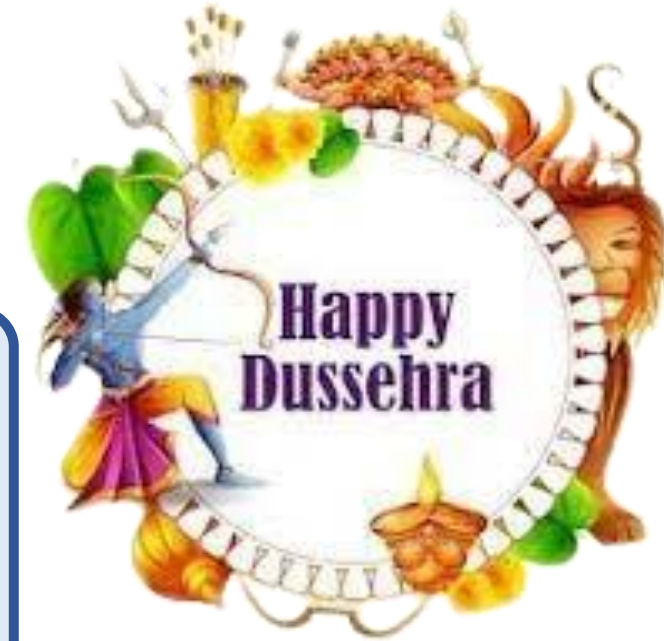


Series on Article 8 – Profit arise from shipping and Air Transport

PART-II

Provisions of Income Tax Act related to taxation on profit arise from shipping and Air Transport



12.10.2024

Jain Shimal & Co.

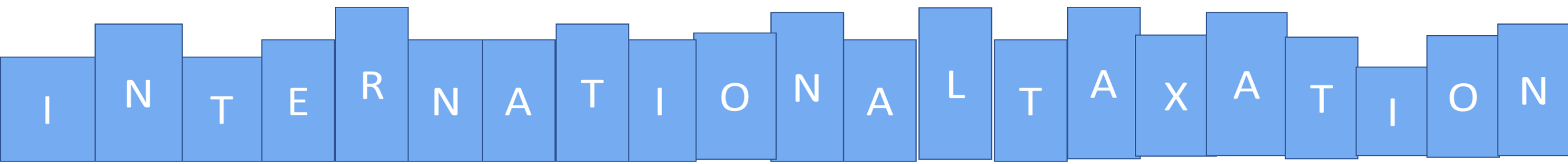
I N T E R N A T I O N A L T A X A T I O N



Overview

In the previous SITG, we discussed about basic overview of Article 8 of Tax treaties. In which we covered important terminology relating to the Article 8, such as meaning of term 'Ship', 'Aircraft', 'Operation of ship', 'International Traffic' and 'Place of effective management'. Types on income which is generally covered under the Article 8 was also covered in the previous SITG.

In this SITG, we will discuss about the provisions of Income Tax Act related to taxation on profit arise from shipping and Air Transport such as Section 44B,, 44BBA, 44BBC and 172.



Section 5(2) – Scope of Income

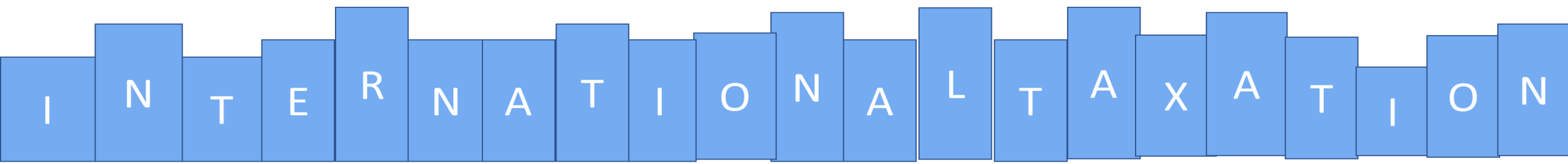
For the levy of tax on a non-resident's income, the income must fall within the scope of income i.e. Section 5(2) of the Income Tax Act, which defines the taxability of income accruing or arising in India.

5(2) :- Total income of any previous year of a person who is a non-resident includes all income from whatever source derived which—

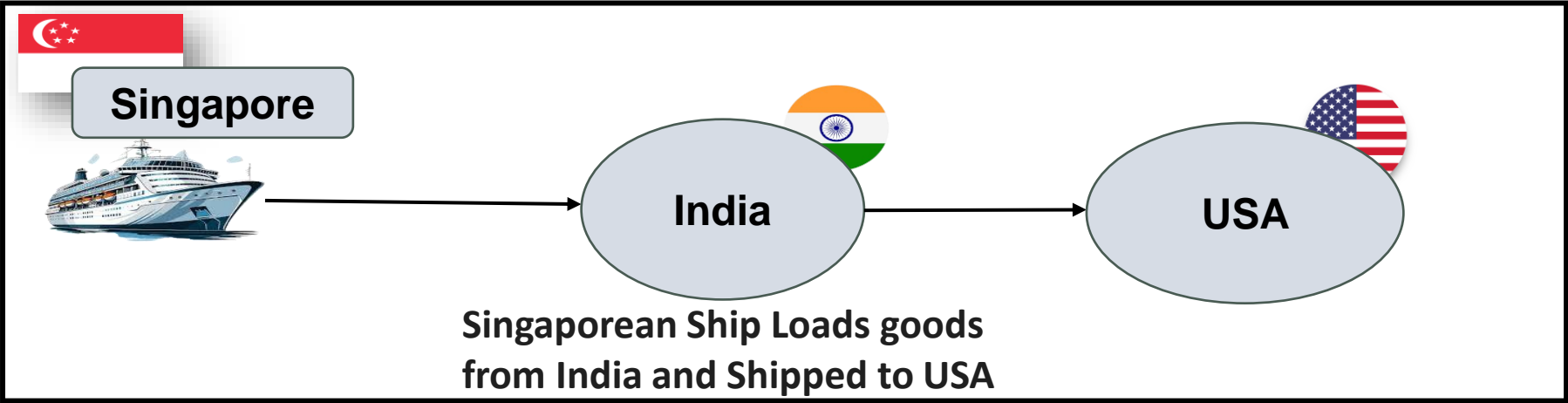
(a) is received or is deemed to be received in India in such year by or on behalf of such person ; or

(b) **accrues or arises** or is deemed to accrue or arise to him in India during such year.

Hence, tax can be levied only on income which is covered under the provisions of Section 5(2). If any income, which is **not accrue or arises in India**, such income would not be taxable under Income Tax act, hence, there will be **no need of taking benefit of Tax treaty**.



Income accrue or arise in India



Accrue or arise in India ✓



Accrue or arise in India? ✗

Since the service is outside India and payment is also received outside India, it doesn't accrue or arise in India.

Section 44B

“Special provision for computing profits and gains of shipping business in the case of non-residents”

W.e.f. 01.04.2025 the above marginal heading will be substituted with :-

“Special provision for computing profits and gains of shipping business other than cruise shipping in case of non-residents”

Notwithstanding sections 28 to 43A

Applicability - Non-residents engaged in the business of operation of ships

Deemed profit - 7.5% of the following :-

- i) **Amount paid or payable (whether in or out of India) to or on behalf of the assessee on account of carriage of passengers, livestock, mail or goods shipped at any port in India;** and
- ii) **Amount received or deemed to be received in India by or on behalf of the assessee on account of carriage of passengers, livestock, mail or goods shipped at any port outside India;**

Note:- i) Demurrage charges or handling charges or any other amount of similar nature will also be included in above.

ii) w.e.f. 1-4-2025, on cruise shipping section 44BBC would be applicable.

Section 44B is used when the non-resident shipping company has a regular presence in India or regularly operates in India

Whether inland haulage charges are covered?

The Mumbai Tribunal had considered this issue as to **whether inland haulage charges was covered under the Explanation and therefore taxable under section 44B of the Income Tax Act.**

The Tribunal held that the very nature of items prescribed in the Explanation being demurrage charges or handling charges which precede "any other amount of similar nature" indicates that the latter category has to draw colour from the items referred to it in the earlier part and the meaning of the later expression has to be understood in the context of the former words.

Handling charges are charges paid for loading, unloading, stacking of containers and demurrage charges are in the nature of penalty for non-removal of cargo in time. Inland haulage charges is basically inland transportation from the exporter's place to the port which separates it from demurrage charges and **hence cannot fall within the ambit of the Explanation to section 44B.**

Dy. DIT v. Safmarine Containers Lines N.V. [2009] (120 ITD 71)/[2008] 24 SOT 211 (Mumbai Tribunal)

Section 172

“Profits of non-residents from occasional shipping business”

“Shipping business of non-residents”

Notwithstanding anything contained in the other provisions of this Act

Applicability - levy and recovery of tax in the case of any ship, belonging to or chartered by a non-resident, which carries passengers, livestock, mail or goods shipped at a port in India (**Occasional shipping**)

Taxability - It is applied on a **voyage-wise basis**, meaning that each voyage is treated as a separate taxable event

Deemed profit – 7.5% of :-

- I) amount paid or payable on account of such carriage to the owner or the charterer or to any person on his behalf,
- II) Demurrage charge or handling charge or any other amount of similar nature

Section 172 provides for **simplified procedures**, where the **tax can be collected before the ship departs from the Indian port.**

Procedure of Levy and collection of tax u/s 172

- ❑ **Pre-Arrival:** File an **undertaking** with the Income Tax Officer, guaranteeing to file a voyage return and pay taxes.
- ❑ **Before Departure:**
 - Submit **Form 43** with voyage income details to the Tax Officer.
 - Obtain the Tax Officer's Port Clearance Certificate (PCC) after tax payment.
 - Get the Customs PCC based on the Tax Officer's PCC.
- ❑ **Post-Departure:** File the Voyage Return u/s 172(3) within 30 days of the ship's departure, paying any additional taxes or submitting a DIT (Director of International Taxation) Relief Certificate if no tax is due.
- ❑ **Assessment:** The Tax Officer must pass the voyage assessment order within **nine months** from the end of the financial year in which the Voyage Return was filed.
- ❑ **Net-Income Option:** Companies can choose to be taxed on a net-income basis under Section 172(7) instead of gross receipts.
- ❑ **No need for PAN** or regular filing; compliance ends once the tax for the voyage is paid.

Section 172 vs. 44B

Aspect	Section 172	Section 44B
Applicability	Occasional voyages by non-residents	Regular shipping operations by non-residents
Basis of Taxation	Voyage-by-voyage	Presumptive taxation on total income for the year
Collection of Tax	Before departure of the ship	Annual return filing and tax payment
Taxable Income	7.5% Gross receipts from each voyage (except for option under 172(7)).	7.5% of gross receipts deemed to be taxable income
Filing Requirement	No ongoing filing after payment for the voyage	Regular annual return filing
Nature of Operations	Temporary/one-off shipping activities	Ongoing/regular shipping business
Requirement of PAN	PAN is not required	PAN is required

Section 44BBA

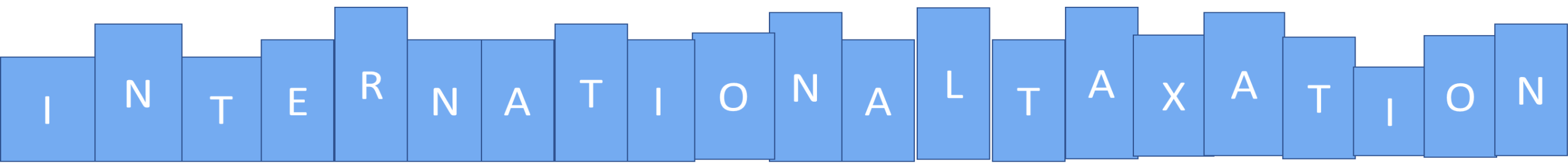
Special provision for computing profits and gains of the business of operation of aircraft in the case of non-residents.

Notwithstanding sections 28 to 43A

Applicability - non-residents engaged in the business of operation of aircraft

Deemed profit - 5% of the of the aggregate of the following amount:-

- i) The amount paid or payable (whether in or out of India) to the assessee or to any person on his behalf on account of the carriage of passengers, livestock, mail or goods from any place in India; and
- ii) The amount received or deemed to be received in India by or on behalf of the assessee on account of the carriage of passengers, livestock, mail or goods from any place outside India.



Section 44BBC

Special provision for computing profits and gains of business of operation of cruise ships in case of non-residents

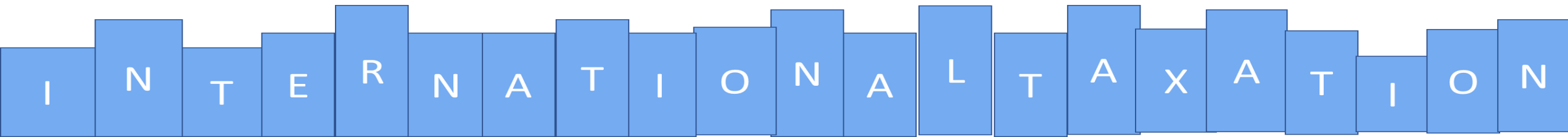
This section would be applicable from 1st April, 2025

Notwithstanding sections 28 to 43A

Applicability - Non-residents engaged in the business of operation of cruise ships subject to such conditions as may be prescribed

Deemed profit - 20% of the following :-

- i) The amount paid or payable to the assessee or to any person on his behalf on account of the carriage of passengers; and
- ii) The amount received or deemed to be received by or on behalf of the assessee on account of the carriage of passengers.

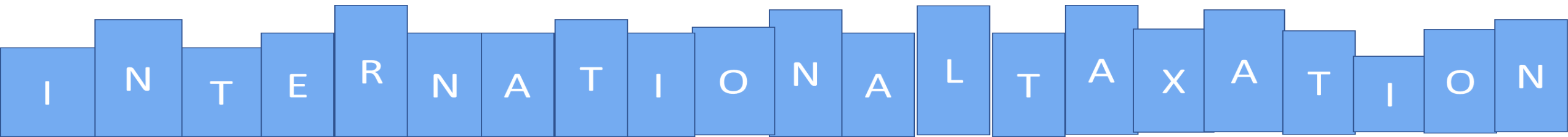


Our comments

Whether presumptive sections are optional or mandatory?

In the scheme of presumptive taxation, the assessee is presumed to have earned income at the rate of a certain percentage of his total turnover or gross receipts. If the assessee agrees to be taxed on presumed income, he is not required to maintain books of account. If, however, he claims that his income is less than the presumed figure, he is required to support his claim by producing books of account.

CIT v. Hyundai Heavy Industries Co. Ltd. [2007] (291 ITR 482)/ 161 Taxman 191(SC)





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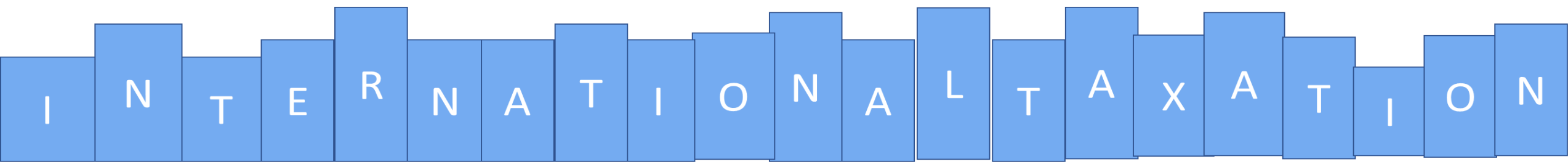


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