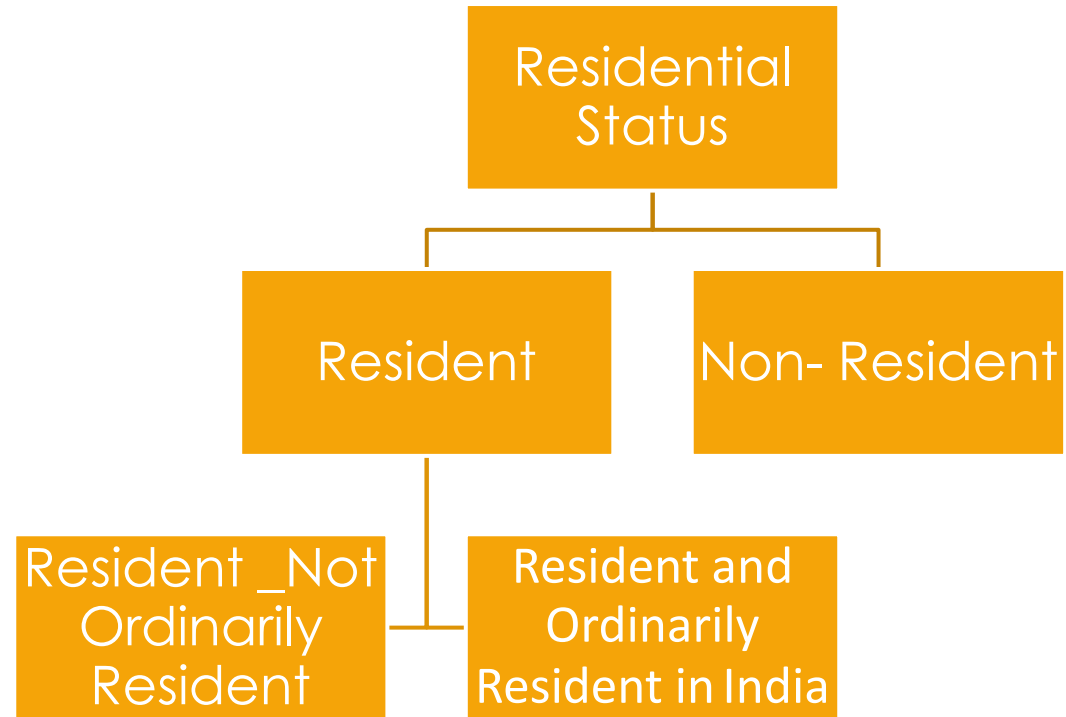


# Residential Status, International Taxation, and SFT Transactions

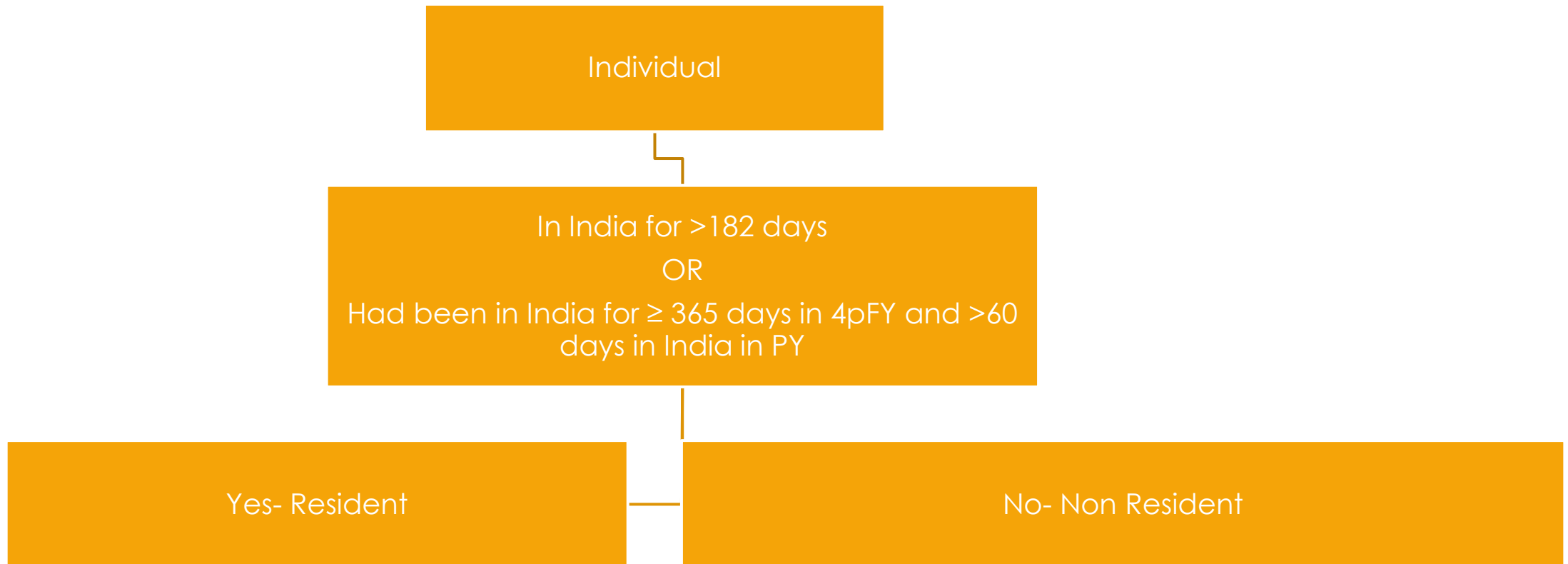
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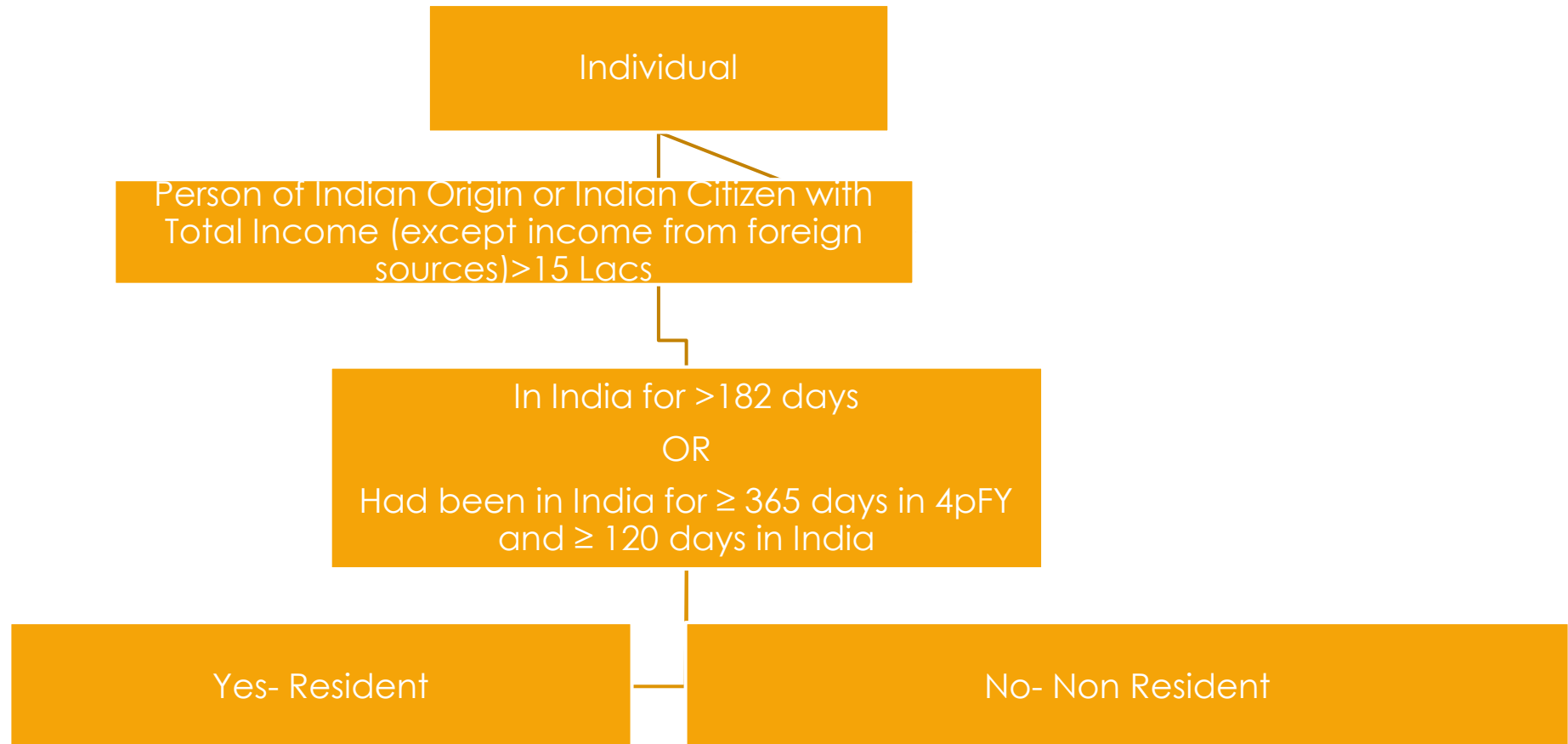
# Residential Status



# Residential Status- Individual

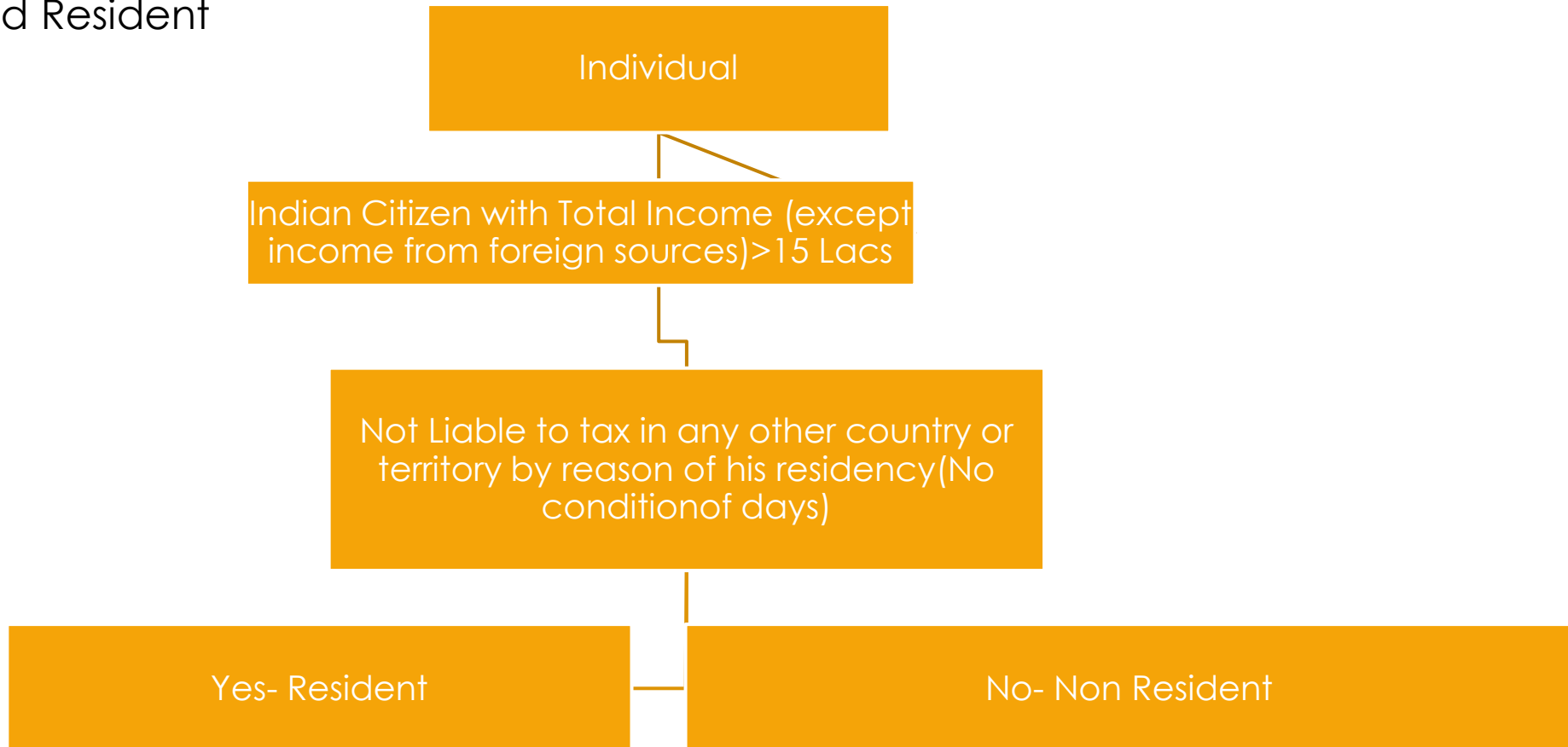


# Residential Status- Individual



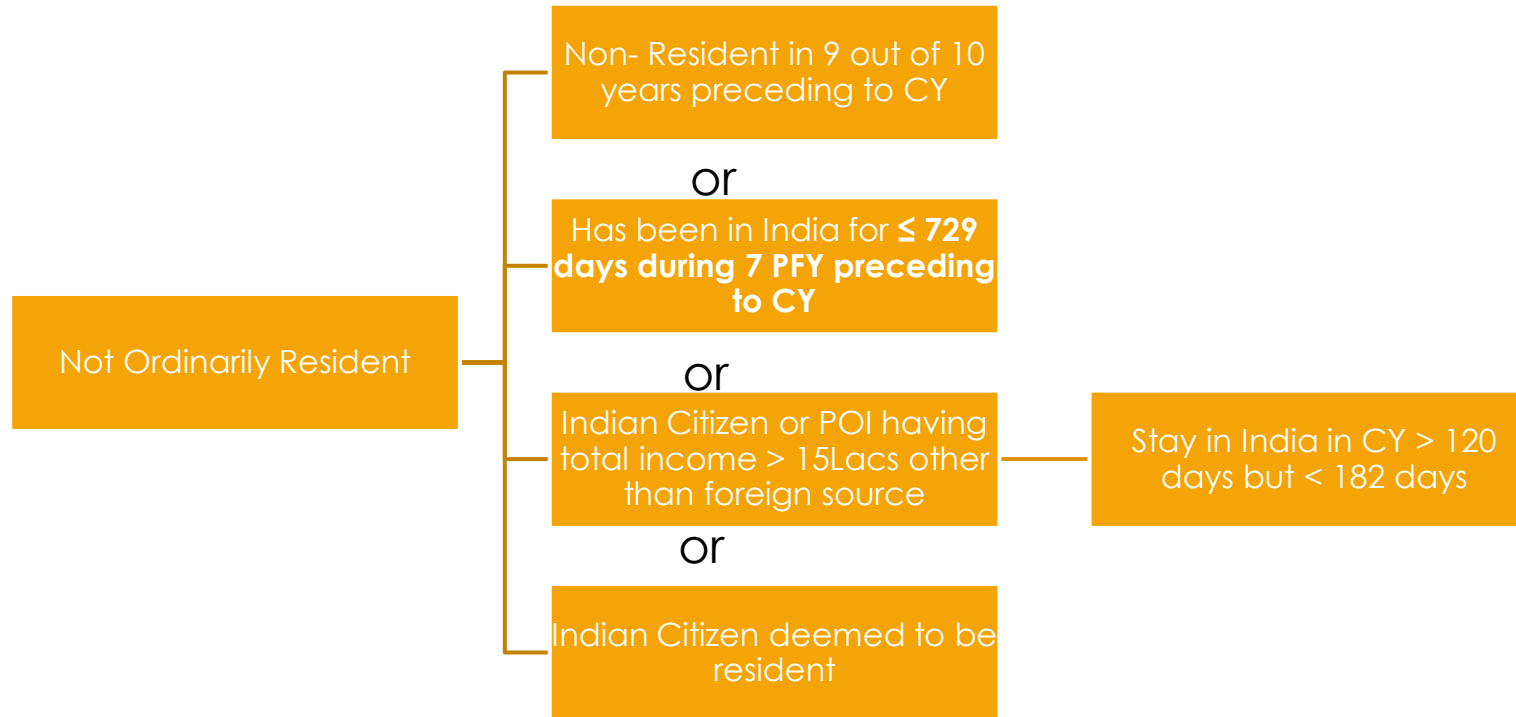
# Residential Status- Individual

Deemed Resident



# Residential Status- Individual

RNOR



# Residential Status- Individual

## Exceptions:

The following categories of individuals will be treated as resident in India only if the period of their stay during the relevant previous year amounts to 182 days or more. In other words, even if such persons were in India for 60 days or more (but less than 182 days) in the relevant previous year, they will not be treated as resident due to the reason that their stay in India was for 365 days or more during the 4 immediately preceding years.

- (1) Indian citizen, who leaves India during the relevant previous year as a member of the crew of an Indian ship or for purposes of employment outside India, or
- (2) Indian citizen or person of Indian origin<sup>1</sup> who, being outside India comes on a visit to India during the relevant previous year.

However, such person having total income, other than the income from foreign sources [i.e., income which accrues or arises outside India (except income from a business controlled from or profession set up in India) and which is not deemed to accrue or arise in India], exceeding ` 15 lakhs during the previous year will be treated as resident in India if -

- the period of his stay during the relevant previous year amounts to 182 days or more, or
- he has been in India during the 4 years immediately preceding the previous year for a total period of 365 days or more and has been in India for at least 120 days in the previous year.

# Residential Status- Individual

Example: Mr. A, an Indian citizen, leaves India on 22nd September 2019 for the first time, to work as an employee of a company in USA. What shall be his residential status for A.Y. 2020-21?

Answer: During the F.Y. 2019-20, Rohit was in India for 175 days i.e. 30 (April) + 31 (May) + 30 (June) + 31 (July) + 31 (August) + 22 (September).

Since he is leaving India for purpose of employment, hence 2<sup>nd</sup> condition of basic condition shall not be applicable for him. He doesn't fulfil the 1<sup>st</sup> condition of basic conditions also.

**Hence he shall be Non-Resident in India for F.Y. 2019-20.**



# Residential Status- Individual

*Example: Brett Lee, an Australian cricket player visits India for 100 days in every financial year. This has been his practice for the past 10 financial years.*

or

- ▶ *Find out his residential status for the assessment year 2022-23.*
  - ▶ *Would your answer change if the above facts relate to Srinath, an Indian citizen who resides in Australia and represents the Australian cricket team?*
- or
- ▶ *What would be your answer if Srinath had visited India for 120 days instead of 100 days every year, including P.Y.2021-22?*

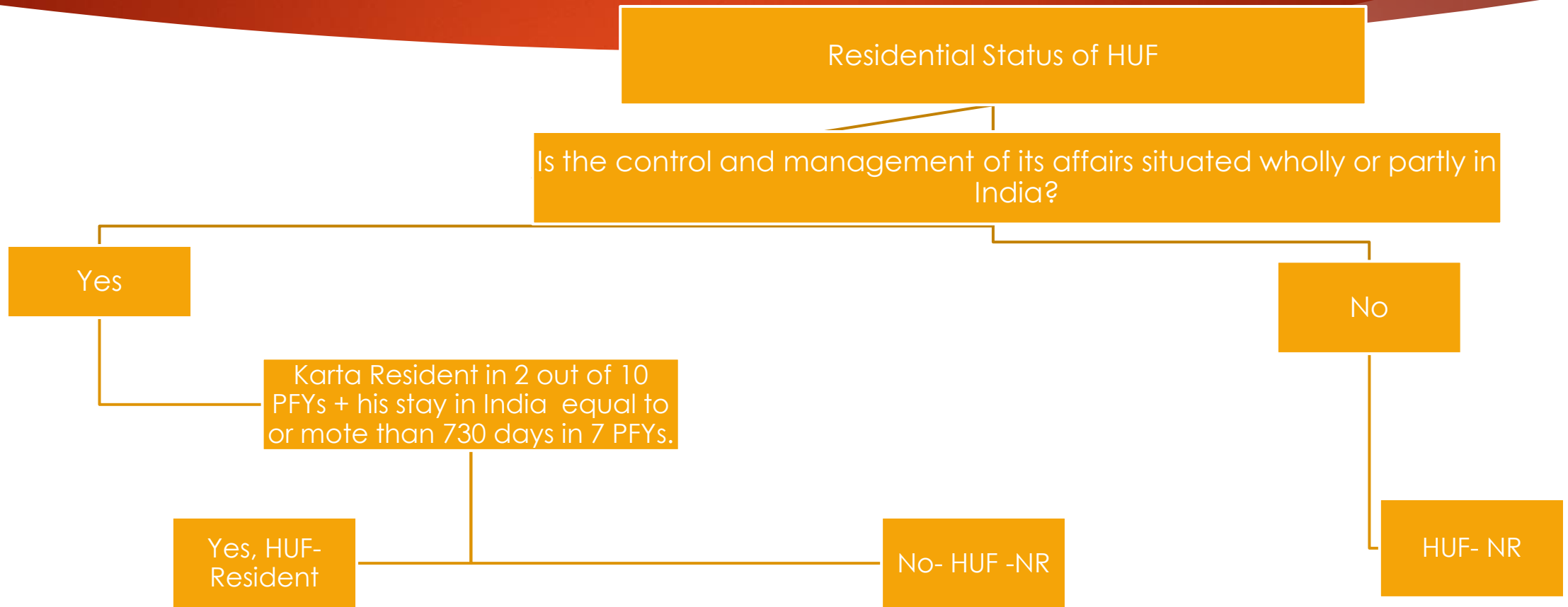
# Residential Status- Individual

- ▶ **Determination of Residential Status of Mr. Brett Lee for the A.Y. 2022- 23:-**
- ▶ Period of stay during previous year 2021-22 = 100 days
- ▶ Calculation of period of stay during 4 preceding previous years (100 x 4=400 days)
- ▶ Mr. Brett Lee has been in India for a period more than 60 days during previous year 2021-22 and for a period of more than 365 days during the 4 immediately preceding previous years. Therefore, since he satisfies one of the basic conditions under section 6(1), he is a resident for the assessment year 2022-23.
- ▶ Computation of period of stay during 7 preceding previous years = 100 x 7=700 days
- ▶ Since his period of stay in India during the past 7 previous years is less than 730 days, he is a not-ordinarily resident during the assessment year 2022-23 so he is RNOR.

# Residential Status- Individual

- ▶ If the above facts relate to Mr. Srinath, an Indian citizen, who residing in Australia, comes on a visit to India, he would be treated as non-resident in India, irrespective of his total income (excluding income from foreign sources), since his stay in India in the current financial year is, in any case, less than 120 days.
- ▶ In this case, if Srinath's total income (excluding income from foreign sources) exceeds ₹ 15 lakh, he would be treated as resident but not ordinarily resident in India for P.Y.2021-22, since his stay in India is 120 days in the P.Y.2021-22 and 480 days (i.e., 120 days x 4 years) in the immediately four preceding previous years.
- ▶ If his total income (excluding income from foreign sources) does not exceed
- ▶ ₹ 15 lakh, he would be treated as non-resident in India for the P.Y.2021-22, since his stay in India is less than 182 days in the P.Y.2021-22.

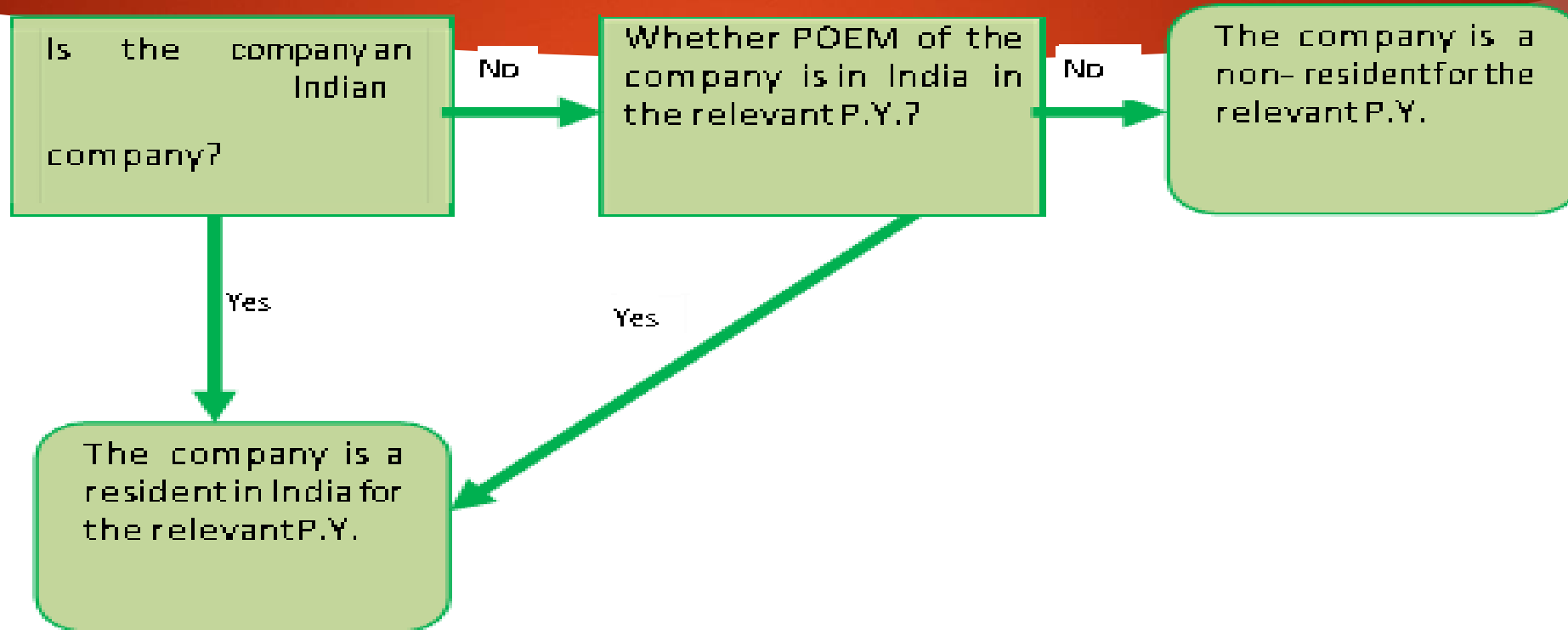
# Residential Status- HUF/ AOP/BOI/ Firm



**AOP/ BOI/ Firm-** if the control and management of its affairs is situated wholly or partly in India- Resident

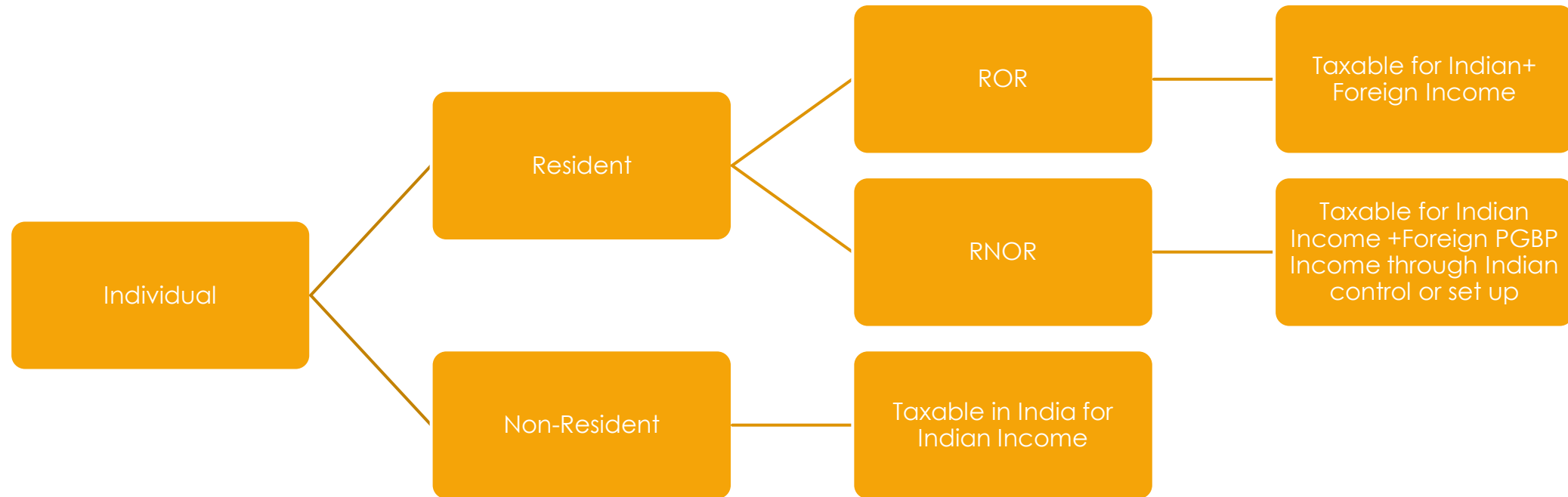
-if the control and management of its affairs is situated wholly outside India- Non-Resident

# Residential Status- Company



*Place of effective management" to mean a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole are, in substance made [Explanation to section 6(3)]*

# SCOPE OF TOTAL INCOME



# SCOPE OF TOTAL INCOME

Source of Income	Resident and Ordinarily Resident ("ROR")	Resident but Non-Ordinarily Resident ("RNOR")	Non Resident ("NR")
Income Received / Deemed to be Received in India	Y	Y	Y
Income Accrue / Arise / Deemed to Accrue/Arise in India	Y	Y	Y
Income Accrues / Arise or Received Outside India <ul style="list-style-type: none"> <li>• A Business Controlled from India</li> <li>• Profession setup in India</li> </ul>	Y	Y	N
Income accrues or arises or received outside India	Y	N	N

# INTERNATIONAL TAXATION



# Topics of Discussion

- ▶ Transfer Pricing Basic Provisions
- ▶ Non- Resident Taxation
- ▶ Double Taxation Avoidance Agreements
- ▶ Equalization Levy
- ▶ Significant Economic Presence

# Transfer Pricing Basic Provisions

- ▶ "transfer pricing" refers to prices of transactions between associated enterprises which may take place under conditions differing from those taking place between independent enterprises.
- ▶ It refers to the value attached to transfers of goods, services and technology between related entities.
- ▶ It also refers to the value attached to transfers between unrelated parties which are controlled by a common entity.
- ▶ Example: A sells goods (purchased for Rs.100) to its associated company B in another country for 200 rupees, who in turn sells in the open market for 400 rupees. Had A sold it direct, it would have made a profit of 300 rupees. But by routing it through B, it restricted it to 100 rupees, permitting B to appropriate the balance.
- ▶ The transaction between A and B is arranged and not governed by market forces. The profit of 200 rupees is, thereby, shifted to the country of B. The goods is transferred on a price (transfer price) which is arbitrary or dictated (200 hundred rupees), but not on the market price (400 rupees).

# Transfer Pricing Basic Provisions

## ▶ **Types of Transfer Pricing**

- ▶ International- When transaction is occurred between two or more AEs and one of them is located outside the country
- ▶ Domestic- When AEs are located in same country (Applicable from the AY 2013-14) (Eg: Director Related transactions)

## ▶ **Arms Length Price**

- ▶ Price which is applied or proposed or charged when unrelated parties enter into similar transactions in an uncontrolled condition.

# Associated Enterprises

- one enterprise holds, directly or indirectly, shares carrying not less than 26% of the voting power in the other enterprise; or
- any person or enterprise holds, directly or indirectly, shares carrying not less than 26% of the voting power in each of such enterprises; or
- a loan advanced by one enterprise to the other enterprise constitutes not less than 51% of the book value of the total assets of the other enterprise; or
- one enterprise guarantees not less than 10% of the total borrowings of the other enterprise; or
- more than half of the board of directors or members of the governing board, or one or more executive directors or executive members of the governing board of one enterprise, are appointed by the other enterprise; or
- more than half of the directors or members of the governing board, or one or more of the executive directors or members of the governing board, of each of the two enterprises are appointed by the same person or persons; or
- the manufacture or processing of goods or articles or business carried out by one enterprise is wholly dependent on the use of know-how, patents, copyrights, trade-marks, licenses, franchises or any other business or commercial rights of similar nature, or any data, documentation, drawing or specification relating to any patent, invention, model, design, secret formula or process, of which the other enterprise is the owner or in respect of which the other enterprise has exclusive rights; or

# Associated Enterprises

- 90% or more of the raw materials and consumables required for the manufacture or processing of goods or articles carried out by one enterprise, are supplied by the other enterprise, or by persons specified by the other enterprise, and the prices and other conditions relating to the supply are influenced by such other enterprise; or
- the goods or articles manufactured or processed by one enterprise, are sold to the other enterprise or to persons specified by the other enterprise, and the prices and other conditions relating thereto are influenced by such other enterprise; or
- where one enterprise is controlled by an individual, the other enterprise is also controlled by such individual or his relative or jointly by such individual and relative of such individual; or
- where one enterprise is controlled by a Hindu undivided family, the other enterprise is controlled by a member of such Hindu undivided family or by a relative of a member of such Hindu undivided family or jointly by such member and his relative; or
- where one enterprise is a firm, association of persons or body of individuals, the other enterprise holds not less than ten per cent interest in such firm, association of persons or body of individuals; or
- there exists between the two enterprises, any relationship of mutual interest, as may be prescribed.

# Section 92C- Methods to Compute the ALP



# Section 92C- Methods to Compute the ALP

## Comparable Uncontrolled Price (CUP Method)

Under the CUP method, a price that is charged in an uncontrolled transaction between the comparable firms is recognized and evaluated with a verified entity price for determining the Arm's Length Price.

Particular	Amount
Price Charged(Paid) – Comparable un-Controlled Tran”	XX.XX
Adjustment – Diff” b/w International Transaction and Comparable Uncontrolled Transaction	XX.XX
Arm Length Price (“ALP”)	XX.XX

# Section 92C- Methods to Compute the ALP

## **Retail Price Method (RPM)**

In this method, it takes the prices at which the associated enterprise sells its product to the third party. This price is referred to as the resale price. The gross margin which is determined by comparing the gross margins in a sale to non-related party is then reduced from this resale price. After this, costs which are associated with the purchase of such product such as the customs duty are deducted.

Particular	Amount
Price Charged for Goods (Sold to Unrelated Party)	xx.xx
Less:- Gross Profit Margin – Similar Transaction	xx.xx
Less:- Purchase Related Expenses	xx.xx
Arm Length Price (“ALP”)	XX.XX



# Section 92C- Methods to Compute the ALP

## **Cost Plus Method(Manufactured Products)**

Emphasize on costs of the supplier of goods or services in the controlled transaction. Once you're aware of the costs, you need to add a markup. This markup must reflect the profit for the associated enterprise on basis of risks and functions performed. The result is the arm's length price.

Particular	Amount
Cost of Production (Direct + Indirect)	XX.XX
Less:- Gross Profit Margin – Similar Transaction	XX.XX
Adjustment – Diff'' b/w International Transaction and Comparable Uncontrolled Transaction	XX.XX
Arm Length Price ("ALP")	XX.XX

# Section 92C- Methods to Compute the ALP

## **Profit Split Method**

This method basically eliminates the effect of special conditions as a result of the joint contract in such a manner that each enterprise receives a share of profit that it would have expected to realise otherwise in an independent transaction.

Particular	Amount
Cost Incurred by Assessee	XX.XX
Add:- Share of Profit of Such Enterprises	XX.XX
Arm Length Price ("ALP")	XX.XX

# Section 92C- Methods to Compute the ALP

## **Transactional Net Margin Method**

The **transactional net margin method** (TNMM) in transfer pricing compares the net profit margin of a taxpayer arising from a non-arm's length transaction with the net profit margins realized by arm's length parties from similar transactions; and examines the net profit margin relative to an appropriate base such as costs, sales or assets.

# Equalization Levy

# Equalization Levy

Equalization Levy 1.0  
(EQL 1.0)  
On Advertisement  
Services

Equalization Levy 2.0  
(EQL 2.0)  
On  
E-Commerce Supply

Not Applicable on NR having PE in India and such service is connected with the PE.

# Equalization Levy 1.0

Applicable on Sale of Advertisement Services

Rate of Tax-6%

Thresh Hold Limit- 100000

Amount to be deducted, by payer like TDS is deducted

# Equalization Levy 2.0

Applicable on Supply of online goods and services

Rate of Tax-2%

Thresh Hold Limit- 2 Crore

Amount to be paid by Service Provider



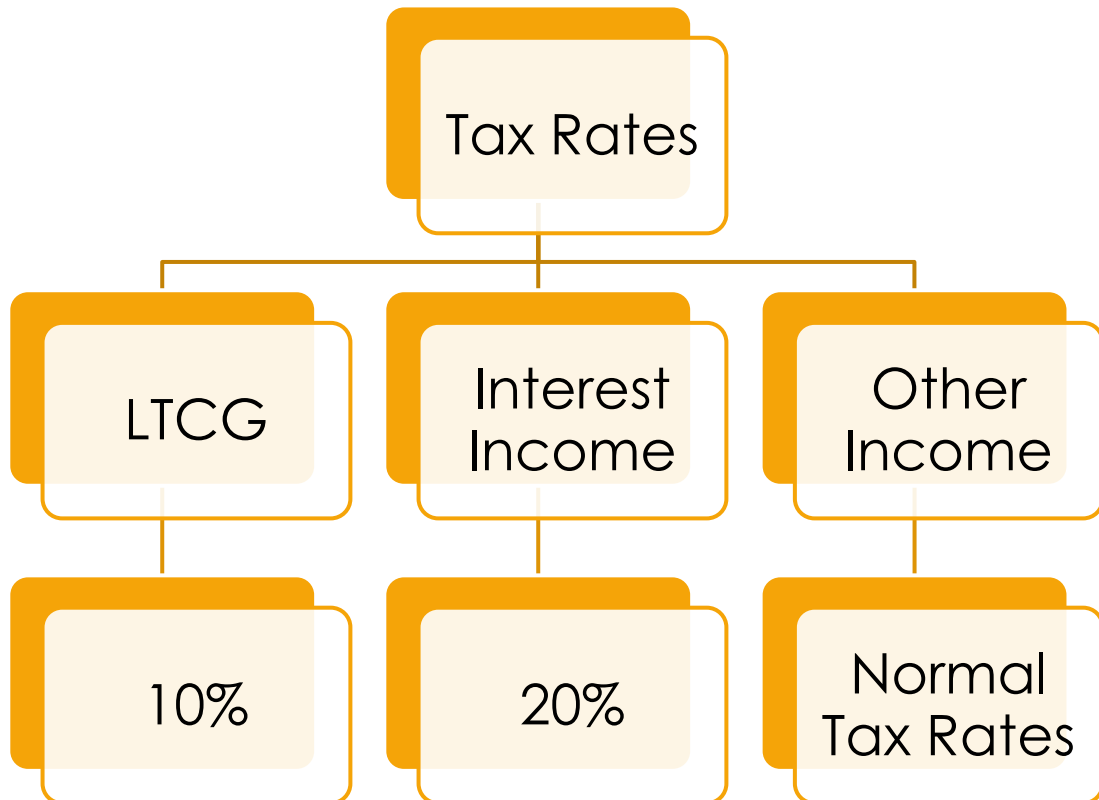
# Taxation of Non-Resident

## Chapter XII-A



# Taxation of Non Resident Indian

## Optional Provisions for NRI (NR + IC/PIO)



Return of  
Income Not  
Required if

Total Income  
Does not  
include any  
other Income

&

TDS Already  
deducted

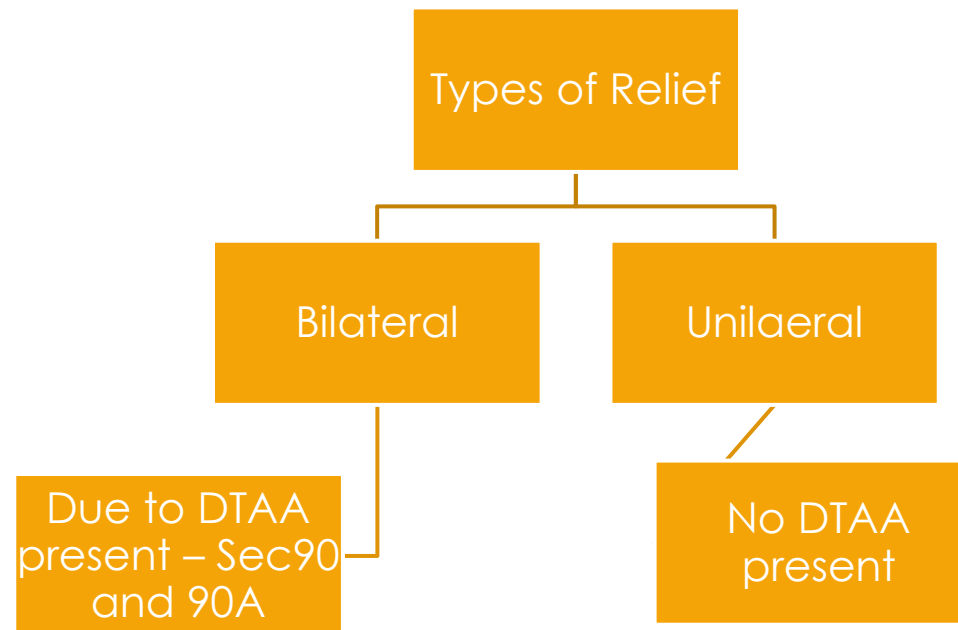


# Double Taxation Avoidance Agreement

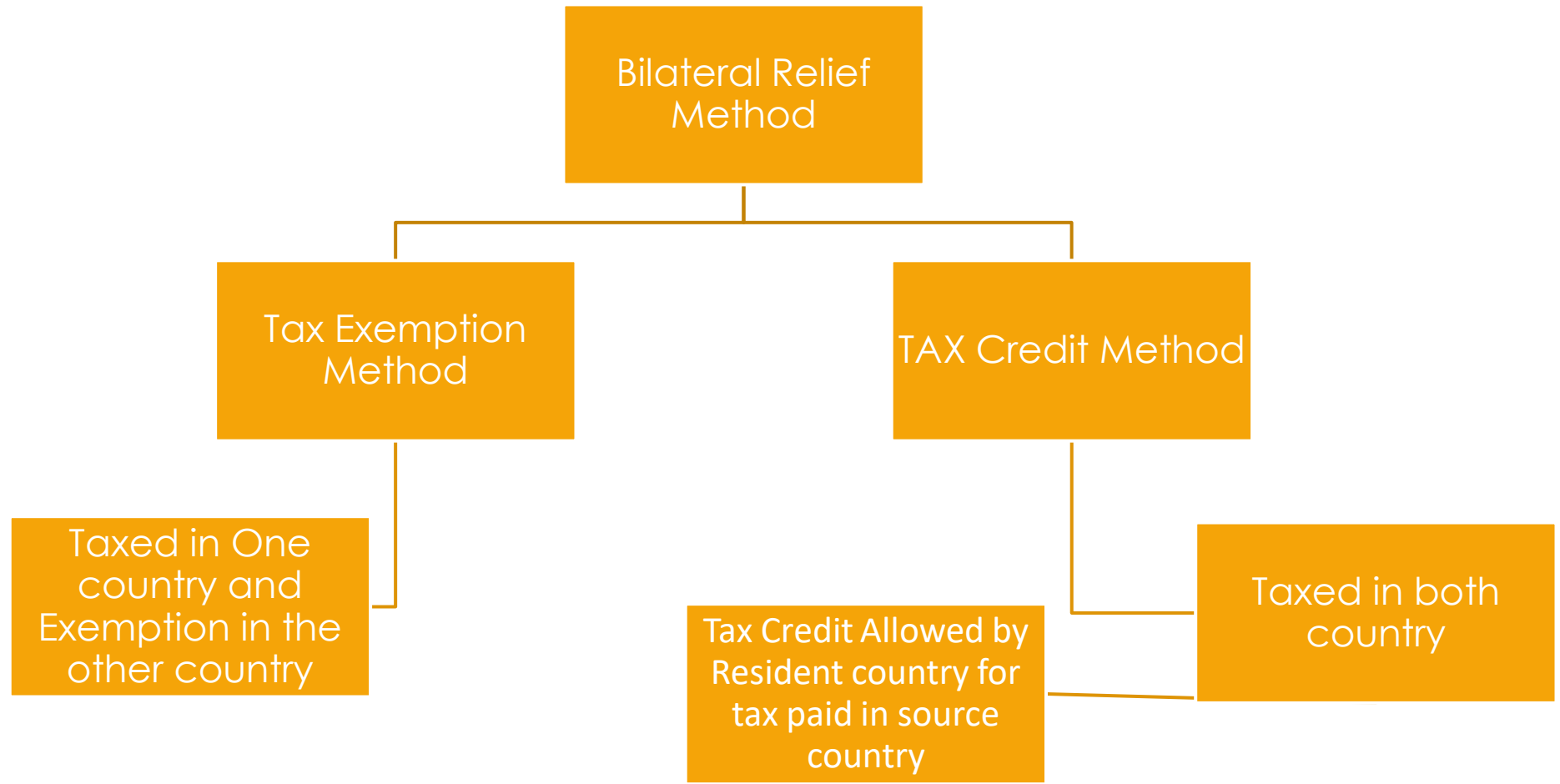
# Basic Concept

Double Taxation means Income is **Twice** in the hands of some Assessee.

- Income is Taxable in any country on Two Basis i.e. **Residence Rule** and **Source Rule**.
- Double Taxation is Arise when Assessee is one country on Resident Basis and in another country on Source Basis.



# Methods of Relief



# Reason for Entering to the Agreements with Different Countries

The Indian Government has entered into Agreements with Foreign Countries regarding



For Granting relief of Double tax

For Exchange of Information

Whenever rates of tax are applied amongst the DTAA Rates and Income Tax Rates , the one which is most beneficial to the assessee is considered  
To avail the benefit of DTAA- Tax Residency Certificate and NO PE certificate.

# Computation of Tax Credit in case of Unilateral Relief

## Conditions for Claiming Unilateral Relief

Assessee Resident in India in the Year in which Foreign Income Earned

Income arises outside India and not in India

Income was subject to tax in Foreign Country

Taxes Paid on such Income Outside India

No Agreement between India and Country in which Income earned

# Computation of Tax Credit in case of Unilateral Relief

## Steps to calculate Unilateral Relief

Calculate Gross Total Income (Including Foreign Income)

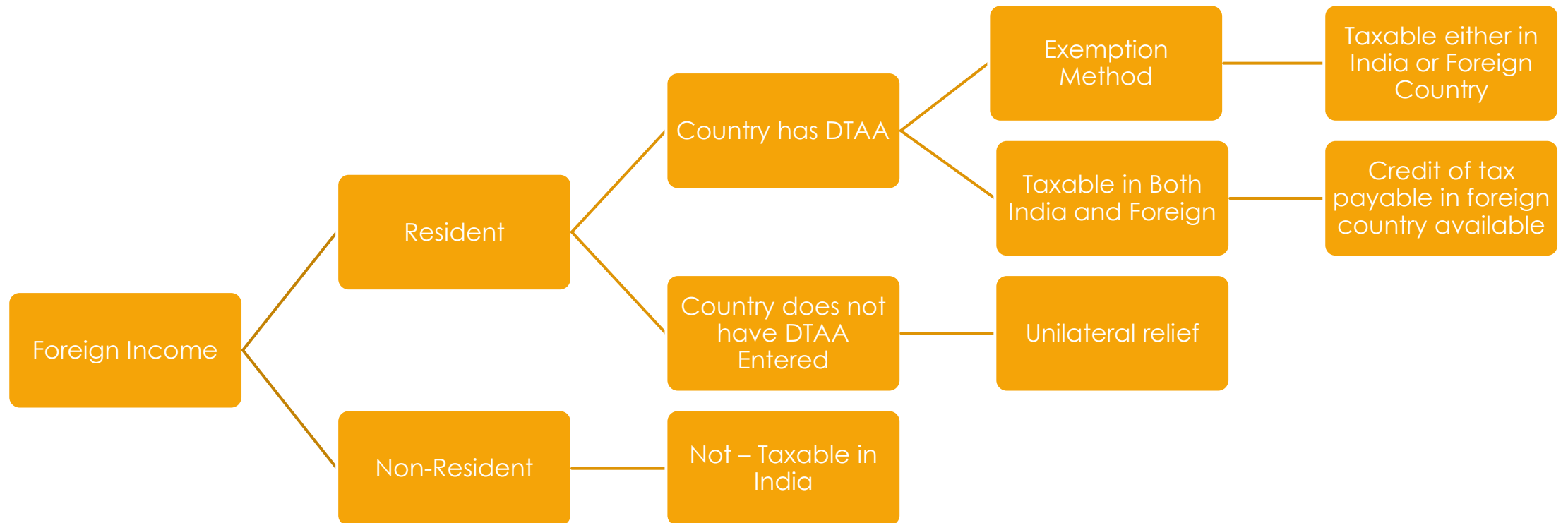
Reduce Deductions

Calculate Tax Liability as per Normal Provisions without Foreign Tax Credit

Calculate Indian Tax Rate at which Tax Computed and Compare with Foreign Tax Rate , consider lower out of both

Relief = Foreign Income \* Lower Tax rate

# Summary of Taxability of Foreign Income







# Foreign Tax and Credit Rule 128

# Foreign Tax and Credit

## Foreign Tax Credit

- Taxes Paid / Deducted in Foreign Country
- Credit is available in the country of Resident

## Credit Claim

- When Income Offered to Tax in INDIA
- S/o. With Income Tax, Surcharge & Cess only (Not with penalty and Fees)

## Amount of Credit

- Lower of Foreign Tax & Indian Tax
- Excess of Foreign Tax shall be Ignored

## Documents Required

- Foreign Computation of Income
- Form 67 to be filed with IT Department

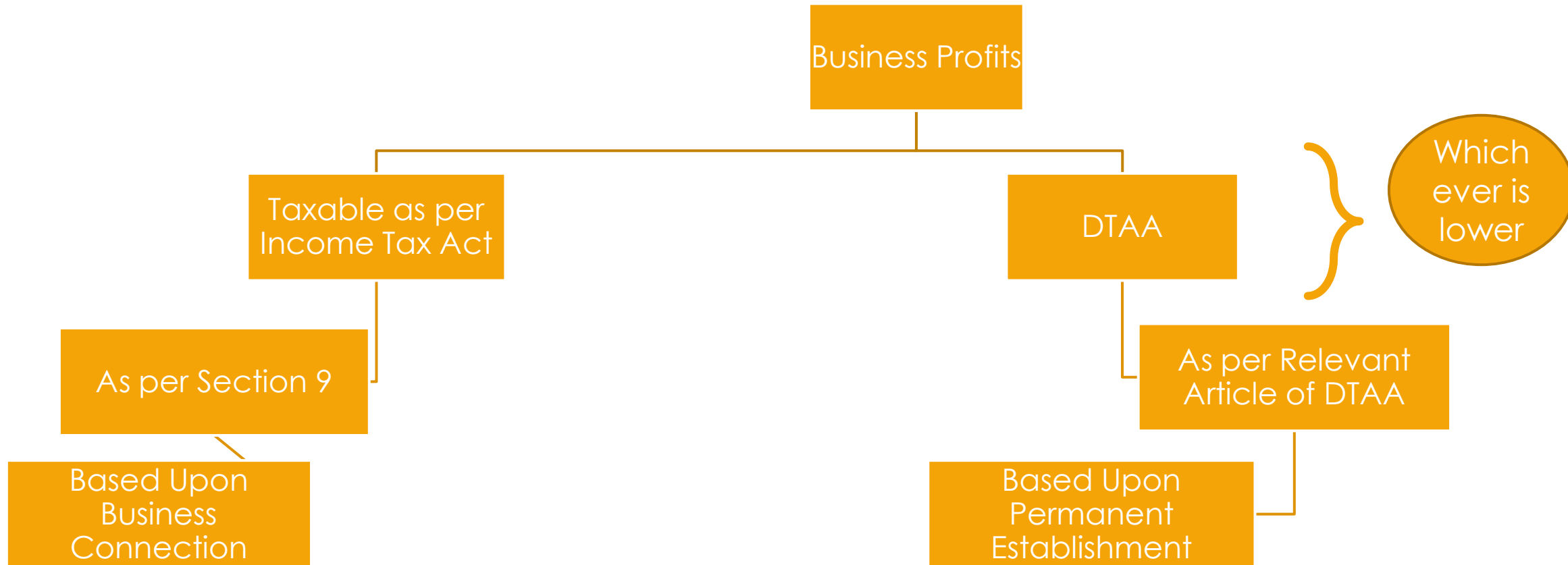
## Conversion Rate

- SBI TTBR
- TTBR on last day of Previous FG



# Significant Economic Presence

# Taxability of Business Profits of Non-Resident



# Significant Economic Presence

- Even a **SEP in India of a non-resident is deemed to constitute a business connection** in India and hence, income generated by a non-resident from such SEP will be taxable in India.
- Statutory text relating to SEP was inserted in the Indian income tax law in 2018. The provisions are **effective from April 1 2021**.
- A non-resident will be said to have a SEP in India in the following circumstances:
  - The non-resident carries out transactions in any goods or services or property with any Indian resident, if the aggregate payments exceeds **20 million rupees in a year**; or
  - The non-resident engages in systematic and continuous soliciting of business or in interaction with a minimum of **300,000 users in India**.



# Specified Financial Transaction

# Specified Financial Transaction

- SFT is a report of specified financial transactions by specified persons including prescribed reporting financial institutions.

- Submitted either in Form 61A (other reporting entities) or Form 61B (prescribed reporting financial institution)

- SFT (Form 61A) shall be submitted on or before 31 May of the FY, immediately following the FY in which the transaction is recorded or registered.

- Form 61B-Submitted for calendar Year

# Specified Financial Transaction

Any person who is liable for audit under section 44 AB of the Income Tax Act, 1961

A Banking Company (Incl. A Co operative Bank)

Post Master General of Post office

A Nidhi referred to in sec 406 of the Companies Act 2013

A Trustee of a Mutual Fund or such other person authorized by the trustee

Any Institution issuing Credit Card

A Company or Institution issuing bonds or Debentures or shares

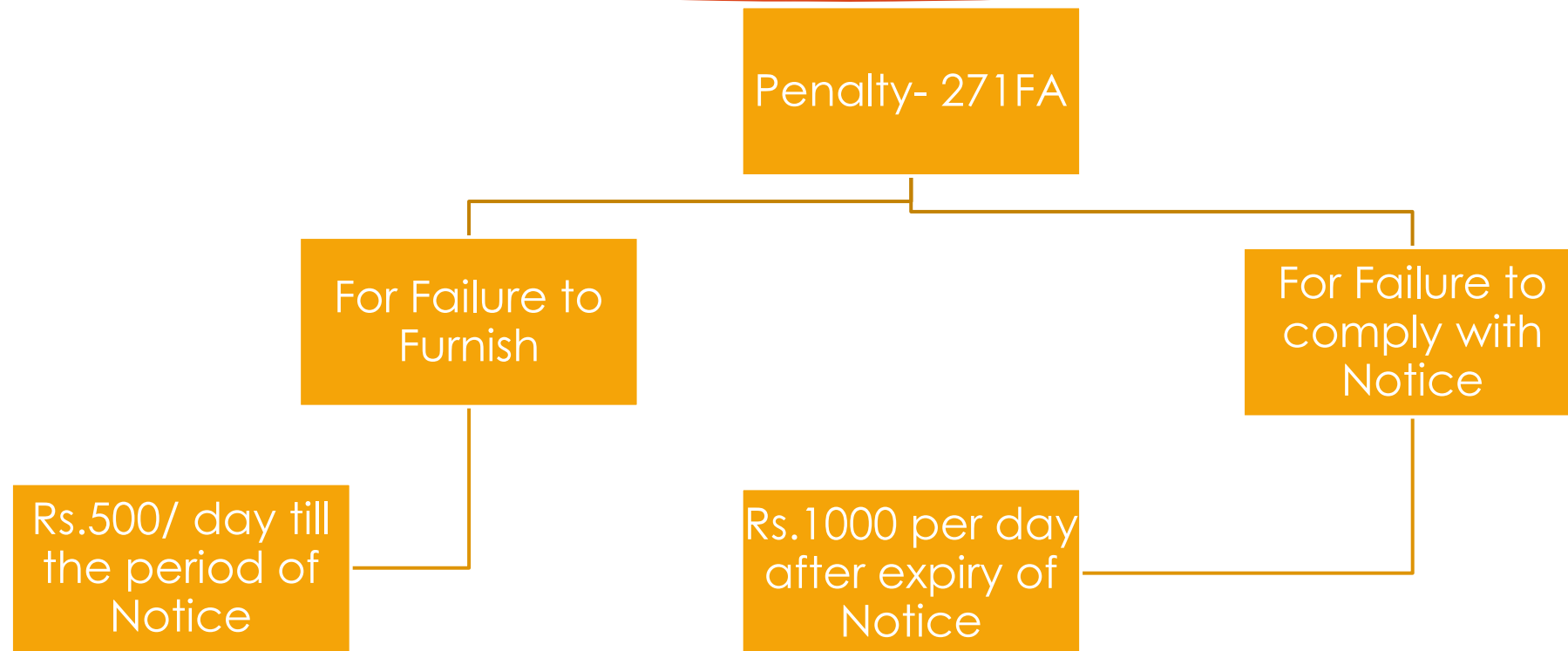
Authorized Dealer, Money Changer, Off shore Banking Unit, or any other person defined in FEMA, 1999

A company listed on a recognized stock exchange purchasing its own securities

A Non banking Financial Company (NBFC)



# Specified Financial Transaction



# Specified Financial Transaction

- **Penalty of INR 50000 will be levied in the following cases**

**failure to comply with the prescribed due diligence requirement** or is deliberate on the part of that person; or

person knows of the inaccuracy at the time of furnishing the statement of financial transaction or reportable account, but does not inform the prescribed income tax authority or such other

The person discovers the inaccuracy after the statement of financial transaction or reportable account is furnished and **fails to inform and furnish correct information within 10 days**



# Thank You

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