

Section 44BBD: Simplifying Tax Complexity for Foreign Collaboration in Electronics Manufacturing Sector

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Pramod Achuthan

Partner, Ernst & Young LLP



Prasad Kulkarni

Director, Ernst & Young LLP



Akshay Joshi

Senior Consultant, Ernst & Young LLP

1. Introduction - India's focus to boost manufacturing of electronics in India

Electronics is one of the highest-traded and fastest-growing industries globally due to ongoing digitization. As digitization continues to advance, the electronics industry is expected to play a pivotal role in shaping the global economy and advancing a country's economic and technological development.

In Calendar Year 2022, global electronics production stood at USD 4.3 trillion, out of which USD 1.8 trillion were on account of electronic components. Ministry of Electronics and Information Technology ('MEITY') had notified different incentive programmes in 2019 to boost electronics manufacturing in India. These initiatives increased the domestic production of electronics goods five times from INR 1.90 lakh crore (USD 30 Billion) in FY 2014-15 to INR 9.52 lakh crore (USD 115 Billion) in FY 2023-24 at a Compounded Annual Growth Rate ('CAGR') of more than 17%.[\[1\]](#)

To position India as a global hub for electronics system design and manufacturing, MEITY recently introduced a scheme named as 'Electronic Component Manufacturing Scheme' to strengthen the component ecosystem. This includes attracting large investments, increasing domestic value addition, and integrating Indian firms into global value chains. However, achieving these goals requires collaboration with foreign players who bring critical technology and expertise in areas like semiconductor packaging, Surface-mount Technology lines, and cleanroom operations—fields still developing in India.

2. Tax Challenges for Non-Residents ('NRs') and the Need for Reform

Despite India's economic appeal, its complex tax system often deters foreign collaboration. Setting up electronics manufacturing facilities involves importing machinery, transferring technology, and deploying skilled foreign personnel for longer duration. These activities can trigger tax complications for NRs, including the risk of creating a Permanent Establishment (PE) in India. This leads to full tax compliance obligations—maintaining books of accounts, tax audits, filing income and withholding tax returns, and navigating GST and transfer pricing rules.

Recognizing these challenges, the Indian Government has introduced a simplified presumptive taxation regime under Section 44BBD via the Finance Act, 2025. This aims to ease compliance for NRs assisting in electronics manufacturing, encouraging greater foreign participation.

3. Section 44BBD: A Progressive Tax Reform for NRs

Presumptive tax regimes are typically reserved for domestic micro and small businesses. As highlighted in the OECD's 2024 working paper, countries like Argentina, Brazil, Colombia, France, Hungary, Italy, Mexico, South Africa, Tunisia, and Uruguay limit such regimes to residents. India stands out for its progressive approach—already offering presumptive taxation to NRs in shipping, aircraft operations, mineral oil services, and turnkey power projects. Section 44BBD now extends this to the electronics manufacturing sector.

Key features of section 44BBD:

a. Applicability:

- Applies to **NR assessee**s engaged in providing **services or technology in India**
- Specifically for activities related to **setting up or operating electronics manufacturing facilities** or producing electronic goods in India.

b. Eligible Transactions:

- Services or technology provided **to a resident company** operating under a **scheme notified by the MEITY**.
- The resident company must **satisfy prescribed conditions**.

c. Presumptive Income:

- **25%** of the aggregate amount paid or payable to NR or received or deemed to be received for such services or technology is deemed as taxable profits.
- This income is taxed under the head "Profits and gains of business or profession".

d. Effective Date:

- Applicable from April 2026, i.e., from FY 2026-27 onwards

e. Tax rate

- While the section does not provide special tax rate, the standard tax rate applicable to NR as per Schedule I to Finance Act, 2025, i.e. 35% (plus applicable surcharge and cess) shall apply.
- If one were to consider, 25% of receipt as deemed income and 38.22% tax rate (after maximum surcharge and cess), the effective tax rate for NR works out to 9.56%, which is much lower than 20% tax applicable on royalty or fees for technical services under section 115A or 10%/15% tax applicable as per India's various tax treaties.

4. Key aspects/nuances of section 44BBD

In light of the amendment, some of the key aspects to be considered by NR are discussed below:-

4.1 Who could be considered as 'eligible assessee'?

- Basis plain reading of the section, there seems no restriction on legal status of NR entity.
- However, Memorandum to Finance Bill, 2025 mentions that *"this will result in an effective tax payable of less than 10% on gross receipts, by a non-resident company."*
- However, clarification cannot be read to restrict the scope of the section to only NR companies. Hence, possibly, the NR individuals, firms, LLPs, AOPs, companies, LLCs, etc. may explore applicability of this section.

4.2 What is the 'eligible activity' of eligible assessee?

- The NR should be engaged in business of providing **services or technology** in India. The section nowhere defines the term "services" or "technology" that will be considered for the purpose of this section.
- Since the term "technology" is not defined, the question arises as to what could be included in the same. Whether or not supply of specialized/advanced machinery or equipment on outright sale even if the title passes to Indian entity will qualify as eligible activity may be highly litigious, as there is no service element involved in the same per se and substantiating it as "technology" will be challenging.
- Also, it appears that even services other than technical services may also get covered under the purview of this section if the same are rendered in connection with setting up an electronics manufacturing facility in India or in connection with manufacturing or producing electronics goods, article or thing in India.

4.3 Whether section 44BBD also covers "off-shore" services or only includes "on-shore" services?

- Section 44BBD has made reference to "in India" in the context of "providing services or technology". A key issue is whether the presumptive taxation scheme under this section applies solely to services physically performed within India ('on-shore services'), or whether it also encompasses services rendered outside India but provided to an Indian entity ('off-shore services').
- Normally, presumptive schemes are provided where there seems to be genuine hardship to the taxpayer to determine its income on net basis and is prone to litigation. This intent is also echoed in the Explanatory Memorandum ('EM') as well FAQs to Finance Bill, 2025. Notably, FAQ :9 - Q2, clarifies that prior to the proposed amendment, NR's business income was taxed on net income basis at applicable rate, suggesting that section 44BBD is primarily aimed at simplifying taxation for onshore service provider.
- However, a broader interpretation may be warranted when viewed through the lens of judicial precedents under tax treaties, in the context of FTS provisions. Courts have held that the phrase provision of services "in India" does not necessarily require actual performance of service in India. Instead, provision of services "in India" also covers situations where service recipient in India (i.e. utilisation is in India). This interpretation could potentially extend the scope of section 44BBD to include offshore services consumed by Indian entities and, thus, could be considered as broader than performance in India.
- The proviso is also inserted to section 44BBD(2) by excluding the applicability of section 115A and section 44DA of the Act in case 44BBD is triggered. Noteworthy to understand that section 115A is normally applicable to the passive income/income from remote provision of specified services to and Indian taxpayers, whereas section

44DA is applicable to onshore royalty/FTS connected with fixed place PE in India. Such exclusion suggests that the Government wants to cover both on-shore as well as off-shore services under the bucket of section 44BBD of the Act.

- Given this ambiguity, a clarification from the Central Board of Direct Taxes ('CBDT') would be instrumental in ensuring consistent application and avoiding future disputes.

4.4 MAT applicability to NR opting for section 44BBD

- In the context of non-applicability of MAT to income of various NRs, captured below are some of the existing provisions:-
 - a. Explanation 4 to section 115JB(2) : Income of NR not having any PE in India, i) if there is treaty between India and NR's country or ii) in absence of such treaty, if the NR is not required to seek any registration in India
 - b. Explanation 4A to section 115JB(2) : Income of NRs covered by presumptive taxation under section 44B, 44BB, 44BBA and 44BBB and such income is offered to tax under those sections.
 - c. Clause (iid) of Explanation 1 to section 115JB(2) : Income of NR in the nature of FTS/Royalty chargeable to tax at the rates specified in Chapter XII. _
- Currently, there is no provision which provides exemption to NR company paying tax as per provisions of section 44BBD, even though there exists separate proviso to exclude NR paying tax under other presumptive section. Surprisingly, in absence of any such express relief, MAT seems to be applicable to the NR companies offering income under section 44BBD of the Act, which may lead to the enhancement in tax rate up to 15% of the book profit (plus applicable surcharge and cess) of such NR company instead of effective tax rate which is <10% under section 44BBD. This appears to be unintentional mistake on the Government side and NR company can expect clarificatory amendment in this regard.

4.5 Applicability of maintenance of books of accounts u/s 44AA and tax audit u/s 44AB

- Section 44AA (maintenance of books of accounts) and section 44AB (tax audit) of the Act are applicable to the taxpayers after crossing the threshold mentioned under respective sections. Applicability of these provisions will extend to NR covered under purview of presumptive scheme under section 44BB and section 44BBB, only when they would want to offer lower income as compared to income computed under the respective sections.
- Interestingly, no such provision is captured in section 44AA, 44AB or 44BBD of the Act. This creates doubt in the mind of NR with respect to applicability of maintenance of books of accounts and tax audit, even though the income is offered as per section 44BBD of the Act.
- This appears to be an unintended lacuna in the law which needs to be corrected/clarified by the CBDT.

4.6 Who is the 'eligible payer' under section 44BBD?

- To claim the benefit of the presumptive taxation under section 44BBD, NR taxpayer needs to provide service or technology to the resident company.
- Language of the section does not capture any other legal entity other than company such as LLP, Partnership firms, AOP, etc. Even, NR company as payer is not covered under the section. Reason behind only covering resident company as eligible payer is not clear from the EM or FAQ. There is uncertainty as to whether and when these legal entities will be covered under the purview of section 44BBD.

4.7 Whether the eligible NR can opt out from presumptive scheme of 44BBD?

- Normally, the taxpayer is provided an option for opting to the presumptive scheme of taxation and there is no compulsion on the taxpayer to opt for it. To align with this intention, the provision is normally captured in the presumptive taxation section providing that the taxpayer can declare income lower than the income computed under respective section subject to maintenance of accounts under section 44AA and getting the books audited under section 44AB of the Act. These provisions are also included in section 44BB and 44BBB of the Act.
- Curiously, reference to abovementioned provision is missing in section 44BBD of the Act, raising doubt whether the NR taxpayer will be able to offer the income lower than the income computed under section 44BBD of the Act.
- However, basis the decision of Supreme Court in case of [A. Sanyasi_Rao\[2\]](#), one could argue that the NR taxpayer should have the option to choose between presumptive taxation or net income taxation.

4.8 Withholding of taxes by resident company to section 44BBD NR

- Provisions of TDS on payments to NR are either governed by the specific provision such as section 192, 194LB, 194LBA, 194LC, etc. and if not covered in these sections, then covered under section 195 of the Act.
- Currently, there is no specific section applicable for payment to NR opting for 44BBD income. Consequently, the TDS will be applicable under section 195 of the Act. Section 195 provides the TDS rate as “rate in force”. In relation to this, First Schedule of Finance Act needs to be looked into.
- First Schedule to Finance Act, 2025 covers various other payments to NR, however it nowhere covers the payment to NR opting for section 44BBD of the Act.
- In this case, if the NR payee is having the PE in India and the income under 44BBD is pertaining to such operations, then the TDS rate could be as high as 38.22% on net income, unless the NR obtains lower TDS certificate.
- Where the income earned under section 44BBD falls under ‘FTS’ or ‘Royalty’ definition under section 9(1)(vi) of the Act, one could explore the tax rate of 20% on gross payment. This rate could be lowered subject to availability of benefit under tax treaty of respective NR’s country.
- Basis above, there appears to be disparity between provision of computation of income under presumptive taxation under section 44BBD (effective rate on gross income is lower than 10%) vis-a-vis. applicable TDS rates which could result into unnecessary blockage of tax in India.
- In this case, the NR taxpayer can explore the option of obtaining the lower withholding certificate in India to solve the cashflow problem.

5. Concluding thoughts

The introduction of Section 44BBD marks a significant and strategic shift in India’s approach to facilitating foreign participation in its electronics manufacturing ecosystem. By offering a simplified presumptive taxation regime tailored for NRs, the government has attempted to address a long-standing pain point—tax complexity and compliance burden—that often deters foreign technology providers and service experts from engaging with Indian enterprises. This reform is not just a tax simplification measure; it is a signal of India’s intent to build a globally competitive and collaborative manufacturing environment.

However, as with any new provision, the success of Section 44BBD will depend on how effectively its ambiguities are addressed. Electronics manufacturing is capital-intensive and timeline-sensitive. Tax unpredictability can disrupt investment decisions, delay project execution, and increase costs. Therefore, timely clarifications from the CBDT—whether through circulars, FAQs, or legislative amendments—will be crucial to ensure that the regime delivers on its promise.

[In the broader context, Section 44BBD complements India’s production-linked incentive \(PLI\) schemes and other policy efforts aimed at boosting domestic manufacturing. It reflects](#)

[a maturing tax policy framework that recognizes the need for differentiated treatment of strategic sectors and international stakeholders. If implemented with clarity and consistency, this provision could become a model for sector-specific tax facilitation and a cornerstone in India's journey toward becoming a global electronics manufacturing hub.](#)

Views expressed above are personal.

[1] Source: Notification dated 08 April 2025 issued by Ministry of Electronics and Information Technology

[2] [\[TS-5022-SC-1996-O\]](#)