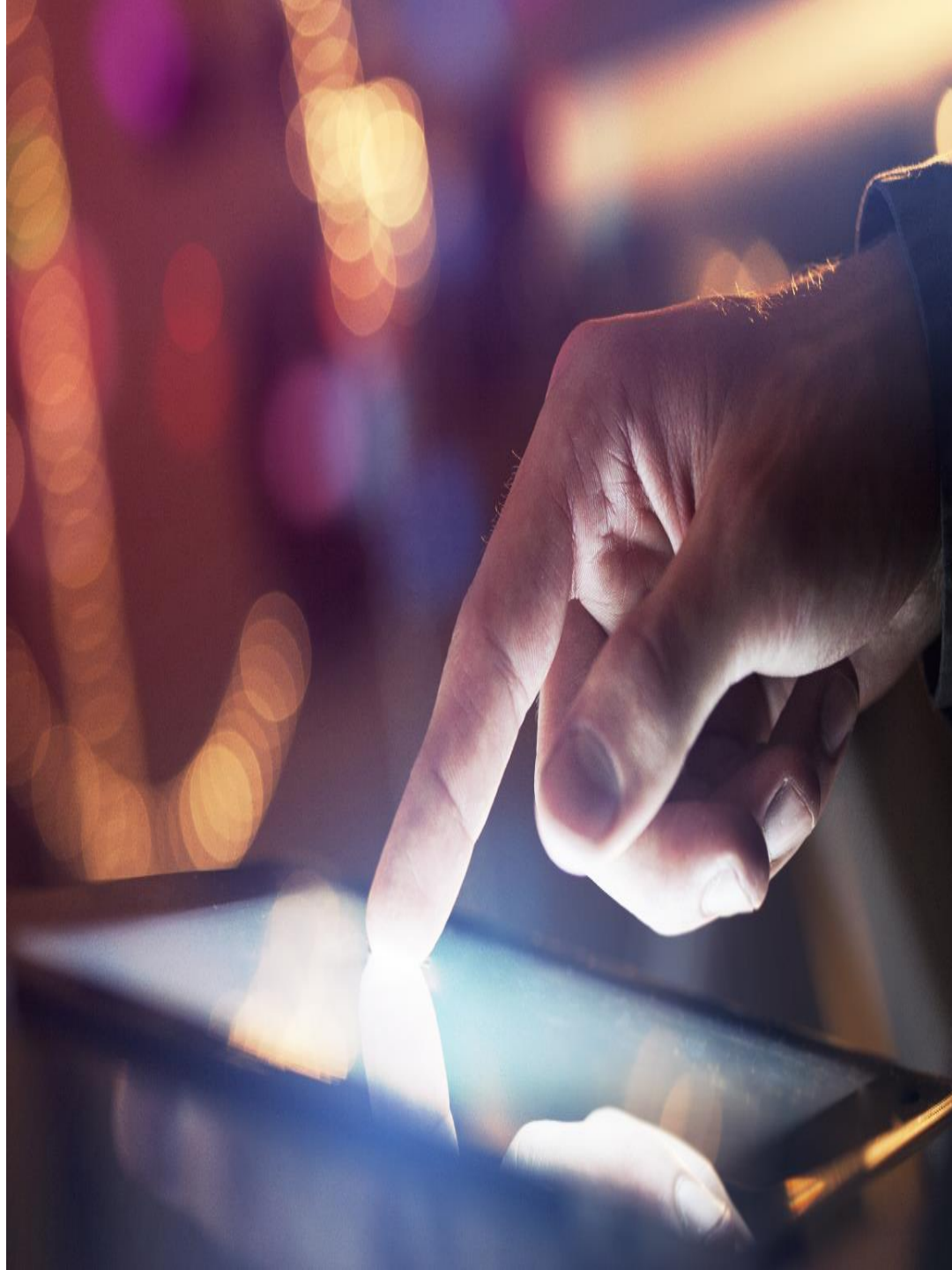


# **An overview of US Tax regulations for individuals**

**May 2022**



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Basics

Taxability of certain incomes

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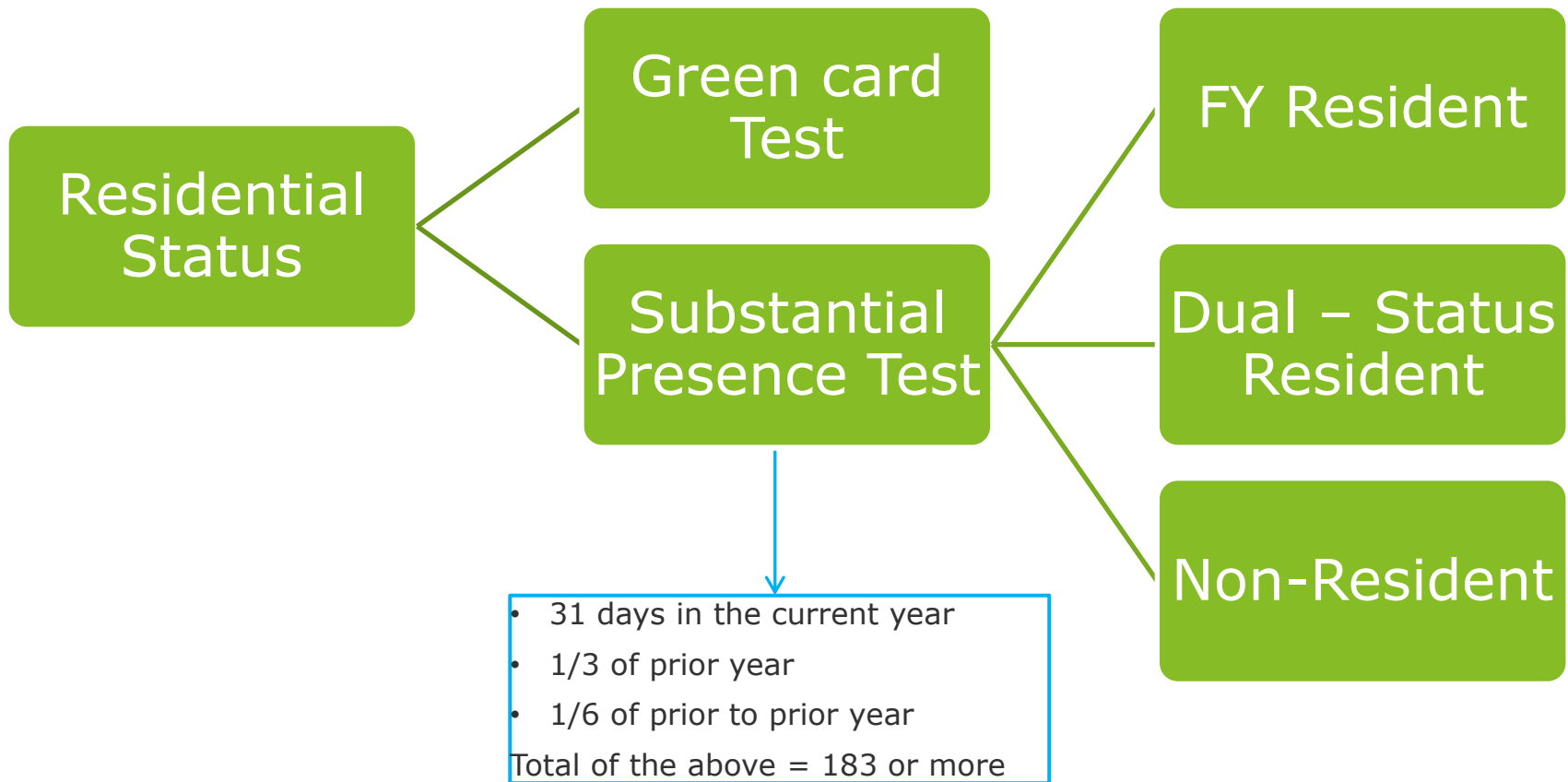
Understanding US tax return

Opportunities



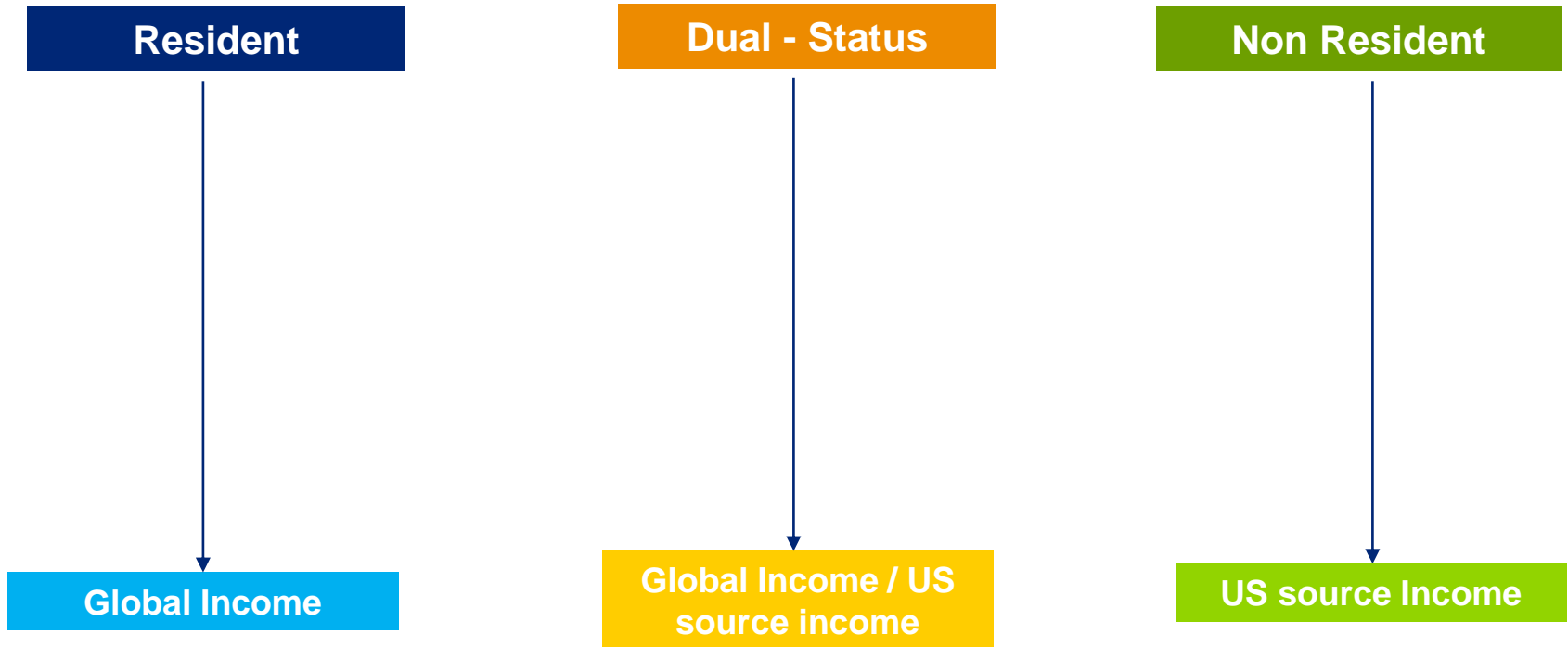
# Basics

# Residential Status



**US citizens are always US residents for tax purposes**  
**Residency start date and Residency termination date**  
**Concept of elections?**

# Scope of taxable income



# Filing status

- Single
- Married filing joint (MFJ)
- Married filing separate (MFS)
- Head of House Hold
- Qualifying widower

## Tax Rates

- Slab rates starting from 10% to 37% (10% tax rate up to \$20,000 for MFJ)
- No basic exemption or personal exemption
- Special rates apply to certain incomes

**Dual status and non-residents cannot opt for MFJ**  
**Scope for tax planning by making elections**

# Heads of Income

Wages and Salaries

Interest

Dividends

Pensions and Annuities

Capital Gains

Additional Income (Business, Profession, Rental, royalties, K1s, Farm income etc.)

# Certain Incomes



## Dividends (Sch-B)

### Ordinary Dividends

- Taxable at normal rates
- Includes qualified dividends

### Qualified Dividends

- Taxable at Spl. Rates
- FTC also available at Spl. rates

Normal tax brackets	Qualified Dividend Tax rate
10% to 15%	0%
>15% to 35%	15%
37%	20%

# Capital Gains (Sch-D)

- Short term – holding period  $\leq$  1 year
- Long Term – Holding period  $>$  1 year
- No indexation benefit for long term
- Short term gains taxed at normal rates
- Capital Gain distributions (mutual fund dividends)
- Long term gains taxed at special rates – same as qualified dividends
- Capital losses can be carried over for an indefinite period
- Intra head set-off: No limits, inter head set-off: \$3,000 (MFJ) / \$1,500 (MFS)
- Gain from sale of principal residence – upto \$500,000 (MFJ) if conditions are met

# Rental income, Royalties and Partnership income (Sch – E)

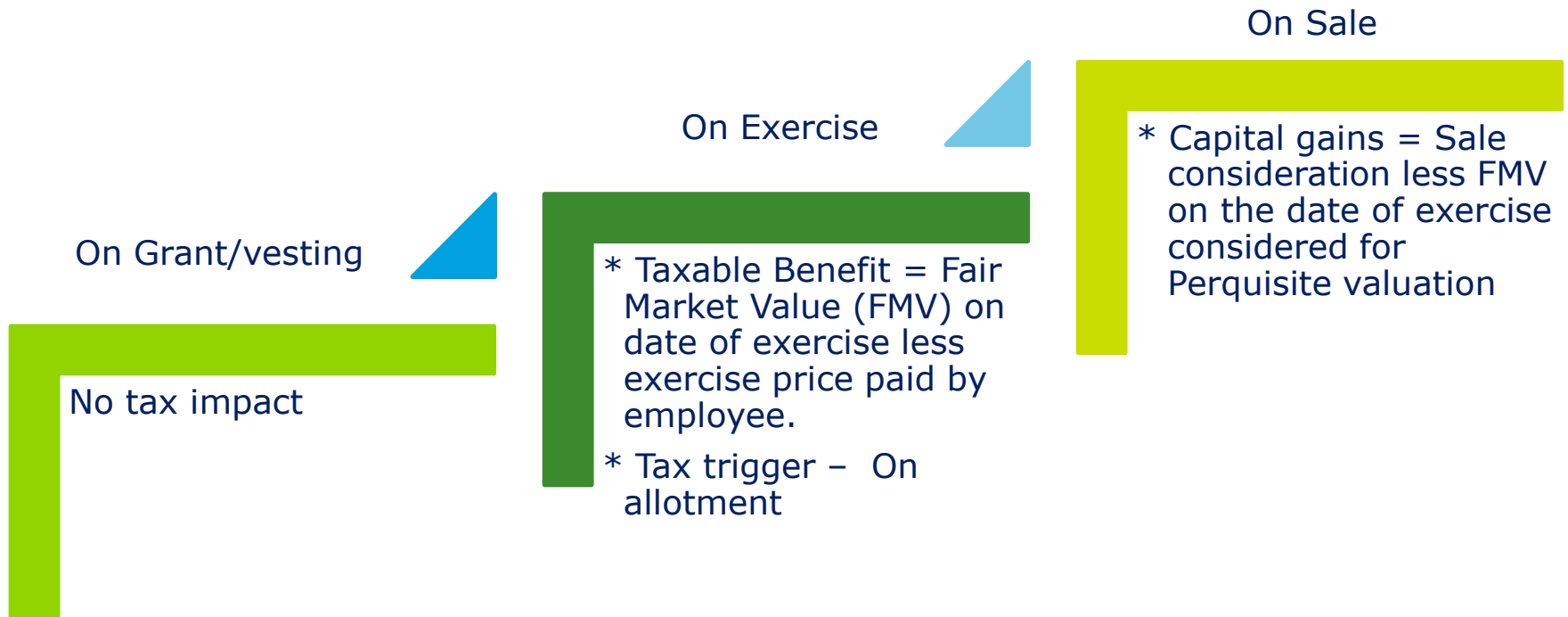
## **Rental Income**

- No standard deduction
- Actual expenses can be deductible (including mortgage interest and prop taxes)
- Depreciation available on let-out properties

## **Partnership Income**

- Pass through income
- Follow K-1 to report
- Indian partnerships and US resident – Form 8865 to be filed

# Stock options



In case of Incentive stock options, taxation is deferred to the time of sale of stock and no tax implications at the time of exercise

# Certain unique features

Taxation based on citizenship

Itemized deduction Vs standard deduction (24,800 for MFJ)

State Tax return (NY and CA)

City tax return (NYC, PA)

Saving clause in the treaty –

*Notwithstanding any provision of the Convention except paragraph 4, a Contracting State may tax its residents [as determined under Article 4 (Residence)], and by reason of citizenship may tax its citizens, as if the Convention had not come into effect.*

# Double taxation relief (US domestic law)

## **Sourcing Rules**

- Salary/wages – Place where employment is exercised (physical presence)
- Interest / Dividends – Location of the payer
- Capital gains from sale of stocks - **Residency**

## **Foreign Earned Income Exclusion (Form 2555)**

- Available for Resident aliens and citizens
- Election to be made – not mandatory
- Conditions need to be satisfied
- Applicable generally in case of salaried employees and self employed
- Max exclusion \$112,000 for 2022

## **Foreign Tax Credit (Form 1116)**

- Different baskets of income
- Separate Form for each basket of income
- Accrual and paid basis
- Carry over of unutilized FTC

# Taxation of Non-Residents in US

- Only US source income is taxable
- Generally the US interest income not taxable (specific exemption)
- Not effectively connected income e.g. dividends are taxed at 30%
- Treaty rates could be availed
- Capital gains from shares exempt based on the sourcing rules
- Student Visa (F Visa) – non-resident status for the first 5 years of their stay in the US
- Generally state/city returns not applicable unless there is a trailing income which is paid in the current tax year

# US tax implications on Gifts

In general, a foreign gift is money or other property received by a U.S. person from a foreign person. A “foreign person” is a non-resident alien individual or foreign corporation, partnership or estate.

Generally, foreign gifts are not subject to US income tax. However, there is a reporting requirement of these gifts on Form 3520 if the total value of the gifts exceeds specified limits. Since, foreign gifts are not subject to income tax in US, Form 3520 is an information return and not a tax return.

## **Reporting requirements of Form 3520**

One must file Form 3520, if during the tax year he received either –

- Gifts valued at more than \$100,000 from a non-resident alien individual (including foreign persons related to that non-resident alien individual or foreign estate)

Or

- Gifts valued at more than \$16,388 for 2021 from foreign corporations or foreign partnerships (including foreign persons related to the foreign corporations or foreign partnerships).

**Non-compliance with Form 3520 requirements may have significant penalties**



# Inheritance (Estate) tax - US assets

## **By a US Citizen / Resident**

- Basic exemption on the value of the assets - \$11.7 M
- The tax rates may go up to 40%

## **By a non-US citizen / Non - Resident**

- Very cumbersome procedure
- Basic exemption on the value of the assets - \$60K
- The tax rates may go up to 40%

**It may be advisable to held the assets in joint name**

# Compliances

# Certain Forms

Form No.	Purpose
1040	Resident Return
1040-NR	Non-Resident Return
W-2	Withholding certificate for Wages
1099-Int	Withholding certificate for interest income
1099-Div	Withholding certificate for dividend income
1099-B	Consolidated certificate for Interest, Dividend and Capital Gains
1042-S	Withholding certificate in case of Non-Resident
K-1	Partnership Income

# Due dates and Extensions

- US tax returns original due date – 15 Apr of the subsequent year.
- Automatic extension for expats – 2 months i.e., 15<sup>th</sup> June. No need to file any separate form.
- 6 Months extension – up to 15<sup>th</sup> Oct by filing form 4868
- Beyond 15<sup>th</sup> Oct – extension available only in case of foreign earned income exclusion that by satisfying certain conditions
- Late payment interest and late payment penalty may still be applicable on taxes due from the original due date even if you opt for extension.
- Late filing penalty is not applicable if extension is filed

# Passive Foreign Investment Company (PFIC)

## When would the foreign corporation / fund / investment be treated as PFIC?

Foreign corporation/fund/investment meeting any of the following tests –

### 75% Income Test

- The entity/fund would be treated as PFIC, if 75% or more of its income is passive income.

### 50% Asset Test

- The entity/fund would be treated as PFIC, if a minimum of 50% of its assets produces passive income or such assets are held with an intention to produce passive income.

**Generally, all investments in Indian mutual funds, alternate investment funds, exchanged traded funds etc. meets either or both of the above tests and hence would qualify as PFIC for US tax purposes**

# Implications

## High Tax Rates

- Depending on the method of accounting chosen by the tax payer, the tax rate may add up to more than 50%
- Capital gains are not eligible for preferential rates and will be treated as regular income

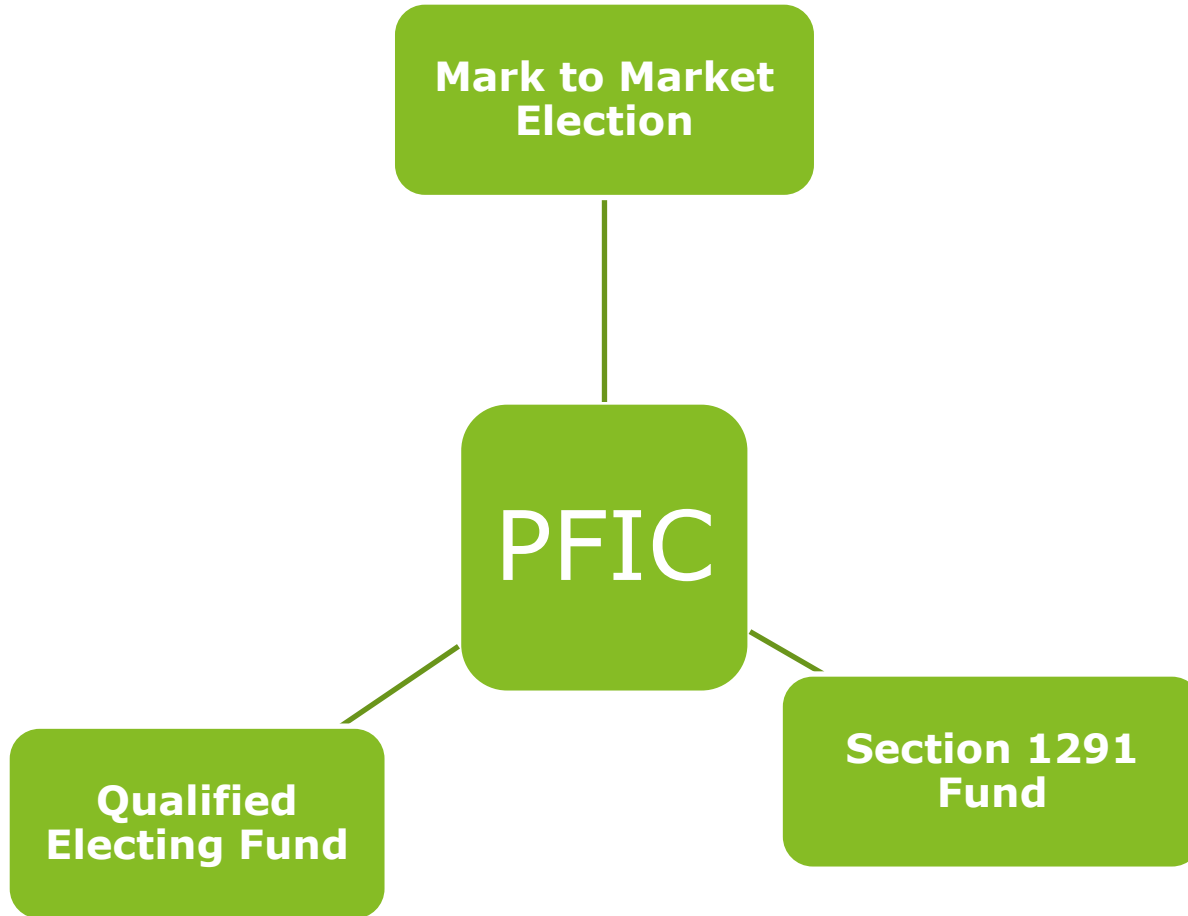
## Complex Reporting

- Form 8621 need to be filed
- For each and every investment/fund, one form 8621 need to be filed
- Elections made if any need to be reported
- The above compliances need to be completed every year

## Exposure

- IRS does not have any limitation period for tax audit if PFIC reporting is applicable
- Hence, IRS may come back to the taxpayer with notices for an indefinite period of time

# Valuation or Accounting Method



# Foreign Bank Accounts Reporting (FBAR)

- Applies to US citizen or Resident
- Having financial accounts or signatory authority
- If the aggregate value of such accounts exceed \$10,000 **at any time during the calendar year**
- A financial account includes, but is not limited to, a securities, brokerage, savings, demand, checking, deposit, time deposit, a commodity futures or options account, an insurance policy with a cash value (such as a whole life insurance policy), an annuity policy with a cash value, and shares in a mutual fund or similar pooled fund.
- Maximum values of the relevant accounts during the tax year need to be considered for determining the threshold as well as reporting.
- In case of joint accounts, both the spouses must comply with FBAR if they are residents

**Non-compliance with FBAR requirements may attract \$10,000 penalty**



# Foreign Asset reporting requirement (Form 8938)

- Applies to U.S citizens and residents if they meet certain reporting thresholds without any exceptions.
- The prescribed threshold for
  - Married individual filing jointly - Total value of assets was more than \$100,000 on the last day of the tax year, or more than \$150,000 at any time during the year
  - Married individual filing separately - Total value of assets was more than \$50,000 on the last day of the tax year, or more than \$75,000 at any time during the year
- The details of the assets need to be reported in Form no. 8938. Form need to be attached to annual income tax return.
- The amounts need to be reported in USD by converting the foreign currency using end of the taxable year exchange rate.
- Maximum values of the relevant accounts/assets during the tax year need to be considered for determining the threshold as well as reporting.
- An illustrative list of foreign specified financial assets are – All kinds of bank accounts, securities/brokerage accounts, pension plans, shares, mutual funds, bonds, insurance/annuity policy, ownership interests in companies, partnerships etc.

**Non-compliance with Form 8938 requirements may have penalty implications**

## W-8 BEN

- Applies to US non-resident availing treaty benefit (reduced rate of withholding or claiming exemption)
- Residency need to be determined as per the treaty
- Resident country and treaty article to be specified
- Does not apply to US citizen and resident aliens

## ITIN (Individual Tax Identification Number)

- If an individual is not eligible for SSN, they must get ITIN to file the tax return e.g. Spouses of L1 visa taxpayer, dependent children etc.
- ITINs can be applied from India as well.

# Challenges

# Taxability of certain types of US income in India

## **K-1**

- **View -1** : Pass through income, taxable in the hands of partner same as US
- **View -2** : Distributions are taxable and not the actual income (especially in case of S-corps)

## **Individual Retirement Account (IRA)**

- Taxable at the time of withdrawal or when the assessee becomes non-resident in India

## **401(k)**

- Taxable at the time of withdrawal or when the assessee becomes non-resident in India

**Form 10EE needs to be filed to opt for taxation at the time of withdrawal for foreign retirement accounts.**

# Other challenges

- Fiscal Year Vs Calendar Year
- Exempt income like PF, PPF etc.
- Capital gain distributions – dividends/capital gains?
- DTAA – saving clause
- Claim state taxes as FTC in India
- International workers for PF purposes

# Understanding US tax return

**Filing Status**  Single  Married filing jointly  Married filing separately (MFS)  Head of household (HOH)  Qualifying widow(er) (QW)

Check only one box. If you checked the MFS box, enter the name of your spouse. If you checked the HOH or QW box, enter the child's name if the qualifying person is a child but not your dependent ▶

Your first name and middle initial		Last name		Your social security number	
If joint return, spouse's first name and middle initial		Last name		Spouse's social security number	
Home address (number and street). If you have a P.O. box, see instructions.				Apt. no.	
City, town, or post office. If you have a foreign address, also complete spaces below.			State	ZIP code	
Foreign country name		Foreign province/state/county		Foreign postal code	

**Presidential Election Campaign**  
Check here if you, or your spouse if filing jointly, want \$3 to go to this fund. Checking a box below will not change your tax or refund.  
 You  Spouse

At any time during 2020, did you receive, sell, send, exchange, or otherwise acquire any financial interest in any virtual currency?  Yes  No

**Standard Deduction** Someone can claim:  You as a dependent  Your spouse as a dependent  
 Spouse itemizes on a separate return or you were a dual-status alien

**Age/Blindness** You:  Were born before January 2, 1956  Are blind Spouse:  Was born before January 2, 1956  Is blind

**Dependents** (see instructions):

(1) First name	Last name	(2) Social security number	(3) Relationship to you	(4) <input checked="" type="checkbox"/> if qualifies for (see instructions):	
				Child tax credit	Credit for other dependents
				<input type="checkbox"/>	<input type="checkbox"/>
				<input type="checkbox"/>	<input type="checkbox"/>
				<input type="checkbox"/>	<input type="checkbox"/>
				<input type="checkbox"/>	<input type="checkbox"/>

If more than four dependents, see instructions and check here ▶

1	Wages, salaries, tips, etc. Attach Form(s) W-2 .....	1	239,488.
2a	Tax-exempt interest .....	2a	
		b	Taxable int. Att. Sch. B if reqd. ....
2b		2b	112,961.
3a	Qualified dividends ..... ST 2	3a	36,381.
		b	Ordinary div. Att. Sch. B if reqd. ....
3b		3b	37,743.
4a	IRA distributions .....	4a	
		b	Taxable amount .....
4b		4b	
c	Pensions and annuities .....	4c	
		d	Taxable amount .....
4d		4d	
5a	Social security benefits .....	5a	
		b	Taxable amount .....
5b		5b	
6	Capital gain or (loss). Attach Schedule D if required. If not required, check here <input type="checkbox"/>	6	-3,000.
7a	Other income from Schedule 1, line 9 .....	7a	
b	Add lines 1, 2b, 3b, 4b, 4d, 5b, 6, and 7a. This is your <b>total income</b> .....	7b	387,192.
8a	Adjustments to income from Schedule 1, line 22 .....	8a	
b	Subtract line 8a from line 7b. This is your <b>adjusted gross income</b> .....	8b	387,192.
9	Standard deduction or itemized deductions (from Schedule A) .....	9	24,400.
10	Qualified business income deduction. Attach Form 8995 or Form 8995-A .....	10	221.
11a	Add lines 9 and 10 .....	11a	24,621.
b	<b>Taxable income.</b> Subtract line 11a from line 8b. If zero or less, enter -0- .....	11b	362,571.

**Standard Deduction for —**

- Single or Married filing separately, \$12,200
- Married filing jointly or Qualifying widow(er), \$24,400
- Head of household, \$18,350
- If you checked any box under *Standard Deduction*, see instructions.



12a Tax (see inst.) Check if any from Form(s): 1  8814

2  4972 3  \_\_\_\_\_

12a 72,471.

b Add Schedule 2, line 3, and line 12a and enter the total ..... ▶ 12b 74,154.

13a Child tax credit or credit for other dependents ..... 13a 2,000.

b Add Schedule 3, line 7, and line 13a and enter the total ..... ▶ 13b 72,504.

14 Subtract line 13b from line 12b. If zero or less, enter -0- ..... 14 1,650.

15 Other taxes, including self-employment tax, from Schedule 2, line 10 ..... 15 5,213.

16 Add lines 14 and 15. This is your **total tax** ..... ▶ 16 6,863.

17 Federal income tax withheld from Forms W-2 and 1099 ..... 17

18 Other payments and refundable credits:

• If you have a qualifying child, attach Sch. EIC.  
• If you have nontaxable combat pay, see instructions.

a Earned income credit (EIC) ..... 18a

b Additional child tax credit. Attach Schedule 8812 ..... 18b

c American opportunity credit from Form 8863, line 8 ..... 18c

d Schedule 3, line 14 ..... 18d 7,518.

e Add lines 18a through 18d. These are your **total other payments and refundable credits** ..... ▶ 18e 7,518.

19 Add lines 17 and 18e. These are your **total payments** ..... ▶ 19 7,518.

**Refund** 20 If line 19 is more than line 16, subtract line 16 from line 19. This is the amount you overpaid ..... 20 655.

21 a Amount of line 20 you want **refunded to you**. If Form 8888 is attached, check here. ▶  21a 0.

Direct deposit?  
See instructions.

▶ b Routing number .....  ▶ c Type:  Checking  Savings

▶ d Account number .....

22 Amount of line 20 you want applied to your 2020 estimated tax ..... ▶ 22 655.

**Amount You Owe** 23 Amount you owe. Subtract line 19 from line 16. For details on how to pay, see instructions. ..... ▶ 23

24 Estimated tax penalty (see instructions) ..... 24

# Qualified Dividends and Capital Gain Tax Worksheet (2020)

- See Form 1040 instructions for line 16 to see if the taxpayer can use this worksheet to compute the taxpayer's tax.
- Before completing this worksheet, complete Form 1040 through line 15.
- If the taxpayer does not have to file Schedule D (Form 1040) and received capital gain distributions, be sure the box on line 7, Form 1040, is checked.

1) Enter the amount from Form 1040, line 15. However, if filing Form 2555 (relating to foreign earned income), enter the amount from line 3 of the Foreign Earned Income Tax Worksheet.....	1)	
2) Enter the amount from Form 1040, line 3a*.....	2)	
3) Is Schedule D being filed?*		
<b>Yes.</b> Enter the <i>smaller</i> of line 15 or 16 of Schedule D. If either line 15 or line 16 is blank or a loss, enter -0-.		
<b>No.</b> Enter the amount from Form 1040, line 7.....	3)	
4) Add lines 2 and 3.....	4)	
5) Subtract line 4 from line 1. If zero or less, enter -0-.....	5)	
6) Enter:     • \$40,000 if Single or Married Filing Separately, • \$80,000 if Married Filing Jointly or Qualifying Widow(er), • \$53,600 if Head of Household.....	6)	
7) Enter the <i>smaller</i> of line 1 or line 6.....	7)	
8) Enter the <i>smaller</i> of line 5 or line 7.....	8)	
9) Subtract line 8 from line 7. This amount is taxed at 0%.....	9)	
10) Enter the <i>smaller</i> of line 1 or line 4.....	10)	
11) Enter the amount from line 9.....	11)	
12) Subtract line 11 from line 10.....	12)	
13) Enter:     • \$441,450 if Single, • \$248,300 if Married Filing Separately, • \$496,600 if Married Filing Jointly or Qualifying Widow(er), • \$469,050 if Head of Household.....	13)	
14) Enter the <i>smaller</i> of line 1 or line 13.....	14)	
15) Add lines 5 and 9.....	15)	
16) Subtract line 15 from line 14. If zero or less, enter -0-.....	16)	
17) Enter the <i>smaller</i> of line 12 or line 16.....	17)	
18) Multiply line 17 by 15% (.15).....	18)	
19) Add lines 9 and 17.....	19)	
20) Subtract line 19 from line 10.....	20)	

# Computation of Foreign Tax Credit in India

Income Particulars	Amount (INR)	India Tax Rate	US Tax rate	Lower of the US and India	FTC
Rental Income	3,08,302	0.3448	-	-	-
Short term capital gain	75,578	0.3448	-	-	-
Long term capital gain	-	0.3448	-	-	-
Interest Income	644	0.3448	0.2956	0.2956	190
Dividends:					
- Qualified		0.3448		0.3448	-
- Others	8,80,006	0.3448	0.2956	0.2956	2,60,113
<b>Total FTC</b>					<b>2,60,303</b>

# Opportunities

- US tax return preparation / ITIN
- FBAR
- Book keeping
- Co-ordination / sharing of information
- Advisory
  - PFIC
  - Gift and Estate taxes
  - Succession



**Questions.....??????**

# Thank you.....

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