TAXATION OF

NON PROFIT ORGANISATION

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Merits in the new regime

- Scattered provisions are grouped commendably
- Registration provisions very well captured in the form of Table
- Concept of Regular income, specified income and residual income brought out well.
- Commercial activities have been properly delineated between non GPU and GPU

Concerns

- No express exemption – Exemption is by necessary implication
- Impractical registration condition
- Gap in dealing with taxation of donation in hands of unregistered NPO
- Corpus definition goof up
- Rate of tax on Taxable regular income and residual income – Mess up in interlinking
- 15% disallowance on inter trust donation inadvertently nullified
- Tax effect on other violations – clash between sections 336 and 353(1)
- Business income computation – cunning tinkering of language in section 344

Non Profit Organizations

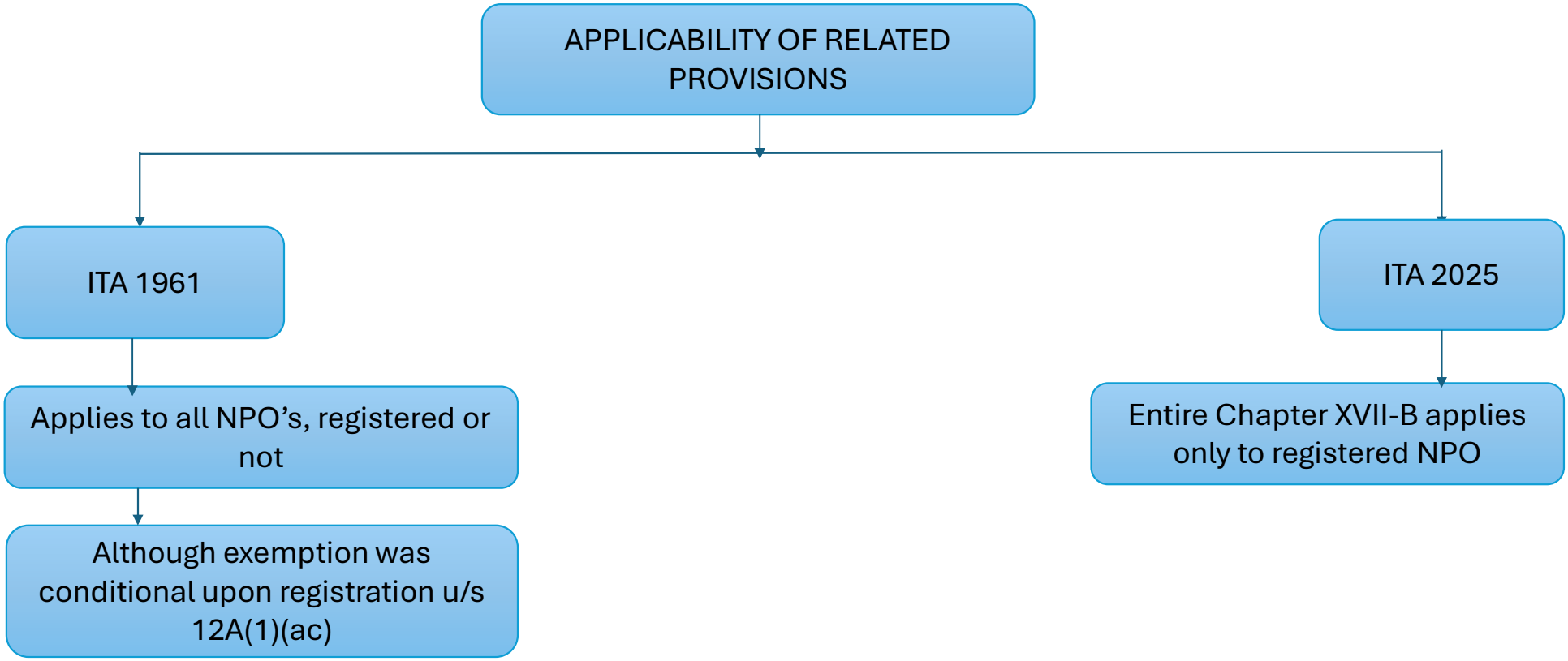
Nature of exemption

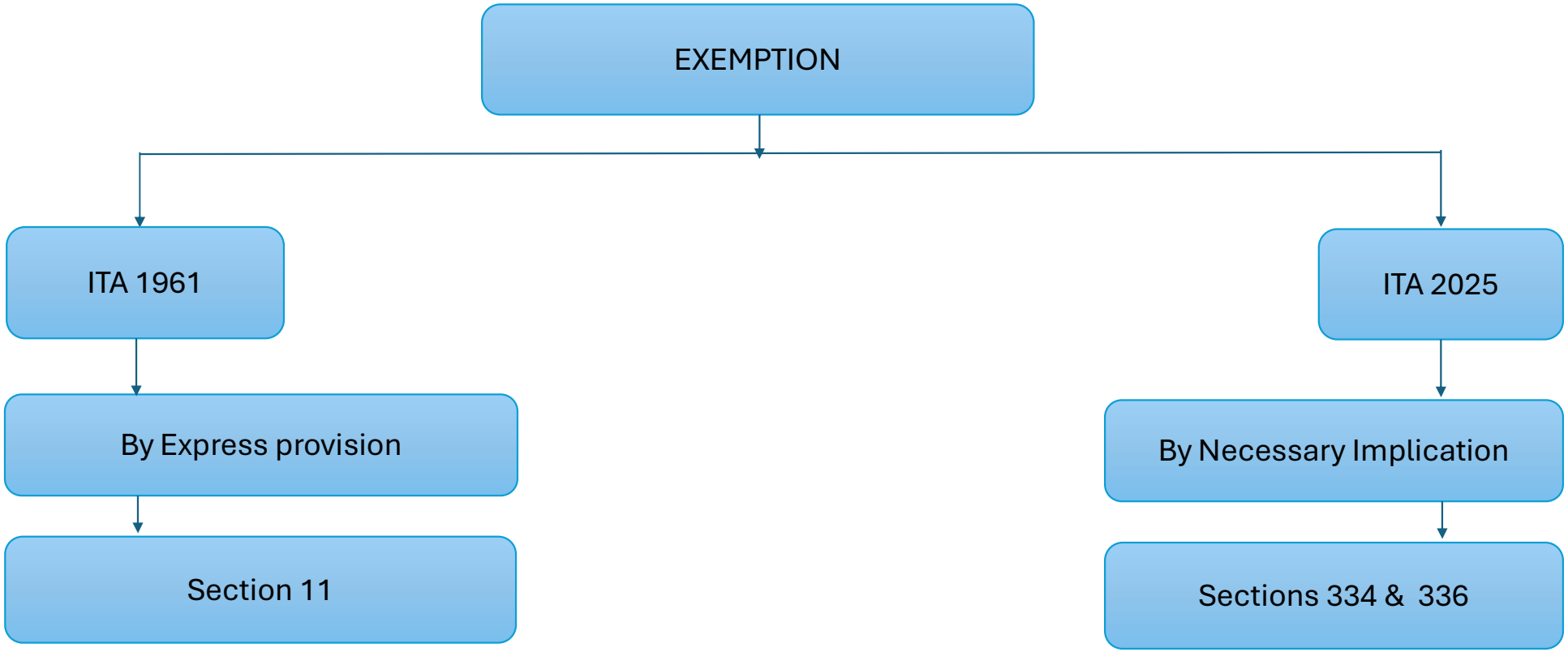
- In ITA 1961, section 11 granted express exemption to income of a charitable or religious trust or institution.

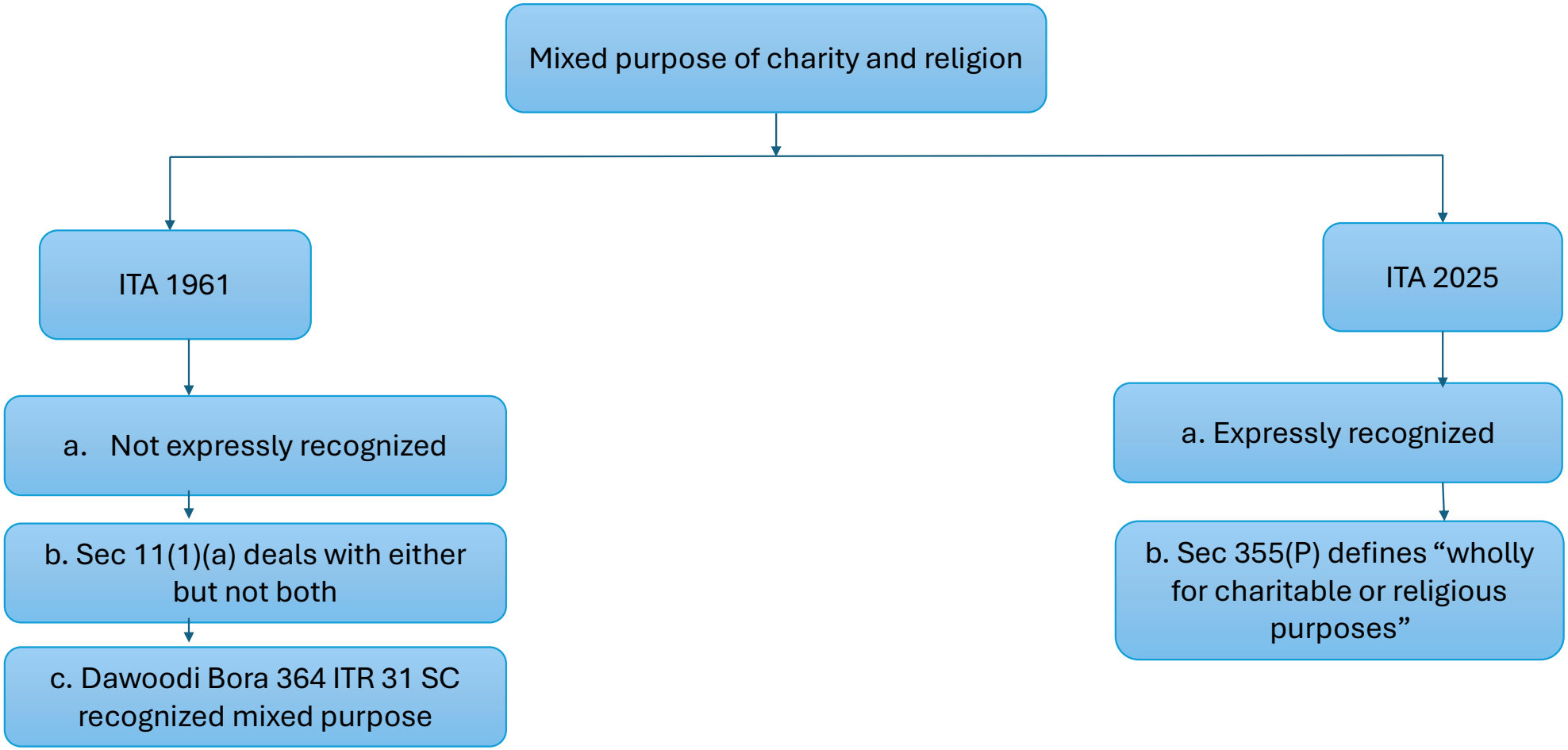
- In ITA 2025, there does not appear to exist any express exemption section. Instead, one has to infer the exemption upon interpretation of section 336 which defines the taxable regular income.

- What does not form part of taxable regular income is assumed to be exempt if the same is not otherwise taxable as specified income or under section 353(1).

- Exemption can be inferred from section 334(1) which provides for tax rate on total income of RNPO and considers only specified income, taxable regular income and residual income


APPLICABILITY OF RELATED PROVISIONS
ITA 1961
Applies to all NPO's, registered or not
Although exemption was conditional upon registration u/s 12A(1)(ac)
ITA 2025
Entire Chapter XVII-B applies only to registered NPO


EXEMPTION
ITA 1961
By Express provision
Section 11
ITA 2025
By Necessary Implication
Sections 334 & 336


Mixed purpose of charity and religion
ITA 1961
a. Not expressly recognized
b. Sec 11(1)(a) deals with either but not both
c. Dawoodi Bora 364 ITR 31 SC recognized mixed purpose
ITA 2025
a. Expressly recognized
b. Sec 355(P) defines “wholly for charitable or religious purposes”

CHARITABLE PURPOSE

Charitable purpose – section 2(23)

"charitable purpose" includes—

(*a*) relief of the poor;

(*b*) education;

(*c*) yoga;

(*d*) medical relief;

(*e*) preservation of environment (including watersheds, forests and wildlife);

(*f*) preservation of monuments or places or objects of artistic or historic interest;

(*g*) the advancement of any other object of general public utility

Charitable purpose – section 2(23)

- Meaning is same as section 2(15) of ITA 1961

- However, the provisos to section 2(15) are now carved out into section 346

REGISTRATION OF NPO

Registration of NPO – section 332(2)

(a) such person is constituted or registered or incorporated in India for carrying out one or more charitable purposes, as referred to in section 2(*23*) or one or more public religious purposes; and

(b) the properties of such person are held for the benefit of the general public under an irrevocable trust—

(*i*) wholly for charitable or religious purposes in India; or

(*ii*) partly for charitable or religious purposes in India, if such person was constituted or registered or incorporated prior to the commencement of the Income-tax Act, 1961

Registration of NPO

- Section 332(2)(b) mandatorily requires the NPO to hold property under irrevocable trust.

- This condition does not exist in ITA 1961

- How a very old trust which was not created under irrevocable trust can move into ITA 2025?

- Chamber of Tax Consultants [TS-373-HC-2026(BOM)] ; a public charitable trust is deemed 'irrevocable' by operation of law unless the instrument of trust expressly provides a power of revocation; *The absence of an explicit irrevocability clause is not a ground for rejecting an application for registration or renewal under section 12AB of the Act*

BOOKS, AUDIT AND RETURN

Maintenance of books of account, audit and ROI

- Under ITA 1961, as per section 12A(1)(b), maintenance of books of account and audit, are a precondition for exemption under section 11.
- If books are not maintained or audited, section 11 would not apply.
- Likewise, section 12A(1)(ba) provides for filing ROI as a precondition for exemption.
- Under ITA 2025, implied exemption under section 336, is not conditional upon maintenance of books of account or their audit or filing of ROI.
- Sections 347, 348 and 349 provide for maintenance of books of account, audit and filing of ROI, as the case may be, more as a compliance but not as a pre-condition.
- Failure to maintain books, audit them and file ROI of course will be regarded as other violations under section 353

Maintenance of books of account, audit and ROI

- While non compliance with sections 347, 348 and 349 would not per se result in denial of exemption in ITA 2025, the following clash arises

  - Such income will be part of regular income and would be eligible for implied exemption under section 336 depending on application and accumulation.

  - At the same time, such regular income would be subject to deduction under section 353(3) and balance would be regarded as taxable regular income under section 353(1).

  - This problem did not arise in the ITA 1961 as while exemption was denied under section 12A, separate relief was provided by section 13(10) thus not creating any such conflict.

UNREGISTERED NPO

Voluntary contributions – Unregistered NPO

- Section 2(49)(c) makes voluntary contributions as income only for RNPO. This is not so under section 2(24)(iia) which applies to any charitable or religious trust.

- However, URNPO may be liable to tax on voluntary contributions as per section 2(49)(u) read with section 92(2)(m), unless recipient NPO argues that it has received the voluntary contribution for public purpose and cannot be said to be without consideration.

- If this argument fails, such NPO will be charged to tax and exemption under section 92(3)(f) is not available if NPO is not registered.

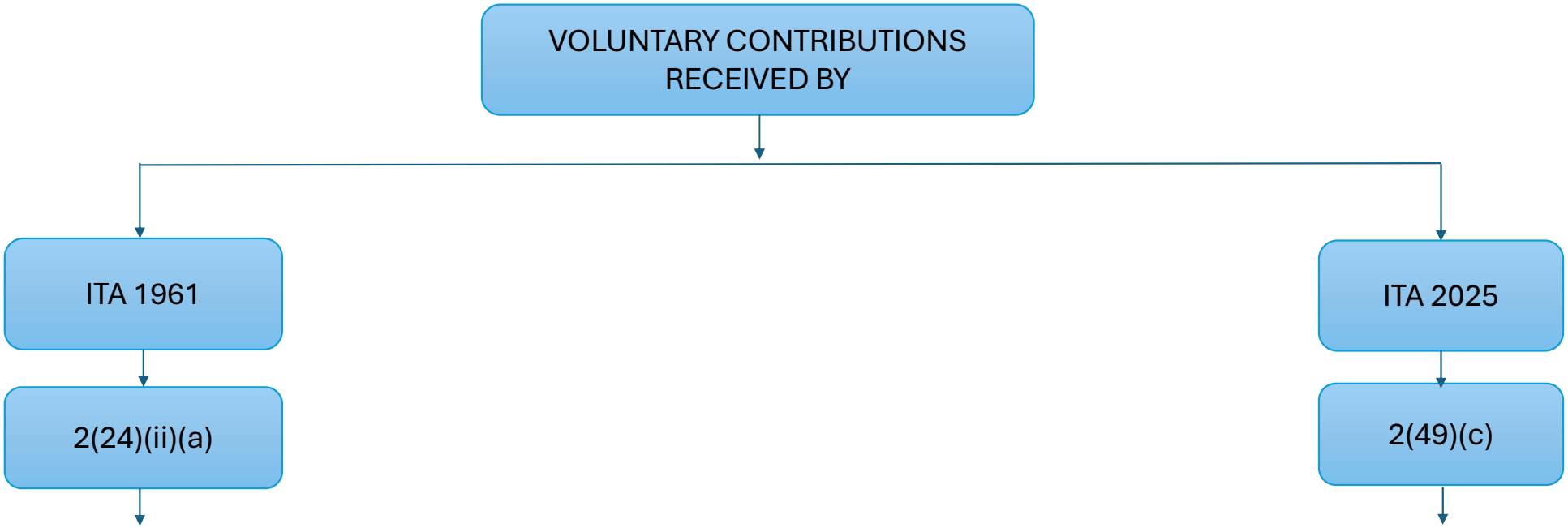
- Voluntary contributions in the form of movable assets other than property specified in section 92(5)(f) would be not taxable in the hands of unregistered NPO.

Voluntary contributions – Unregistered NPO

- Under ITA 1961, section 11(1)(a) exempted income from property held under trust. Literal reading of this would have excluded voluntary contributions. Therefore, section 12(1) created a fiction that the voluntary contributions shall be deemed to be income from property held under trust.

- In ITA 2025, section 335 introduces the concept of regular income. Such regular income inter alia includes voluntary contributions. Therefore, there is no need to have provision similar to section 12(1) to create a fiction.

- Corpus donation needs to be dealt with separately keeping in mind the underlying obligations and court's ruling even after amendment to section 2(24)(iia) holding corpus donations are not incomes

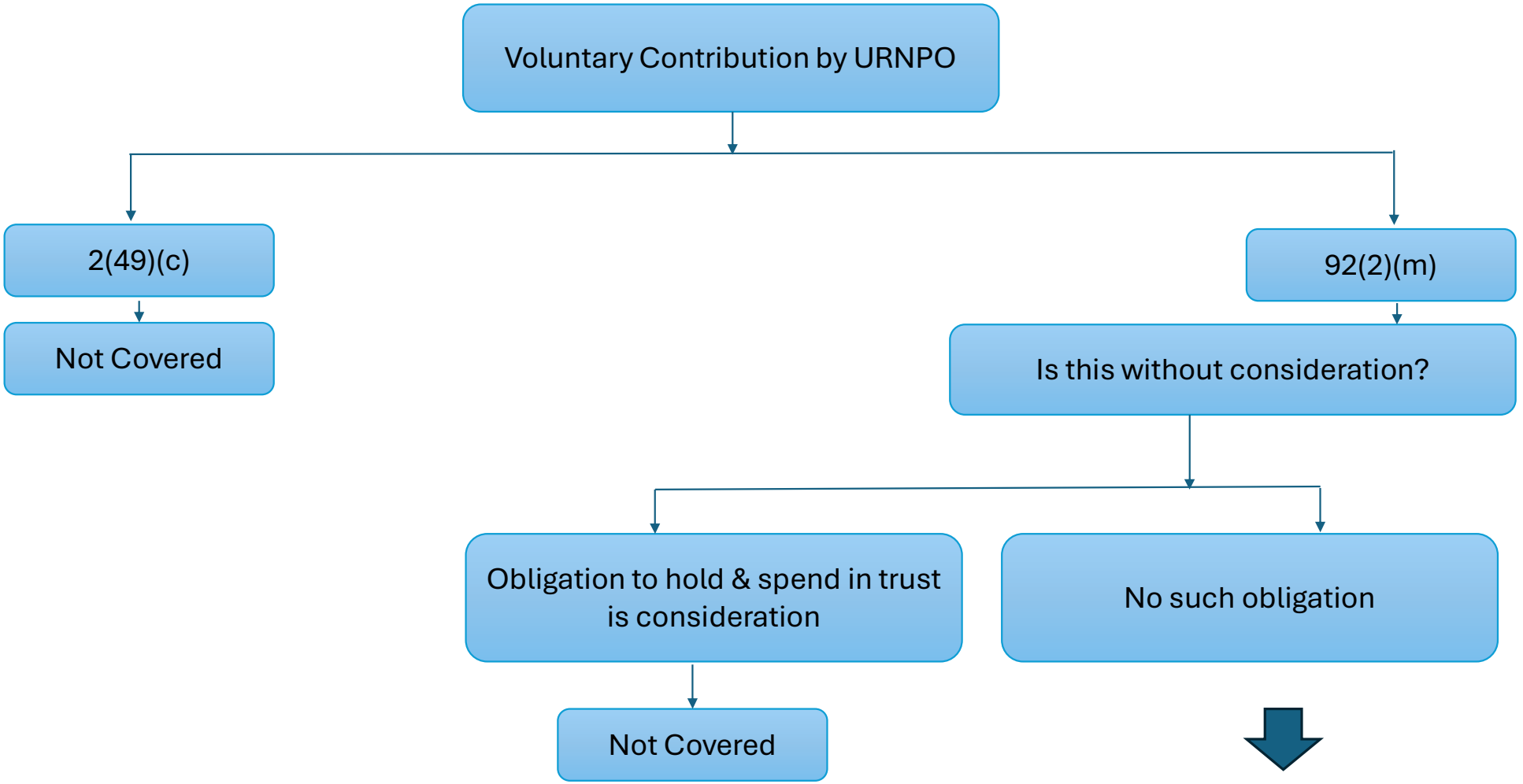


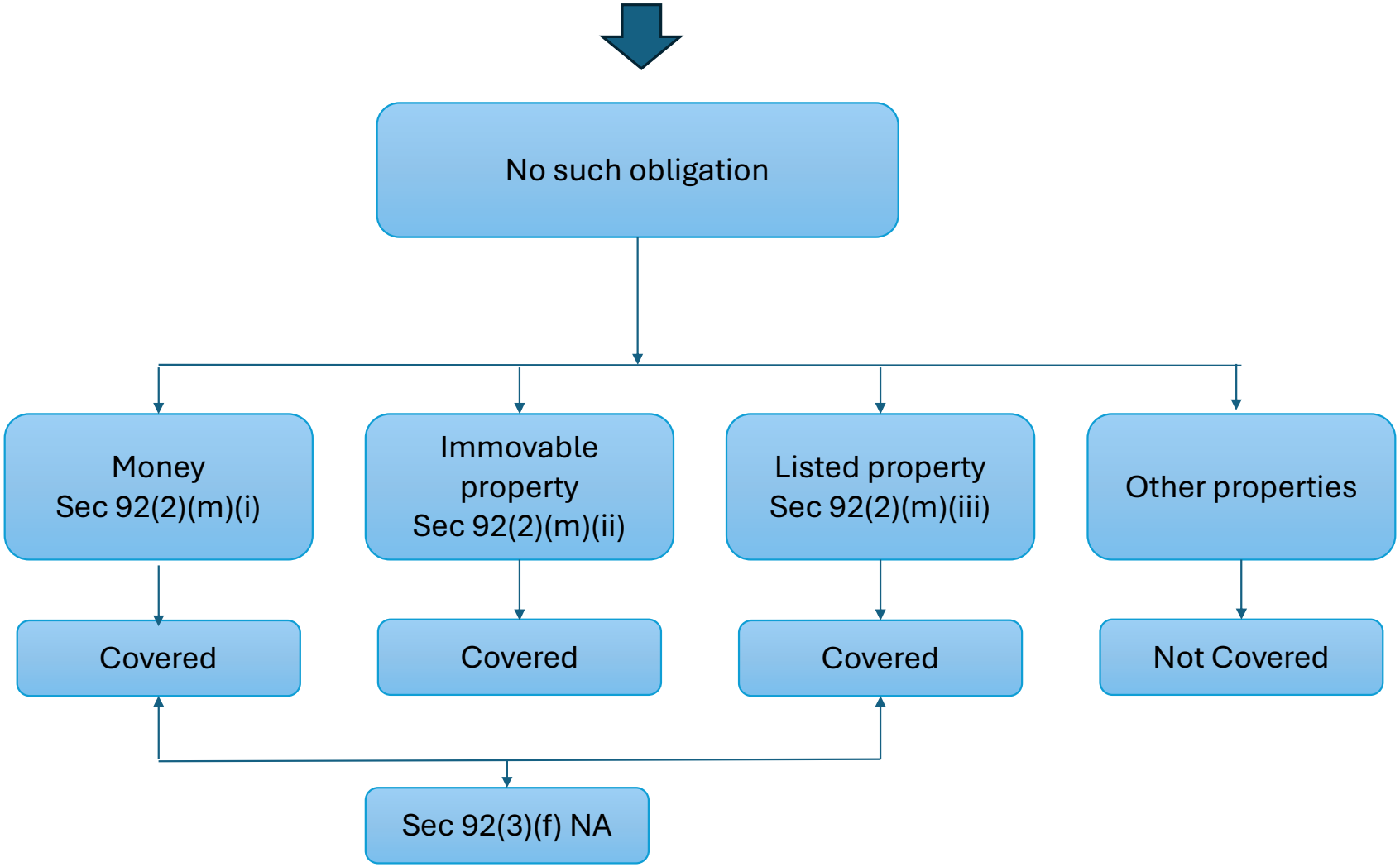
voluntary contributions received by a trust created wholly or partly for charitable or religious purposes or by an institution established wholly or partly for such purposes or by an association or institution referred to in clause (21) or clause (23), or by a fund or trust or institution referred to in sub-clause (iv) or sub-clause (v) or by any university or other educational institution referred to in sub-clause (iiiad) or sub-clause (vi) or by any hospital or other institution referred to in sub-clause (iiiae) or sub-clause (via) of clause (23C) of section 10 or by an electoral trust.

Explanation.—For the purposes of this sub-clause, "trust" includes any other legal obligation ;

(c) voluntary contributions received by:

(i) a registered non-profit organisation; or
(ii) an association referred to in Schedule III (Table: Sl. No. 23); or
(iii) any University or other educational institution or any hospital or other institution referred to in Schedule VII (Table: Sl. No. 19); or
(iv) an electoral trust;


Voluntary Contribution by URNPO
2(49)(c)
Not Covered
92(2)(m)
Is this without consideration?
Obligation to hold & spend in trust is consideration
Not Covered
No such obligation


No such obligation
Money
Sec 92(2)(m)(i)
Immovable property
Sec 92(2)(m)(ii)
Listed property
Sec 92(2)(m)(iii)
Other properties
Covered
Covered
Covered
Not Covered
Sec 92(3)(f) NA

Unregistered NPO – other income

- Earlier analysis would apply only to voluntary contribution

- Any other income of Unregistered NPO would be dealt in the same manner as how an unregistered charitable trust is dealt with under ITA 1961

CORPUS DONATION

Corpus donations

- Corpus donation is defined in section 12(1) and the same is exempt under section 11(1)(d) in ITA 1961

- As per section 12(1), the meaning of corpus donation can be deduced as contributions made with a specific direction that they shall form part of the corpus of the trust or institution

- On the contrary, in ITA 2025, the corpus donation is specifically defined in section 339 to mean

Any donation made with a specific direction by the donor that it shall form part of the corpus of the registered non-profit organisation ***provided that such donation is invested or deposited in any of the modes permitted under section 350 maintained specifically for such corpus***

Corpus donations

- While section 11(1)(d) attached an exemption condition that corpus contributions are invested or deposited in one or more of the forms or modes specified in sub-section (5) maintained specifically for such corpus, such condition is now made part of very definition of corpus under section 339.

- This would mean that if not so invested, it cannot even be regarded as corpus donation at all.

- If a voluntary contribution does not fall within the meaning of corpus under section 339, it falls within the meaning of ‘regular income’ under section 335(d). The same shall be dealt with in terms of section 336.

- If corpus is invested contrary to section 350 – Section 337 Table 4 : It will become specified income. However, this would apply only if it is corpus.

Corpus donations – not invested as per sec 350

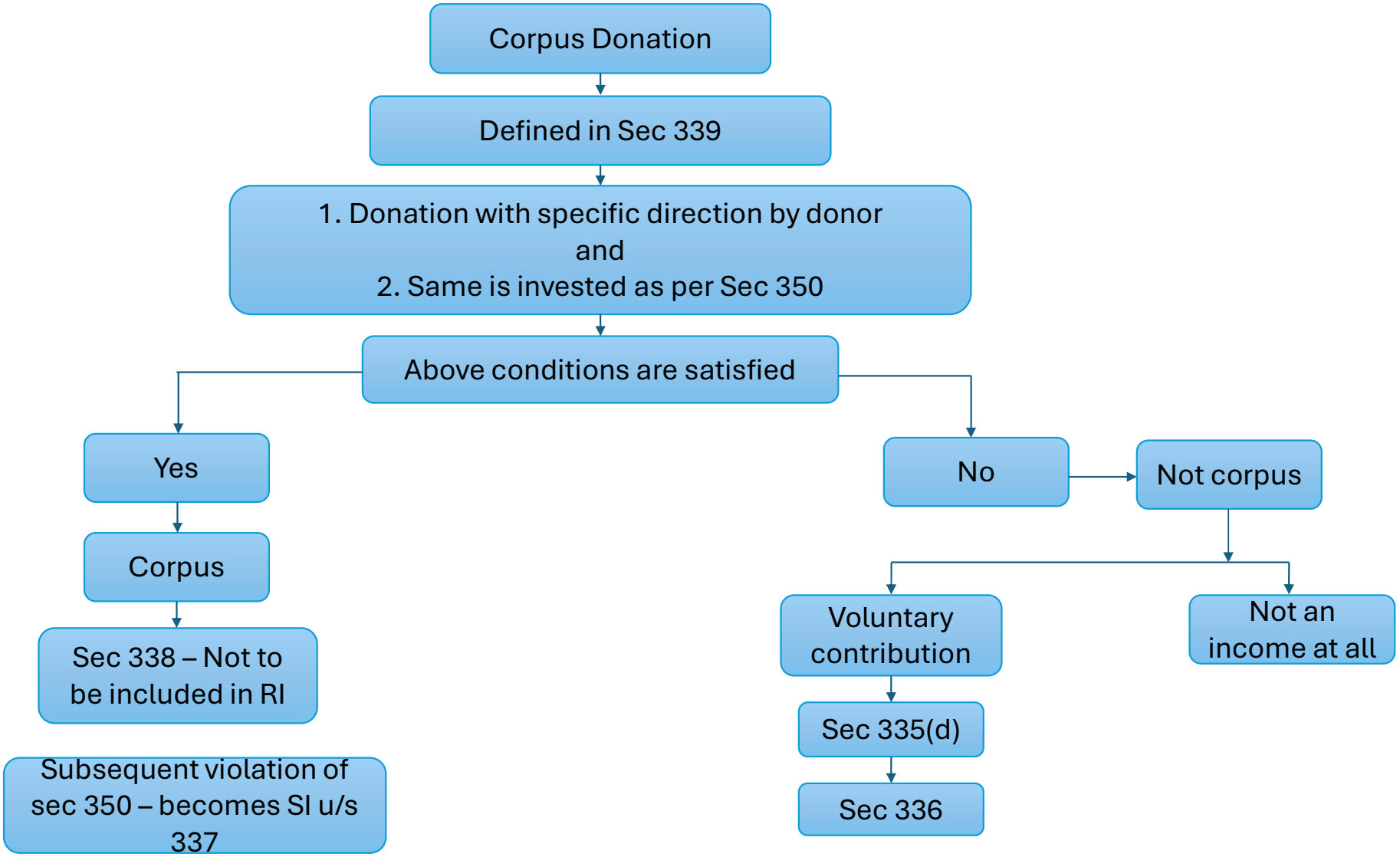
- Corpus donation under ITA 1961 would not have been exempt under section 11(1)(d) if not invested in 11(5), and no exemption even if such corpus is applied for charity.

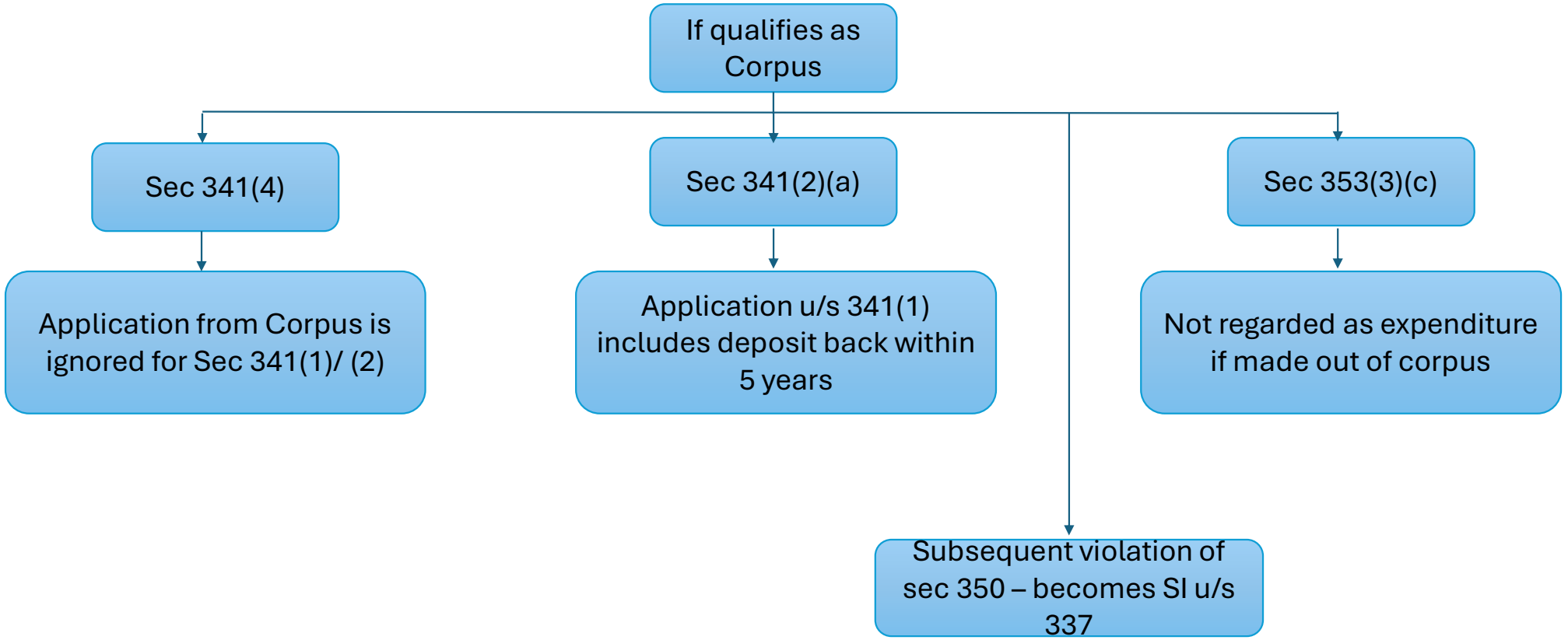
- Such corpus donation in ITA 2025 is not even corpus under section 339 if not so invested.

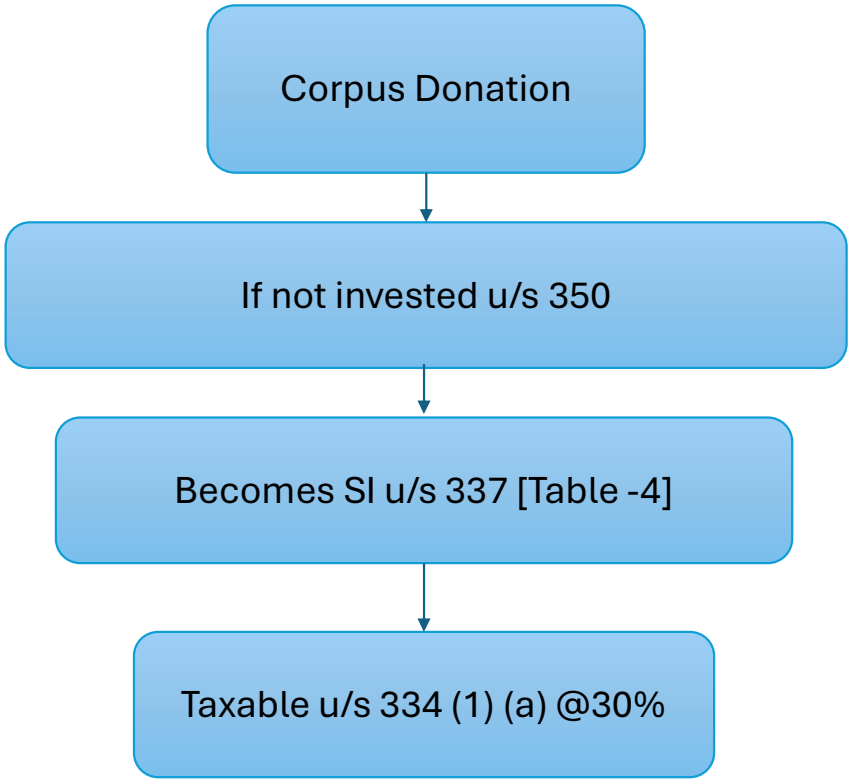
- Instead it becomes regular income under section 335 and would be exempt to the extent applied under section 336 read with section 341.

- Alternatively, it may not even become income being fastened with obligation

- The restrictions of section 341 on application from corpus do not apply as such donations are not even corpus as per section 339.


Corpus Donation
Defined in Sec 339
1. Donation with specific direction by donor
and
2. Same is invested as per Sec 350
Above conditions are satisfied
Yes
Corpus
Sec 338 – Not to be included in RI
Subsequent violation of sec 350 – becomes SI u/s 337
No
Not corpus
Voluntary contribution
Sec 335(d)
Sec 336
Not an income at all


If qualifies as Corpus
Sec 341(4)
Application from Corpus is ignored for Sec 341(1)/ (2)
Sec 341(2)(a)
Application u/s 341(1) includes deposit back within 5 years
Sec 353(3)(c)
Not regarded as expenditure if made out of corpus
Subsequent violation of sec 350 – becomes SI u/s 337


Corpus Donation
If not invested u/s 350
Becomes SI u/s 337 [Table -4]
Taxable u/s 334 (1) (a) @30%

TAXATION OF RNPO

Taxation of RNPO – section 334

(1) The income-tax payable by a registered non-profit organisation on its total income for any tax year shall be the aggregate of the amounts calculated—

(*a*) at the rate of 30% on specified income for such tax year; and

(*b*) at the rate applicable on taxable regular income and any residual income for such tax year under other provisions of this Act.

(2) The provisions of this Chapter shall apply irrespective of anything to the contrary contained in any other provision of this Act other than sections 96 to 98.

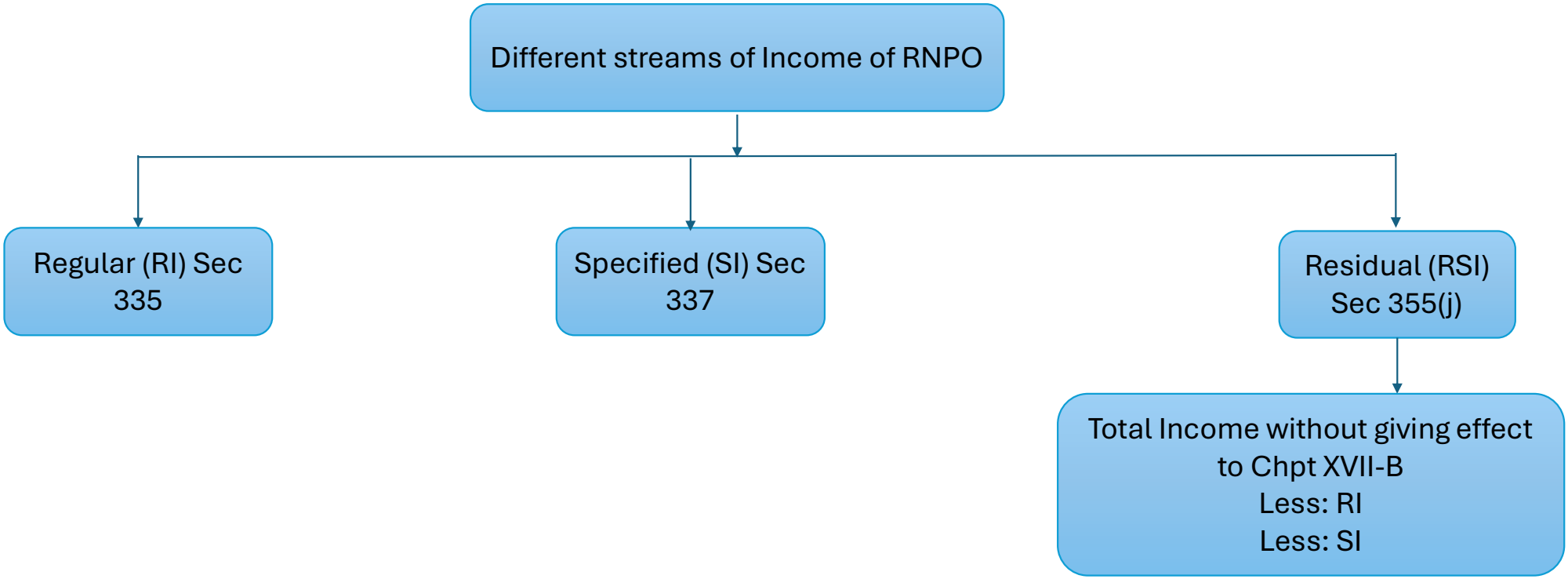
Taxation of RNPO

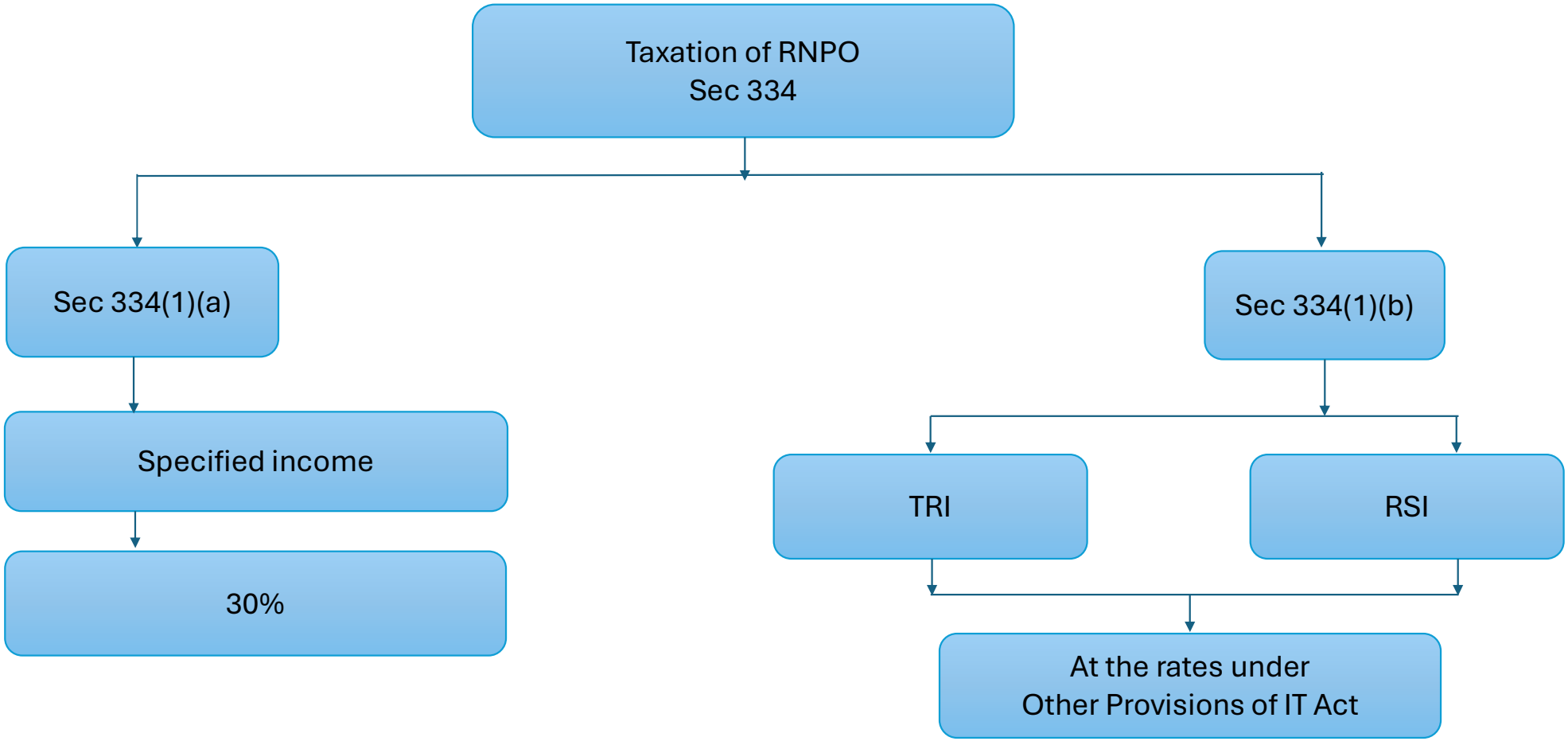
- A reading of section 334(1) indicates that the total income of a RNPO may consist of only three components viz

    1. Specified income – SI
    2. Taxable regular income – TRI
    3. Residual income – RSI

- Section 334(1) has two clauses

    - Clause (a) provides for 30% tax on specified income [SI]
    - Clause (b) provides for taxation of taxable regular income [TRI] and residual income [RSI] at the rates given in other provisions of this Act.


Different streams of Income of RNPO
Regular (RI) Sec 335
Specified (SI) Sec 337
Residual (RSI) Sec 355(j)
Total Income without giving effect to Chpt XVII-B
Less: RI
Less: SI


Taxation of RNPO
Sec 334
Sec 334(1)(a)
Specified income
30%
Sec 334(1)(b)
TRI
RSI
At the rates under
Other Provisions of IT Act

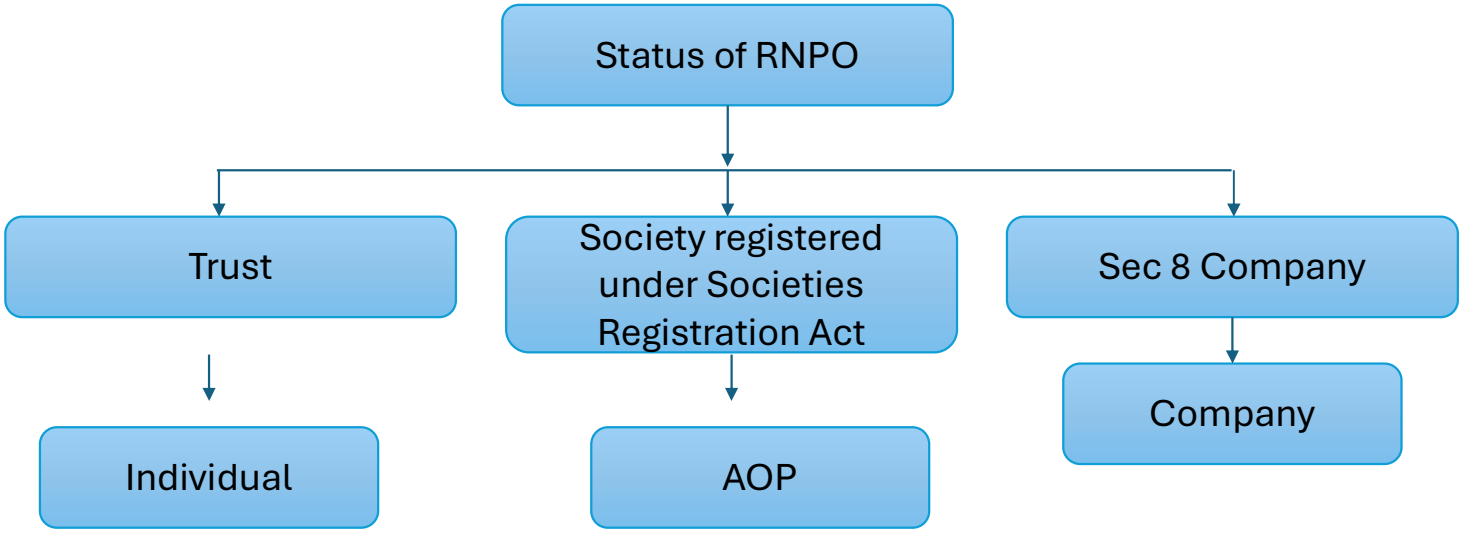
STATUS OF RNPO

Taxation of RNPO – Status

- If RNPO is a section 8 company – It may be regarded as a company for its assessment and determination of tax
- If it is a society registered under Societies Registration Act, courts have held such society to be an AOP [CIT vs. All India Hindu Mahasabha 1983] 140 ITR 748 (Delhi), CIT vs. Sarvhitkari Education Society [2009] 318 ITR 93 (P&H) & CIT vs. Sengunthar Matriculation Higher Secondary School [2020] 121 taxmann.com 338 (Madras)]
- An APMC is as AJP [CIT vs. AMC [2011] 336 ITR 641 (AP)[01-03-2011]
- University is an AJP [O.P. Jindal Global University vs. CIT 127 ITD 164 (Delhi)]
- Other RNPOs may have to be regarded as individual [DIT vs. Shardaben Bhagubhai Mafatlal Public Charitable Trust No. 8 [2001] 247 ITR 1 (Bombay)]
- ***CIT v. Sodra Devi (1957) 32 ITR 615 SC*** : *the word 'individual' did not mean only a human being but it included a group of persons forming a unit*

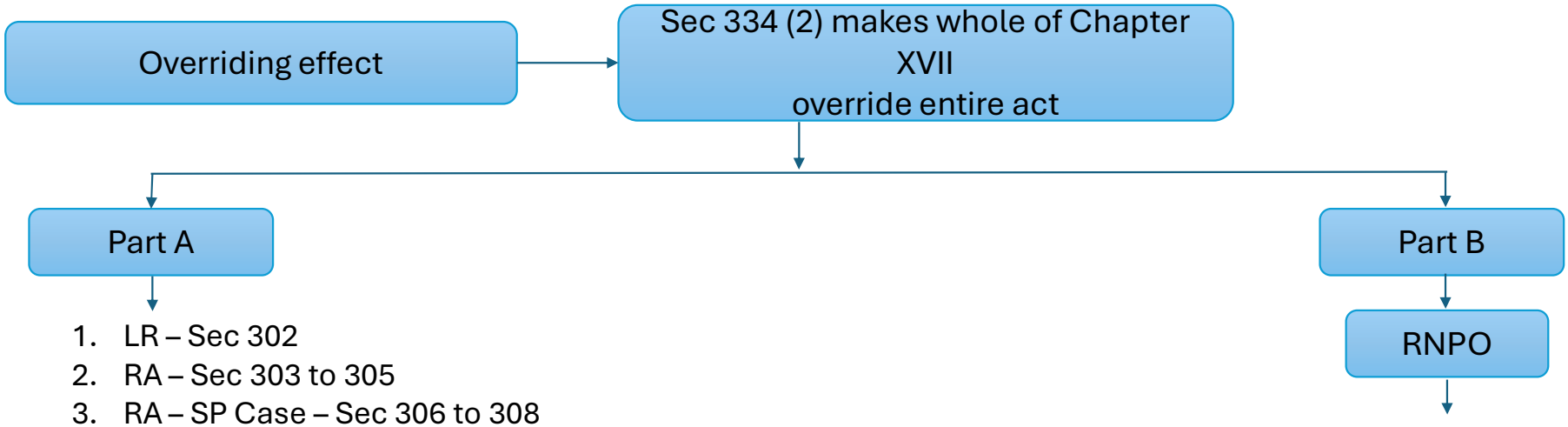
Taxation of RNPO – Status

- Shushrutha Educational Trust 161 ITD 565 Blr : sec 164(2) is only for assessment purpose and it does not alter the real status of the trust para 27


Status of RNPO
Trust
Society registered under Societies Registration Act
Sec 8 Company
Individual
AOP
Company

RNPO – TAX RATES FOR

TRI & RSI



1. LR – Sec 302
2. RA – Sec 303 to 305
3. RA – SP Case – Sec 306 to 308
4. AOP – Sec 309 to 311
5. Execution – Sec 312
6. Succession to business – Sec 313 to 314
7. HUF partition – Sec 315
8. Occasional Shipping Biz – Sec 316
9. Persons leaving India – Sec 317
10. Special purpose AOP – Sec 318
11. Persons leaving India – Sec 319
12. Biz discontinued or dissolved – Sec 320 to 322
13. Private Company – Sec 323
14. Firms – Sec 324 to 326
15. Change in constitution/ succession/ dissolution
16. LLP – Sec 331

1. Registration – Sec 332 to 333
2. Income of RNPO – Sec 334 to 343
3. Commercial activities – Sec 344 to 346
4. Compliance – Sec 347 to 350
5. Violations – Sec 351 to 353
6. Approval for eligible contribution [Sec 80G type]
7. Interpretation – Sec 355

Taxation of RNPO : Taxable Regular Income [TRI] and Residual income [RSI]

- Section 334(1) does not refer to Finance Act. Therefore, rates if any found in FA cannot be applied.
- Section 334(1)(b) refers to other sections for the rates of tax on TRI and RSI
- Rates for these incomes are not separately found but are to be gathered from the Act
- If RNPO is a non company, it may be regarded as discretionary trust and covered by section 307(1).
- As the beneficiaries are not known or shares are indeterminate, section 307(1) provides for MMR.

Taxation of RNPO being a company – TRI and RSI

- If RNPO is a company, it may be covered by section 200 which provides for 22% tax.
- Section 200 does not yield to Chapter XVII-B and thus overrides section 307
- Mutual non obstante clause in sections 200 and 334(2)

Where RNPO is Individual/AOP/AJP – TRI and RSI

- Section 202 yields to chapter XVII-B but does not yield to chapter XVII-A which contains section 307.

- However, section 334(2) rightly or wrongly provides that whole of Chapter XVII overrides the entire Act. Therefore, non company RNPO is taxed under section 307(1) at MMR. Section 202 does not rescue such case.

- Even otherwise, there is no section similar to section 164(2) to apply the rates of AOP to RNPO.

- Therefore, section 202 may not apply to RNPO.

Section 307(1)

- Section 307 deals with discretionary trust.
- Section 307 comes in Part A of Chapter XVII-A. Although section 307 does not override the Act per se, in terms of section 334(2), it overrides the entire Act.
- Section 307 applies to persons specified in section 303(1)(c) and (d).

c) in respect of income which the Court of Wards, the Administrator-General, the Official Trustee or any receiver or manager (including ....) appointed by or under any order of a court, receives or is entitled to receive, on behalf or for the benefit of any person, such Court of Wards, Administrator-General, Official Trustee, receiver or manager;

d) in respect of income which a trustee appointed under a trust declared by a duly executed instrument in writing whether testamentary or otherwise (including any Wakf deed which is valid under the Mussalman Wakf Validating Act, 1913) receives or is entitled to receive on behalf or for the benefit of any person, such trustee or trustees;

Non company RNPO v. Section 307(1)

- Section 307 applies only to duly executed trust.

- As per section 332(2)(b), an NPO should hold property for the benefit of general public under an irrevocable trust.

- This would mean that such NPO should hold property under trust. Hence, invariably, an NPO is covered by section 303(1)(d) so as to attract section 307.

- Further, section 202 yields to Chapter XVII-B. Section 334(2) falls in Chapter XVII-B but provides that whole of Chapter XVII [not just Part B] overrides the entire Act. This would mean that section 202 surrenders to section 307 as well.

Give a restricted reading to section 334(2) - Effect

- Consider the case of a society registered SRA 1860
- Such society is an AOP and covered by section 202
- If such society is to be taxed under section 334(1)(b), one has to reach out to section 307(1) for MMR and section 202 for rates of AOP.
- Section 202 does not yield to section 307(1) but rather overrides it. Hence, rates applicable to AOP would apply to such society
- This would be so irrespective of application of section 332(2)(b) to such society. Therefore, such society would pay tax at rates given in section 202.
- This would be so despite the absence of provision similar to section 164(2).

Taxation of RNPO – FA is not applicable?

- See section 3(3) of FA 2026 which provides that the income referred to in section 334 shall suffer tax at rate given in section 3(1) of FB 2025 or section 334.

- Section 3(3) of FA 2026 reads

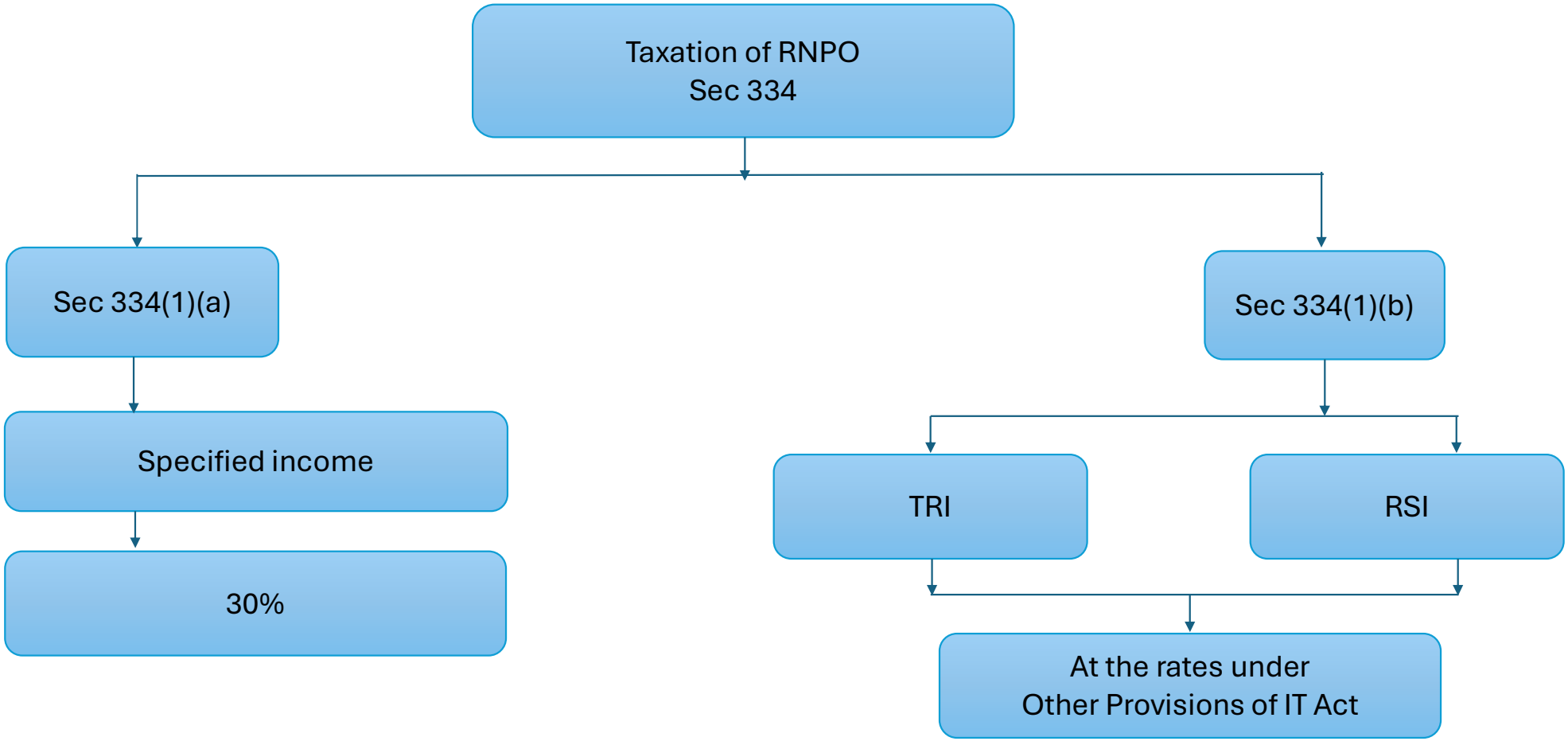
(3) In cases to which the provisions of Part A, B, C or D of Chapter XIII or section 207 to 218, 223, 224, 307, 308, 311 or 334 of the said Act apply, the tax chargeable shall be determined—

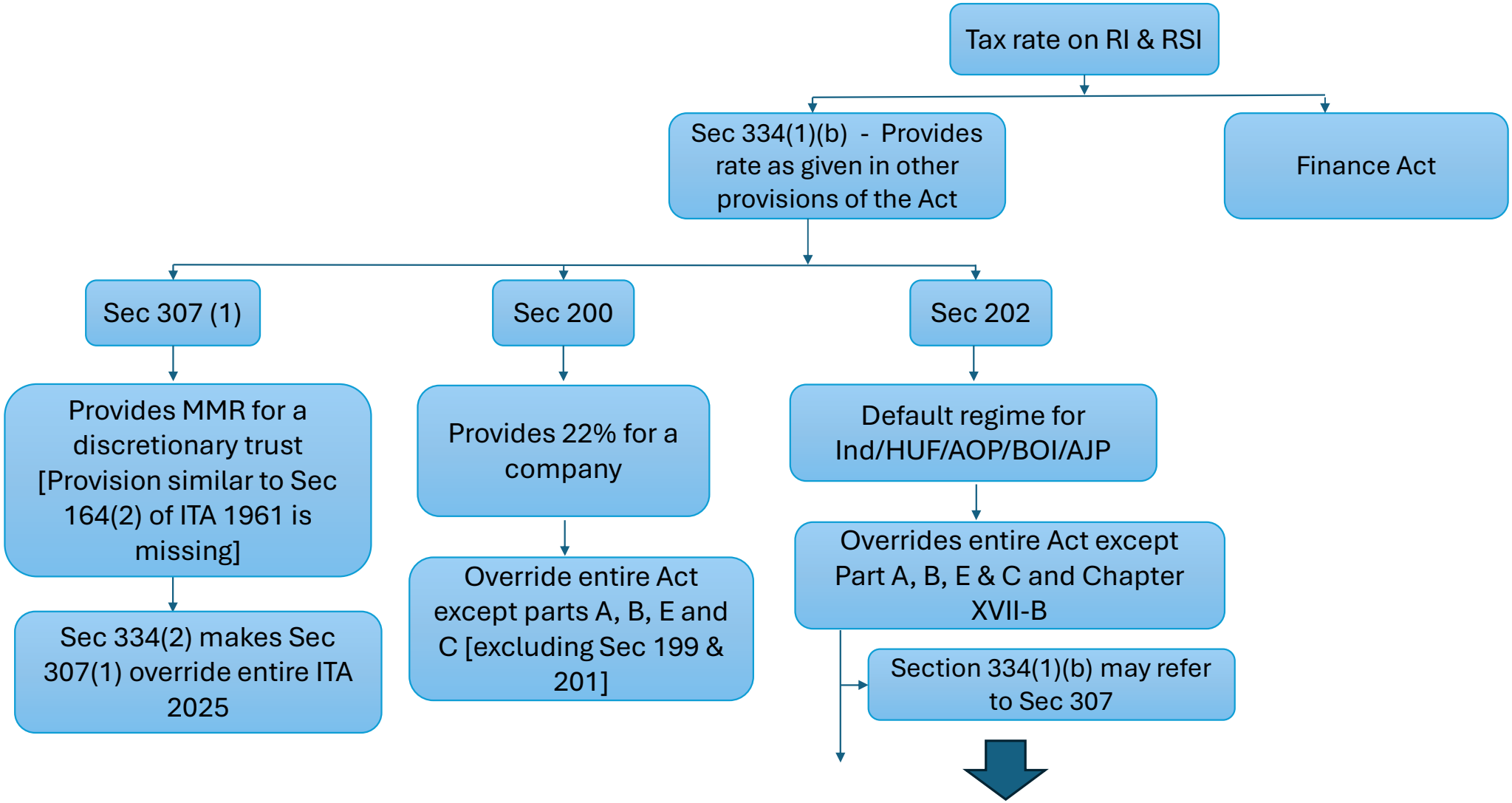
(i) as provided in that Chapter or that section; and

(ii) with reference to the rates imposed by sub-section (1) or the rates as specified in that Chapter or section, as the case may be

- Section 334(1)(b) does not give rate but rather refers to rate provided elsewhere in the Act.

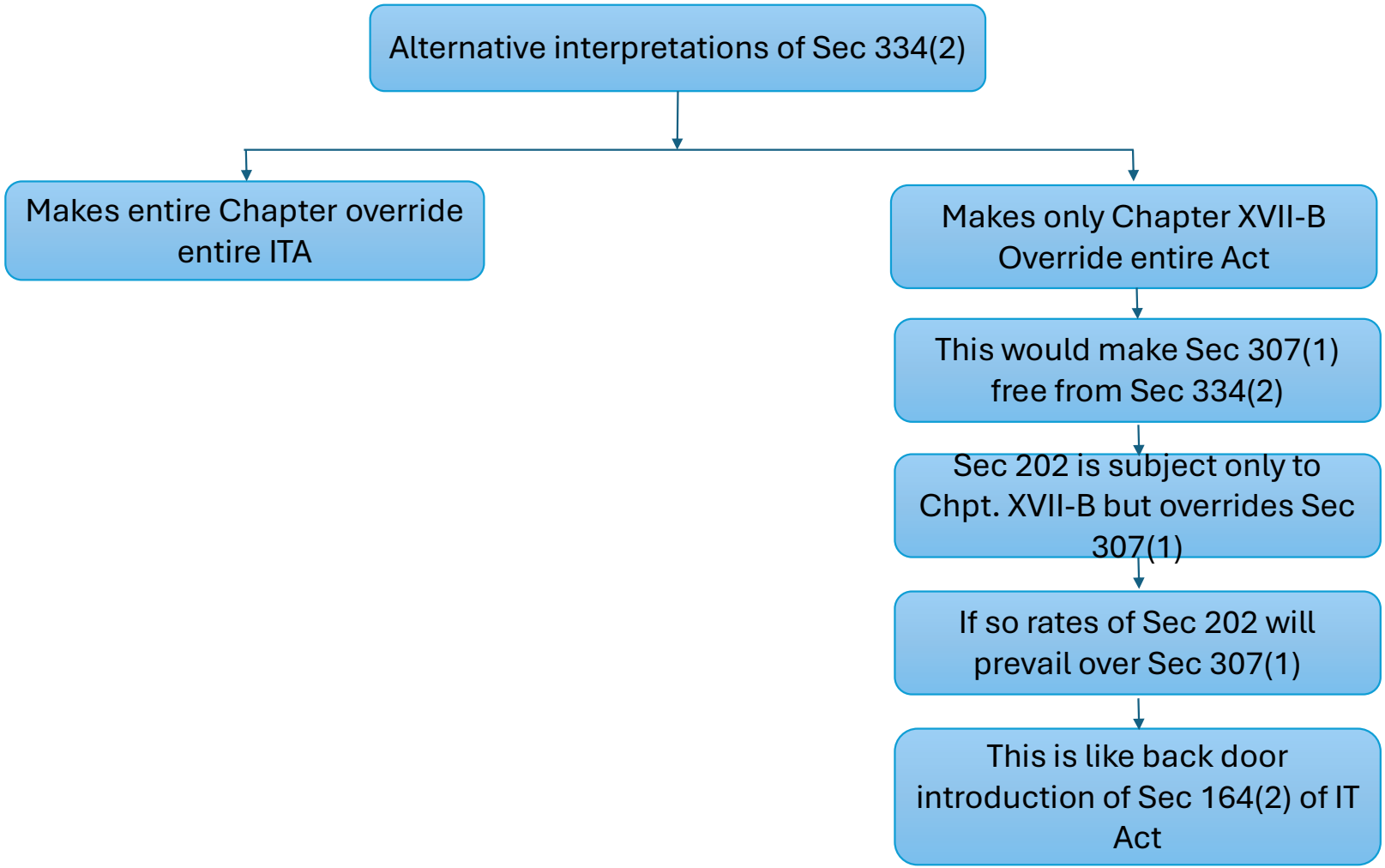
SUMMARY OF TAXATION OF RNPO

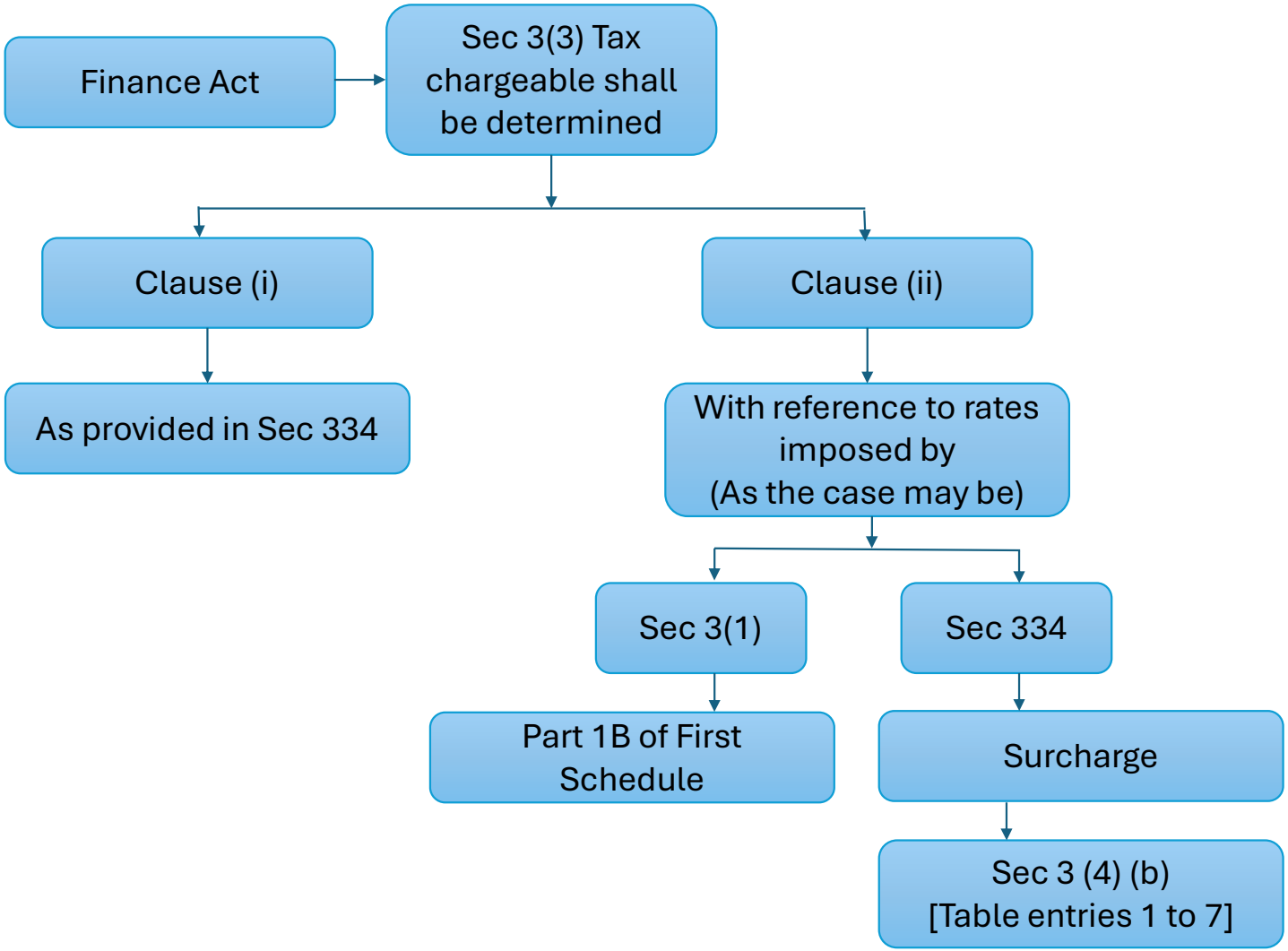

Taxation of RNPO
Sec 334
Sec 334(1)(a)
Specified income
30%
Sec 334(1)(b)
TRI
RSI
At the rates under
Other Provisions of IT Act


Tax rate on RI & RSI
Sec 334(1)(b) - Provides rate as given in other provisions of the Act
Finance Act
Sec 307 (1)
Sec 200
Sec 202
Provides MMR for a discretionary trust [Provision similar to Sec 164(2) of ITA 1961 is missing]
Provides 22% for a company
Default regime for Ind/HUF/AOP/BOI/AJP
Sec 334(2) makes Sec 307(1) override entire ITA 2025
Override entire Act except parts A, B, E and C [excluding Sec 199 & 201]
Overrides entire Act except Part A, B, E & C and Chapter XVII-B
Section 334(1)(b) may refer to Sec 307



- Sec 202 does not override Sec 334(2) [Part of Chpt XVII-B]
- Sec 334(2) makes entire Chapter, [including XVII-B] override entire Act
- Sec 334(2) makes Sec 307(1) override entire Act
- This would mean Sec 307(1) overrides Sec 202


Alternative interpretations of Sec 334(2)
Makes entire Chapter override entire ITA
Makes only Chapter XVII-B Override entire Act
This would make Sec 307(1) free from Sec 334(2)
Sec 202 is subject only to Chpt. XVII-B but overrides Sec 307(1)
If so rates of Sec 202 will prevail over Sec 307(1)
This is like back door introduction of Sec 164(2) of IT Act


Finance Act
Sec 3(3) Tax chargeable shall be determined
Clause (i)
Clause (ii)
As provided in Sec 334
With reference to rates imposed by (As the case may be)
Sec 3(1)
Sec 334
Part 1B of First Schedule
Surcharge
Sec 3 (4) (b) [Table entries 1 to 7]

CONCEPT OF REGULAR INCOME - RI

Concept of RI –A new concept : section 335

- Regular income of any tax year of a registered non-profit organization means—

(a) income from any charitable or religious activity, for which such nonprofit organisation is registered, carried out by it in such tax year;

(b) income other than income covered in clause (*e*), derived from any property, deposit or investment held wholly for charitable or religious purposes by such registered non-profit organisation in such tax year;

(c) income other than income covered in clause (*e*), derived from any property, deposit or investment held in part for charitable and religious purposes by such registered non-profit organisation as referred in section 332(2)(*b*)(*ii*) in such tax year;

(d) voluntary contributions received by such registered non-profit organization in such tax year; and

(e) gains of any commercial activity permissible under sections 344, 345 and 346, carried out by such registered non-profit organisation in such tax year, computed in such manner, as may be prescribed

Concept of RI –A new concept : section 335

- Section 335 enlists five types of income

- Section 335(a) deals with income from charitable or religious activities, for which NPO is registered, carried out by it in tax year. This is a new clause.

- Such clause is not found in section 11(1), although, the same was considered as covered under section 11(1)(a) by implication.

- Section 335(a) makes it explicit. It deals with cases of non GPU RNPOs who derive income from conduct of their core charitable or religious activities, say school or hospital.

- There is a potential overlap between clause (a) and (e)

CONCEPT OF TAXABLE REGULAR INCOME - TRI

TRI : section 336

TRI of RNPO for any tax year shall be—

(a) *nil*, where 85% or more of the regular income of such tax year has been applied as per provisions of section 341 or accumulated under section 342 for charitable or religious purposes, in such tax year as per the provisions of this Part; and

(b) in any other case, 85% of the regular income for such tax year as reduced by its application for charitable or religious purposes as per provisions of section 341 or accumulation thereof under section 342 in such tax year as per the provisions of this Part

TRI under section 336 shows what is exempt

- TRI is taxable portion of RI
- By necessary implication, rest of RI is not taxable
- Thus, the exemption in ITA for RNPO is in respect of RI which is not TRI

CONCEPT OF SPECIFIED INCOME - SI

Concept of SI – section 337

- Section 337 of ITA 2025 defines specified income which corresponds to Explanation below section 115BBI

- Section 337 has a table of 13 items

- Item 1 is dealing with anonymous donation which was earlier dealt with by section 115BBC of ITA 1961. Definition of anonymous donation is given in section 355(a) which is identical to section 115BBC(3).

- Item 4 deals with any investment or deposit made in contravention to the provisions of section 350 out of any income, accumulated income, deemed accumulated income, corpus, deemed corpus, or any other fund.

Concept of SI – section 337

- Item 10 deals with any income applied to purposes other than charitable or religious purposes for which it is registered.
- This was not found in section 115BBI – Explanation in ITA 1961.
- Any such application would have meant specified violation under section 12AB(4) – Explanation.
- Item 11 deals with any income determined by the Assessing Officer under section 344 in excess of income shown in the books of account of such business undertaking
- This was not found in section 115BBI – Explanation in ITA 1961.
- Ending words of section 11(4) deemed it to have been applied for purposes other than charitable or religious purposes. It would have been charged to tax under section 164(2).
- In ITA 2025, it is treated as specified income.

WHEN RI AND SI CLASH

Clash between RI and SI

- Some items of regular income may also be classified as specified income
- Section 335(d) makes VC as RI
- Such VC may also be anonymous donation [AD] as per section 355(a)
- AD is covered by section 337 – table 1 to become SI
- Section 336 which provides for determination of TRI provides for deduction towards application and application of RI. It does not exclude AD from RI while allowing such deduction.
- Neither section 336 nor section 337 override each other.
- However, section 341(4) bars application from SI
- Thus primacy of section 337 over section 336 is established

Clash between RI and SI

- Take an example of charitable RNPO receiving AD of Rs.30L and other donation of Rs.70L and applied entire amount for charitable purpose;

- Whole of AD becomes SI as per section 337 – table 1

- In terms of item 1 of table below section 337, Rs.1L or 5% of total donation i.e Rs.5L would not be regarded as SI.

- Such amount remains as part of RI and would be treated under section 336

APPLLICATION OF INCOME

APPLICATION – 341(1)(a)

Application of income – section 341(1)(a)

- Section 341(1) does not per se refer to RI

- The same has to be implied by reading sections 335 and 336

- Section 341(1)(a)

a) Use of ‘sum’ in section 341(1) as against ‘income’ in section 11(1)
b) Meaning of ‘sum’
c) Take a case of RNPO receiving VC in kind and if it applies the same by donating to beneficiaries, will it be taken as sum applied?

Application of provisions of section 35(b)(i) and sections 36(4) to (7)

- These provisions are applied not in computing income but in determining sum applied.
- These provisions may also be applied by the AO while exercising his powers under section 345 in computing business income. This is because of expansion of scope such powers under section 345 where the words ‘for the purposes of assessment’ are missing.
- Consider an example where the returned business income of Rs.1 Cr is determined as Rs.1.2 cr by applying section 35(b)(i). In such case, assessee pays tax at 30% on Rs.20 lakh.
- When such assessee applies Rs.1 cr for charity and while doing so, if the payment of Rs.60 lakh required TDS. If assessee does not comply with the TDS, Rs.18 lakh would not be treated as application.
- Such amount thus becomes part of TRI on which tax is paid.

Use of words “where such sum is paid during the tax year”

- Compare this to Explanation at the end of Section 11

- *Explanation*.—For the purposes of this section, any sum payable by any trust or institution shall be considered as application of income in the previous year in which such sum is actually paid by it (irrespective of the previous year in which the liability to pay such sum was incurred by the trust or institution according to the method of accounting regularly employed by it):

Provided that where during any previous year, any sum has been claimed to have been applied by the trust or institution, such sum shall not be allowed as application in any subsequent previous year

Use of words “where such sum is paid during the tax year”

- These words do not effectively substitute the Explanation for the following reasons;
- Words ‘actually paid’ not used
- Method of accounting is not ignored
- Paid should be understood as paid or incurred
- If so understood, for a person following accrual system would have application and payment overlapping and the above would not trouble him.
- However, if a person is cash system, he should not claim the entire amount of bill raised by the vendor by emphasizing on application, ignoring the sum paid by him.
- Therefore, the aforementioned words apply only to a person following cash system of accounting.

APPLICATION – 341(1)(b)

Application of income – section 341(1)(b)

- Considers 85% of donation made to other RNPO as application

- However, if such donation is made to other RNPO having charitable or religious objects but not for which donor RNPO is registered

  - It may get covered under section 341(1)(b)
  - It may also get covered under section 337 – Table 10
  - It may also get covered under section 351(1)(a) as specified violation
  - In the above situation, till registration is withdrawn, such application becomes SI and suffers tax at 30%
  - Once withdrawn, it ceases to be RNPO and ceases to get exemption and also is liable to accreted tax under section 352

Section 341(1)(b) v. section 336 – a statutory mess up

- Section 341(1)(b) considers only 85% of donation made to other RNPO as application
- Intention is to tax balance 15%
- However, in a given case, even this 15% would be exempt by operation of Section 336
- Consider that Trust A has a regular income of Rs.1 cr. It donates entire amount to Trust B. As per section 341(1)(b), only Rs.85L is treated as application. However, section 336(a), regards TRI as nil as 85% is treated as application.
- Section 337 [entry 4] does not trouble as it applies only when there is investment or deposit contrary to section 350 but does not deal with application
- Different combinations of donation and application may give different results

APPLICATION – 341(2)

Application of income – section 341(2)

- Corpus amount withdrawn earlier for application if deposited back in section 350 investments within 5 years from end of tax year of earlier withdrawal and there was no violation of this part or ITA 1961 wrt such application– sec 341(2)(a) [corresponds to 4 provisos below Explanation 4(i) to section 11(1)

- Repayment of loan taken earlier for application if repaid back in section 350 investments within 5 years from end of tax year of earlier loan and there was no violation of this part or ITA 1961 wrt such application– sec 341(2)(b) [corresponds to 4 provisos below Explanation 4(ii) to section 11(1)

DISQUALIFICATION– 341(3)/(4)

Section 341(3)/(4) - disqualification

- The deduction or allowance by way of depreciation or otherwise claimed in respect of an asset acquisition of which has been claimed as an application of income in the same or any other tax year under this Part or under any corresponding provision of the Income-tax Act, 1961 : section 341(3)(a) corresponding to section 11(6)
- A claim of set off or deduction or allowance of any excess application of any of the years preceding the tax year section 341(3)(b) corresponding to Explanation 5 to section 11(1)
- Any sum paid as a corpus donation to any other RNPO: section 341(3)(c) corresponding to Explanation 2 to section 11(1)
- An application from corpus, loan or borrowing, accumulated income, specified income or deemed accumulated income : section 341(4) corresponding to Explanation 4(i) and (ii)

DEEMED APPLICATION – 341(5) TO (8)

Section 341(5) to (8) – deemed application

- Where, in a tax year, RI applied by a RNPO towards charitable or religious purposes in India, as per section 341(1) to (4) is less than 85% of RI, the shortfall, or any part thereof, at the option of the RNPO, may be treated as deemed application of income – section 341(5) corresponding to Explanation 1(2) to section 11(1)
- Such deemed application should be applied during the tax year in which the income is received or in the tax year immediately succeeding such tax year, where such shortfall is for the reason that the whole or any part of the income has not been received during that tax year – section 341(6)(a) corresponding to Explanation 1(2)(a) to section 11(1)
- Such deemed application should be applied in the tax year immediately succeeding the tax year in which the income was derived, where such shortfall is for any other reason - section 341(6)(b) corresponding to Explanation 1(2)(b) to section 11(1)

Section 341(5) to (8) – deemed application

- The option of section 341(5) shall be exercised on or before the due date for furnishing the ROI for tax year – section 341(7) corresponding to Explanation 1(2) to section 11(1)

- Such deemed application will qualify as application under section 341(1) in the tax year of deriving of income – section 341(8) corresponding to Explanation 1(2)

- When actual application is made under section 341(6), whether the same may be again treated as application in the later year? Answer is no – see section 341(4)

- If such deemed application is not actually applied within the time specified in section 341(6), it shall be regarded as SI as per section 337 Table 13

DEEMED APPLICATION – 341(9)

CAPITAL GAINS

Section 341(9)– deemed application of capital gains

- Wholly charitable or religious trust : the capital gain from transfer of a capital asset, being property held under trust wholly for charitable or religious purposes, where the whole or any part of the net consideration is utilised for acquiring another capital asset to be so held,—

i) if the whole of the net consideration is utilised in acquiring them new capital asset, the whole of such capital gain;

ii) if only a part of the net consideration is utilised for acquiring the new capital asset, so much of such capital gain as is equal to the amount, if any, by which the amount so utilised exceeds the cost of the transferred asset;

Section 341(9)– deemed application of capita gains

- Partly charitable or religious trust : the appropriate fraction of the capital gain arising from the transfer of a capital asset, being property held under trust in part for charitable or religious purposes, where the whole or any part of the net consideration is utilised for acquiring another capital asset to be so held,

i) if the cost of acquisition of the new capital asset acquired is not less than the net consideration in respect of the capital asset transferred, the whole of appropriate fraction of such capital gain;

ii) in any other case, so much of the appropriate fraction of the capital gain as is equal to the amount, if any, by which the appropriate fraction of the amount utilised for acquiring the new asset exceeds the appropriate fraction of the cost of transferred asset.

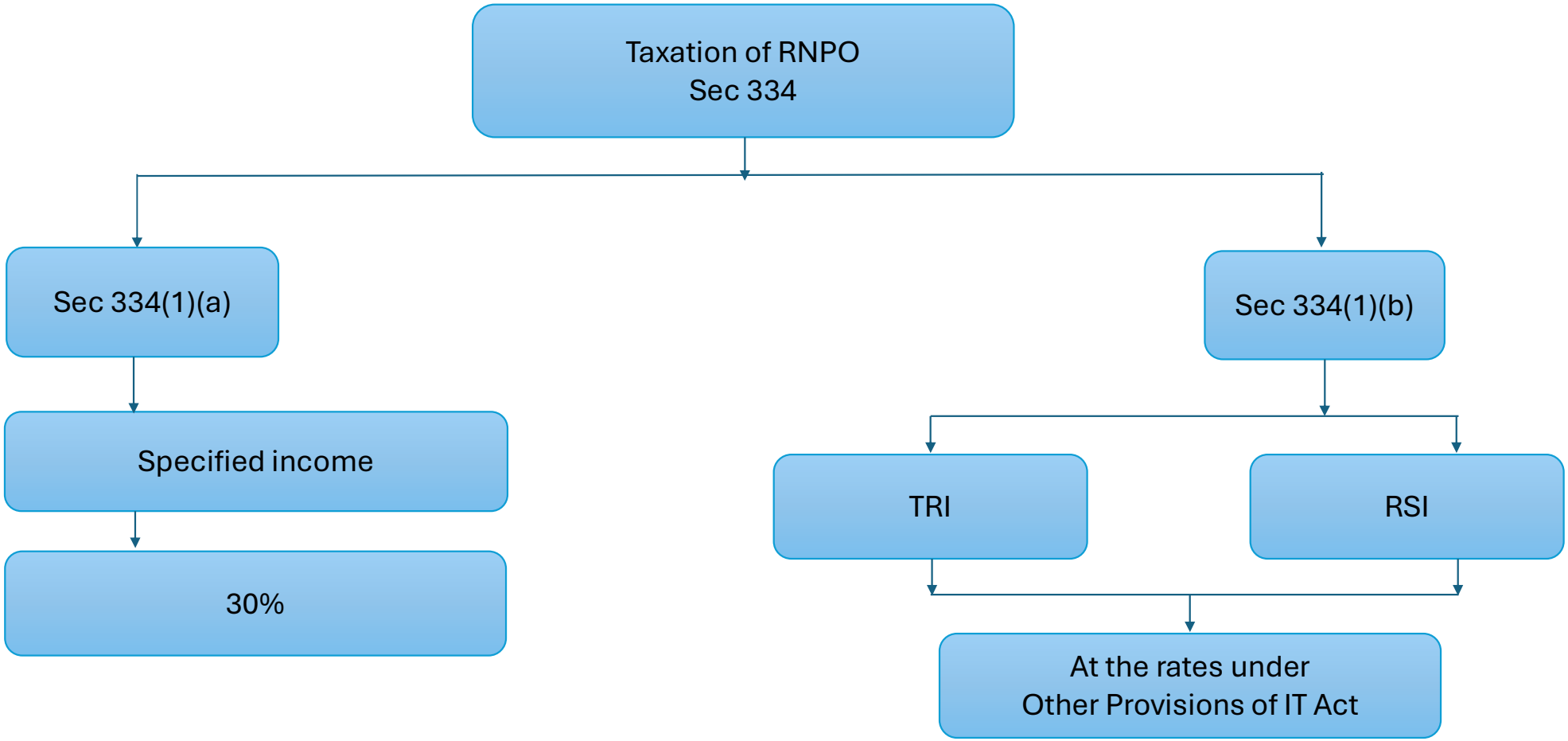
Section 341(9)– deemed application of capita gains

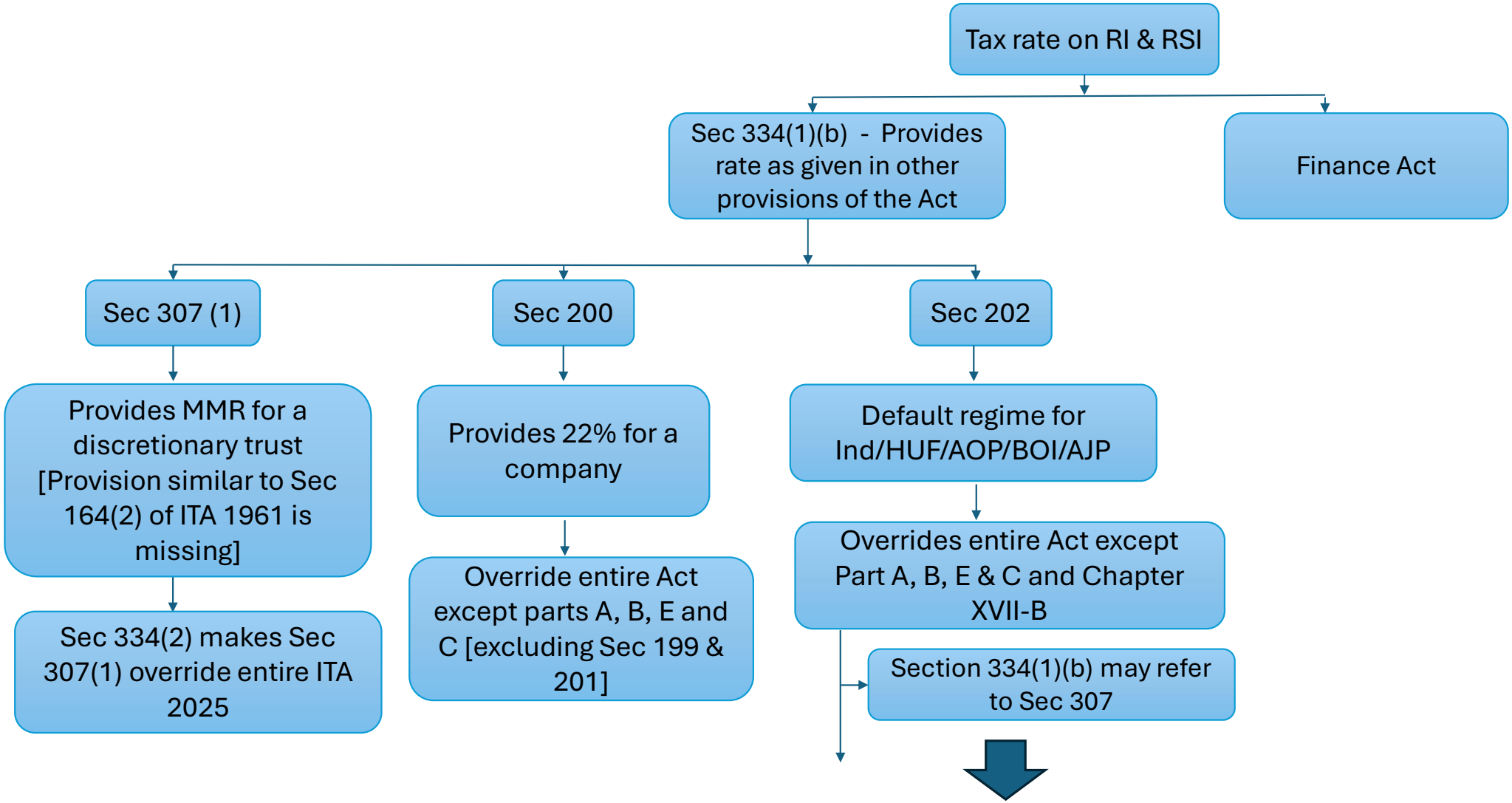
- Meaning of “appropriate fraction” [section 341(10)(a)] : the fraction which represents the extent to which the income derived from the capital asset transferred was immediately before such transfer applicable to charitable or religious purpose;

- Meaning of “cost of transferred asset” [section 341(10)(b)]: the aggregate of the cost the purposes of sections 72 and 73) of the capital asset which is subject of the transfer and the cost of any improvement thereto within the meaning assigned to that expression in section 90(1)(b)

- Meaning of “net consideration” [section 341(10)(c)]: the full value of the consideration received or accruing as a result of the transfer of the capital asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer

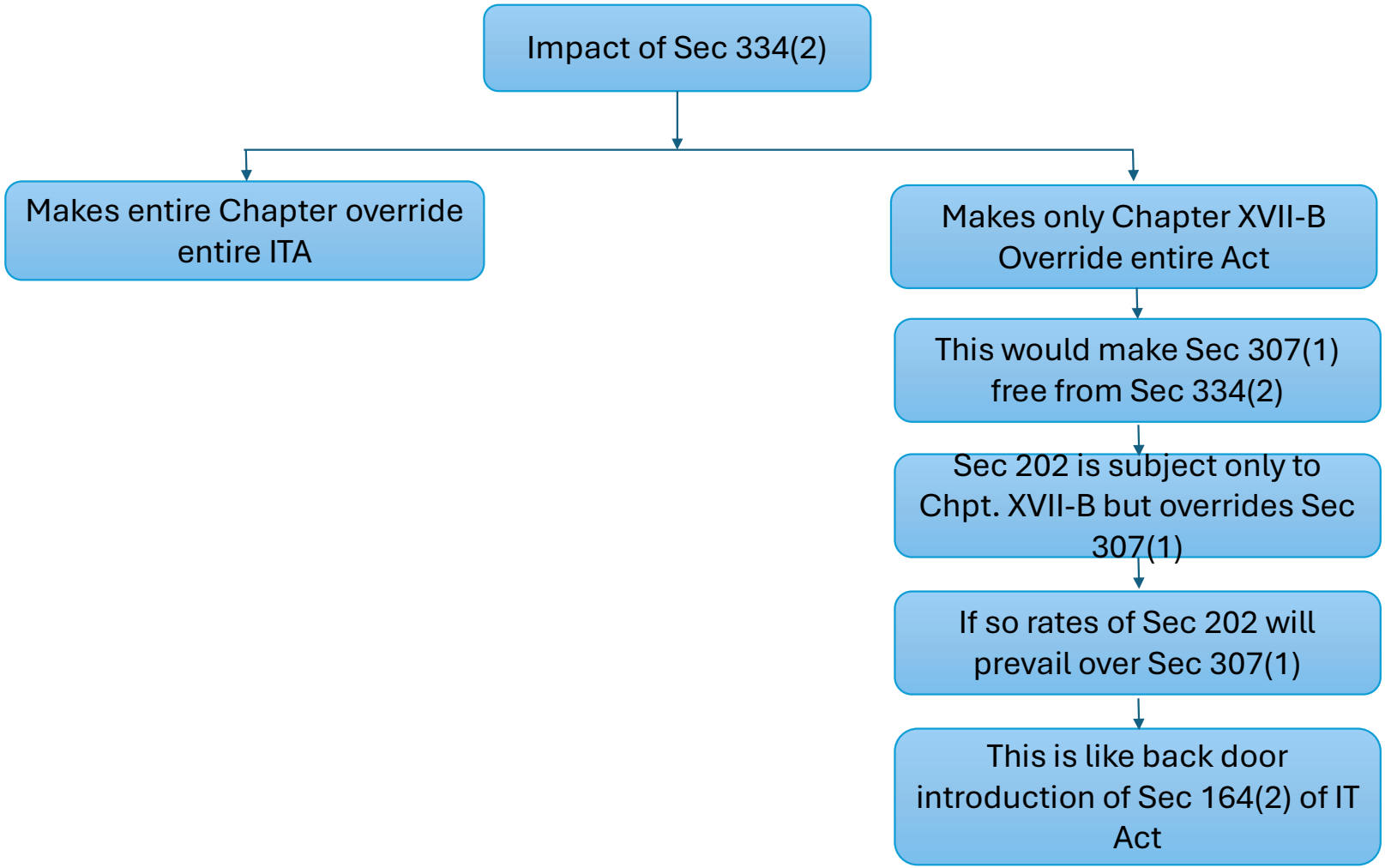
Tax Rates


Taxation of RNPO
Sec 334
Sec 334(1)(a)
Specified income
30%
Sec 334(1)(b)
TRI
RSI
At the rates under
Other Provisions of IT Act


Tax rate on RI & RSI
Sec 334(1)(b) - Provides rate as given in other provisions of the Act
Finance Act
Sec 307 (1)
Sec 200
Sec 202
Provides MMR for a discretionary trust [Provision similar to Sec 164(2) of ITA 1961 is missing]
Provides 22% for a company
Default regime for Ind/HUF/AOP/BOI/AJP
Sec 334(2) makes Sec 307(1) override entire ITA 2025
Override entire Act except parts A, B, E and C [excluding Sec 199 & 201]
Overrides entire Act except Part A, B, E & C and Chapter XVII-B
Section 334(1)(b) may refer to Sec 307



- Sec 202 does not override Sec 334(2) [Part of Chpt XVII-B]
- Sec 334(2) makes entire Chapter, [including XVII-B] override entire Act
- Sec 334(2) makes Sec 307(1) override entire Act
- This would mean Sec 307(1) overrides Sec 202


Impact of Sec 334(2)
Makes entire Chapter override entire ITA
Makes only Chapter XVII-B Override entire Act
This would make Sec 307(1) free from Sec 334(2)
Sec 202 is subject only to Chpt. XVII-B but overrides Sec 307(1)
If so rates of Sec 202 will prevail over Sec 307(1)
This is like back door introduction of Sec 164(2) of IT Act

Business and charity

ITA 1961

Business and charity – ITA 1961

- Section 11(1) is subject to sections 60 to 63. Therefore, by implication, section 11(1) applied to irrevocable trust
- Section 11(1)(a) deals with income from property held under trust.
- Section 11(4) stated that property held under trust included business undertaking so held and it applied to both Non GPUs and GPUs
- Accordingly, income from such business would come under section 11(1)(a) for exemption.
- Section 11(4A) provides that exemption under section 11 does not apply to business income if such business is not incidental to attainment of objectives of the trust and separate books are not maintained.
- In other words, no exemption to business income unless section 11(4A) is complied with.

Business and charity – ITA 1961

- Section 11(4A) does not exclude GPU and applies to GPUs as well.
- However, separate restriction is applicable to GPU as per proviso to section 2(15) which applied irrespective of end use.
- Further, where section 11(4A) is violated, it would become specified violation as per Explanation (b) below section 12AB(4). This would result in cancellation of registration and liability to accreted tax.
- Both sections 11(4) and (4A) applied conjointly to any business.
- If there is a business activity, both provisions would apply.
- In the case of GPUs, all three provisions viz Proviso to section 2(15), sections 11(4) and 11(4A) will apply

Example of Business and charity – ITA 1961

- Consider an example of a business activity with a profit of Rs.1 crore and assessee claims exemption.
- AO has the power under section 11(4) to determine the income applying the provisions of the Act relating to assessment.
- If he determines the same at Rs.1.2 Cr, Rs.20L shall be deemed to be applied for purposes other than charity and brought to tax.
- This does not mean that balance Rs.1 Cr is per se exempt. AO may now take up section 11(4A) and see if the conditions therein are complied with.
- If yes, he may grant benefit of exemption to Rs.1 Cr.
- If not, he may tax the same.
- Such case will also be a case of specified violation resulting in cancellation of registration and liability to accreted tax.

Business and charity

ITA 2025

Business and charity – ITA 2025

- Section 332(2)(b) requires the NPO to hold all its properties under irrevocable trust.
- Section 334(2) overrides the entire Act except sections 96 to 98. However, unlike section 11(1), it is not subject to sections 96 to 98.
- Thus, by express provisions, only an irrevocable trust can be RNPO
- Section 11(4) of ITA 1961 is found in section 344 of ITA 2025.
- Section 11(4A) of ITA 1961 is found in section 345 of ITA 2025.
- Proviso to section 2(15) of ITA 1961 is found in section 346 of ITA 2025
- There was an overlap between section 11(4A) and section 2(15) Proviso.
- However, ITA 2025 avoids such overlap.
- While section 345 applies to non GPU, section 346 applies to GPU.

Business and charity – ITA 2025

- Unlike section 11(1)(a) which deals with income from property held under trust and section 12(1) and section 11(4) deemed voluntary contribution and business undertaking as property held under trust, section 335 deals with different streams of income separately in its clauses (a) to (e).

- In respect of business income, there could be cases where clauses (a), (b) and (e) all would have applied.

Section 344

GPU AND NON GPU

Section 11(4) – IT Act 1961	Section 344 – IT Act 2025
For the purposes of this section "property held under trust" includes a business undertaking so held, and where a claim is made that the income of any such undertaking shall not be included in the total income of the persons in receipt thereof, the Assessing Officer shall have power to determine the income of such undertaking in accordance with the provisions of this Act **relating to assessment**; and where any income so determined is in excess of the income as shown in the accounts of the undertaking, such excess shall be deemed to be applied to purposes other than charitable or religious purposes.	Where the property held by a registered non-profit organisation includes a business undertaking, and where a claim is made that the income of any such undertaking is eligible for benefits under this Part, then the Assessing Officer shall have the power to determine the income of such business undertaking as per the provisions of this Act.

Business and charity – ITA 2025

- Section 344 is worded slightly different from section 11(4).
- It does not deem business undertaking as property held under trust.
- It only applied to a case where property held by RNPO included business undertaking.

Business and charity – ITA 2025

- The power of AO under section 344 to determine the income is wider as compared to section 11(4).

- While section 11(4) empowered the AO determine the income in accordance with the provisions of ITA relating to assessment, the last words ‘relating to assessment’ are missing in section 344.

- This would cause significant prejudice to the assessee. Will this take away the concept of commercial income in case of charitable trusts and undo various decisions in this regard?

- If yes, it permits AO to apply schedular computation provisions and determine business income by applying Chapter IV – Part D

Business and charity – ITA 2025

- Excess income computed would be regarded as specified income as per section 337 Table Entry 11

- Violation of section 344 does not mean a specified violation as per section 351

Example under section 344 – ITA 2025

- Consider a case of a kalyanamantapa business held under trust and trust reflects Rs.1 crore as surplus. AO determines the income to be Rs.1.2 Crore as he found some unaccounted cash receipts
- Entire Rs.1.2 crore will come under section 335(b)/(e) and becomes RI
- However, in terms of entry 11 of section 337, AO would call Rs.20L as SI
- Thus, there is an overlap of Rs.20L between RI and SI
- Section 341(4) states that an application from corpus, loan or borrowing, accumulated income, specified income or deemed accumulated income shall not be considered as application for the purpose of section 341(1)/(2)
- Even if the entire Rs.20L is also spent on charity, same would not be regarded as application and would not become NTRI.
- It will be taxed under section 334(1)(a)

Section 345

NON GPU

Section 11 (4A) - IT Act1961	Section 345 – IT Act 2025
Sub-section (1) or sub-section (2) or sub-section (3) or sub-section (3A) shall not apply in relation to any income of a trust or an institution, being profits and gains of business, unless the business is incidental to the attainment of the objectives of the trust or, as the case may be, institution, and separate books of account are maintained by such trust or institution in respect of such business.	A registered non-profit organisation (other than a registered non-profit organisation mentioned in section 346) shall not carry out any commercial activity unless— (a) such commercial activity is incidental to the attainment of the objectives of the registered non-profit organization ; and (b) separate books of account are maintained for such activities.

Business and charity – ITA 2025

- Section 345 is worded differently from Section 11(4A).

- While section 11(4A) provides that no exemption is available to business income unless section 11(4A) is complied with, section 346 bars a RNPO [non GPU] from carrying out any commercial activity if such activity is not incidental to the attainment of objectives and separate books are not maintained.

- While Section 11(4A) does not exclude GPU and applied to GPUs as well, section 345 does not apply to GPUs.

Business and charity – ITA 2025

- If a commercial activity is carried out in violation of section 345, exemption is not per se denied as gain from such activity will fall under 335(b) and would enjoy exemption under section 336.

- Such income is not covered by section 337 dealing with SI

- However, it will be a specified violation under section 351(1)(b) and would be liable to cancellation of registration and accreted tax.

- Both sections 344 and 345 apply conjointly to any business.

- If there is a business activity, both provisions would apply.

Example of Business and charity – ITA 2025

- Consider an example of a business activity with a profit of Rs.1 crore and assessee claims exemption.
- AO has the power under section 344 to determine the income applying the provisions of the Act [not confined to those relating to assessment].
- If he determines the same at Rs.1.2 Cr, Rs.20L shall be regarded as specified income.
- This does not mean that balance Rs.1 Cr is per se exempt under section 336.
- AO may now take up section 345 and see if the conditions therein are complied with. If conditions of section 345 are satisfied, Rs. 1 cr would be subject exemption under section 336.
- If not, while Rs. 1 cr may be exempt under section 336, it may also come under section 351(1)(b) and will be a case of specified violation resulting in cancellation of registration and liability to accreted tax.

Non GPU and commercial activity– Is there a concern?

- In ITA 1961, proviso to section 2(15) applied only to GPUs.

- Non GPUs are not covered by it as clarified by starting words of the proviso as well as circular 11 of 2008.

- In ITA 2025, both sections 345 and 346 apply to commercial activities. The phrase ‘commercial activities’ is defined in section 355(e) in the same manner as proviso to section 2(15). While defining commercial activities, end use is ignored.

- As the same phrase is used in both sections 345 and 346, there is a fear that even non GPUs are barred from carrying out commercial activities irrespective of end use.

Non GPU and commercial activity– ITA 2025

- However, this is not so for the following reasons;
- Section 345 clearly says that it applies to non GPUs
- Section 345 permits commercial activity if incidental to attainment of objectives.
- The words ‘incidental to attainment of objectives’ negates the end use theory.
- The words ‘incidental to attainment of objectives’ are not used in section 346 and therefore, the end use theory is not negated in section 346.

Implications of section 345 – Case 1

- Consider a case of an educational institution running theatre and using the profits for running the school and separate books of account are maintained

- Such activity is permitted under section 345

- Income from such activity will not come under section 335(a) but would come under section 335(b)/(e)

Implications of section 345 – Case 2

- Consider a case of an educational institution running theatre and using the profits for running the school but separate books of account are not maintained – income from such activity neither comes under section 335(a) nor under section 335(e).

- It may however come under section 335(b). If so, it cannot become RSI under section 355(j).

- As such income is regular income, trust will get the benefit of exemption under section 336.

- Such income is not SI as per section 337

Implications of section 345 – Case 2

- However, not maintaining separate books is a specified violation under section 351(1)(b) and could result in cancellation of registration for such tax year and subsequent tax year.

- Upon cancellation, the NPO is no more RNPO and would stay out of chapter XVII-B and may also suffer accreted tax under section 352.

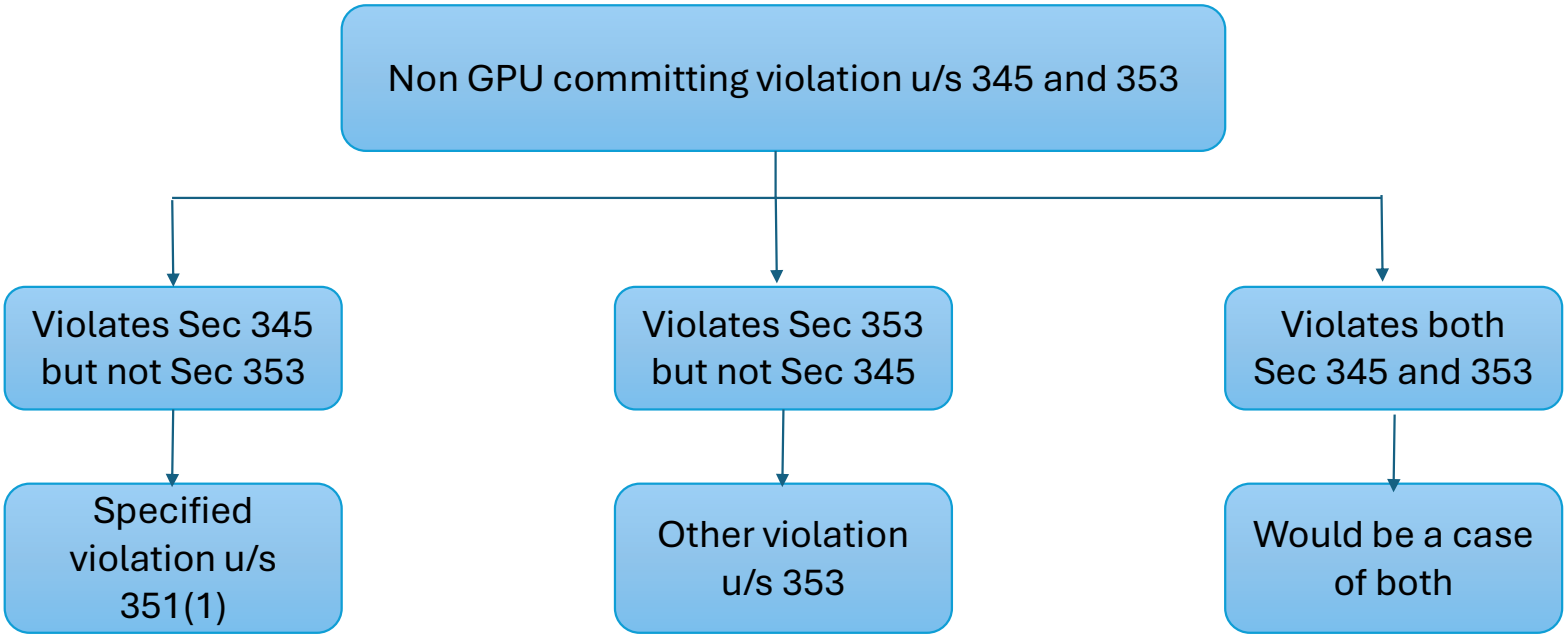
- Therefore, separate books have to be maintained.

- Trust as such may maintain books account for entire operations, although no separate books are maintained for theatre

- Thus, there is no violation of section 353(1)

Implications of section 345 – Case 3

- Consider a case of an educational institution running theatre and books are maintained but profit was used for using other charitable purpose [say for example feeding animals and funding a blook bank].
- Income from such activity neither comes under section 335(a) nor under section 335(e).
- However, it may fall under section 335(b). If so, it does not become part of RSI under section 355(j).
- As per section 337 Table 10, such income though regular income, becomes specified income.
- Application from SI is not permitted under section 341(4)
- Thus, trust may pay tax on such SI under section 334(1)(b)
- It may also be specified violation under section 351(1)(a) inviting cancellation of registration and levy of accreted tax


Non GPU committing violation u/s 345 and 353
Violates Sec 345 but not Sec 353
Violates Sec 353 but not Sec 345
Violates both Sec 345 and 353
Specified violation u/s 351(1)
Other violation u/s 353
Would be a case of both

Section 346

GPU

Proviso to Section 2(15) – IT Act 1961	Section 346 – IT Act 2025
Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity, unless—	(346) No registered non-profit organisation, carrying out advancement of any other object of general public utility, shall carry out any commercial activity unless,—

Proviso to Section 2(15) – IT Act 1961	Section 346 – IT Act 2025
(i) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and	(a) such commercial activity is undertaken in the course of actual carrying out of advancement of any object of the general public utility;
(ii) the aggregate receipts from such activity or activities during the previous year, do not exceed twenty per cent of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year;	(b) the aggregate receipts from such commercial activity or activities do not exceed 20% of the total receipts of such registered non-profit organisation of the relevant tax year; and
	(c) separate books of account are maintained by such registered non-profit organisation for such activities.

Section 2(15) – IT Act 1961	Section 355(e) – IT Act 2025
	355(e) “commercial activity” means any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity;

GPU and Commercial activities

- As per proviso to 2(15), there was no bar on carrying out commercial activities as such.

- If carried out, while registration would have been retained, income would not have been exempt but charged under section 13(10).

- It was not a specified violation under Explanation below 12AB(4)

- As per section 346, there appears a statutory bar on carrying out commercial activities.

- Carrying out commercial activity is not a specified violation as per section 351(1)(b) post Finance Act 2026 amendment.

GPU and Commercial activities

- Provision similar to section 13(10) is found in section 353
- Section 13(8) provides that nothing contained in section 11 or section 12 shall operate so as to exclude any income from the total income of the previous year of the person in receipt thereof if the provisions of the first proviso to clause (*15*) of section 2 become applicable in the case of such person in the said previous year. Section 13(10) would mitigate the impact by allowing permissible deduction
- Although section 335(e) read with section 346 seeks to achieve the function of section 13(8), section 335(b) negates its impact.
- Under ITA 1961, if any commercial activity is undertaken, the purpose ceases to be charitable.
- Under ITA 2025, if a GPU takes up any commercial activity, nature of charitable purpose is not lost. This way, the ITA 2025 appears more reasonable.

GPU and Commercial activities

- The bar of commercial activity is applicable to only RNPO.
- Therefore, registration cannot be denied to a NPO on the basis that it is carrying out commercial activities.
- The term ‘commercial activity’ used in section 346 is defined in section 355(e) which is identical to the language of the 1st proviso.
- The bar of proviso to section 2(15) read with AUDA extends to any and every commercial activity, whether or not the purpose involves such activity. It applied to even fringe or incidental activities.
- The bar of section 346 conveys the same without the aid of AUDA.
- However, the meaning of trade etc., will have to be understood for both statutes applying the principles of AUDA i.e. activity should not earn more than nominal profits.

GPU and Commercial activities – new condition

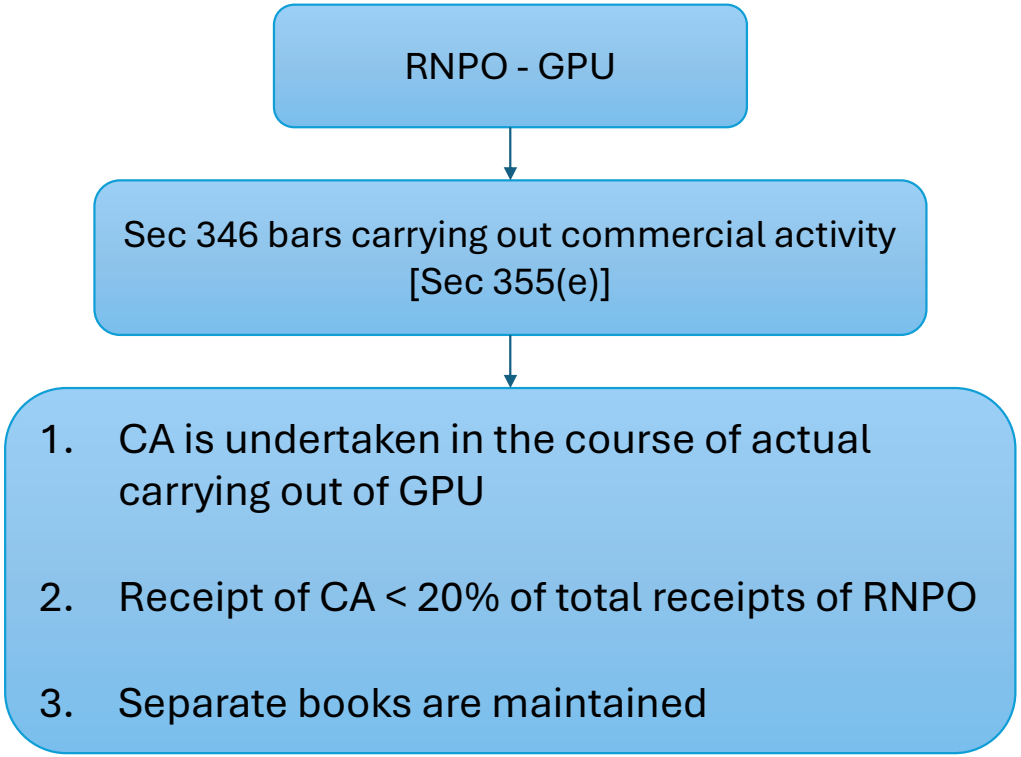
- Section 346(c), an additional condition has been added that separate books are maintained for such activities. This would imply the following;

  - If the receipts from commercial activity do not exceed 20%, books are required to be maintained.

  - If the receipts from commercial activity exceed 20%, maintenance of books of account is irrelevant as the bar anyway applies.

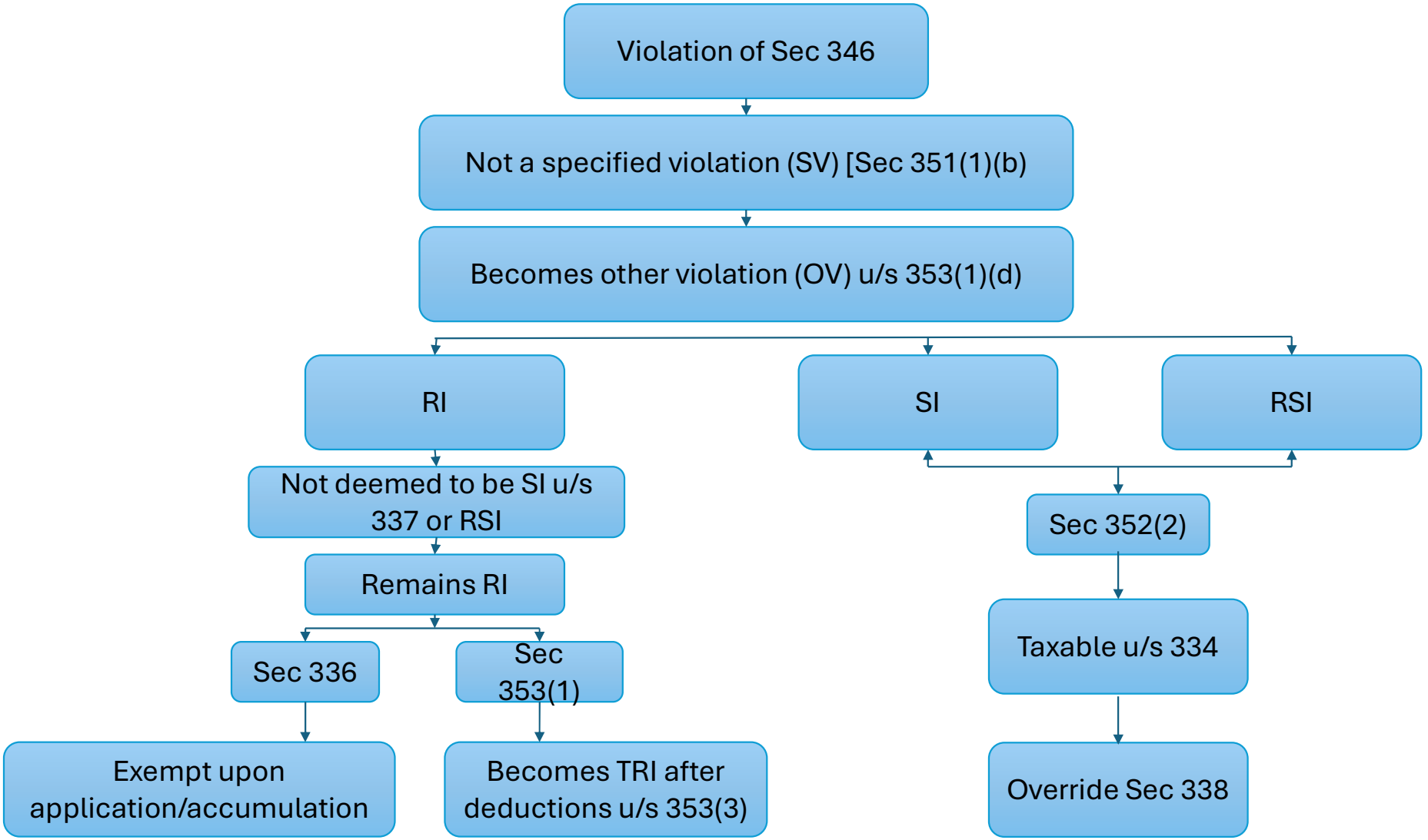
  - Where receipts from commercial activity exceed 20%, books may be otherwise required for claiming deductions under section 353(3).

  - Separate books of account [section 346] v. overall books of account [section 353(1)


RNPO - GPU
Sec 346 bars carrying out commercial activity [Sec 355(e)]
1. CA is undertaken in the course of actual carrying out of GPU
2. Receipt of CA < 20% of total receipts of RNPO
3. Separate books are maintained

If GPU's commercial activity falls foul of section 346

- Such income will be regarded as regular income under section 335(a)/(b) and not under section 335(e).
- Such income is not regarded as SI under section 337
- See section 353(1) which uses words 'regular income'
- If such regular income is applied, taxable regular income is computed under section 336 by giving allowance for application.
- If minimum 85% is applied and/or accumulated, as per section 336, taxable regular income will be nil.
- However, under section 353(1), the regular income from such activity after allowing deduction of expenditure under section 353(3) shall be regarded as 'taxable regular income' to be charged to tax under section 334.
- Section 353(1) clashes with section 336 as the former does not expressly override the latter.


Violation of Sec 346
Not a specified violation (SV) [Sec 351(1)(b)
Becomes other violation (OV) u/s 353(1)(d)
RI
SI
RSI
Not deemed to be SI u/s 337 or RSI
Remains RI
Sec 336
Sec 353(1)
Exempt upon application/accumulation
Becomes TRI after deductions u/s 353(3)
Sec 352(2)
Taxable u/s 334
Override Sec 338

Illustrations of section 346

- Firstly, one has to understand the commercial activity which is defined in section 355(e), which is almost on the same lines as proviso to section 2(15).

- Therefore, one has to apply the principles of AUDA 449 ITR 1 SC which states that if the profits are nominal, the activities are not commercial at all.

- Consider a case of a charitable activity promoting blood donation camps and running blood bank.

Section 346 – Illustration 1

- If such RNPO runs blood back with less than nominal profit, such activity is not commercial at all.

- Hence, income from such activity falls under section 335(a).

- Same would be eligible for application and accumulation as provided in section 336 and its NTRI is exempt from tax.

Section 346 – Illustration 2

- If such RNPO runs blood back with more than nominal profit, such activity is commercial.

- If receipts fall within 20% threshold, income from such activity falls under section 335(e) as permissible commercial activity under section 346.

- It may incidentally come under section 335(a)/(b).

- Same would be eligible for application and accumulation as provided in section 336 and its NTRI is exempt from tax.

Section 346 – Illustration 3

- If such RNPO runs blood back with more than nominal profit, such activity is commercial.
- If receipts go beyond 20% threshold, income from such activity falls under section 335(a) and not under section 335(e).
- Such income would be called as regular income and would be subject to section 336.
- However, such income is also dealt with by section 353(1) wherein it would be regarded as TRI and subject to tax under section 334(1)(b) after deduction under section 353(3).
- Thus, there is clash where this RI is both treated as NTRI under section 336 as well as TRI under section 353(1).

Section 336 v. Section 353(1)/(3)

- There is difference in the treatment between sections 336 and 353(1) read with 353(3).
- While section 336 deals with application and accumulation, section 353(3) deals with expenditure.
- The word ‘expenditure’ used in section 353(1)/(3) has to be understood as application for the reason that there cannot be expenditure per se after regular income is determined.
- While determining regular income as envisaged in section 335, all expenditure per se would have been considered.
- Therefore, what is allowed as a deduction from such regular income under section 353(3) is to be regarded as application.
- Further, while section 335(1) recognizes accumulation, section 353(3) does not so recognize.