

Saturday  
International  
Tax  
Gyaan

SITG

# SATURDAY INTERNATIONAL TAX GYAN !!!

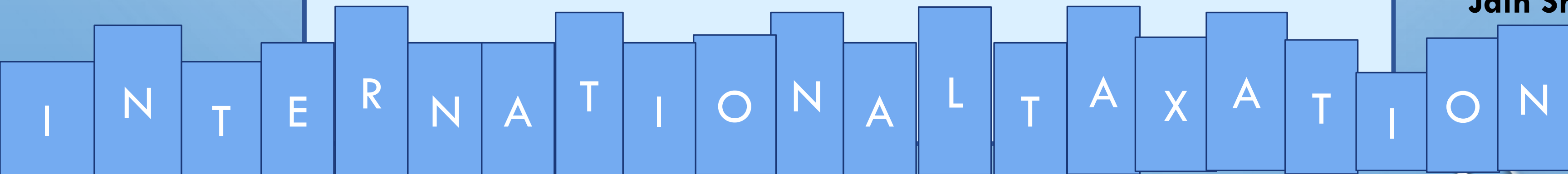
## #taxmadeeasy

# SITG No. 193

## Basic FAQs on International tax Transactions!!

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Jain Shrimal & Co.



# FAQ1- Dual Residency

**Mr. A is the citizen and resident of USA. In the P.Y. he came to India for a total of 190 days. Now he become resident of India as per Provisions of Income tax Act, 1961. Now will Mr. A be considered as resident of both the countries or only of one country for the purpose of taxability?**

**Solution:**

## **Determination of RESIDENTIAL STATUS:**

- For determination of residential status of a person who is the resident of 2 countries simultaneously i.e. India and USA, then for the purpose of determination of residential status we should check the DTAA between both the respective countries.
- Generally **Article 4** deals with determination of residency of a person under DTAA. And the Article 4 provides **The Tie Breaker Rule**, where in case a person become resident of both the countries i.e. India and USA .

# FAQ1- Dual Residency

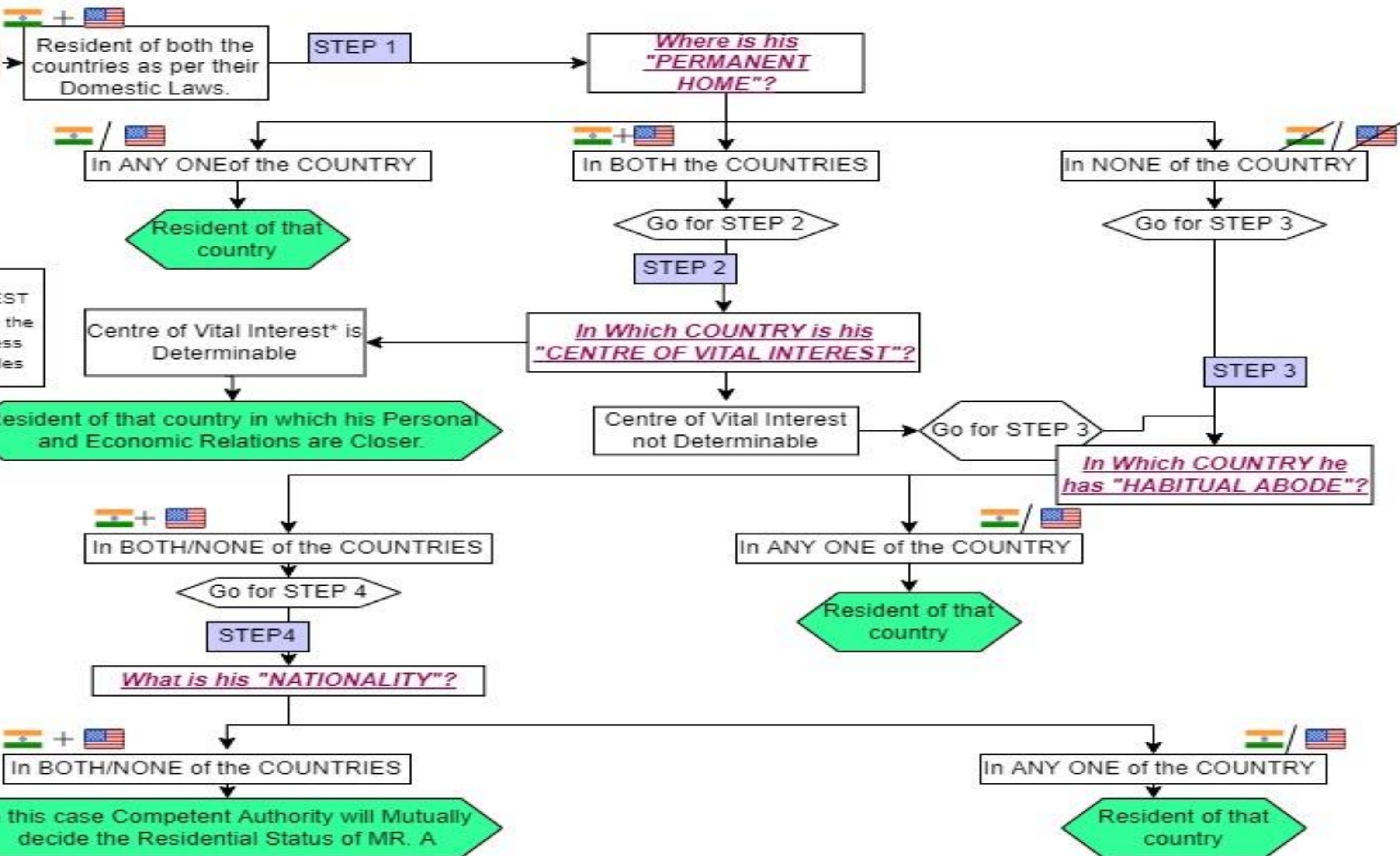
- As per **Tie Breaker Rule** we have to follow **4 STEPS** for determination of the residential status:

**STEP1-Permanent home Test:** If the **Permanent Home** of Mr. A is in both the countries then we will look for Step2 otherwise he will be resident of country in which he has permanent home.

**STEP2-Centre of Vital Interest Test:** If the **Centre of Vital Interest** of Mr. A is in both the countries then we will look for Step 3 otherwise he will be resident of country in which he has centre of vital interest.

**STEP3-Habitual Abode Test:** If the **Habitual Abode** of Mr. A is in both the countries then we will look for Step4 otherwise he will be resident of country in which he has habitual abode.

**STEP4-Nationality Test:** If Mr. A have the **Nationality** of both Countries then the Competent Authority will mutually decide the residential status of Mr. A.



\*VITAL INTEREST can mean where the person's business and family resides

**Note-** This Tie-Breaker Rule is as per OECD Model and respective DTAA needs to be seen for taking a decision.

# FAQ2- Credit of tax paid in other countries

▪ **Mr. A, Resident of India, earned Income from foreign country. Tax has been deducted in foreign country. Now will Mr. A have to pay the tax in both the countries or there any other method to eliminate double taxation?**

## Solution:

Method of elimination of double tax would differ from country to country. However, there are generally **two methods** to eliminate double taxation of income:

- **Method1 - Exemption Method:**

In this method, if income is once taxed in the one country, then it will get full exemption in the other country of his residence.

So in the above case, if the income of Mr. A is get taxed in foreign country, then such Income will not chargeable to tax in India and will get the full exemption in India.

# FAQ2- Credit of tax paid in other countries

- **Method2 - Credit Method:**

In this method, the income will be taxable in both countries, but the taxpayers can get the relief in the form of credit in the resident country.

So in the above example, the income of Mr. A will get taxed in India also. But Mr. A will get the tax credit of tax paid in foreign country while filing his income tax return in India.

**Note:**

In relation to transaction with countries with whom India has not entered into any DTAA credit of tax paid in foreign country shall be available as per Section 91 of Income tax Act for elimination of double taxation.

## FAQ3- Exempt Income in one country and taxable in another

▪ **Mr. A, the Resident of India, earned Income from USA. The income earned in USA is not taxable as per the tax law there. Now will there be any tax credit available in India?**

### Solution:

- There are two methods mentioned in the previous slide if the income is taxable in 2 countries. But if the income is Taxable in one country and Exempt in the other country, then
  - **If Income is Taxable in resident country and Exempt in other country:**  
Then in such case the income will be taxable in the Resident country and no credit will be given to the assessee because there is no dual taxation over the income.
  - **If Income is Exempt in resident country and Taxable in other country:**  
Since the income is taxable in the other country but exempt in the resident country, therefore, there will be no double taxation over the income and no credit will be made available to the assessee in resident country.

# FAQ4- Requirements to obtain PAN

▪ **Mr. A, Resident of USA, earned Royalty income of Rs. 9,85,000 from India. Is he required to obtain PAN?**

▪ **Solution:**

▪ **Requirement for obtaining PAN :**

As per Section 139A of Income Tax Act 1961, following persons are required to obtain PAN:

- **If the total income of the person exceeds the limit which is not chargeable of Income tax.**
- **Who is carrying on any business or profession whose turnover, total sale or gross receipt is more than Rs. 5,00,000.**
- **Who is required to furnish a return of income u/s 139(4A)(Income from Charitable and Religious purpose).**
- **Who, being an employer, required to furnish return for fringe benefits u/s 115WD.**
- **Who, other than resident individual, enters into a financial transaction of Rs. 2,50,000 or more in a F.Y..**



# FAQ4- Requirements to obtain PAN

- who is the managing director, director, partner, trustee, author, founder, karta, chief executive officer, principal officer or office bearer of the person who enters into a above mentioned Financial Transaction.
- Who intend to enter into the transactions prescribed by board.

Note: However There are few exemptions mentioned in Rule 114AAB of the Income Tax Act in which a Non-resident is not required to obtain PAN in India.

Hence, the income of Mr. A is more than basic exemption limit. Therefore, he is **required to obtain PAN** in India.

# FAQ5 – Requirements to file return

▪ **Mr. A, Resident of USA, earned Royalty income of Rs. 9,85,000 from India and tax was deducted as per Income tax act. Is he required to file income tax return or not?**

▪ **Solution:**

• **Requirement for residents:**

As per the section 139 of Income Tax Act , If the resident person fulfil the conditions mentioned in the next slide then that person is required to file the his income tax return.

• **Requirement for Non-residents:**

If the income of Non-residents is deemed to be accrue or arise in India, and it fulfils the conditions mentioned in section 139 (conditions mentioned in diagram), then such Non-resident is require to file his income tax return in India.

# FAQ5 – Requirements to file return

## Various conditions which requires filing of Income Tax Return in Income Tax Act

### Income Criteria

Individual should have taxable income of **more than Rs. 2.5 Lakh**. Taxable income refers to source of income in India. Rs.2.5 Lakh is aggregate income from all taxable sources. In case of person other than individual there is no such exemption limit.

### Non-Income Criteria

- Aggregate deposits of **more than Rs. 1 Crore** in a current account in a financial year.
- Electricity Bills of **more than Rs. 1 Lakh** in a financial year.
- Expenditure of **more than Rs. 2 Lakh** in a financial year for foreign travel.

### Criteria introduced with insertion of RULE 12AB

- Total sales/turnover/gross receipts in business **exceeds Rs. 60 Lakh** in a financial year.
- Total gross receipts in profession **exceed Rs. 10 Lakh** in a financial year.
- Aggregate of TDS and TCS in a financial year is **more than Rs. 25000** or in case of resident senior citizen such aggregate is **more than Rs. 50000**.
- Aggregate deposits of **more than Rs. 50 Lakh** in a saving account in a financial year.

# FAQ5 – Requirements to file return

## **Exemptions for Non-Resident from filing return of income:**

As per Section 115G a **Non-Resident Indian** is not required to file income tax return in India in the following special circumstance:

a) If the total income of Non-Resident should consist of only

- Investment Income; or
- Long-term capital gain; or
- Both; and

b) The tax deductible at source should have been deducted from such income.

Further, If the non-resident earns income in the nature specified under section 115A of the Act and if the rate of tax deducted at source is also as per 115A, then the Non-resident is not required to file Income tax return in India u/s 139(1).

Hence, the income of Mr. A is more than basic exemption limit, however TDS was deducted as per Income tax act. Therefore, he is **not required to file Income tax return** in India as per exemption u/s 115A of the Act.



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Jain Shrimal & Co.



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