

- (a) any dividend] declared³⁵ by a company or distributed³⁵ or paid by it within the meaning of sub-clause (a) or sub-clause (b) or sub-clause (c) or sub-clause (d) or sub-clause (e) of clause (22) of section 2 shall be deemed to be the income of the previous year in which it is so declared, distributed³⁵ or paid, as the case may be ;
- ³⁶[(b) any interim dividend shall be deemed to be the income of the previous year in which the amount of such dividend is unconditionally made available by the company to the member who is entitled to it.]

Income deemed to accrue or arise in India.

- ³⁷9. ³⁸(1) The following incomes shall be deemed³⁹ to accrue or arise in India :—
- ⁴⁰(i) all income accruing or arising, whether directly or indirectly⁴¹, through or from any business connection⁴¹ in India, or through or from any property⁴¹ in India, or through or from any asset or source of income in India,⁴²[***] or through the transfer of a capital asset situate in India.
- ⁴³[*Explanation 1*].—For the purposes of this clause—
- (a) in the case of a business of which all the operations⁴⁴ are not carried out in India, the income of the business deemed under this clause to accrue or arise in India shall be only such part of the income as is reasonably attributable to the operations⁴⁴ carried out in India ;
 - (b) in the case of a non-resident, no income shall be deemed to accrue or arise in India to him through or from operations which are confined to the purchase of goods in India for the purpose of export ;

35. For the meaning of the term “declared and distributed”, see Taxmann’s Direct Taxes Manual, Vol. 3.

36. Inserted by the Finance Act, 1965, w.e.f. 1-4-1965.

37. See also Circular No. 35(XXXIII-7) of 1956, dated 3-9-1956 (Foreign company engaged in re-insurance with Indian companies), Circular No. 4, dated 20-2-1969 (Pensions received in India from abroad), Circular No. 382, dated 4-5-1984 (Shares allotted to non-residents in consideration for machinery and plant), Circular No. 5/2004, dated 28-9-2004 (Taxation of BPO units in India), Circular No. 7/2009, dated 22-10-2009 (Withdrawing Circular No. 23, dated 23-7-1969, Circular No. 163, dated 29-5-1975 and Circular No. 786, dated 7-2-2000), Letter F. No. 500/111/12009-FTD-1(Pt.), dated 29-5-2012 [Clarification an amendment by Finance Act, 2012], Circular No. 4/2015, dated 26-3-2015 [Clarification regarding *Explanation 5* to section 9(1)(i)], Circular No. 41/2016, dated 21-12-2016 [Clarifications on Indirect Transfer] [Operation of clarification in Circular No. 41/2016, dated 21-12-2016 is kept in abeyance for the time being : Circular No. 4/2017, dated 20-1-2017] and Circular No. 28/2017, dated 7-11-2017 (Clarification on Indirect transfer in case of redemption of share or interest outside India). For details, see Taxmann’s Master Guide to Income-tax Act.

38. For relevant case laws, see Taxmann’s Master Guide to Income-tax Act.

39. For the meaning of the term “deemed”, see Taxmann’s Direct Taxes Manual, Vol. 3.

40. See rule 10 for manner of computation of income of non-residents in certain cases. See also rules 11UB and 11UC and Form 3CT (Determination of value of assets and apportionment of income in certain cases).

41. For the meaning of the expressions “directly or indirectly”, “business connection” and “property”, see Taxmann’s Direct Taxes Manual, Vol. 3.

42. Words “or through or from any money lent at interest and brought into India in cash or in kind” omitted by the Finance Act, 1976, w.e.f. 1-6-1976.

43. *Explanation* renumbered as *Explanation 1* by the Finance Act, 2003, w.e.f. 1-4-2004.

44. For the meaning of the term “operations”, see Taxmann’s Direct Taxes Manual, Vol. 3.

⁴⁵[* * *]

⁴⁶[(c) in the case of a non-resident, being a person engaged in the business of running a news agency or of publishing newspapers, magazines or journals, no income shall be deemed to accrue or arise in India to him through or from activities which are confined to the collection of news and views in India for transmission out of India ;]

⁴⁷[(d) in the case of a non-resident, being—

- (1) an individual who is not a citizen of India ; or
- (2) a firm which does not have any partner who is a citizen of India or who is resident in India ; or
- (3) a company which does not have any shareholder who is a citizen of India or who is resident in India,

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

⁴⁸[(e) in the case of a foreign company engaged in the business of mining of diamonds, no income shall be deemed to accrue or arise in India to it through or from the activities which are confined to the display of uncut and unassorted diamond in any special zone notified by the Central Government in the Official Gazette in this behalf.]

⁴⁹[*Explanation 2*.—For the removal of doubts, it is hereby declared that “business connection” shall include any business activity carried out through a person who, acting on behalf of the non-resident,—

- (a) has and habitually exercises in India, an authority to conclude contracts on behalf of the non-resident, unless his activities are limited to the purchase of goods or merchandise for the non-resident; or

Following clause (a) shall be substituted for the existing clause (a) of *Explanation 2* to clause (i) of sub-section (1) of section 9 by the Finance Act, 2018, w.e.f. 1-4-2019 :

- (a) *has and habitually exercises in India, an authority to conclude contracts on behalf of the non-resident or habitually concludes contracts or habitually plays the principal role leading to conclusion of contracts by that non-resident and the contracts are—*
 - (i) *in the name of the non-resident; or*
 - (ii) *for the transfer of the ownership of, or for the granting of the right to use, property owned by that non-resident or that non-resident has the right to use; or*
 - (iii) *for the provision of services by the non-resident; or*
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45. Proviso omitted by the Finance Act, 1964, w.e.f. 1-4-1964.

46. Inserted by the Finance Act, 1983, w.e.f. 1-4-1962.

47. Inserted by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-4-1982.

48. Inserted by the Finance Act, 2016, w.e.f. 1-4-2016.

49. Inserted by the Finance Act, 2003, w.e.f. 1-4-2004.

- (b) has no such authority, but habitually maintains in India a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the non-resident; or
- (c) habitually secures orders in India, mainly or wholly for the non-resident or for that non-resident and other non-residents controlling, controlled by, or subject to the same common control, as that non-resident:

Provided that such business connection shall not include any business activity carried out through a broker, general commission agent or any other agent having an independent status, if such broker, general commission agent or any other agent having an independent status is acting in the ordinary course of his business :

Provided further that where such broker, general commission agent or any other agent works mainly or wholly on behalf of a non-resident (hereafter in this proviso referred to as the principal non-resident) or on behalf of such non-resident and other non-residents which are controlled by the principal non-resident or have a controlling interest in the principal non-resident or are subject to the same common control as the principal non-resident, he shall not be deemed to be a broker, general commission agent or an agent of an independent status.

Following *Explanation 2A* shall be inserted after *Explanation 2* to clause (i) of sub-section (1) of section 9 by the Finance Act, 2018, w.e.f. 1-4-2019 :

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

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

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

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

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

Explanation 3.—Where a business is carried on in India through a person referred to in clause (a) or clause (b) or clause (c) of *Explanation 2*, only so much of income as is attributable to the operations carried out in India shall be deemed to accrue or arise in India.]

⁵⁰[*Explanation 4.*—For the removal of doubts, it is hereby clarified that the expression “through” shall mean and include and shall be deemed to have always meant and included “by means of”, “in consequence of” or “by reason of”.

⁵¹*Explanation 5.*—For the removal of doubts, it is hereby clarified that an asset or a capital asset being any share or interest in a company or entity registered or incorporated outside India shall be deemed to be and shall always be deemed to have been situated in India, if the share or interest derives, directly or indirectly, its value substantially from the assets located in India:]

⁵²[**Provided** that nothing contained in this *Explanation* shall apply to an asset or capital asset, which is held by a non-resident by way of investment, directly or indirectly, in a Foreign Institutional Investor as referred to in clause (a) of the *Explanation* to section 115AD for an assessment year commencing on or after the 1st day of April, 2012 but before the 1st day of April, 2015:]

⁵³[**Provided further** that nothing contained in this *Explanation* shall apply to an asset or capital asset, which is held by a non-resident by way of investment, directly or indirectly, in Category-I or Category-II foreign portfolio investor under the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014, made under the Securities and Exchange Board of India Act, 1992 (15 of 1992).]

⁵⁴[*Explanation 6.*—For the purposes of this clause, it is hereby declared that—

- (a) the share or interest, referred to in *Explanation 5*, shall be deemed to derive its value substantially from the assets (whether tangible or intangible) located in India, if, on the specified date, the value of such assets—
 - (i) exceeds the amount of ten crore rupees; and
 - (ii) represents at least fifty per cent of the value of all the assets owned by the company or entity, as the case may be;

50. Inserted by the Finance Act, 2012, w.r.e.f. 1-4-1962.

51. See also Circular No. 4/2015, dated 26-3-2015 [Clarification on *Explanation 5*].

52. Inserted by the Finance Act, 2017, w.r.e.f. 1-4-2012.

53. Inserted, *ibid.*, w.r.e.f. 1-4-2015.

54. Inserted by the Finance Act, 2015, w.e.f. 1-4-2016.