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### Chapter -> Application & Interpretation of Tax Treaties

↳ All instruments for creation of an international law.

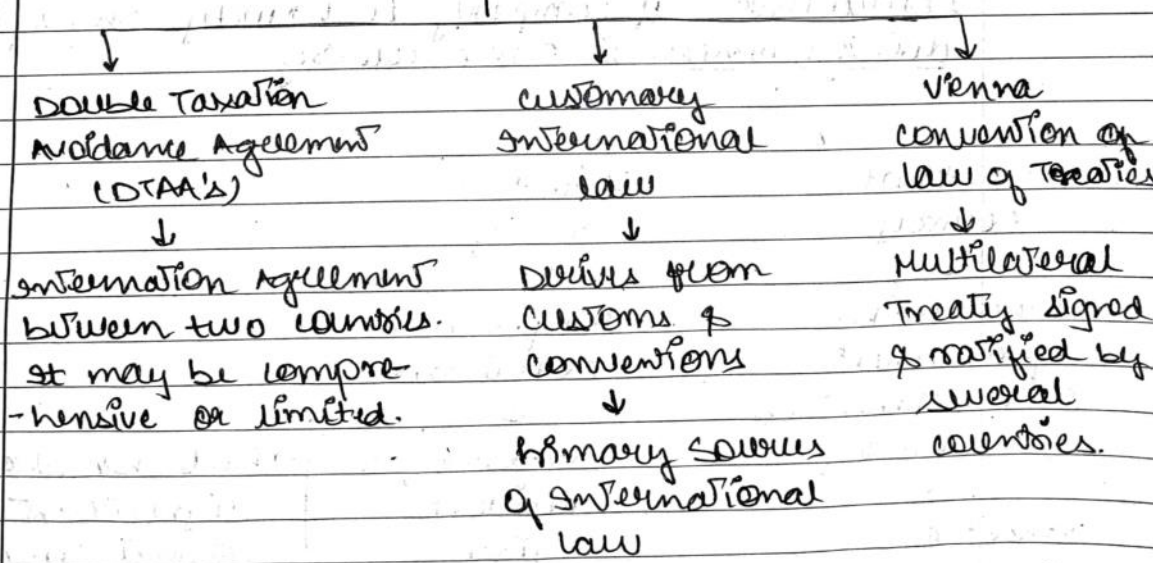
Article 38 (1) of International Court of Justice, provides that courts shall apply following in deciding a matter ->

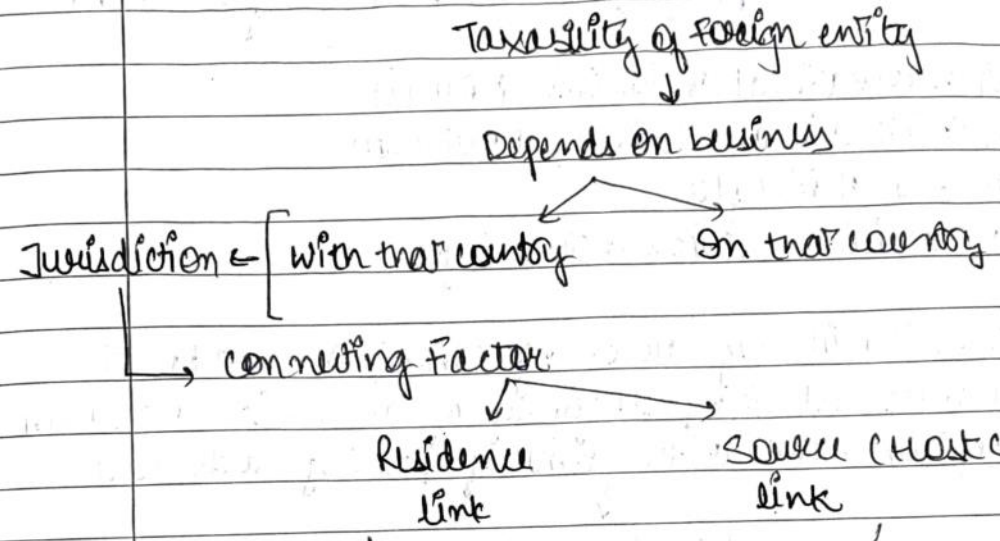
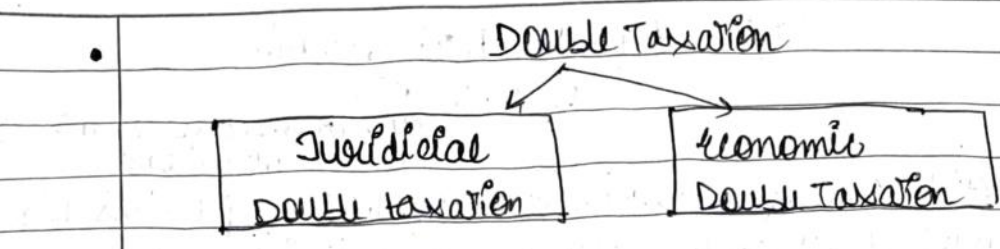
- 1) International Convention ( Rules )
- 2) International Customs ( Evidence )
- 3) General Principles
- 4) Judicial Decisions & Teachings.

- To interpret any law or agreement, one needs to understand the philosophy of law which was born kept in mind at the time of passing such law.

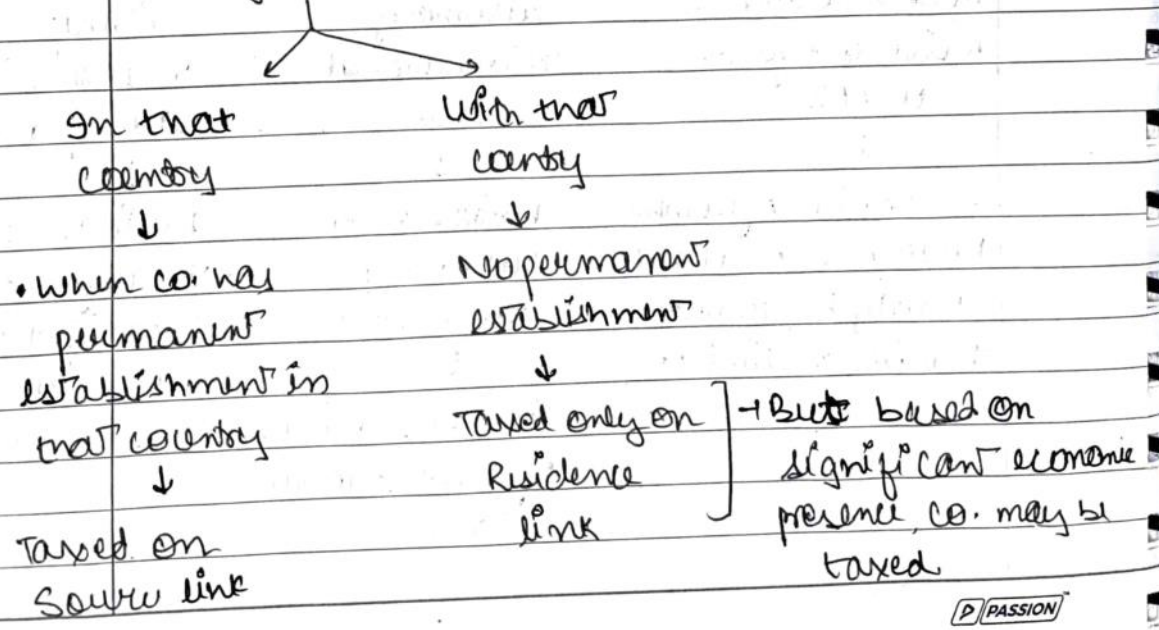
↓  
Principles of Public International Law

#### Source of International Tax Law





Company may be taxed on the basis of residence link as well as source link. On the basis of source link, if company is heavily engaged in doing business in other country.



## DOUBLE TAXATION

↓  
Tax is imposed by 2 or more countries

### Judicial Double Taxation

### Economic Double Taxation

- One person/hand
- Taxed in different jurisdiction

eg - Co. Ico is resident of India & branch in UK. → Due to source link, it will be taxed in UK as well

- Co's can claim relief with DTAA or u/s 91.

- Different person/hands
- Taxed in different jurisdiction

eg. Dividend in Country X is taxed on the co. resident of that country and Country Y tax on the basis of recipient (two both are different persons, economic double taxation arises)

## DTAA'S

### Limited DTAA'S

### Comprehensive DTAA'S

↓  
Only to certain types of income

↓  
Cover all types of income

- Distributive Rule or classification & assignment Rule → If a exemption is granted in other country earlier, and afterwards such country decided to levy tax then exemption will be granted afterwards also. To ensure double taxation does not arise in future.

- Need for Tax treaties →
  - 1) Allocating taxing rights
  - 2) Elimination of double taxation.
  - 3) Non discrimination b/w residents & non-residents.
  - 4) Resolution of disputes → due to different interpretation.
  - 5) Collection of fair & legitimate share of tax.

- Other principles of tax treaties →
  - 1) Equity & fairness. → Taxed at same rate to all.
  - 2) Neutrality & efficiency
    - Capital export & Capital Import
    - ↳ Decisions must not be affected by tax factors
    - ↳ Tax must be similar on non-residents as well as residents
  - 3) Promotion of mutual economic relation, trade & investment.

- General rule of interpretation under Vienna Convention of Law of Treaty :-

- 1) Treaty shall be interpreted in good faith.
- 2) Interpretation of treaty shall comprise →
  - Any agreement b/w two parties.
  - Any instrument made b/w parties and accepted by everyone.
- 3) Also, any subsequent agreement or any subsequent practice in application of treaty or any relevant rules applies.

• Extrinsic Aids to Interpretation of tax treaty →

It means supplementary means of interpretation including the preparatory work of treaty.

As per Prof. Starks, following are extrinsic aids →  
 (i) Interpretative protocols, Resolutions & Committee reports.

(ii) Subsequent agreement of two parties.

(iii) Subsequent conduct of parties → acts as evidence.

(iv) Reference to any other treaties.

> Provisions in Parallel Tax Treaties

→ If language used in one treaty is more elaborate & clear, also the context is same. Then one can make a reference to other treaty.

> International Articles / Essays / Reports

→ Courts may refer for interpretation as they are considered authoritative source.

> Protocol → (Explanations)

It is a supplement to treaty. To put certain matters beyond doubt. Same binding force as main clauses.

> Preamble

Interpretation of tax treaty with the view of constitution of that country.

> Mutual Agreement Procedure provisions negotiations  
 interpret any ambiguous term through bilateral

