or not. NRIs can claim excess tax deducted by filing income tax return.*

### 5. TDS on Capital Gains on Sale of other than Equity Shares and Equity Oriented Mutual Fund by NRIs (e.g. Debt Fund)

The STCG tax rate on Non-Equity funds (or) Debt funds is as per the investor's income tax slab rate. (TDS @ 30% is applicable) *(Sec. 115AD (b))*

The LTCG tax rate on non-equity funds is 20% (with Indexation) on listed mutual fund units and 10% on unlisted funds. *(Sec. 112(1) (c))*

### 6. TDS on Capital Gains on sale of Property/Gold

TDS will be deducted at 30% for any short term capital gains

TDS will be deducted at 20% for any long term capital gains

*The holding period for the gains resulting from the sale of property to qualify as long-term capital gains has been reduced from 3 years to 2 years (F.Y. 2017-18). For gold, such holding period remains 3 years.*

### 7. TDS on Interest Income on other investments by NRIs

Interest income on any other investments such as bonds, corporate FDs etc. is taxed as per income tax slab. TDS shall be deducted at 30%.

### 8. TDS on All other Types of Income

All other types of income unless explicitly specified in the Income Tax Act are subject to TDS at the rate of 30%. Even rental income is not explicitly defined in the Act, hence default rate of 30% is considered.

### 9. TDS on Salary Income

By Virtue of Section 9 (1) (ii), Salary is deemed to accrue or arise in India, if services are rendered in India. Therefore, if non-resident renders service in India, the salary income would be chargeable to tax in India and person responsible for paying the salary income that is the employer has to deduct withholding tax in accordance with the provision of section 192.

Such income tax has to be calculate at the average rate of income tax computed on the basis of the rates in force for the relevant financial year in which the payment is made, on the estimated total income of the assessee

### Points to Note

1. For NRIs, the tax exemption limit is Rs 2.5 lakhs irrespective of their age.

2. Surcharge and cess are applicable to NRIs too
3. NRIs cannot adjust capital gains by the amount the total taxable income falls short of minimum tax exemption limit. Only residents are permitted to do so.
4. The payer (buyer) will issue TDS certificate to the seller (NRI) in case any TDS has been deducted.
5. If income tax liability of NRIs is lower than TDS deducted, then he/she can claim back excess tax paid/deducted at the time of filing income tax returns.
6. If a resident made a capital gain of Rs. 2 lakhs and has no other income during the year, he won't have to pay any tax since the total income falls below Rs. 2.5 lakhs. An NRI, in a similar situation, will have to pay tax on Rs. 2 lakhs of capital gains.

### **Last but not Least**

#### **NRIs need not file return on income**

Section 139 of the Income Tax Act 1961 provides that every person if his total income or the total income of any other person in respect of which he is assessable under the Act during the previous year exceeded the maximum amount which is not chargeable to Income tax, shall, before the due date furnish, a Return of Income in the prescribed form and verified in the prescribed manner.

Section 115G of the Income Tax Act 1961, provides that on certain circumstances non-resident Indian are exempted in filing the Return of Income. This in other words, on certain conditions, the non-resident Indian need not file the Return of Income.

The conditions to be satisfied for non-filing the return of Income are mentioned below:

- Where the total income of the non-resident Indian consists only of investment income or income by way of long term capital gains or both; and
- The tax deductible at source under the provision of chapter XVII-B has been deducted from such income.

#### **"Non-Resident Indians having only investment income or/and long term capital gain - Not required to file return of income provided tax has been deducted at source there from"**

The Investment Income means any income derived (other than dividends referred to in section 115 O) from a foreign exchange asset. Foreign Exchange Asset means" any specified asset which the assessee has acquired or purchased with, or subscribed in convertible foreign exchange. Similarly, section 115C(e), defines, Long-term Capital gains, which means income chargeable under the head capital gains relating to capital asset, being a foreign exchange asset which is not a short term capital asset.

Therefore, Income derived from a foreign exchange asset either Investment income or long-term capital gain, as long as tax has been deducted at source, then, there is no need to file the return of Income.

### Withholding Tax Provisions for Non-resident: A Summary

Nature of payment	Rate of TDS	Actual Tax rate
Payment of Salary	Income Tax slab	Income Tax slab
Income by way of Winning From Lotteries, crossword puzzles, card games, horse races and other games of any sort	30%	30%
Investment income (under Special Provisions Section 115-C to 115-I) (For Specific assets acquired through convertible foreign exchange)	20%	20%
Interest on NRE/FCNR deposits	Nil	Nil
Interest on NRO deposits	30%	As per Income Tax slab
Short Term Capital Gains on Listed Equity Shares or Equity Mutual Fund	15%	15%
Any other Short Term Capital Gains	30%	As per Income Tax slab
Long term Capital Gains on Equity and Equity Shares <b><i>(Without Indexation Benefits) (shall be applicable from 1<sup>st</sup> April, 2018)</i></b>	10%	10%
Long term Capital Gains on other than Equity and Equity Shares (With Indexation Benefits) (Listed)	20%	20%
Long term Capital Gains on other than Equity and Equity Shares (Without Indexation Benefits) (Unlisted)	10%	10%
Long term Capital Gains on any other capital asset (Property, Gold etc.) (With Indexation Benefits)	20%	20%
Rental Income	30%	As per Income Tax slab
Royalty and fees for Technical Service	10%	10%
Any other income not specified in the Income tax Act,	30%	30%

## The Best Way to Win is not the need to Win

Kinnaree Thacker

This essay was ranked at second place in the essay contest held by WICASA Branch on 1<sup>st</sup> July, 2018, the CA Day

Winning – A six letter word after which almost we all run from the start of the day to achieve it in one or other way. But actually what is "winning?" Is it simply a successful score or winning a tough game? Winning isn't about finishing in first place. It isn't about beating the others. It is about overcoming yourself, overcoming your body, your limitations, and your fears. Winning means surpassing yourself and turning your dreams into reality. A winner is someone who recognizes his God-given talents, works his tail off to develop them into skills, and uses these skills to accomplish his goals

Competing at the highest level is not about winning. It's about preparation, courage, understanding and nurturing your heart. Winning is simply its result. It isn't something that happens suddenly on the field, it is something that builds physically and mentally every day that you train and every night that you dream.

Winning is definitely fun, but winning is not the point, wanting to win is the point, not giving up is the point, never letting up is the point; never being satisfied with what you've done is the point. Trying to do the right thing at the right time makes a point. They may just be little things, but usually they make the difference between winning and losing. There are always new, grander challenges to confront, and a true winner will embrace each one. And above all a winner never stops trying. Failing over and over again is the secret to success. You learn more from losing than winning. You learn how to keep going. It's not whether you win or lose, it's how you play the game. Thus, it is rightly said that you cannot win unless you learn how to lose. Nobody goes undefeated all the time. If you can pick up after a crushing defeat, and go on to win again, you are going to be a champion someday. We learn wisdom from failure much more than from success.

No one wins all the time. Steve Jobs was FIRED from the company he founded! When he returned to Apple over 10 years later, he built it into the most profitable company on the planet.

Learning from the mistakes once committed is also an important step succeed for the next time. But at the same time even it is true that the past achievements cannot help one win all the time. Learning from what was done in past, correcting it and

then trying to improve on it is important and if one can take control over this thing, he wins the race against himself, which is the most difficult one of all.

There are certain ways in which one can ensure improving oneself. They are:

1. A for Action-

Napoleon once stated that create a definite plan for carrying out your desire whether you are ready or not put this plan into action. Creating a definite plan for achieving the goal is one of the winning ways, winners have demonstrated on their success journey.

2. B for Believe-

Believe in yourself will manifest in whatever we do. Many people remain paralyzed by their belief of impossibilities. To be successful you have got to believe in unlimited possibilities.

3. C for consistency-

A consistent man believes in destiny, a Capricorn believes in chances. It is the ability to stay on the particular task and stay focused on it, day by day until the object is obtained.

4. D for Diligence-

We do not achieve anything without diligence; diligence is what gets winner apart from losers. Diligence is a gate opener.

The ABCD of success could sets you on the path to achieving the massive results in your life and these ABCD are winning ways too. We believe that education is the key to everything but this is not true in all the cases. The secret of success cannot always be found in education. Secret of success is in discipline. Success is when someone is working to achieve a goal or dream. When we achieved with the certain task and if it results satisfaction in our heart then it is really success.

We are taught right from the childhood to work only for winning or getting the 1<sup>st</sup> place. But at a young age winning is not the most important thing, the important thing is to develop creative and skilled players with good confidence. We play a sport. It's a game. At the end of the day, that's all it is, is a game. It doesn't make you any better or any worse than anybody else. So by winning a game, you're no better. By losing a game, you're no worse. So kids should be taught that there are more important things in life than winning or losing a game, tell them that somebody will win, somebody will lose. One should not fight over it and try to get better. This reminds of the movie 3 idiots wherein everyone is taught to run for winning the race as no one remembers the one who came 2<sup>nd</sup>. But this should not be the thing. As

Aamir Khan rightly explains later on that 'Excellence and ability are the keys to success, so instead of running after success run for excellence and success will come to you on its own.'

It is rightly said that beauty lies in the eye of the beholder. It turns out that the same can be said for winning. Traditionally when most of us think of winning, we probably focus on the final score of the contest. Generally, the winners are considered to be only the ones who are on top when the final whistle blows. However, this is not the only possible definition of winning. Winning can also be defined by the quality of the performance of each individual. Winning is valuable only when it is accomplished in the right way and is a subjective matter. It differs from person to person. Say for example:

1. When Google changes its home page doodle on your birthday or death anniversary, YOU WIN!
2. When government declares a national holiday on your birthday, YOU WIN
3. When at the age of 75 you can walk and climb without anyone's support, YOU WIN
4. When people recognize you as your son's/daughter's father/mother, YOU WIN.
5. When you have time to adore beauty of nature surrounding you and to gaze the stars at night with your family or partner in this mundane world, YOU WIN.

The one who works hard, gets opportunity and seizes it, the one who is sociable, the one who gets his priorities straight, the one who can save for future, the one who has achieved freedom to do as his/her heart feels, the one who never stops learning, the one who can enjoy a marvellous sunset, can make others happy or can give for noble cause and charity is a winner. When it comes to charity we are reminded of Sudha Murty and Narayan Murty, who have a heart of gold which is must for giving. They struggled to build the Infosys and when they were successful enough they started returning what they had to the society by way of charity. Thus, this shows that values are more important than simply winning.

Abraham Lincoln while writing a letter to his son's teacher said "Teach him if you can that 10 cents earned is of far more value than a dollar found. It is far more honourable to fail than to cheat. Teach him to learn how to gracefully lose, and enjoy winning when he does win." Thus, the one who sell his talents and brains to the highest bidder but never to put a price tag on his heart and soul is a winner.

Thus, all these things together show that to win we should stop making it as necessity and start excelling in our abilities.





GROUP PHOTO WITH WIRC TEAM



L to R: CA Darshan Khandol, Chairman, Bhuj Br., CA Sandeep Jain, Chairman WIRC, CA Purshottam Khandelwal, RCM, CA Aniket Talati, RCM



GROUP PHOTO WITH VICE PRESIDENT, ICAI AND VICE CHANCELLOR, KSKVKU



MANAGING COMMITTEE OF BHUJ BRANCH PRESENTING MEMENTO TO THE VICE PRESIDENT, ICAI



L to R, Shree C.B.jadeja, VC, KSKVKU, CA Prafulla Chhajed, VP, ICAI, CA Darshan Khandol, Chairman, Bhuj Br., CA Anil Bhandari, CCM, ICAI



CA PRAFULLA CHHAJED, VICE PRESIDENT, ICAI, AT BHUJ

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