

NOT APPLICABLE

CHAPTER - 3

DOUBLE TAXATION AVOIDANCE AGREEMENT

ADTA / TAX TREATY

Section 90-91

(ONLY FOR OLD SYLLABUS)

➤ BACKGROUND

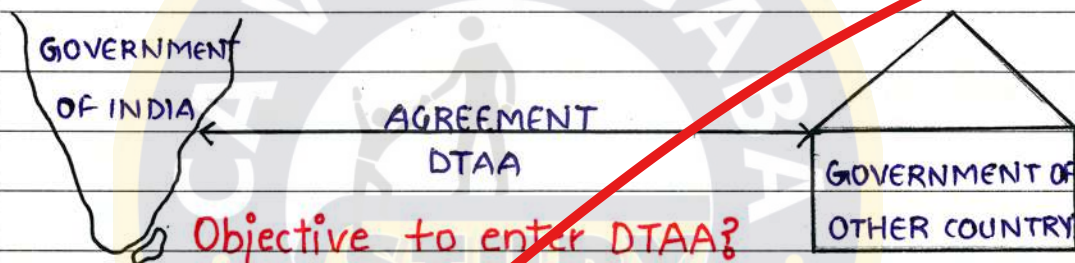


Remarks

	INDIA	USA
Tax Exemption Method	✓	X
Tax Credit Method	X	✓
	✓	✓
	(xxx)	---
	xxx	

↓
Relief provided by resident country.

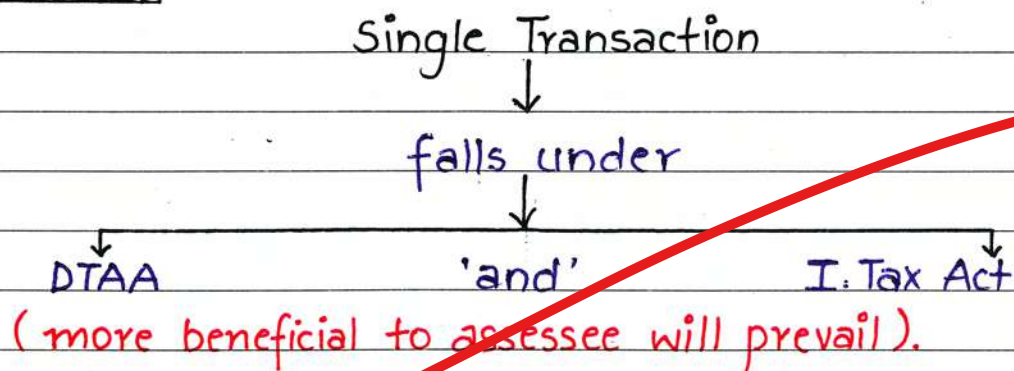
➤ SECTION - 90 AGREEMENT EXIST WITH FOREIGN COUNTRY



• Clause 1

- a. For granting relief from double Tax. (Tax Credit)
- b. For avoidance of double Tax. (Tax exemption)
- c. For exchange of information
- d. For recovery of Income Tax.

• Clause 2

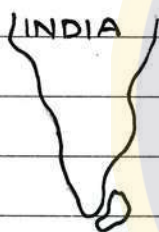


Example :

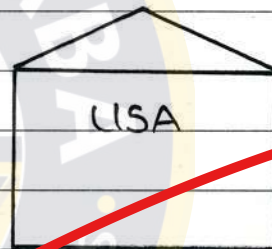
→ Rate of tax different in I. Tax and DTAA are as follows:

I. Tax	DTAA	Prevail	Remarks
10%	15%	10%	More beneficial
12%	8%	8%	More beneficial
10%	10%	10%	DTAA rates cannot increase by cess or surcharge and I. Tax rates can be increased by cess or surcharge.

• CLAUSE 3



11/4/1990
DTAA



- Royalty } Term used
- Interest } and defined
- Commission → Term used but not defined

↓
Defined = 20/8/2016

↓
Effective from = 11/4/1990
as per sec. 90(3)

Example

1. If provisions of Income tax Act are more beneficial to the assessee than DTAA, then the provisions of Income-tax are applicable. For example, if as per DTAA with a foreign country or specified territory; the royalty is to be taxed @ 35% then it will be beneficial to apply section 115A of the Income tax where royalty is taxed @ 10%. If provisions of

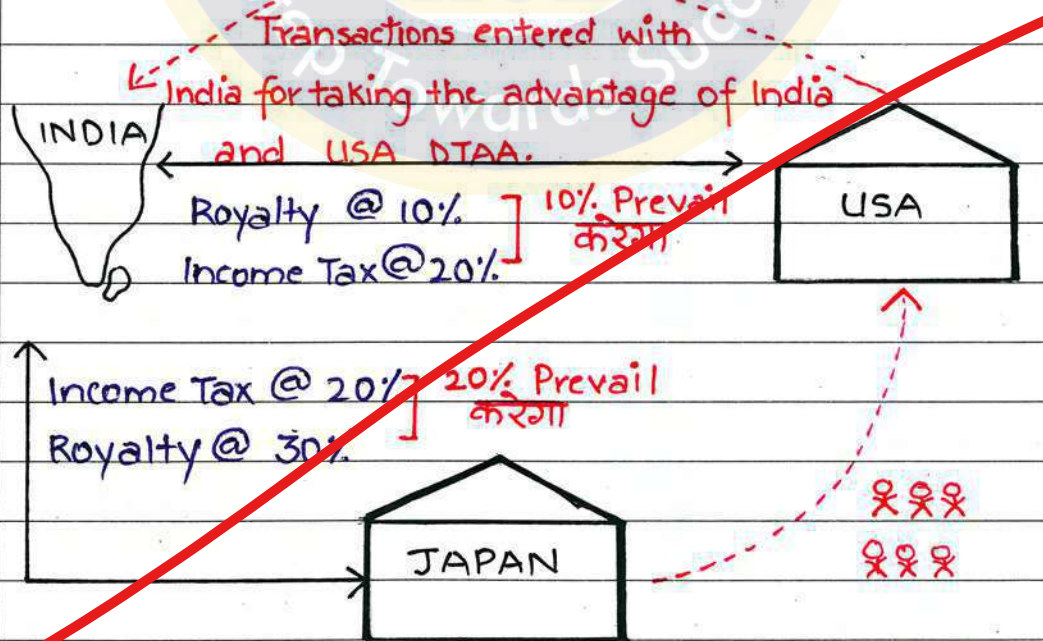
Remarks

DTAA are beneficial, then DTAA will apply.
 For example, if as per DTAA with foreign country or specified territory, the royalty is to be taxed @ 10% then it will be beneficial to apply DTAA instead of section 115A of Income tax Act.

Example

- The Government of India has entered into DTAA with Government of USA w.e.f 1.4.1990. The central government defined the term not mentioned in DTAA by a notification dated 13.4.2013. Now, as per amendment by Finance Act, 2012 this definition of term given by Central government is applicable from 1.4.1990 i.e, the date when DTAA was entered.

CLAUSE 4

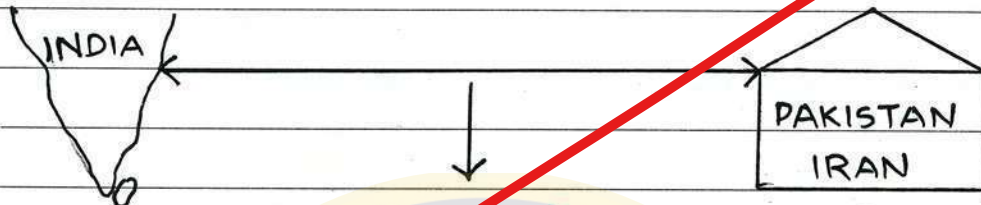


Rate of Tax @ 10% applicable only if tax resident certificate in hands of Japan, assessee, otherwise rate of tax

Remarks

@ 20% shall apply.

→ SECTION-91 COUNTRIES WITH WHICH NO AGREEMENT EXISTS



How to calculate relief under Section 91?

Follow the following steps :-

STEP-I First, ascertain amount of double taxy income.

STEP-II Find out the tax liability on double taxy income.
(Foreign Income)

STEP-III Find out the total income in India (includes foreign income).

STEP-IV Find out the tax liability on total income in India (including Health and education cess, surcharge, if any)

STEP-V Find out the tax liability on doubly tax income in India.

$$\frac{\text{Total tax in India}}{\text{Total income in India}} \times \text{D.T.I}$$

STEP-VI Compare Step II and Step V, least of the following is equal to relief uls 91.

- STEP - II
- STEP - V

STEP-VII Find out the final tax liability payable in India.

$$\text{STEP-IV} (-) \text{STEP-VI} = \text{Balance Tax}$$

(Payable in India)

Remarks

- Salary forgone is always taxable since it is merely application of income. Salary surrendered to central govt. shall not be treated as salary.
- Any amount received before joining employment or after cessation of employment with that person is treated as "Profit in lieu" of salary and it is taxable.
- All sections of salary applicable in the hands of employee not in the hands of employer.
- Arrears of Salary shall be chargeable to tax but subject to Sec. 89(1).
- Every payment by an employer to his employee for service rendered would be taxable as Income from salary.

Employer, employee को कुछ भी देगा तो employee के हाथ में salary मान लिया जाएगा।

- * Deduction = I add then minus.
- Exemption = Not includible in total income.

DEDUCTION

Internal Deduction

Deduct from income of particular chapter
Ex: Sec. 16 Salary
 Sec. 24 House property
 Sec. 30-38 PGBP, etc.

External Deduction

Deduct from Gross total income to compute total income.
Ex: Sec. 80C to 80U

➤ COMPUTATION OF INCOME UNDER HEAD SALARY.

Particulars	₹
• Basic Salary (Working Note : 1)	xxx
• Dearness Allowance (DA) (W. Note : 2)	xxx
• Commission (W. Note : 3)	xxx
• Bonus (W. Note : 4)	xxx
• Advance Salary / Arrears Salary (W. Note : 5)	xxx
• Gratuity (W. Note : 6)	xxx
• Pension (W. Note : 7)	xxx
• Leave Salary (W. Note : 8)	xxx
• Allowances (W. Note : 9)	xxx
• Provident Fund (W. Note : 10)	xxx
• Voluntary Retirement Compensation (VRS) (W. Note : 11)	xxx
• Super Annuation Fund (W. Note : 12)	xxx
• Retrenchment Compensation (W. Note : 13)	xxx
Sec-17 [• Perquisite (W. Note : 14)	xxx
GROSS SALARY	xxxx
• Less : Deduction u/s 16	
1. Professional Tax (W. Note : 15)	(xxx)
2. Entertainment Allowance (W. Note : 16)	(xxx)
3. Standard Deduction (W. Note : 17)	(xxx)
NET SALARY	xxxx

Remarks

WORKING NOTES• NOTE 1: Basic Salary

It is fully taxable.

• NOTE 2: Dearness Allowance (DA)

- DA is fully taxable whether it is 'in terms' or not in terms of employment.
- DA in terms means DA which is forming part of retirement benefit calculation. In all the formulas DA is considered only if it is 'in terms' except few calculations. If nothing is given about DA then assume it is 'not in terms of employment'.

• NOTE 3: Commission

Commission is fully taxable whether it is turnover commission or any other commission, But in retirement benefit calculations commission on the basis of T.O will be considered.

• NOTE 4: Bonus

It is taxable on receipt basis. If only declared is given then it should be ignored. In RFA calculation bonus will also be considered.

• NOTE 5: Advance and Arrears Salary

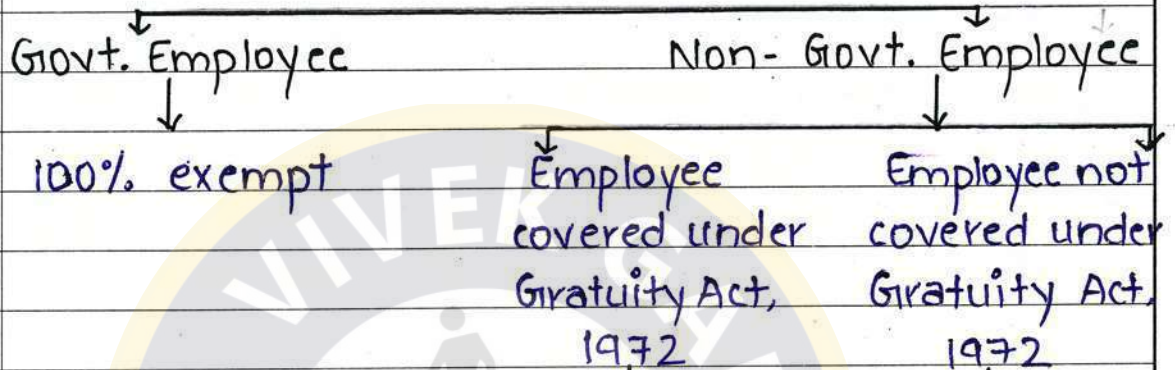
(A) Advance Salary : Advance salary is taxable on receipt basis. If advance against salary is given or only advance is given then it should be ignored because it is treated as loan.

(B) Arrears Salary : It means salary under dispute

Remarks

or increase of salary retrospectively. It is taxable in the year in which it is received but subject to Section 89(1)

• NOTE 6: GRATUITY Sec. 10(10)



Least of the following shall be exempt.

Covered under Gratuity Act

Not covered under Gratuity Act

- Actual amount received
- 20,00,000
- $15 \times \text{last drawn } * \text{ salary}$ / 26
- Completed year of service* or part thereof.

- Actual amount received.
- 20,00,000
- $15 \times \text{last 10 months average } * \text{ salary}$ / 30
- Completed year of service.

* Basic + D.A (Total)

* Basic + DA (UTOE)

+ Commission % based on T.O