THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

(Set up by an Act of Parliament)

CHENGALPATTU DISTRICT BRANCH (SIRC)

(Formerly Known as Kanchipuram District Branch)





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ARTICLES INVITED FROM MEMBERS

Note: Articles are invited from members for publishing in newsletter. The articles shall be either on the specific subject or a general article. Members can send their articles with Name, Membership Number, Mobile Number, Residential Address, Office Address & Photo to our Email id mentioned below:

E-mail id: chengalpattu@icai.org

Note: The views expressed in the articles published, are their own views and Chengalpattu District Branch does not endorse or take responsibility.



From the Chairman's Desk



Dear Colleagues and Esteemed Members,

I am very happy and pleased to share with you the monthly edition of our journal. As we step into August 2024, I am sure everyone has been having a small pause after a hectic schedule and adhering to the statutory deadline of July month. This month offers us a valuable opportunity to assess our progress, opportunities and recalibrate our efforts towards our goals for the remainder of the year.

Our profession continues to evolve at a remarkable pace, with new challenges and opportunities. We are witnessing significant changes in regulatory landscapes that are reshaping our operations and to deliver value to our clients. It is imperative that we stay ahead of these changes and adapt our skills and strategies accordingly.

I am particularly excited about our most awaited dream of having our own building premises for our branch. The major milestone of Foundation Stone Laying Ceremony for the branch premises had been planned on 22nd August 2024 in the golden hands of President of ICAI CA. Ranjeet Kumar Agarwal and in the presence of Vice President of ICAI CA. Charanjot Singh Nanda. I take this opportunity to invite all the members for this grand occasion.

I would like to take this opportunity to acknowledge the hard work, dedication and support extended by all our members for the branch activities.

As we move forward, let us continue to embrace learning and growth, foster collaboration, and lead with integrity. Together, we can navigate the evolving landscape of our profession and contribute to shaping its future with confidence and excellence.

Thank you once again for your unwavering support and dedication. I look forward to our continued success and collective achievements

Jai Hind

CA Narasimma Raghavan R Chairman



CPE MEETING

Topic : ALL ABOUT NRI TAXATION AND PERMANENT ESTABLISHMENT AS PER IT ACT - AN ANALYSIS Speaker : CA. BHARATHY G, CA. SIRISH M I AND CA. RAMESH R Date : 06th July 2024, Saturday Time : 5.00 PM to 8.00 PM

Venue : Our Branch Premises













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PROGRAM

Program: ICAI MSME & Startup Yatra 2024 Date: 11.07.2024, Thursday Time: 10.00 am Venue: Our Branch Premises















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CPE MEETING

TOPIC : WORLD YOUTH SKILLS DAY - SKILLS ENRICHMENT OF VARIOUSPROFESSIONAL ASPECTS & LISTENING AND VERBAL COMMUNICATION SKILLSSpeaker: CA. RATHINAGIRI S & MR. VEERARAGHAVAN R

Date: 15th July 2024, Monday Time: 5.00 PM to 8.00 PM Venue: Our Branch Premises













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PROGRAM

Program: Annual General Meeting Date: 20.07.2024, Saturday Time: 4.30 pm Venue: Our Branch Premises

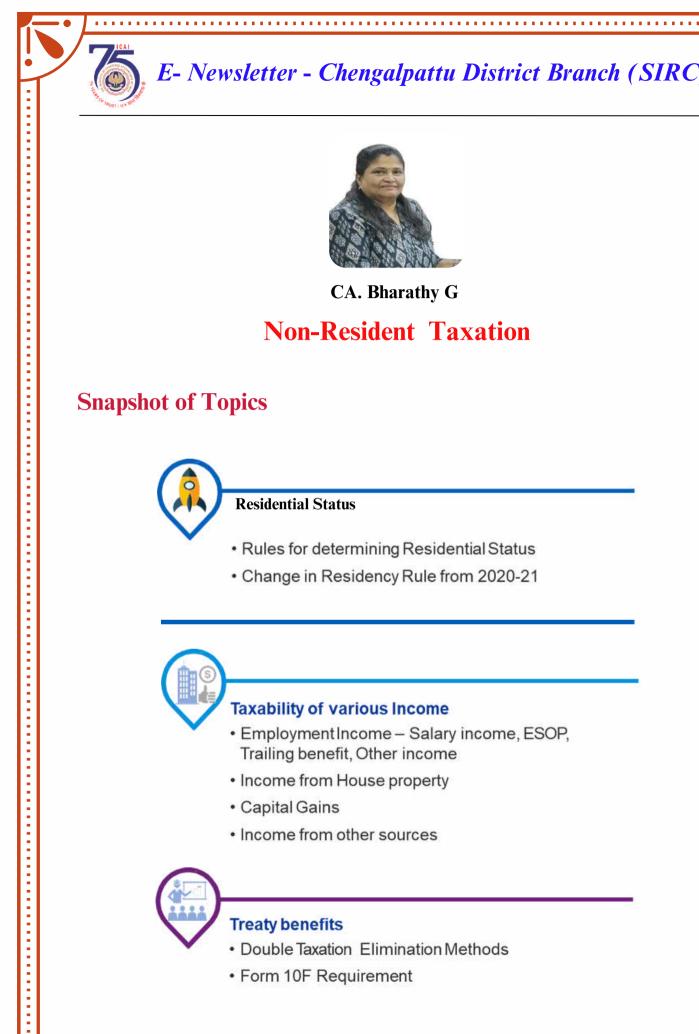






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CA. Bharathy G

Non-Resident Taxation

Snapshot of Topics

Residential Status

- Rules for determining Residential Status
- Change in Residency Rule from 2020-21

Taxability of various Income

- EmploymentIncome Salary income, ESOP, Trailing benefit, Other income
- Income from House property
- · Capital Gains
- Income from other sources

Treaty benefits

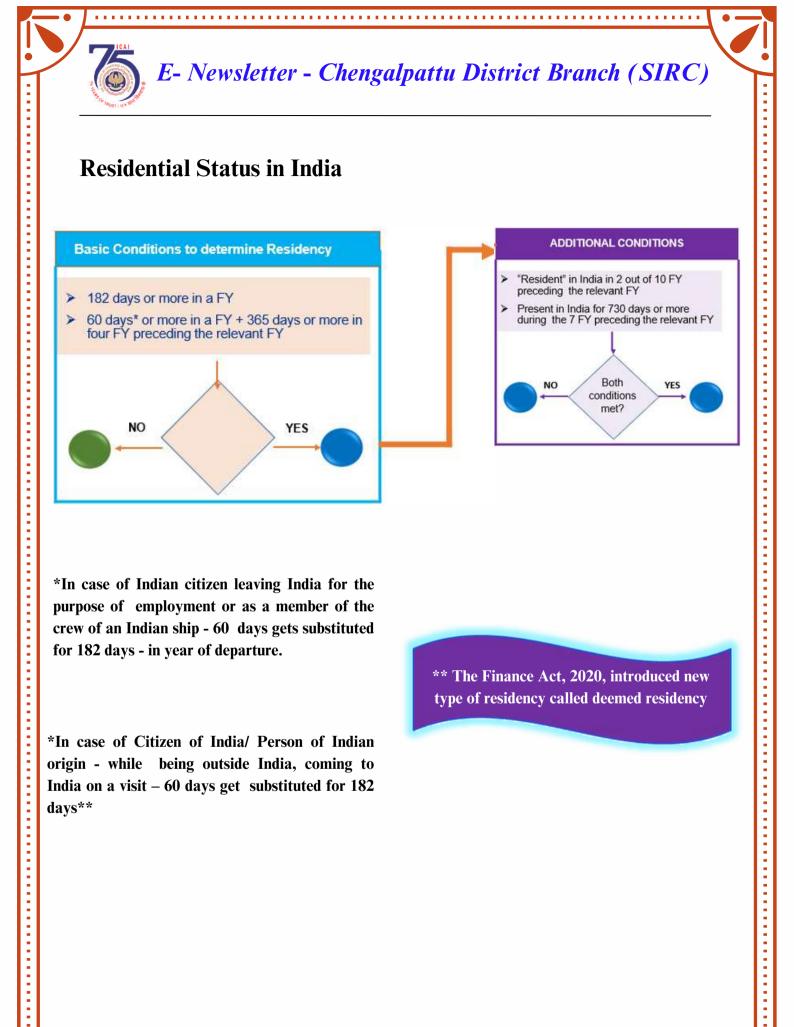
Double Taxation Elimination Methods

Form 10F Requirement

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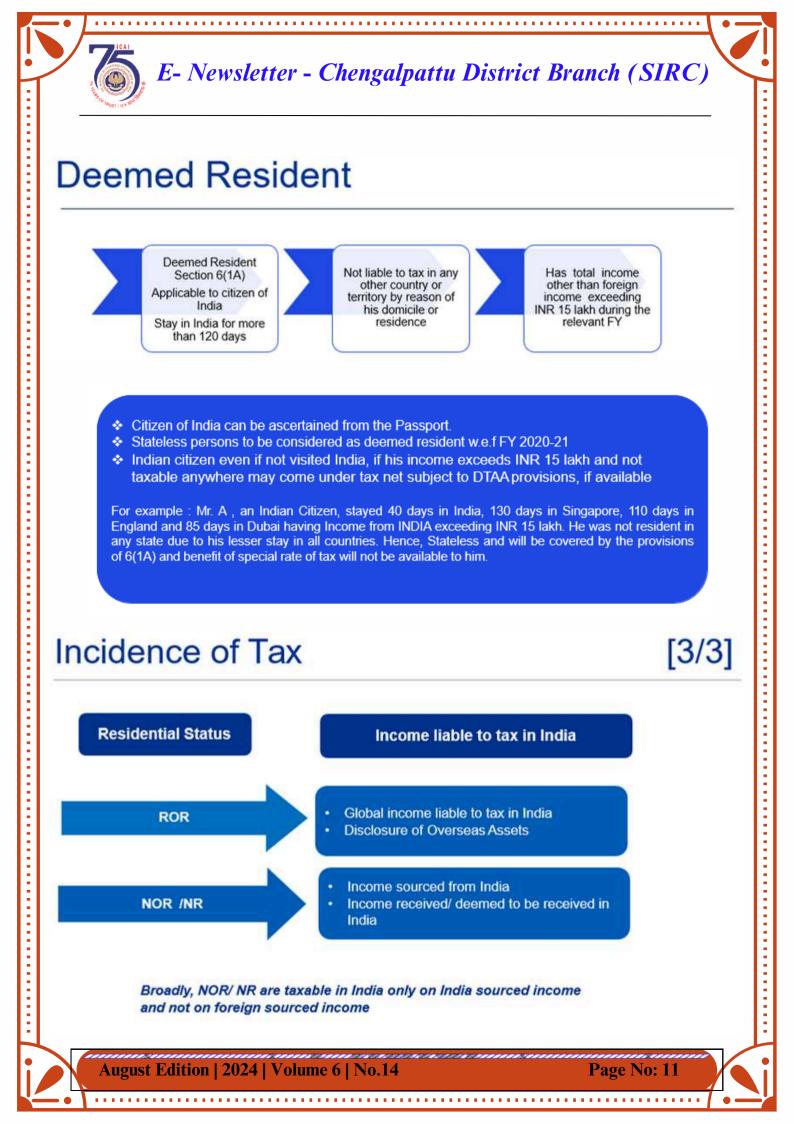




*In case of Indian citizen leaving India for the purpose of employment or as a member of the crew of an Indian ship - 60 days gets substituted for 182 days - in year of departure.

*In case of Citizen of India/ Person of Indian being outside India, coming to origin - while India on a visit – 60 days get substituted for 182 days**

** The Finance Act, 2020, introduced new type of residency called deemed residency





Taxability of various sources of income

A | Salary Income

Section 9(1) (ii) – Salary deemed to accrue or arise in India:

Salary for service rendered in India; and Rest / leave period preceding and succeeding services rendered in India

Section 15 – Salaries

Taxable on due / payment basis

Section 10(6)(vi) – Exemptions from Total Income

The remuneration received by a foreign citizen employed by a foreign enterprise for services in India is exempt if:

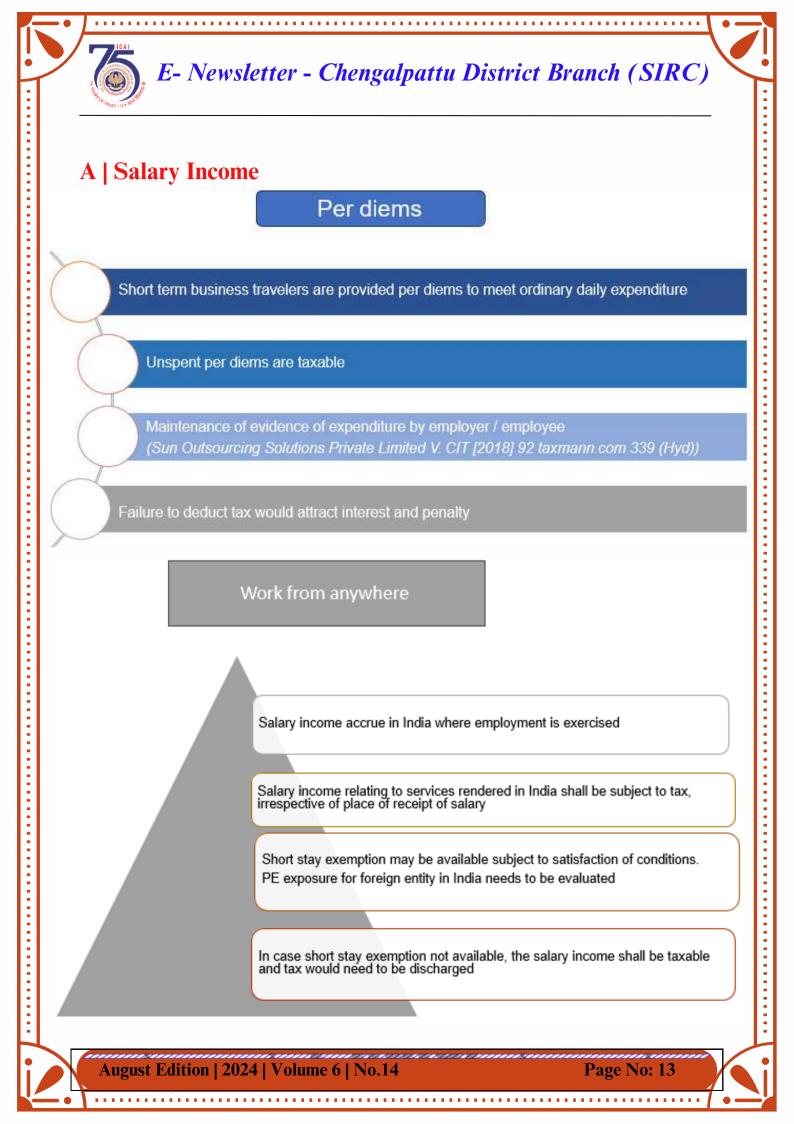
1. Foreign enterprise is not engaged in any trade or business in India;

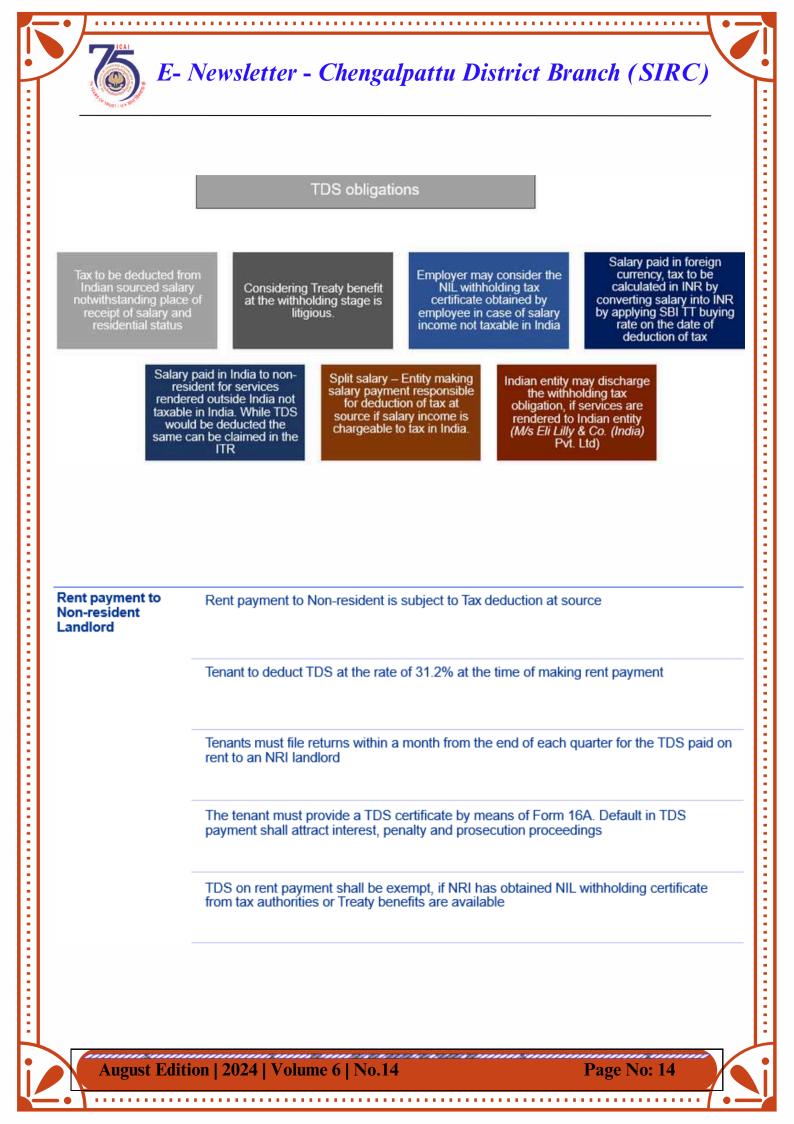
2. Foreign citizen's stay does not exceed 90 days

3. Remuneration is not liable to be deducted from the income of employer









C | Capital Gains

- · Capital gains arising on sale of property, securities or bonds are taxable in India.
- It shall be classified as long term or short-term depending on the period of holding.
- Tax rate on capital gains by Non-resident depends on the asset type and period of holding:

Type of Asset	Period of holding	Tax rate
Listed securities Unit of equity-oriented fund Units of UTI	<= 12 months – Short term > 12 months – Long term	Short term – 15% where STT paid, for others normal rate of tax Long term – 10% where STT paid, no indexation (Gain in excess of INR 1 lac)
Unlisted shares Land & building	<= 24 months – Short term > 24 months – Long term	STCG – at normal rate of tax LTCG – 20% with indexation
Unit of debt oriented fund Unlisted securities other than shares Other capital assets	<= 36 months – Short term > 36 months – Long term	STCG – at normal rate of tax LTCG – 10% without indexation

The buyer of property from NRI required to deduct TDS at the time of payment of sale consideration to NRI
 The TDS rate ranges from 20.8% to 23.92% depending on the quantum of sale consideration

D | Income from other sources

- Interest from NRE / FCNR account Exempt from tax
- Other interest income

Fully taxable at applicable tax rates If Treaty benefit is available, the rate is 15% NRI can choose the rate whichever is beneficial to him

Dividend income

Fully taxable at 20% If Treaty benefit is available, the rate is 25% NRI can choose the rate whichever is beneficial to him





E- Newsletter - Chengalpattu District Branch (SIRC) Treaty Benefits Relief under DTAA Home Country Whether DTAA Host Country Kes No

Note - Mandatory to obtain a Tax Residency Certificate from Country of Residence

taxes (Refer Note)

Exclusion of

Lower rates of

Income

Tax relief under the DTAA can be resorted to when the same income is liable to tax in two or more jurisdictions

Tax relief can be in the nature of:

Foreign tax credit

Exemption of income which is liable to tax in two or more jurisdictions (Article 16 of the Indo-US DTAA - Article on dependent personal services)

Advance Ruling in the case of S Mohan (AAR 741 of 2007, dated 24 August 2007) Advance Ruling in the case of British Gas India (P) Ltd v. CIT [2006] 157 Taxman 225

Credit of taxes on doubly taxed income (Article 25(2)(a) of the Indo- US DTAA -Article on relief from double taxation / elimination of double taxation)

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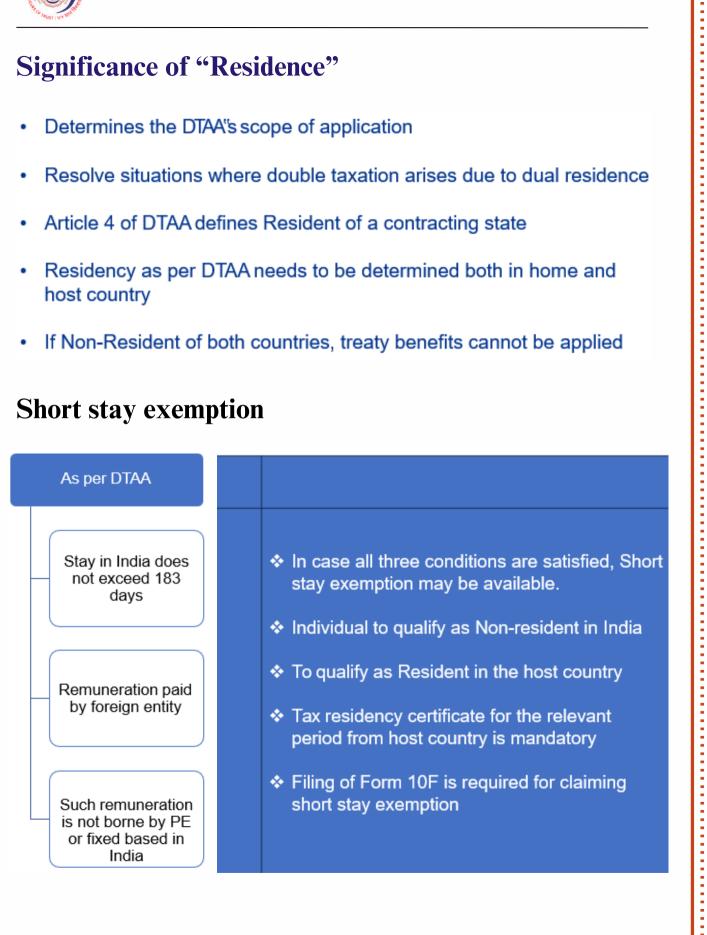
Claim benefit under domestic

tax laws

Significance of "Residence"

- Determines the DTAA's scope of application
- Resolve situations where double taxation arises due to dual residence
- Article 4 of DTAA defines Resident of a contracting state
- Residency as per DTAA needs to be determined both in home and host country
- If Non-Resident of both countries, treaty benefits cannot be applied

Short stay exemption





Compliance for Non resident

Annual Compliances

> Advance tax on non-salary income

If the tax liability (net of tax deducted at source) on the other income (i.e. other than salary income), exceeds INR 10,000

Due date for payment of advance tax withing the relevant FY is:

Due Date	 tax payable %
15 June	- 15 % of FY
15 Sep	- 45% of FY
15 Dec	- 75% of FY
15 Mar	- 100% of FY

 Shortfall / default in payment of advance tax will attract interest

 Rebate under section 87A not applicable to Nonresident

Personal obligation of the individual

- File Income tax return on or before the due date of 31 July
- Appropriate ITR form to be selected.
- Income to be disclosed is based on the residential status in India

 For NR individuals, claiming exempt income should disclose appropriately in Exempt Income Schedule in the ITR

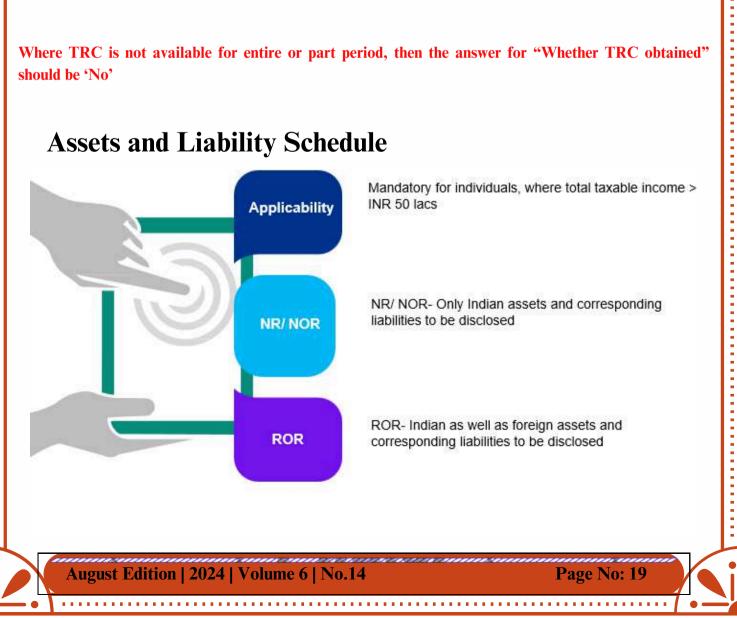
 Schedule AL - specified assets and liabilities to be disclosed if the total income exceeds INR 5 million

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Repo	orting for						
	ing in	exclusio	n of exen	npt incom	e under	DTAA	
Other	exempt income (inclu	ding exempt income o	of minor child)		3	į	
SI. No.	Nature O	of Income	Desc	ription	A	nount	
1	1	2		3		4	
Income not chargeable to tax as per DTAA							
SI. No.	Amount Of Income	Nature Of Income	Country code & Name	Article of DTAA	Head of Income	Whether TRC obtained (Y/N)	
1	2	3	4	5	6	7	
1	17,42,693	Salary Income	45-DENMARK	16	Salary	Y	
Total	Income from DTAA not	chargeable to tax			4	17,42,69	
Pass t	hrough income not cha	argeable to tax (Schee	dule PTI)		5	1	
	(1+2+3+4+5)	5 N	. S				

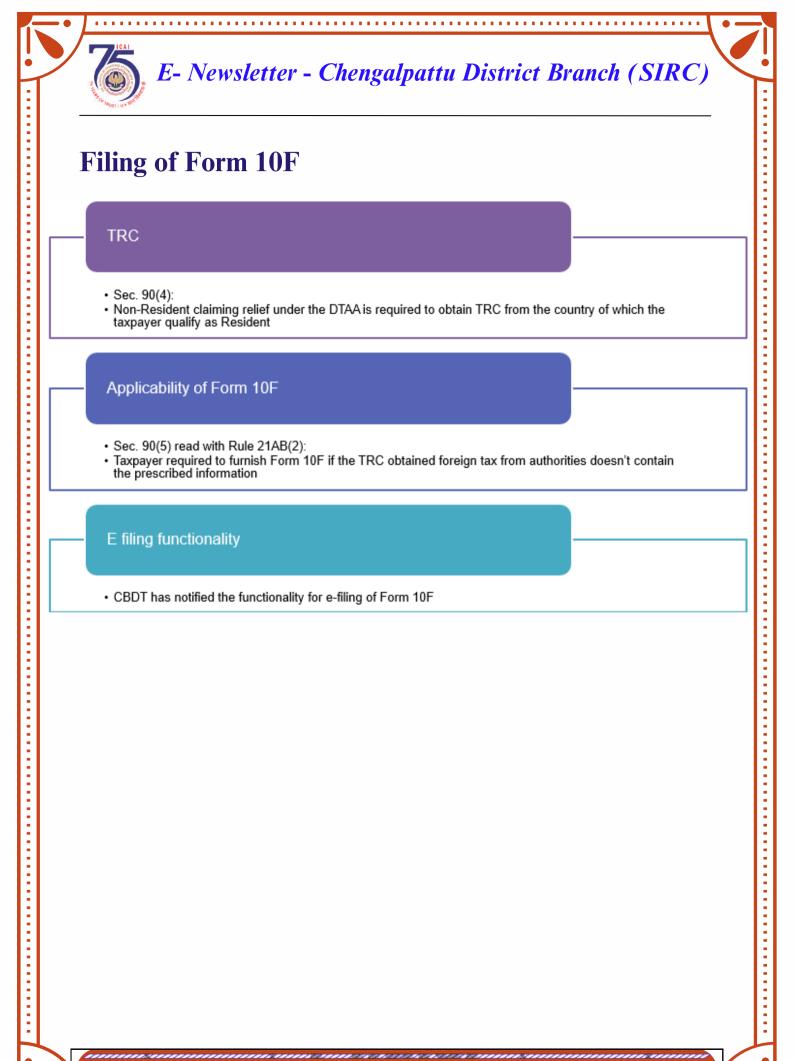
Where TRC is not available for entire or part period, then the answer for "Whether TRC obtained" should be 'No'

Assets and Liability Schedule



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E- Newsletter - Chengalpattu District Branch (SIRC)
A PROST I WAR
For determining the threshold of INR 5 million, taxable income (not gross total income) should be
considered;
Assets gifted to spouse during the FY - For donor - No (as the asset was not held by him as on 31
March of the FY)
For recipient - Yes (if taxable income exceeds INR 5 million).
PF balance as on 31 March of the FY is not required to be reported
Assets and Liability Schedule
In case no assets are held as on 31 Mar 2024 / there is no corresponding liability as on 31 March 2024; No requirement for disclosure
requirement for disclosure
Insurance policies- Total amount of policy premium paid since inception till 31 Mar 2024
Shares and Securities- Includes investment in shares and securities (including any investment in National
Pension Scheme)
Bank (including all deposits) shall include Fixed/ Time/ Recurring deposits/PPF
Cash in hand implies actual hard cash in hand as on 31 Mar 2024
Cash in hand implies actual hard cash in hand as on 51 Mai 2024
In case of any outstanding loans against the Assets mentioned in point A and B of schedule, outstanding
Ioan amounts as on 31 March 2024 is to be provided
All values are required to be reposted at COST (market value is not required)









CA. Sirish M I

Permanent Establishments as per Income-tax Act

Concept of PE and its significance

- Today, the world has become a 'global village' where every destination is accessible with the advent of technologies and infrastructure. Accordingly, Companies have gone global in their operations and expanding business beyond boundaries.
- Over the years, two types of cross border transactions have emerged:

1. Undertaking business with a Country

2. Undertaking business in a Country

- · Such activities can be carried out by its employees, agents, or from a fixed place of business.
- In these situations, following questions emerge:

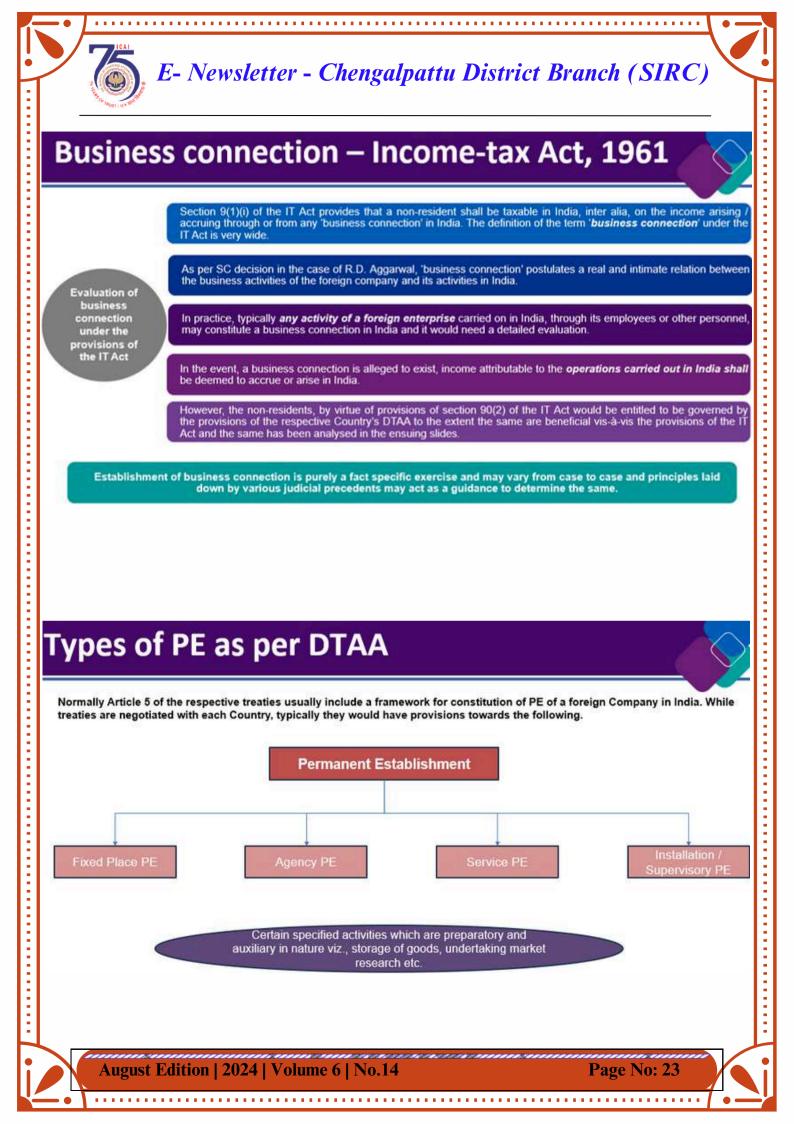
- ✓ Which Country has the right to tax the business profits earned by the foreign company?
- ✓ If the Country in which the Company has a presence must tax the profits, how much to be taxed?

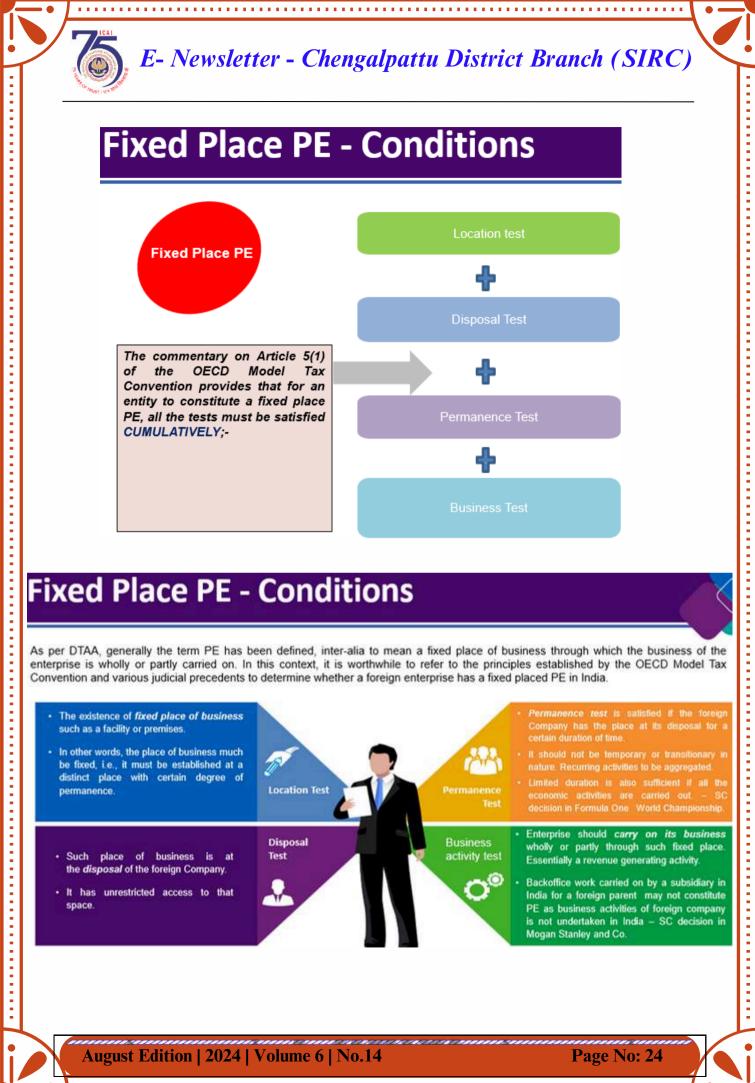
PE under the Income-tax Act, 1961

- The concept of PE was introduced in the Income-tax Act, 1961 ('IT Act') as part of the statutory provisions
 of transfer pricing by the Finance Act, 2001
- Circular No. 14 of 2001 ([2001] 252 ITR (St.) 65, 107) clarified that the term PE has not been defined in the IT Act, but its meaning may be understood with reference to the tax treaty entered into by India.
- However, vide Finance Act, 2002, the definition of PE was inserted in the Act under section 92F(iiia) which states that the PE includes a fixed place of business through which the business of the enterprise is wholly or partly carried on.
- Morgan Stanley [2007] 292 ITR 416 (SC) Supreme Court observed that the definition of PE provided under the Act is an inclusive definition.
- Further, for non-residents to be taxed in India, the activities they are carrying out should have a business connection in India and the same has been dealt with in the subsequent slide.

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Fixed Place PE – Illustrations

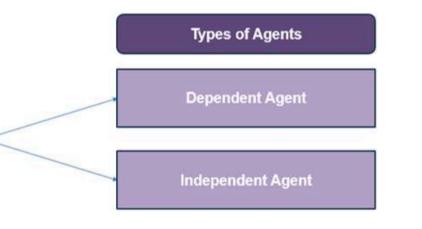
SI. No.	Facts	Location test	Disposal test	Permanence test	Business activity test	Fixed Place PE (Yes / No)
1	Salesperson regularly visiting customer premises to take orders and meets the purchase director in his office	Satisfied	Not satisfied	Satisfied	Satisfied	No. Cumulatively all conditions to be satisfied.
2	Employee from a foreign company is allowed to use office of a subsidiary in India for a prolonged period under a contract to carry out business activities of a foreign company	Satisfied	Satisfied	Satisfied	Satisfied	Yes
3	Truck Company uses the delivery dock at a customer's warehouse every day for a number of years to deliver the goods	Satisfied	Not satisfied	Satisfied	Satisfied	No. Cumulatively all conditions to be satisfied.

Agency PE – Conditions and Analysis

India's DTAA's normally provide for constitution of Agency PE where a dependent agent undertakes certain activities in India on behalf of a foreign company

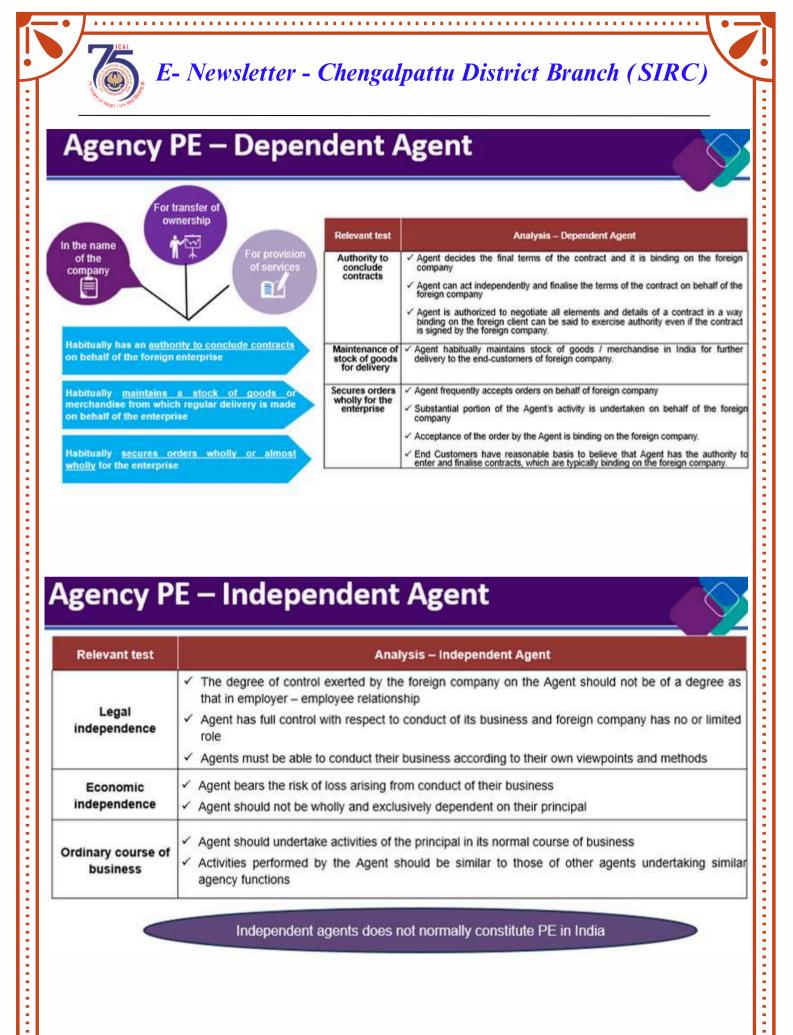
Principal – Agent relationship:

- Agent works under the direction and supervision of the principal and acts on behalf of the principal while dealing with third parties
- Activities undertaken are in relation to the business activities of the principal
- Principal can intervene in the performance of the agent



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Agency PE – Independent Agent

Relevant test	Analysis – Independent Agent
11125-20130-011	The degree of control exerted by the foreign company on the Agent should not be of a degree as that in employer – employee relationship
Legal independence	 Agent has full control with respect to conduct of its business and foreign company has no or limited role
	✓ Agents must be able to conduct their business according to their own viewpoints and methods
Economic	✓ Agent bears the risk of loss arising from conduct of their business
independence	✓ Agent should not be wholly and exclusively dependent on their principal
Ordinary course of business	 Agent should undertake activities of the principal in its normal course of business Activities performed by the Agent should be similar to those of other agents undertaking similar
	agency functions

Independent agents does not normally constitute PE in India

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Service PE - Conditions

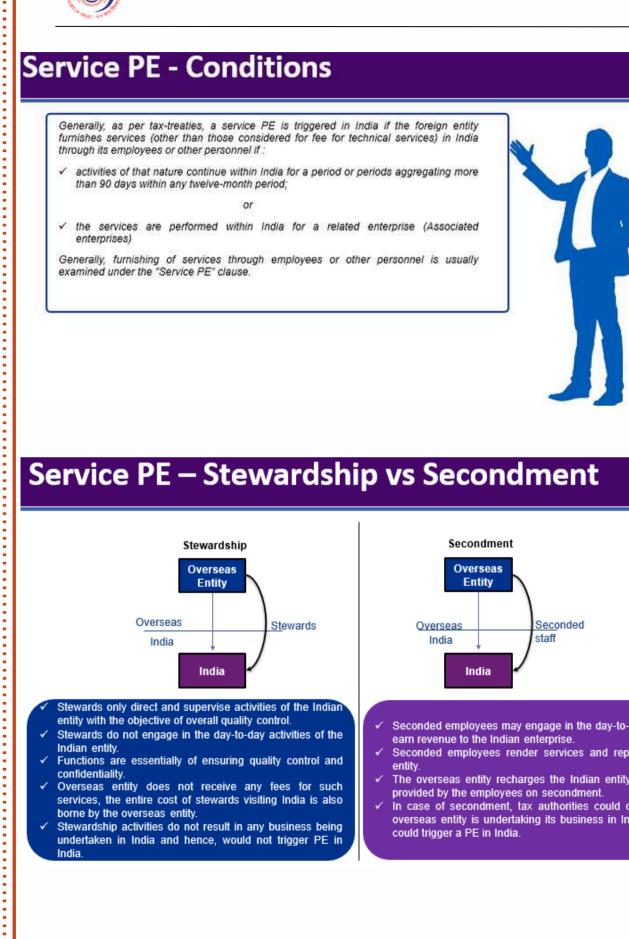
Generally, as per tax-treaties, a service PE is triggered in India if the foreign entity furnishes services (other than those considered for fee for technical services) in India through its employees or other personnel if :

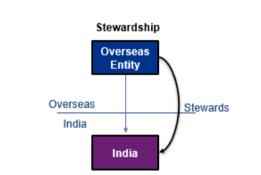
activities of that nature continue within India for a period or periods aggregating more than 90 days within any twelve-month period;

or

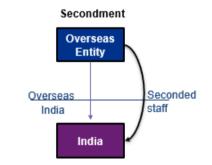
the services are performed within India for a related enterprise (Associated enterprises)

Generally, furnishing of services through employees or other personnel is usually examined under the "Service PE" clause.





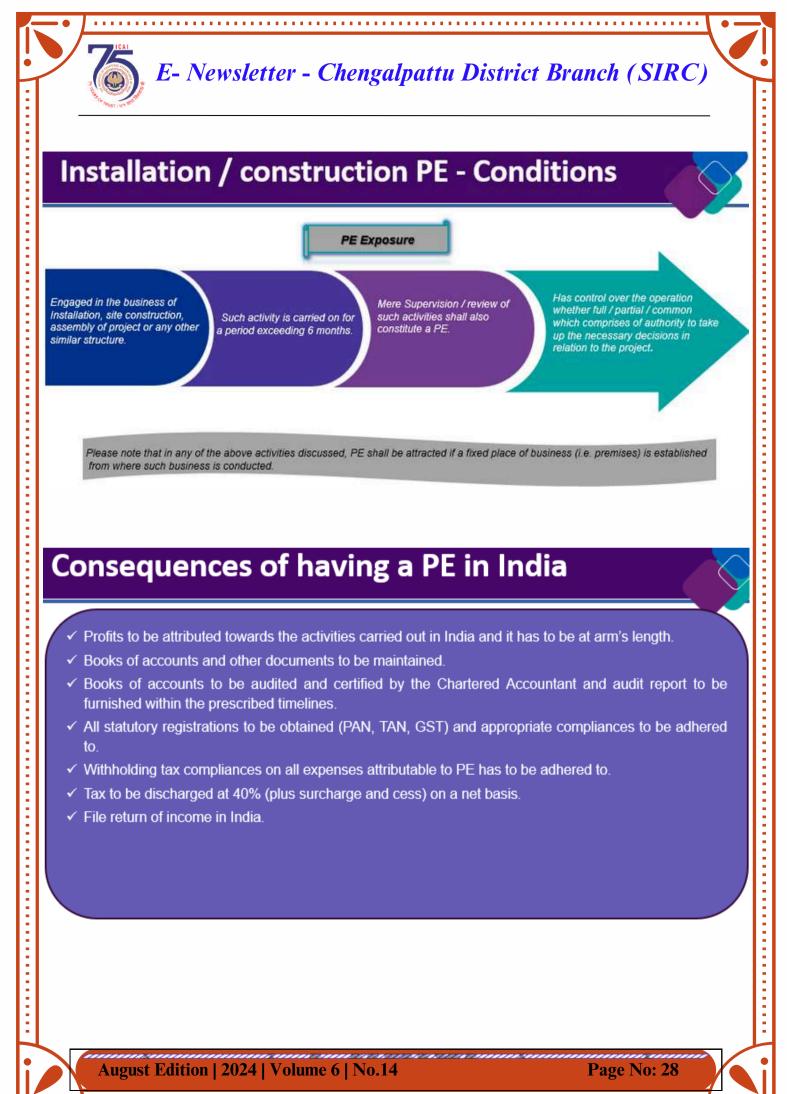
- Stewards only direct and supervise activities of the Indian entity with the objective of overall quality control.
- Stewards do not engage in the day-to-day activities of the Indian entity.
- Functions are essentially of ensuring quality control and confidentiality
- Overseas entity does not receive any fees for such services, the entire cost of stewards visiting India is also borne by the overseas entity.
- Stewardship activities do not result in any business being undertaken in India and hence, would not trigger PE in India

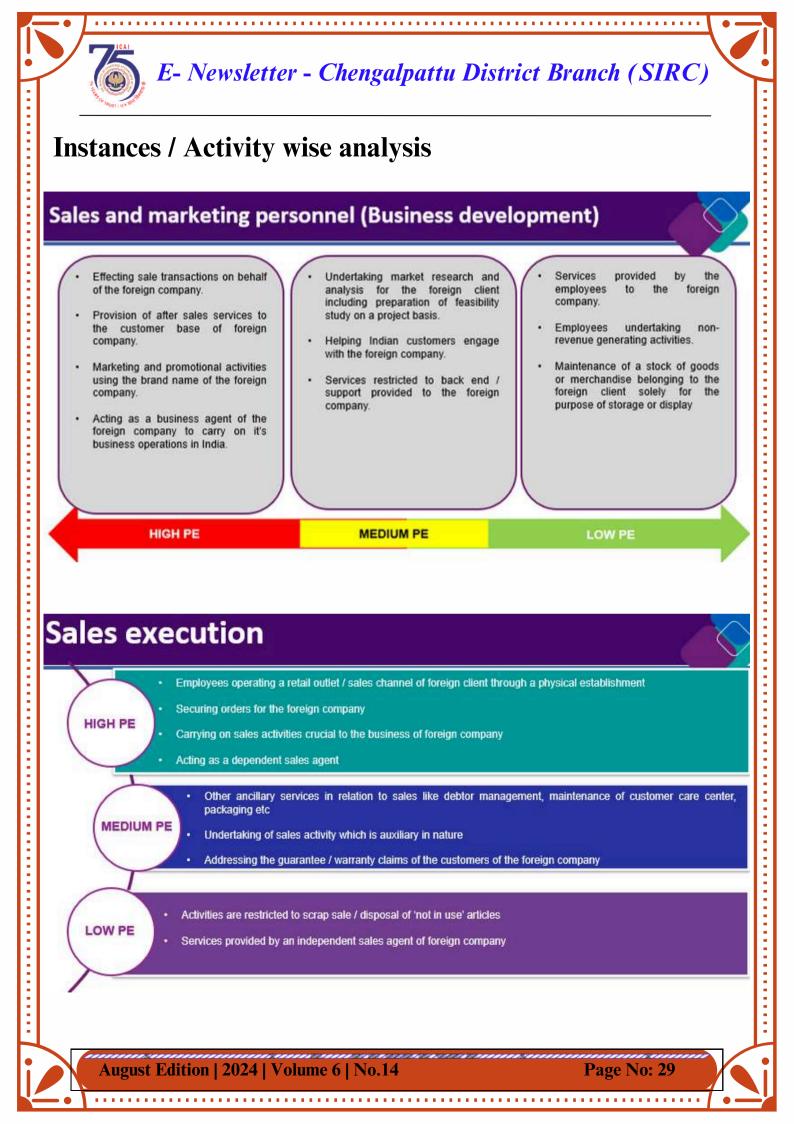


- Seconded employees may engage in the day-to-day activities that earn revenue to the Indian enterprise.
- Seconded employees render services and report to the Indian entity
- The overseas entity recharges the Indian entity for the services provided by the employees on secondment.
- In case of secondment, tax authorities could conclude that the overseas entity is undertaking its business in India and hence, it could trigger a PE in India

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Senior Management



HIGH PE

- Strategic decision making / drafting of policies by the employees of the foreign company which is crucial to the business of the Indian entity.
- Entering / conclusion of contracts & agreements in the name of the foreign company.
- Key managerial activities performed by the employees of the foreign company.

MEDIUM PE

- Key decisions in relation to the day-today business of Indian entity is performed by employees of foreign company.
- Activities / decision supporting the business of closely related enterprise.





LOW PE

- Routine decision making on a daily basis in relation to administration and management of the business of the foreign company in India.
- Non-binding authority to take ground level decisions.
- Execution of policies drafted by the top management.





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	E- Newsletter - Chengalpattu District Branch (SIRC)
	<u>Upcoming Programs</u>
	THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA (Set up by an Act of Parliament)
	CHENGALPATTU DISTRICT BRANCH (SIRC)
Fopics	: Union budget 2024-2025 Highlights
•	: CA. Bhuvaneswari R V & CA. Muthu Abirami T V
Date	: Thursday, 01.08.2024
Place	: Our Branch Premises
opics	: All about Charitable Trust, Association & Society
1	(Under the aegis of "Direct Tax Committee")
peaker	: Mr. Prasanth Srinivas
) Date	: Wednesday, 14.08.2024
Place	: Our Branch Premises
Fopics	: Transfer pricing
Speaker	: CA. Muthu Palaniappan C
Date	: Tuesday, 20.08.2024
Place	: Our Branch Premises

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