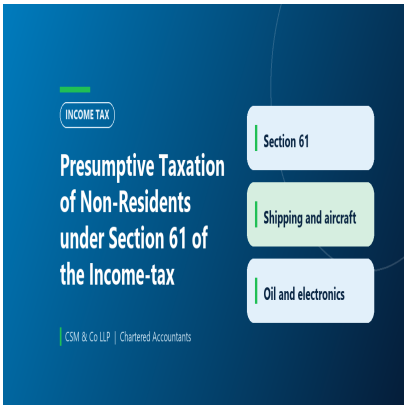

Presumptive Taxation of Non-Residents under Section 61 of the Income-tax Act, 2025: Shipping, Cruise, Aircraft, Oil and Electronics (Tax Year 2026-27)

Description

Last updated: 02 October 2026 · Written and reviewed by CA Meet Dhrangadhariya, CSM & Co LLP

Quick summary

- Section 61 of the Income-tax Act, 2025 gathers the old non-resident presumptive sections 44B, 44BB, 44BBA, 44BBB, 44BBC and 44BBD in one table; the profit is a fixed percentage of the receipts and no deduction, loss or allowance is allowed against it.
- The percentages are 7.5% for ships, 20% for cruise ships, 5% for aircraft, 10% for turnkey power projects (foreign company) and for mineral oil services and equipment hire, and 25% for services or technology given to a resident company that runs an electronics manufacturing facility.
- Only the turnkey power and mineral oil cases can claim lower actual profit, and then only with books of account and an audit under sections 62 and 63.
- A foreign ship that picks up cargo or passengers at an Indian port only occasionally is dealt with under section 316 (7.5%, return by the master before departure, port clearance withheld until tax is paid).

Some non-resident businesses are taxed on a fixed percentage of the receipts they earn from India, instead of on actual profit. In the 1961 Act these were separate sections: 44B (shipping), 44BB (mineral oil), 44BBA (aircraft), 44BBB (turnkey power projects), 44BBC (cruise ships) and 44BBD (electronics manufacturing services). The Income-tax Act, 2025, in force from 01/04/2026, puts all of them in **one table in section 61(2)**.

The six cases

Specified business	Specified assessee	Profit taken as
1. Operation of ships (other than cruise ships)	Non-resident	**7.5%** of (A + B)
2. Operation of cruise ships (conditions in Rule 44)	Non-resident	**20%** of (A + B)

Specified business	Specified assessee	Profit taken as
3. Operation of aircraft	Non-resident	**5%** of (A + B)
4. Civil construction, erection, testing or commissioning of plant or machinery in a turnkey power project approved by the Central Government	Foreign company	**10%** of the amount paid or payable, in or outside India
5. Services or facilities, including hire of plant and machinery, for prospecting for, or extraction or production of, mineral oils	Non-resident	**10%** of (A + B)
6. Services or technology in India for setting up an electronics manufacturing facility, or for manufacturing electronic goods, for a resident company	Non-resident	**25%** of (A + B)

In each case, **A** is the sum paid or payable to the assessee (or to another person on their behalf) for the Indian leg of the business, and **B** is the sum received or deemed to be received in India for the leg that starts outside India. For ships, A covers carriage shipped at an Indian port and includes demurrage, handling and similar charges; for aircraft it is carriage from any place in India. For cruise ships only the carriage of passengers counts, so on-board sales, dining and similar earnings are outside the base.

The result is deemed to be the profit of the business, charged under the head “Profits and gains of business or profession” for the tax year (section 61(2)).

Rules that apply to all six cases

- **No deductions.** Any loss, allowance or deduction allowed by the Act cannot be set against the income computed under section 61(2) (section 61(4)).
- **Depreciation is still worked out in the background.** The written down value of the assets used is computed as if depreciation had been claimed and allowed in every year (section 61(5)), so a later switch to normal computation starts from the right WDV.
- **Lower actual profit** can be claimed only in cases 4 and 5, and only if the assessee keeps books of account under section 62 and gets an audit report under section 63 (section 61(3)).
- **Books and audit** are triggered by section 62(2)(c) and the audit table in section 63 only if the assessee claims lower income in cases 4 and 5. A person who declares the section 61(2) figure needs no audit under section 63 (section 63(2)).
- **Case 5 and royalty or fees.** Section 61 does not apply to case 5 where sections 54, 59, 207 or 527 apply to compute the profits or income referred to in them (section 61(6)). “Plant” in case 5 includes ships, aircraft, vehicles, drilling units and scientific apparatus (section 61(7)).

Cruise ship conditions (Rule 44)

The non-resident must (a) operate a passenger ship with a capacity of more than 200 passengers or a length of 75 metres or more, for leisure and recreation, with appropriate dining and cabin facilities; (b) operate it on a scheduled voyage or shore excursion that touches at least two Indian sea ports or the same Indian sea port twice; (c) operate it primarily for passengers and not for cargo; and (d) follow the procedure and guidelines, if any, issued by the Ministry of Tourism or the Ministry of Ports, Shipping and Waterways. Some older notes say

“at least 200 passengers”; the Rule says “more than two hundred”.

Electronics manufacturing services (case 6)

The resident company must be establishing or operating an electronics manufacturing facility, or a connected facility, under a scheme notified by the Ministry of Electronics and Information Technology, and must not become ineligible for the scheme at any time in the tax year (section 61(8), Rule 45). Sections 59 and 207, which tax royalty and fees for technical services, do not apply to these amounts (section 61(9)).

Minimum alternate tax

The minimum alternate tax section (section 206) does not apply to a foreign company where its total income comprises solely profits and gains from a business referred to in section 61(2) and that income has been offered to tax at the rates in that section (section 206(1), clause (l)(iii)). Finance Act 2026 omitted some words after the reference to section 61(2), so confirm the latest wording before relying on this for a client.

Occasional shipping: section 316

A ship that belongs to or is chartered by a non-resident and carries passengers, livestock, mail or goods shipped at an Indian port is dealt with separately where the operator has no regular arrangement:

1. **7.5%** of the amount paid or payable for the carriage, in or outside India, including demurrage and handling charges, is deemed income accruing in India (section 316(2)).
2. **The master of the ship files a return** before departure from each Indian port, showing the amounts paid or payable since the ship’s last arrival at that port. If this is not possible, satisfactory arrangements can be made for another person to file it within thirty days of departure (section 316(3) and (4)).
3. **Tax** is assessed at the rate applicable to the total income of a company without an arrangement under section 393(1) (Table Sl. No. 7), and the master pays it. The order must be made within nine months from the end of the tax year in which the return is furnished (section 316(5) and (6)).
4. **Port clearance** is withheld until the Commissioner of Customs or the authorised officer is satisfied that the tax is paid or satisfactory arrangements are made (section 316(8)).
5. **Option for regular assessment.** The owner or charterer can claim, before the end of the year following the tax year of departure, that the total income be assessed under the other provisions of the Act. The amount paid under section 316 is then treated as advance tax and adjusted against the final tax, with any difference paid or refunded (section 316(9) and (10)).

Practical points

- Choose the section 61 route knowingly: the percentage is fixed, but losses and allowances are lost, and a business with real losses can be worse off.
- Check the fixed assessee: cases 1 to 3, 5 and 6 are for a non-resident, case 4 only for a foreign company.
- Treaty protection can still matter. This post covers the domestic law only; the treaty position needs a separate check.

How CSM & Co LLP can help

We advise foreign shipping, aviation, construction and technology businesses on Indian tax, compute presumptive income and file returns. Please reach out to our team and we will be happy to assist.

Frequently asked questions

What replaces sections 44B, 44BB, 44BBA, 44BBB, 44BBC and 44BBD?

Section 61 of the Income-tax Act, 2025. Its table lists six specified businesses, the specified assessee for each, and how the profit is computed (section 61(2)).

What is the presumptive rate for a non-resident shipping company?

7.5% of the sum paid or payable for carriage of passengers, livestock, mail or goods shipped at an Indian port (in or outside India), plus the sum received or deemed to be received in India for carriage from a port outside India, including demurrage and handling charges (section 61(2), Table Sl. No. 1).

Which cruise ships qualify for 20%?

A non-resident must operate a passenger ship of more than two hundred passengers capacity or 75 metres or more in length, for leisure and recreation, with dining and cabin facilities, on a scheduled voyage or shore excursion touching at least two Indian sea ports or the same port twice, primarily for passengers and not cargo, as per the procedure and guidelines of the Ministry of Tourism or the Ministry of Ports, Shipping and Waterways (Rule 44). Only the amount for carriage of passengers is counted.

Can I claim that my actual profit is lower?

Only in the turnkey power project case (foreign company, 10%) and the mineral oil services case (10%), and only if you keep books of account under section 62 and get an audit under section 63 (section 61(3)). The other cases are fixed.

Is MAT charged on a foreign company taxed under section 61?

Section 206, the minimum alternate tax section, does not apply to a foreign company whose total income is only profits and gains from a business referred to in section 61(2) offered to tax at the section's rates (section 206(1), clause (l)(iii)). The reference to certain sub-clauses was omitted by Finance Act 2026; check the current text for your case.

What is section 316?

Section 316 deals with a ship belonging to or chartered by a non-resident that carries passengers, livestock, mail or goods shipped at an Indian port. 7.5% of the amount paid or payable is deemed income, the master of the ship files a return before departure from each Indian port, tax is assessed at the rate

applicable to a company with no arrangement under section 393(1) (Table Sl. No. 7), and port clearance is not given until the tax is paid or secured.

Official sources

- Income Tax Department: Income-tax Act, 2025 (sections 61, 62, 63, 206, 316)
- Income Tax Department: Income-tax Rules, 2026 (Rules 44 to 46)

Related reading

- Presumptive Taxation Under Section 58: Businesses, Goods Transporters and Professionals (Tax Year 2026-27)
- Decoding the Direct Tax Landscape: Budget 2025 Insights

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meetsoni