

Double Taxation Avoidance Agreement

Lesson 8

KEY CONCEPTS

■ Tax Treaty ■ Double Taxation ■ Source Rule Based Taxation ■ Residence Rule Based Taxation

Learning Objectives

To understand the:

- What is Tax Treaty?
- Source Rule v/s Residence Rule based Taxation
- Types of Double Taxation
- Objectives and Need of DTAA
- Provisions relating to double taxation relief
- Double taxation relief where there is no DTAA

Lesson Outline

- Introduction
- Double Taxation
- Juridical Double Taxation
- Economic Double Taxation
- Type of DTAA
- Double Taxation Relief
- Bilateral Relief from Double Taxation
- Unilateral Relief from Double Taxation
- Calculation of Relief from Double Taxation
- Necessity for DTAA
- Objectives of Tax Treaties
- Interpretation of Tax Treaties
- Case Law
- Lesson Roundup
- Test Yourself
- List of Further Readings
- Other References

REGULATORY FRAMEWORK

Sections	Income Tax Act, 1961
Section 90	Agreements with Foreign Countries or Specified Territories
Section 90A	Adoption by Central Government of Agreement between Specified Associations for Double Taxation Relief
Section 91	Double Taxation Relief when there is no agreement exists
Rules	Income Tax Rules, 1962
Rule 21AB	Information to be provided by the Assessee not being a resident in India and Tax Residency Certificate for residents

INTRODUCTION

In today's scenario, the taxation is one of the important factors that has to be taken into consideration for any investment decision in any countries. Many countries have entered into Tax Treaties (also called Double Tax Avoidance Agreements, or DTAA) with other countries to avoid or mitigate *double taxation*. Such treaties may cover a range of taxes including *Income or Revenue Taxes, GST, Value Added Taxes*, or other taxes.

The stated goals for entering into a Tax Treaty often include *reduction of double taxation, eliminating tax evasion, and encouraging cross-border trade efficiency*. It is generally accepted that Tax Treaties improve certainty for taxpayers and tax authorities in their international dealings. The application of the Tax Treaty signifies that the parties intend to create rights and obligations enforceable under international law.

A "tax treaty" is a Bilateral Agreement made by two countries to resolve issues involving Double Taxation of Passive as well as Active Income. Tax treaties generally determine the amount of tax that a country can levy to a taxpayer's income, capital.

"A tax treaty is also called a Double Tax (Avoidance) Agreement (DTAA)"

Article 2 of Vienna Convention on Law of Treaties, 1969 defines a "treaty" as an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation

(Vienna Convention on Law of Treaties, 1969: https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf)

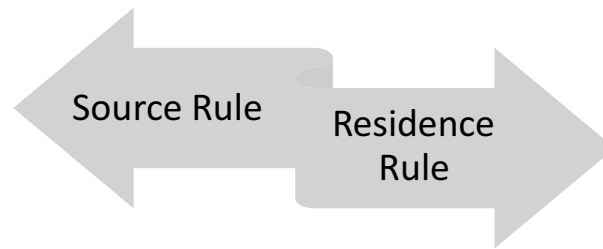
"Tax Treaty" represents various compromises agreed upon by the respective Contracting States depending upon the economic expediency of a particular country.

Tax, in the country of source is considered as a cost, whereas the same is an obligation in the country of residence. Double Tax Avoidance Agreements come into play to mitigate hardship caused by subjecting the same income to double taxation. DTAA's attempt to eliminate double taxation at a tolerable level

Where a taxpayer is resident in one country but has a source of income situated in another country, it will be a situation of double taxation for the taxpayer.

The taxability of a foreign entity in any country around the globe depends upon two distinct factors, namely, whether it is doing business **with that country or in that country**.

The term used to determine the jurisdiction/nexus for taxation is "connecting factors". There are two types of connecting factors, namely, "Residence" and "Source". It means a company can be subject to tax either on its residence link or its source link with a country.



The **Source Rule** holds that income is to be taxed in the country in which it originates irrespective of whether the income accrues to a resident or a non-resident whereas the **Residence Rule** stipulates that the power to tax should rest with the country in which the taxpayer resides.

If both rules apply simultaneously to a business entity and it were to suffer tax at both ends, the cost of operating on an international scale would become prohibitive and would deter the process of globalisation. It is from this point of view that Double Taxation Avoidance Agreements (DTAA) becomes very significant.

'In India the residential status is the key point for determination of Income Tax'

As per the provisions of Section 5 read with Section 6/7/9 of the Income Tax Act, 1961. In case of Residents their global income (i.e., Indian Income as well as Foreign Income) is taxable in India whereas in case of Non-Residents only Indian Income (source-based income) is taxable. So, we can say that in India residence rule is applied for residents whereas source rule is applied for Non-residents. The residential status of a person is determined based on the provisions of Section 6 of Income Tax Act, 1961.

DTAAs lay down the allocation rules for taxation of the income by the source country and the residence country. Such rules are laid for various categories of income, such as, interest, dividend, royalties, capital gains, business income etc. Each such category is dealt with by separate article in the DTAA.

Many a times, it is seen that in case of residents, the income tax has been paid in other countries on their income abroad (i.e., Foreign Income) and on the same income they are also required to pay tax in India. It is a universally accepted principle that the same income should not be subjected to tax twice. In such cases, there are provisions of providing relief from double tax under Income Tax Act, 1961.

DOUBLE TAXATION

Double taxation occurs when an assessee is required to pay two or more taxes for the same income, asset, or financial transaction in different countries. Double taxation occurs mainly due to overlapping tax laws and regulations of the countries where an individual operates his business. Double taxation Agreement is the systematic imposition of two or more taxes on the same income. The double liability is often mitigated by tax agreements, known as treaties, between countries.

Juridical Double Taxation

Juridical double taxation refers to circumstances where a taxpayer is subject to tax on the same income (or capital) in more than one jurisdiction. For example, a resident of Canada who is also considered to be a resident of the United States would be potentially subject to concurrent full taxation in both countries. Bilateral Tax Treaties generally tend to eliminate (or at least reduce) the possibility of juridical double taxation.

For example, X Ltd. is a resident of India. It has set up a branch in USA. Here, India would be the country of residence for X Ltd. whereas USA would be the country of source. USA would tax the profits earned by the branch of X Ltd. located in USA, whereas X Ltd. would be taxed on worldwide basis in India on the basis of residence, including profits of its USA branch.

However, X Ltd. can claim relief in respect of taxes paid in USA while filing its tax return in India under the *Indo-USA Double Taxation Avoidance Agreement*.

If, instead of USA, X Ltd. has a branch in Hong Kong, then it can claim unilateral relief under section 91 of the Act, 1961 in respect of taxes paid by its Hong Kong branch as India does not have a tax treaty with Hong Kong as the tax treaty with China does not apply to Hong Kong.]

(*Bilateral & Unilateral Tax Relief discussed in subsequent paras of this chapter)

Country wise Double Taxation Avoidance Agreements entered by INDIA :

<https://incometaxindia.gov.in/pages/international-taxation/dtaa.aspx>

Economic Double Taxation

Economic Double Taxation refers to the taxation of two different taxpayers with respect to the same income (or capital).

Economic Double Taxation explained via example, corporate profits may be taxed first when earned by the corporation (corporation tax) and again when the profits are distributed to shareholders as a dividend or other distribution (dividend tax), when income earned by a corporation is taxed both to the corporation and to its shareholders when distributed as a dividend. (*Dividend Distribution Tax is abolished vide Finance Act, 2020*)

TYPES OF DTAA'S

- Limited DTAA's – DTAA's which are limited to certain types of income only.
- Comprehensive DTAA's – DTAA's cover almost all types of incomes covered under any model convention.

DOUBLE TAXATION RELIEF

Relief from Double Taxation can be provided in two ways

1. BILATERAL RELIEF
2. UNILATERAL RELIEF

BILATERAL RELIEF FROM DOUBLE TAXATION

Under Section 90, the Indian government offers protection against double taxation by entering into a DTAA with another country, based on mutually acceptable terms. India has entered into DTAA's with 90+ Countries. Such relief may be offered under two methods:

1. **Exemption method** - A particular income is taxed in one of the both countries and exempted in the other country.
2. **Tax Credit method** - The income is taxed in both the countries as per their respective taxation laws read with the treaty/DTAA and the country of residence will allow the tax credit / reduction for the tax charged in the country of source.

For example: Mr. A (an Indian resident) has received salary from a US company for job in US. Since Mr. A is a resident so his global Income will be taxable. In this case source country is US (since the service has been rendered in US) and resident country is India. So, at the time of computation of tax liability of Mr. A, the tax paid in US will be allowed as set off against his total tax liability but limited to the tax payable on such foreign income at Indian tax rates as per Income Tax Law.

India follows Tax Credit Method in majority of its DTAA's

In case where Bilateral agreement has been entered u/s 90 with a foreign country then the assessee has an option either to be taxed as per the Double Taxation Avoidance Agreement (hereinafter referred as "DTAA") or as per the normal provisions of Income Tax Act 1961, whichever is more favourable to assessee. [CIT Vs ITC Ltd. (2002)]

For example: As per DTAA between Indian and Germany, tax on Interest is specified @ 10% whereas under Income Tax Act 1961, it depends on slab rates for individuals & HUF and flat rates (generally 30%) for other assessee. Hence one can follow DTAA and pay tax @ 10% only.

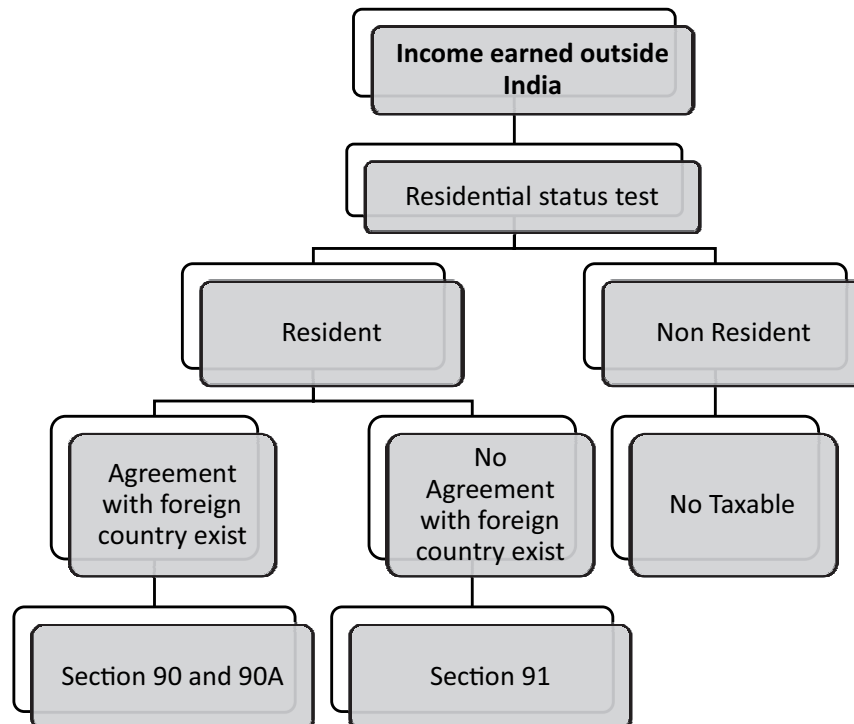
UNILATERAL RELIEF FROM DOUBLE TAXATION

Under Section 91, the Indian government can relieve an assessee from double taxation irrespective of whether there is a DTAA between India and the other country concerned. Unilateral relief may be offered to a tax payer if:

- (1) The person or company has been a resident of India in the previous year.
- (2) The same income must be accrued to and received by the tax payer outside India in the previous year.
- (3) The income should have been taxed in India and in another country with which there is no tax treaty.

The person or company has paid tax under the laws of the foreign country in question.

Sections 90, 90A and 91 of the Income-tax Act, 1961 provide for double taxation relief in India. The application of section 90/90A and 91 can be explained with the help of the following diagram.



As can be seen from the above diagram that section 90/90A is applicable in cases where India has entered into an agreement with other country and section 91 is applicable in case where there is no such agreement.

Both Section 90 and 90A of Income Tax Act, 1961 provides Bilateral Relief of Double Taxation.

AGREEMENTS WITH FOREIGN COUNTRIES OR SPECIFIED TERRITORIES OUTSIDE INDIA – BILATERAL RELIEF [SECTION 90]

Section 90 of the Income Tax Act, 1961 empowers the Central Government to enter into an agreement with foreign country or specified territory outside India for the purpose of providing relief from double taxation.

Section 90 is associated with relief measures for assessee involved in paying taxes twice i.e., paying taxes in India as well as in Foreign Countries or a territory outside India. It also contains provisions which will certainly enable the Central Government to enter into an agreement with the Government of any country outside India or a definite territory outside India. Section 90 is intended for granting relief with reference to any of the following **(Objectives)** relevant situations that may occur:

- Income on which tax has been paid both under Income Tax Act, 1961 and Income Tax prevailing in that country or definite territory.
- Income tax chargeable under Income Tax Act, 1961 and according to the corresponding law in force in that country or specified territory to boost mutual economic relations, trade and investment.
- For the prevention of double taxation of income under Income Tax Act, 1961 and under the equivalent law in force in that country or specified territory.
- For exchange of information regarding the avoidance of evasion or avoidance of income tax chargeable as per Income Tax Act or under the law in force in that country or specified territory, or investigation of cases of evasion or avoidance.
- For recovery of income tax under Income Tax Act and under the law in force in that country of the specified territory.

The double tax relief as per Section 90 can be claimed only by the residents of the countries who have entered into the agreement. If a resident of other countries wants to claim relief related to the phenomenon of double taxation, then they have to obtain a Tax Residence Certificate (TRC) from the Government of the particular country.

Where the Central Government has entered into an agreement with the Government of any country outside India or specified territory outside India for granting relief of tax, avoidance of double taxation, then, the provisions of Income Tax Act, 1961 shall apply to the assessee to whom such agreement applies, to the extent they are more beneficial to him. However, the provisions of chapter XA of the act shall apply to the assessee even if such provisions are not beneficial to him.

In case of an assessee, not being a resident in India, the benefit of double taxation agreement or tax treaty shall be applicable only when a tax residency certificate is obtained of his resident in any country outside India or specified territory outside India from the Government of that country or specified territory. [Section 90(4)]

ADOPTION BY CENTRAL GOVERNMENT OF AGREEMENT BETWEEN SPECIFIED ASSOCIATIONS FOR DOUBLE TAXATION RELIEF [SECTION 90A]

The Central Government is empowered by section 90A to enter into an agreement with any specified association in the specified territory outside India and the Central Government has been authorized to make such provisions as may be necessary for adopting and implementing such agreement.

The provisions may be made **(Objective)** for granting relief in respect of:

- income on which tax have been paid both under Income Tax Act,1961 and Income-Tax Act prevailed in that specified territory; or
- income-tax chargeable under Income-tax Act, 1961 and under the corresponding law in force in that specified territory to promote mutual economic relations, trade and investment; or

- for the avoidance of double taxation of income under Income-tax Act, 1961 and under the corresponding law in force in that specified territory outside India; or
- for exchange of information for the prevention of evasion or avoidance of income-tax chargeable under Income Tax Act, 1961 or under the corresponding law in force in that specified territory, or investigation of cases of such evasion or avoidance, or
- for recovery of Income-tax under Income Tax Act, 1961 and under the corresponding law in force in that specified territory outside India.

Where the Central Government has entered into an agreement with the specified association of any specified territory outside India for granting relief of tax, avoidance of double taxation, then, the provisions of Income Tax Act, 1961 shall apply to the assessee to whom such agreement applies, to the extent they are more beneficial to him.

However, the provisions of chapter X-A of the act shall apply to the assessee even if such provisions are not beneficial to him.

Where the assessee, being not resident in India, the benefit of double taxation agreement or tax treaty shall be applicable only when a tax residency certificate is obtained of his resident in any country outside India or specified territory outside India from the Government of that country or specified territory. [Section 90A(4)].

In addition to such certificate Section 90(5)/90A(5) requires the assessee to provide such other documents and information as may be prescribed for claiming benefits of the DTAA

“Specified Association” means any institution, association or body whether incorporated or not, functioning under any law for the time being in force India or the laws of specified territory outside India and which may be notified as such by the Central Government.

“Specified Territory” means any area outside India which may be notified as such by the Central Government for the purpose of section 90A of the Income Tax Act, 1961.

Where any “term” used in avoidance of double taxation agreement entered into under section 90(1) and 90A(1) is defined under the said agreement, the said term shall be assigned the meaning provided in the said agreement. Where, however, the term is not defined in avoidance of double taxation agreement, but is defined in the Act, it shall be assigned the meaning as defined in the act or explanation, if any, issued by the Central Government.

Information to be provided by the Assessee not being a resident in India and Tax Residency Certificate for residents [Rule 21AB]

1	<p>The assessee, not being resident in India, shall provide the following information in Form No. 10F, namely:</p> <ol style="list-style-type: none"> i. Status (individual, company, firm etc.) of the assessee; ii. Nationality (in case of an individual) or country or specified territory of incorporation or registration (in case of others) iii. Assessee’s tax identification number in the country or specified territory of residence and in case there is no such number, then, a unique number on the basis of which the person is identified by the Government of the country or the specified territory of which the assessee claims to be a resident; iv. Period for which the residential status, as mentioned in the certificate; and v. Address of the assessee in the country or specified territory outside India, during the period for which the certificate, as mentioned in (iv) above, is applicable.
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2	The assessee may not be required to provide the information or any part thereof referred to in sub-rule (1) if the information or the part thereof, as the case may be, is contained in the tax residency certificate.
2A	The assessee shall keep and maintain such documents as are necessary to substantiate the information provided under sub-rule (1) and an income-tax authority may require the assessee to provide the said documents in relation to a claim by the said assessee of any relief under an agreement.
3	An assessee, being a resident in India, shall, for obtaining a certificate of residence for the purposes of an agreement referred to in section 90 and section 90A, make an application in Form No. 10FA to the Assessing Officer.
4	The Assessing Officer on receipt of an application referred to in sub-rule (3) and being satisfied in this behalf, shall issue a certificate of residence in respect of the assessee in Form No. 10FB.

#Circular No. 333 dated 2.4.1982, issued by CBDT provides that a specific provision of the DTAA will prevail over the general provisions of the Income-tax Act, 1961. However, where there is no specific provision in the treaty, then the Income-tax Act will apply. Generally, DTAA only provides for distribution of taxing rights between the residence and the source state. The computation mechanism is usually not provided under DTAA and the same is governed by the domestic tax law of each country

Statement:

The DTAA's entered into by the Govt. of India override the Domestic Law

The above Statement is Correct.

Section 90(2) provides that where a DTAA is entered into by the Government, the provisions of the Income Tax Act, 1961 would apply to the extent they are more beneficial to the assessee.

In case of any conflict between the provisions of the DTAA and the Income Tax Act, 1961, the provisions of the DTAA would prevail over the Act in view of the provisions of section 90(2), to the extent they are more beneficial to the assessee [**CIT v. P.V.A.L. Kulandagan Chettiar (2004) 267 ITR 654 (SC)**].

DOUBLE TAXATION RELIEF WHERE THERE IS AN NO DTAA AGREEMENT [SECTION 91]

If any person who is resident in India in any previous year proves that, in respect of his income which accrued or arose during that previous year outside India (and which is not deemed to accrue or arise in India), he has paid in any country with which there is no agreement under section 90 for the relief or avoidance of double taxation, income-tax, by deduction or otherwise, under the law in force in that country, he shall be entitled to the deduction from the Indian income-tax payable by him of a sum calculated on such doubly taxed income at the Indian rate of tax or the rate of tax of the said country, whichever is the lower, or at the Indian rate of tax if both the rates are equal.

If any non-resident person is assessed on his share in the income of a registered firm assessed as resident person in India in any previous year and such share includes any income accruing or arising outside India during that previous year (and which is not deemed to accrue or arise in India) in a country with which there is no agreement under section 90 for the relief or avoidance of double taxation and he proves that he has paid income tax by deduction or otherwise under the law in force in that country in respect of the income so included he shall be entitled:

- to a deduction from the Indian Income Tax payable by him or a sum calculated on such doubly taxed income so included

- at the Average Indian Tax Rate or
- the Average Foreign Tax Rate,

Whichever is lower or at the Indian Tax Rate if both the rates are equal.

<p>Indian Tax on Doubly Taxed Income :</p> $\frac{\text{Tax on Total Income in India} \times \text{Doubly Taxed Income}}{\text{Total Income in India}}$ <p>Foreign Tax on Doubly Taxed Income :</p> $\frac{\text{Tax Paid in Foreign County} \times \text{Doubly Taxed Income}}{\text{Total Income in Foreign County}}$

CALCULATION OF RELIEF FROM DOUBLE TAXATION

The process which is generally adopted by the authorities in order to grant bilateral relief under Section 90 and 90A is (i.e., when there is DTAA Agreement):

Compute the total income of person liable to tax in India in accordance with the provision of the Income-tax Act.

Allow relief as per the terms of the tax treaty entered into with the other contracting country or specified territory, as the case may be, where the income has suffered double taxation.

The process which is generally adopted by the authorities in order to grant bilateral relief under Section 91 is (i.e., when there is NO DTAA Agreement)

Step 1	Calculate tax on total income inclusive of the foreign income on which relief is available. Claim any relief allowable under the provision of this Act but before relief due under sections 90, 90A and 91
Step 2	Add surcharge (if applicable @ applicable rates) + HEC @ 4%.
Step 3	Calculate the average rate of tax by dividing the tax computed under Step 2 with the total income (inclusive of such foreign income).
Step 4	Calculate the average rate of tax of the foreign country by dividing income tax actually paid in the said country after deducting all relief due. This should be done before deduction of any relief due in the said country in respect of double taxation by the whole amount of the income as assessed in the said country
Step 5	Claim the relief from the tax payable in India at the rate calculated at Step 3 or Step 4, whichever is less.

Illustration 1:

Mr. Raja, an individual resident retired employee of the XY Label Ltd aged 61 years, is a well-known Singer deriving income of INR 1,10,000 from Stage Shows Abroad. Tax of INR 11,000 was deducted in the country where the Shows were performed. India does not have any Double Tax Avoidance Agreement with that Country. His income in India amounted to INR 6,10,000.

In view of tax planning, he has deposited INR 1,50,000 in Public Provident Fund and paid contribution to approved Pension Fund of LIC INR 32,000. He also contributed INR 28,000 to Central Government Health Scheme during the previous year and gave payment of medical insurance premium of INR 26,000 to insure the health of her mother, a non-resident aged 80 years, who is not dependent on her. Compute the tax liability of Mr. Raja for the Assessment year 2026-27, assuming that he has opted out of the default tax regime under Section 115BAC.

Solution:**Computation of tax liability of Mr. Raja for the A.Y. 2026-27 under normal provisions of the Act**

Particulars	Amount (INR)	Amount (INR)
INDIAN INCOME		6,10,000
FOREIGN INCOME		1,10,000
GROSS TOTAL INCOME		7,20,000
Less: Deductions under chapter VI-A		
Deposit in PPF (Section 80C)	1,50,000	
Contribution to Approved Pension Fund of LIC (Section 80CCC)	32,000	
Aggregate Deduction u/s 80C and 80CCC restricted to 1,50,000 (Section 80CCE)		(1,50,000)
Contribution to CGHS (Section 80D)	28,000	
Medical Insurance Premium on health of Mother, Non-Resident – 26,000 (restricted to 25,000)	25,000	(53,000)
TOTAL INCOME		5,17,000
Tax On Total Income		
Income Tax (As per Slab Rates for AY 2026-27)		13,400
Add: HEC @ 4%		536
Total Tax		13,936

Average Rate of Tax in India (i.e. $13,936 / 5,17,000 \times 100$)	2.296%	
Average Rate of Tax in Foreign Country (i.e. $11,000 / 1,10,000 \times 100$)	10%	
Relief under Sec. 91 on 1,10,000 @ 2.696% (lower of Avg Indian Tax Rate or Avg Foreign Tax Rate)	2.296%	(2,966)
TAX Payable in INDIA (13,936 – 2966)		10,970

NECESSITY FOR DTAA

1. The need for Double Taxation Avoidance Agreement (DTAA) arises because of rules in two different countries regarding chargeability of income based on receipt and accrual, residential status etc.
2. Double taxation is frequently avoided through DTAA entered into by two countries for the avoidance of double taxation on the same income.
3. The DTAA eliminates or mitigates the incidence of double taxation by sharing revenues arising out of international transactions by the two contracting states of the agreement.
4. As there is no clear definition of income and taxability thereof, which is accepted internationally, an income may become liable to tax in two countries.
5. In such a case, the possibilities are as under:
 - The income is taxed only in one country.
 - The income is exempt in both countries.
 - The income is taxed in both countries, but credit for tax paid in one country is given against tax payable in other country.

If the two countries do not have DTAA then in such a case, the domestic law of the country will apply. In the case of India, the provisions of Section 91 of the Income Tax act will apply. The CBDT has clarified vide circular no. 333 dated 2nd April, 1982 that in case of a conflict in the provisions of the agreement of Tax Avoidance of double taxation and the Income Tax Act, the provisions contained in the Agreement for Double Tax Avoidance will prevail.

OBJECTIVES OF TAX TREATIES

There are two influential model tax conventions - the United Nations Model Convention and OECD Model Convention. In addition, many countries have their own model tax treaties, which are often not published but are provided to other countries for the purpose of negotiating tax treaties.

The United Nations Model Convention draws heavily on the OECD Model Convention. Objectives for signing a tax treaty also play a significant role in its interpretation as they determine the context in which a particular treaty is signed. Organisation for Economic Co-operation and Development 'OECD' and UN Model Conventions have different objectives to achieve as mentioned below:

1. **OECD Model Convention:** Principal objective of double taxation conventions is to promote, by eliminating international double taxation, exchange of goods and services, movement of capital and person. Also to prevent tax avoidance and evasion.

2. UN Model Convention: The principal objectives of UN Model Conventions are as follows:

- To Protect tax payer from double taxation
- To encourage free flow of international trade and investment
- To encourage transfer of technology
- To prevent discrimination between taxpayer
- To provide a reasonable element of legal and fiscal certainty to investors and traders
- To arrive at an acceptable basis to share tax revenues between two states
- To improve the co-operation between taxing authorities in carrying out their duties.

3. Indian Tax Treaties: The principal objectives of Indian Tax Treaties are as follows:

- a) for granting relief in respect of:
 - income on which tax have been paid both under Income Tax Act,1961 and Income-Tax Act prevailed in that country; or
 - income-tax chargeable under Income Tax Act, 1961 and under the corresponding law in force in that country to promote mutual economic relations, trade and investment; or
- b) for the avoidance of double taxation of income under Income Tax Act, 1961 and under the corresponding law in force in that country; or
- c) for exchange of information for the prevention of evasion or avoidance of income-tax chargeable under Income Tax Act, 1961 or under the corresponding law in force in that country, or investigation of cases of such evasion or avoidance, or
- d) for recovery of income-tax under Income Tax Act, 1961 and under the corresponding law in force in that country.

CONCEPT OF PERMANENT ESTABLISHMENT

As per the provisions of the Income-tax Act, 1961, the taxability of business profits is determined by existence of business connection in India under section 9(1)(i) of the Income Tax Act, 1961.

Whereas, Under the DTAA, taxability of business profits is determined by existence of a Permanent Establishment (PE) in India.

It may be noted that the scope of business connection under section 9(1)(i) is wider than that of a PE.

Article 5(1) of the DTAA usually provides that for the purpose of this convention, the term 'Permanent Establishment' means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

The term PE is also defined under section 92F(iii) to include a fixed place of business through which the business of the enterprise is wholly or partly carried on.

According to Article 5(2), the term PE includes a Place of Management, Branch, Factory, Office, Workshop, Warehouse, Sales Office, Mine, Oil or Gas Well any other place of extraction of natural resources.

- Permanent establishment means a fixed place of business through which the business of an enterprise is wholly or partly carried on.
- Every DTAA has a specific clause, which will deal with an explanation of permanent establishment for the purpose of such DTAA.

- Business Income of a non-resident will not be taxed in India, unless such non-resident has a permanent establishment in India.
- Taxability of income under business connection and permanent establishment is explained here below

Illustration:

The concept of Permanent Establishment is one of the most important concepts in determining the tax implications of cross border transactions. Examine the significance thereof, when such transactions are governed by Double Taxation Avoidance Agreements.

Solution:

Double Taxation Avoidance Agreements (DTAAs) generally contain an Article, providing that business income is taxable in the country of residence, unless the enterprise has a permanent establishment in the country of source, and such income can be attributed to the permanent establishment.

As per Section 92F(iii), the term “Permanent Establishment” includes a fixed place of business through which the business of an enterprise is wholly or partly carried on.

Section 9(1)(i) requires existence of business connection for deeming business income to accrue or arise in India. DTAAs, however, provide that business income is taxable only if there is a permanent establishment in India.

As per Section 90(2), the provisions of the Income-tax Act, 1961 or the DTAA, whichever is beneficial, shall apply. The PE concept is narrower than the business connection concept. Therefore, in a case where the Indian Government has entered into DTAA with a country, unless and until the PE test is satisfied, the business income would not be taxable in the source country.

However, in cases not covered by DTAAs, business income attributable to business connection is taxable.

ARTICLE 64**EMERGENCE OF A NEW PEREMPTORY NORM OF GENERAL INTERNATIONAL LAW (“JUS COGENS”)**

If a new peremptory norm of general international law emerges, any existing treaty which is in conflict with that norm becomes void and terminates.

(Vienna Convention on Law of Treaties, 1969: https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf)

Significant Articles covered in the Model Conventions

Article 1	Persons Covered The OECD and UN Model Convention covers or applies to persons who are resident of one or both of the contracting states
Article 2	Taxes Covered The OECD and UN Conventions would apply to taxes on income and on capital imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.

Article 4	<p>Residence</p> <p>A taxpayer has to demonstrate that he is a resident of one or both Contracting States to be able to gain access to a tax treaty and avail the benefits thereunder.</p> <p>The term “resident of a contracting State” means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.</p> <p>Where by reason of the provisions of as stated above, an individual is a resident of both contracting States, then his status shall be determined as follows:</p> <ul style="list-style-type: none"> (a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (centre of vital interests); (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode; (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national; (d) if he is a national of both States or of neither of them, the competent authorities of the contracting States shall settle the question by mutual agreement. <p>Where by reason of the provisions, a person other than an individual is a resident of both contracting States, then it shall be deemed to be a resident only of the State in which its place of effective management is situated.</p> <p><i>Note:</i> A person shall be entitled to a tax treaty benefits only if he is a resident of one of the contracting states. Article 4 of the tax treaty deals with residential status of a person, it does not provide rules for determination of the residence. Instead, it refers to the determination of residence in accordance with the provisions of domestic tax law of the respective contracting states. Therefore, the primary requirement is for a person to qualify as a resident under the law of the concerned contracting state.</p>
Article 5	<p>Permanent Establishment</p> <p>Discussed earlier in this chapter</p>
Article 6	Income from immovable property;
Article 7	<p>Business profits</p> <p>Business profits of an enterprise can only be taxed by the Residence State. Right of Source State to tax business profits of an enterprise only exists if a PE exists in its jurisdiction. As per the approach under the OECD Model Convention, once a PE is proven, the Source State can tax only such profits as are attributable to the PE. The UN Model Convention amplifies this attribution principle by a limited Force of Attraction rule (FOA).</p>
Article 8	Income from the operation of ships or aircraft in international traffic and boats in inland waterways transport

Article 9	Profits of associated enterprises and transfer pricing
Article 10	Dividends
Article 11	<p>Interest</p> <p>Generally, the interest is taxed in the Source State at a given rate on gross basis. However, if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged cannot exceed a specified percentage of the gross amount of the interest. The OECD Model specifies the percentage as 10%, but the UN Model leaves this percentage to be established through bilateral negotiations.</p>
Article 12	<p>Royalties</p> <p>As per the OECD Model, royalties arising in the Source State and beneficially owned by a resident of the Residence State are taxable only in the Residence State. However, the UN Model provides that royalties may be taxed in the Residence State. Hence, the UN Model departs from the principle of exclusive right to tax provided to Residence State in the OECD Model.</p> <p>Thus, under the UN Model, the Source State may also tax royalties. However, if the beneficial owner is a resident of the Residence State, the tax charged by the Source State cannot exceed the specified percentage of the gross amount of royalties. This specified percentage is to be established through bilateral negotiations.</p>
Article 12A	<p>Fees for Technical Services</p> <p>The UN Model has a specific article pertaining to Fees for Technical Services (FTS).</p> <p>Paragraph 1 of Article 12A provides that the FTS may be taxed in the Residence State but does not provide that the FTS is exclusively taxable in the Residence State.</p> <p>Paragraph 2 establishes the right of the country in which FTS arises to tax in accordance with its domestic law, subject to the limitation on the maximum rate of tax on gross amount of the fees, if the beneficial owner is a resident of the other Contracting State. The maximum rate of tax is to be established through bilateral negotiations.</p>
Article 12B	<p>Income from Automated Digital Services (ADS)</p> <p>Article 12B was added to the United Nations Model Tax Convention in its 2021 update to preserve the domestic law taxing rights for States from which payments for automated digital services are made. There is no article in the OECD Model corresponding to Article 12B.</p> <p>Examples of ADS – supply of user data, online search engines, social media platforms, online gaming, digital content services, online advertising services etc (As Per Para 6)</p>
Article 13	<p>Capital Gains</p> <p>This is the most commonly used Article and it provides for the taxation of income arising from transfer of a capital asset, including transfer of shares. The right to tax income from capital gains may be exclusively with the Residence State, or shared between the Residence and Source States.</p>

Article 14	Independent Personal Services Article 14 is only present in the UN Model. It was deleted from the OECD Model on 29-4-2000 on the basis of OECD Report (2000) on “Issues Related to Article 14 of the OECD Model Tax Convention”. The Effect of deletion of Article 14 is that income derived from Professional Services etc., is now dealt with as ‘Business Profits’ (Article 7) under the OECD MC.
Article 15	Income from Employment
Article 16	Directors’ fees and remuneration of top-level managerial officials
Article 17	Income derived by artistes (entertainers) and athletes
Article 18	Pensions and social security payments
Article 19	Income derived by Government Employees
Article 20	Income derived by students, business trainees and apprentices
Article 21	Other income; in other words, income not dealt with in Articles 6-20 This Article deals with taxation of items of income which are not specifically taxable under any other specific Article. Key differences are as under: <ul style="list-style-type: none"> • OECD approach envisages that the exclusive right to tax is with the Residence State. UN Model contains an additional paragraph, Article 21(3), which provides that Source State may also tax other income. • Article 21(2) of both OECD and UN Model provides that for income effectively connected with a PE maintained in a Contracting State by a resident of the other Contracting State, taxation is governed by the provisions of Article 7 (Business Profits). Additionally, UN Model provides that if the aforesaid income is effectively connected with a fixed base situated in a Contracting State by a resident of the other Contracting State, taxation would be governed by the provisions of Article 14 (Independent personal services).
Articles 23A & 23B	Elimination of Double Taxation
Article 25	Mutual Agreement Procedure There may be a situation wherein a tax payer may believe that the treatment accorded by either or both Contracting States is not in accordance with the provisions of the tax treaty. In such a case, there is a need for dispute resolution which is addressed by this Article

Students are advised to go through the Significant Articles covered in the Model Conventions through following links for additional knowledge:

- https://www.un.org/esa/ffd/wp-content/uploads/2018/05/MDT_2017.pdf
- https://www.oecd.org/en/publications/2017/12/model-tax-convention-on-income-and-on-capital-condensed-version-2017_g1g8769b.html

INTERPRETATION OF TAX TREATIES

Tax treaties are signed between two independent nations by competent authorities under delegated powers from the respective Governments. Thus, an international agreement has to be respected and interpreted in accordance with the rules of International Law as laid down in the Vienna Convention on Law of Treaties (VCLT). VCLT is a multilateral Treaty signed and ratified by several countries, which codifies the international law for interpretation of tax treaties

These rules of interpretation are not restricted to tax treaties but also apply to any treaty between two countries. Therefore, any dispute between two nations in respect of Article 25 relating to Mutual Agreement Procedure of the OECD/UN Model Conventions has to be solved in the light of the VCLT.

However, when it comes to application of a tax treaty in the domestic forum, the appellate authorities and the Courts are primarily governed by the laws of the respective countries for interpretation.

In India, even before insertion of Section 90(2) by the Finance (No.2) Act, 1991, with retrospective effect from 1-4-1972, CBDT had clarified vide Circular No. 333 dated 2-4-1982 that where a specific provision is made in the DTAA, the provisions of the DTAA will prevail over the general provisions contained in the act and where there is no specific provision in the DTAA, it is the basic law, i.e., the provisions of the Act, that will govern the taxation of such income.

The Income-tax Act, 1961 provides that where the Indian Government has entered into DTAA's which are applicable to the taxpayers, then, the provisions of the act shall apply to the extent they are more beneficial to the taxpayer. Internationally, this situation is known as "Monist View" wherein International and National laws are part of the same system of law, where DTAA overrides domestic law. Some other countries which follow such a system are: Argentina, Italy, Netherlands, Belgium and Brazil.

The other prevalent view is known as "Dualistic View" wherein International Law and National Law are separate systems and DTAA becomes part of the national legal system by specific incorporation/legislation. In case of Dualistic View, DTAA's may be made subject to provisions of the National Law. Some of the countries that follow Dualistic View are Australia, Austria, Norway, Germany, Sri Lanka, and UK.

Interpretation of any statute, more so International tax treaties requires that we follow some rules of interpretation. In subsequent paragraphs, we shall deal with rules of interpretation of tax treaties.

The interpretation of tax treaties bears certain similarities to that of domestic tax legislation. For example, the meaning of the words, the context in which they are used, and the purpose of the provision are generally important in interpreting both treaties and domestic tax legislation. There may be a tendency for tax authorities and Courts to interpret tax treaties in the same way as domestic tax legislation. There are, however, several important differences between tax treaties and domestic tax legislation:

- (a) Because two contracting States are involved in every treaty, questions of interpretation should be resolved by reference to the mutual intentions and expectations of both of them;
- (b) Tax treaties are addressed to a broader audience than domestic legislation, namely, to both the Governments and taxpayers of each country;
- (c) Tax treaties are often not drafted using the same terms as domestic legislation. For example, the United Nations Model Convention uses the term "enterprise," which is not used in the domestic legislation of many countries;
- (d) Tax treaties are primarily relieving in nature, as discussed above; they do not impose tax;
- (e) The United Nations and OECD Model Conventions and Commentaries thereon have no counterparts in the context of domestic tax legislation.

As tax treaties are treaties, their interpretation is governed by the Vienna Convention on the Law of Treaties (Vienna Convention), which applies to all treaties, not just tax treaties. Many countries have signed it and are bound by its terms. However, even countries that have not done so may be bound by its provisions because they represent a codification of customary international law, which is binding on all nations.

The basic / general rule of interpretation in Article 31 (1) of the Vienna Convention provides as follows:

A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of its object and purpose.

The context under Article 31 (2) includes the text of the treaty and any agreements between the parties made in connection with the conclusion of the treaty and any instrument made by one of the parties and accepted by the other party.

For example, the United States produces a technical explanation for each of its tax treaties, and Canada publicly announced its acceptance of the United States technical explanation of the United States-Canada treaty.

In addition, under Article 31 (3), subsequent agreements between the parties and subsequent practice with respect to the interpretation of the treaty and any applicable rules of international law must be taken into account together with the context. Therefore, for example, if the competent authorities of the two States enter into an agreement concerning the interpretation of the treaty, the agreement should be taken into account for purposes of interpreting the treaties in the same way as if it were included in the treaty itself.

Under Article 32 of the Vienna Convention, other elements, referred to as supplementary means of interpretation, which include the preparatory work of the treaty and the circumstances of its conclusion, are only to be considered to confirm the meaning established pursuant to Article 31, or to establish the meaning if Article 31 produces an ambiguous, obscure, absurd or unreasonable result.

It is important that tax treaties be interpreted the same way in both countries (the principle of common interpretation) because otherwise income may be taxed twice or not at all. Assume, for example, that S, a resident of country A, performs services in country B for more than 183 days for the benefit of corporation C. The services result in the creation of some work product used by corporation C. S receives a payment from corporation C that is characterized under the laws of country B as compensation for performing services in country B. In contrast, Country A characterizes the payment as a royalty for allowing corporation C to use S's work product. Under the tax treaty between the two countries, fees for personal services are taxable in the source State and royalties are taxable exclusively in the residence State (as they are under Article 12 (Royalties) of the OECD Model Convention). Under these circumstances, S will be subject to double taxation unless the competent authorities of the two countries can resolve the matter.

In addition to the provisions of the Vienna Convention, tax treaties based on the United Nations and OECD Model Conventions contain an internal rule of interpretation. Article 3 (2) (General definitions) of the United Nations and OECD Model Conventions provides that any undefined terms used in a treaty should be given the meaning that they have under the domestic law of the country applying the treaty unless the context requires otherwise. Thus, the application of Article 3 (2) involves a three-stage process:

- (a) Does the treaty provide a definition of the term?
- (b) If the treaty does not provide a definition, what is the domestic meaning (not necessarily the definition under domestic law) of the term?
- (c) Does the context of the treaty require a meaning different from the domestic meaning?

The determination of the meaning of a term under domestic law also may be difficult. Domestic tax legislation is generally imposed on the legal consequences of transactions and the legal status of persons under the general law.

Article 3 (2) explicitly recognizes that the domestic meaning of a term used in a treaty may be derived from the general domestic law rather than the domestic tax law. Where, however, the domestic tax law provides a meaning for an undefined treaty term, Article 3 (2) provides that the meaning of the term under a country's tax law prevails over the meaning under other domestic laws. An undefined term, however, may have more than one meaning for purposes of a country's tax law. In this situation the domestic meaning that is most appropriate should be used in the context of the treaty.

Another important and controversial issue of interpretation in connection with Article 3 (2) of the United Nations and OECD Model Conventions is whether a term has its meaning under domestic law at the time that the treaty was entered into (the static approach) or its meaning under the domestic law as amended from time to time (the ambulatory approach). Article 3 (2) of the OECD Model Convention was amended in 1995 to make it clear that Article 3 (2) should be applied in accordance with the ambulatory approach. A similar conforming amendment was made to the United Nations Model Convention 2001. The ambulatory approach allows treaties to accommodate changes in domestic law without the need to renegotiate the treaty. A drawback of this approach is that it effectively permits a country to amend unilaterally its tax treaty with another country by changing certain parts of its domestic law.

http://www.un.org/esa/ffd/wp-content/uploads/2015/10/TT_Introduction_Eng.pdf

CASE LAWS

22.04.2021

Ranjit Kumar Vuppu Vs ITO

ITAT Hyderabad

DTAA exemption cannot be denied merely for non-availability of Tax Residency Certificate 'TRC'

Facts of the Case: The assessee, a Non-resident individual, filed his return of income for the A.Y 2014-15 on 31.07.2014 admitting total income of Rs.10,04,580. During the assessment proceedings u/s 143(2) of the act pursuant to selection of his return of income for scrutiny under CASS, the assessee was required to furnish certain information and the said information was furnished by the assessee.

On verification of Form-16 issued by the assessee's employer, i.e., IBM India (P) Ltd. for the A.Y 2014-15, the Assessing Officer found that during the relevant A.Y, the gross salary of the assessee was Rs. 31,11,185/-. The Assessing Officer observed that the employer had deducted the tax at source of Rs.7,76,564/-.

Further, on verification of the total income filed by the assessee along with the return of income for the A.Y 2014-15, the Assessing Officer found that the assessee has claimed double taxation relief under section 90 of the Income Tax act and admitted NIL total income but claimed TDS of Rs. 7,66,567/- in his return. Therefore, the assessee was required to furnish the following details:

- a) Tax Residency Certificate to claim the relief under section 90 for the salary received outside India with respect to the services rendered outside India,
- b) Copy of the Assignment letter between the Employer and employee.

In response, the assessee submitted a reply dated 9.9.2016 given as under:

"As the assessee has spent less than 60 days in India during the FY 2013-14, he qualifies as a Non-resident under section 6(1) of the Act. Therefore, the foreign allowance of Rs.20,72,238/- was not offered to tax in India in the return of income as the same was received by him outside India for the services rendered outside India and shall not form part of total income under section 5(2) of the Income tax Act, 1961."

The Assessing Officer, however, held that the claim of the assessee could not be allowed for the following reasons:

- Despite giving many opportunities, the assessee could not produce the Tax Residency Certificate of Belgium for claiming the Double Taxation relief under section 90 as it is statute u/s 90(4) of the Income tax Act, 1961 w.e.f. from A.Y. 2013-14.
- The assessee has failed to furnish the supporting evidences for receiving the foreign allowances outside India to come under purview of section 5(2) of the Income tax Act, 1961. Moreover, the assessee has neither produced any bank account outside India to prove any credits received outside India. Though the assessee stated that certain amounts which are received through travel card pertains to allowance received outside India, the same is not acceptable as the receipts received through travel card does not prove to be receipts received outside India as it is mobile card which can be used anywhere. Further, the employer has not confirmed the same either in letter submission or in Form 16 that these receipts paid through travel card.
- Further the assessee has also failed to prove that the receipts which are reflecting in Form 16 are the salary receipts earned outside India, as there is no evidence of the assessee being resident of Belgium.
- Employer in Form No. 16 has deducted tax at source of Rs.7,76,564/- on the gross salary, i.e., Rs.31,11,185/- received by assessee in India. However, as per section 5(2) of the I.T. Act, 1961, the total income of any previous year of a person who was a non-resident included all income from whatever sources derived, which was received or deemed to be received in India in such year by or on behalf of such person or accrue or arises to him in India during such year. Hence the total salary income and allowance received by employee is taxable.
- Further, the assessee has stated which is reproduced as under:
- “Hence at the time of payment of salary, as the residential status of the assessee was unknown to his employer, IBM has treated the entire salary paid to assessee as taxable in India and taxes were deducted at source on the entire salary”. As the Act has put primary responsibility and onus on the deductor employer to deduct taxes, IBM with abundant caution and following a conservative basis has deducted taxes on the entire salary paid to the assessee”.

Judgement: It has been held that the AO has disallowed the exemption claimed by the assessee under Article 15(1) of the India-Austria DTAA only for want of Tax Residence Certificate (TRC) from Austria. The submission of the assessee in this regard was that despite best possible efforts he was not able to procure TRC from country of residence and the situation may be treated as “impossibility of performance”. I find merits in the submission of the assessee. Normally it is a herculean task to obtain certificates from alien countries for compliance of domestic statutory obligations. In such circumstances the taxpayer cannot be obligated to do impossible task and penalized for the same. If the assessee provides sufficient circumstantial evidence in such cases, the requirement of section 90(4) ought to be relaxed. Further, it is obvious that where there is a conflict between the Treaty and the Act, the Treaty shall overrule the Act. In the case of the assessee, by virtue of the Treaty, the assessee is liable to tax in Austria for the services rendered in Austria and not in India. Therefore, though the act mandates Tax Residency Certificate of Austria, non-production of the same before the Ld. Revenue Authorities shall not enable the Ld. Revenue Authorities not to grant the benefit of the Treaty to the assessee. Therefore, the Ld. Revenue Authorities have erred in not granting the benefit of the Treaty to the assessee just for the reason that the assessee has not submitted the Tax Residency Certificate from Austria.

Abdul Razak A. Mema's case [2005] 276 ITR 306, the AAR observed that “there can be little doubt that while interpreting treaties, regard should be had to material *contemporanea expositio*, which means that a statute is best explained by following the construction put upon it by judges at the time it was made, or soon after. This proposition is embodied in Article 32 of the Vienna Convention, and is also referred to in the decision of the Hon'ble Supreme Court in *K. P. Varghese v. ITO [1981] 131 ITR 597*.”

Johnson Matthey Public Limited Company vs. CIT (International Taxation) (2024) 465 ITR 649 (Delhi)

Facts of the Case: The assessee was a tax resident of the United Kingdom and engaged in manufacturing specialty chemicals. It entered into global corporate guarantee for the purpose of securing loans taken by its Indian subsidiaries from foreign banks. It received guarantee charges for extending such guarantee

Issue: Whether the amount received as “Guarantee Fees” by a foreign company from its Indian subsidiaries fall within the definition of “interest”?

Relevant Provision: As per section 2(28A), "interest" means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) and includes any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilized.

Article 12(5) of India-UK DTAA defines “interest” to mean income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from Government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures but, subject to the provisions of paragraph 9 of this Article, shall not include any item which is treated as a distribution under the provisions of Article 11(Dividends) of this Convention.

Analysis and Decision: The High Court concur with the views of the Tribunal that the word "interest" as defined in Article 12(5) of the Treaty and section 2(28A) of the Act, shall be understood contextually. Article 12(5) of the DTAA and section 2(28A) of the Act extend the scope of such payments. However, payment or re-payment pursuant to any loan to be qualified as "interest", necessarily have to be within the context of loan and shall relate to the parties to the privity of contract. In this context only, the expressions "claims of any kind", "service fee or other charge" have to be understood. The word “interest” does not take into its fold any payments made to stranger to the privity of loan transactions, though such payments have to be made incidentally in relation to such loan.

Undoubtedly, assessee is a stranger to the privity of loan transactions in as much as the contract of loan is a different from the contract of guarantee, as such in our considered opinion, the expression of "debt claims of any kind" or "the service fee or other charge in respect of moneys borrowed or debt incurred" does not stand extended to the payment of guarantee commission received by the assessee in India.

“interest” is defined to mean amounts payable in respect of any undisputedly the appellant had not borrowed any monies. The debt, if any, which could be said to have been incurred was clearly not one owed to the Indian subsidiaries. The income that it received from its Indian subsidiaries was solely in consideration of any liability that could possibly befall in case its Indian subsidiaries were to default in their repayment obligations.

Judgement: Accordingly High Court held that guarantee fee would neither fall within the ambit of Article 12 of India-UK DTAA nor section 2(28A) of the Act.

LESSON ROUNDUP

- A tax treaty is also called a Double Tax Agreement (DTA). 'Treaty' means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.
- Double taxation occurs when an assessee is required to pay two or more taxes for the same income, asset, or financial transaction in different countries.
- Juridical double taxation refers to circumstances where a taxpayer is subject to tax on the same income (or capital) in more than one jurisdiction.
- Economic double taxation refers to the taxation of two different taxpayers with respect to the same income (or capital).
- The DTAA's can be two types:
Comprehensive DTAA: Comprehensive DTAA's are those which cover almost all types of incomes covered by any model convention. Many a time a treaty covers wealth tax, gift tax, surtax etc. too.
Limited DTAA: Limited DTAA's are those which are limited to certain types of incomes only, e.g. DTAA between India and Pakistan is limited to shipping and aircraft profits only.
- The Vienna Convention on Law of Treaties provides basic rules of interpretation of any international agreement.

TEST YOURSELF

(These are meant for recapitulation only. Answer to the questions are not to be submitted for evaluation)

1. Explain Double Taxation? Discuss the connecting factors which lead to Double Taxation.
2. Explain the General Rule of Interpretation under Vienna Convention of Law and Treaties.
3. Explain the objectives and need for entering into DTAA.
4. Briefly explain the Juridical and Economic double taxation.
5. Explain the Source v/s Residence Based Taxation.
6. Mr X resident in India, having income earned outside India in a country with which no agreement under section 90 exists, asks you to examine whether the credit for the tax paid on the foreign income will be allowed against his income-tax liability in India.
7. Mr. Raju, aged 38 years, a resident in India furnishes the following particulars of income earned by him in India and Country A for the previous year 2025-26. India does not have a double taxation avoidance agreement (DTAA) with Country A

Particulars	Amount (INR)
Professional Income form Delhi	8,50,000
Agricultural Income from Country A	1,30,000
Royalty Income from Country A (gross)	6,25,000
Expenses incurred for earning royalty	75,000
Business Loss Country A	1,10,000

Annexure

Reports and Certificates under Income Tax Law

Section	Details	Reports / Certificates	Rule	Form No.	Weblink
33AB(2)	Audit Report in case of tea/coffee/rubber development account - The requirement for an audit report ensures that the deductions claimed by a taxpayer for investments or expenditures related to tea/coffee/rubber business are accurate and supportable.	Audit report under section 33AB(2) of the Income-tax Act, 1961, in a case where the accounts of the business or profession of a person have been audited under any other law	5AC	3AC	https://incometaxindia.gov.in/forms/income-tax%20rules/103120000000007759.pdf
33ABA(2)	Relates to deductions in respect of certain types of expenditure incurred by businesses involved in the production, extraction of petroleum or natural gas - The requirement for an audit report in cases where a taxpayer claims certain deductions related to investments for site restoration required in petroleum and gas extraction/production.	Audit report under section 33ABA(2) of the Income-tax Act, 1961, in a case where the accounts of the business of a person have been audited under any other law	5AD	3AD	https://incometaxindia.gov.in/forms/income-tax%20rules/103120000000007760.pdf

Section	Details	Reports / Certificates	Rule	Form No.	Weblink
35D(4)/ 35E(6)	<p>Section 35D relates to preliminary expenses incurred during the startup phase – an audit report requires to ensure that the preliminary expenses claimed as deductions are genuine, properly documented, and compliant with the provisions of income tax.</p> <p>Section 35E relates to deduction towards expenditure incurred on prospecting for or extraction/production of certain minerals.</p> <p>An audit report is required for claiming deduction for these expenditures.</p>	Audit Report under section 35D(4)/35E(6) of the Income-tax Act, 1961	6AB	3AE	https://incometaxindia.gov.in/forms/income-tax%20rules/103120000000007761.pdf
44AB	Mandates tax audit of certain categories of taxpayers – Audit is required if turnover /gross receipts exceed the prescribed limit i.e., one crore. (Limit changed to 10 crores if amount received/paid in cash does not exceeds 5% of total sales/expenditure)	Audit report under section 44AB of the Income -tax Act, 1961, in a case where the accounts of the business or profession of a person have been audited under any other law	6G	3CA	https://incometaxindia.gov.in/forms/income-tax%20rules/103120000000007765.pdf

Section	Details	Reports / Certificates	Rule	Form No.	Weblink
	Tax audit of certain categories of taxpayers like Proprietorship, partnership firm which is not required to get their accounts audited under any other law – Report on Audit of accounts should be given in Form 3CB.	Audit report under section 44AB of the Income -tax Act 1961, in the case of a person referred to in clause (b) of sub - rule (1) of rule 6G	6G	3CB	https://incometaxindia.gov.in/forms/income-tax%20rules/103120000000007766.pdf
	It covers comprehensive details about the taxpayer's business, financial transactions, and compliance with tax regulations, The same is required along with Form 3CA AND 3CB as the case may be.	Statement of particulars required to be furnished under section 44AB of the Income-tax Act, 1961	6G	3CD	https://incometaxindia.gov.in/forms/income-tax%20rules/103120000000007767.pdf
44DA(2)	Section 44DA deals with non-resident Indian or a foreign company received income by way of Royalty or Fees for technical services, such income shall be computed after deduction of expenditure incurred for the business of such permanent establishment or fixed place of profession in India – Audit report is required to verify the correctness of expenditure incurred	Audit Report under sub-section (2) of section 44DA of the Income-tax Act, 1961	6GA	3CE	https://incometaxindia.gov.in/forms/income-tax%20rules/103120000000007768.pdf

Section	Details	Reports / Certificates	Rule	Form No.	Weblink
	on such permanent establishment or fixed place of profession in India as income is calculated post deduction of expenditure incurred wholly and exclusively for such permanent establishment or fixed place of profession in India.				
50B(3)	Section 50B refers to the slump sale wherein lumpsum consideration received against one or more of the undertakings transferred without assigning individual value of each asset and liability – Report of accountant is required relating to computation of capital gains in case of slump sale to minimize the disputes.	Report of an accountant to be furnished by an assessee under subsection (3) of section 50B of the Income-tax Act, 1961 relating to computation of capital gains in case of slump sale	6H	3CEA	https://incometaxindia.gov.in/forms/income-tax%20rules/103120000000007769.pdf
92E	Section 92E of Income Tax Act related to Transfer pricing provisions which requires that all international transactions and specific domestic transaction should be conducted at Arm's length prices – A Report from Accountant is	Report from an accountant to be furnished under section 92E relating to international transaction(s) and specified domestic transaction(s)	10E	3CEB	https://incometaxindia.gov.in/forms/income-tax%20rules/103120000000009614.pdf

Section	Details	Reports / Certificates	Rule	Form No.	Weblink
	required wherein all Individual involved in international transaction or Specific Domestic Transaction must obtain a report from Accountant which ensures that such transactions are conducted at Arm's length prices which ensures compliance with transfer pricing guidelines.				
9A	<p>Section 9A prescribed certain conditions regarding taxation of Income earned by eligible investment funds in India which operates its business in India through 'Business Connection' by appointing fund manager – Report from accountant is required to ensure that remuneration paid to such fund manager (Fund manager might be a non-resident entity) is comparable to the price if the same is paid to other unrelated parties. Such report ensures the following:</p> <ul style="list-style-type: none"> ● it verifies that such transaction is at Arm's length price 	Report from an accountant to be furnished for purposes of section 9A relating to arm's length price in respect of the remuneration paid by an eligible investment fund to the fund manager	10V (13)	3CEJ	https://incometaxindia.gov.in/forms/income-tax%20rules/itr62form3cej.pdf

Section	Details	Reports / Certificates	Rule	Form No.	Weblink
	<ul style="list-style-type: none"> It ensures to compliance of transfer pricing regulations. 				
9A	Section 9A prescribed certain conditions regarding taxation of Income earned by eligible investment funds in India which operates its business in India through 'Business Connection' by appointing fund manager – Report from an accountant is required which ensures that the entity meets the criteria to qualify the entity as eligible investment funds (EIF). Such EIF should not be deemed to have a business connection in India just on the basis that it operates through a fund manager. Such EIF should arise its income from its investment only.	Report from an accountant to be furnished for purpose of section 9A regarding fulfilment of certain conditions by an eligible investment fund	10V (13)	3CEJA	https://incometaxindia.gov.in/forms/income-tax%20rules/103520000000076116.pdf
35(2AB)	As per section 35(2AB) a 100% deduction of all revenue and capital expenditure incurred on in-house scientific research and development (Excluding land) is allowed to a company engaged in business of	Report from an accountant to be furnished under sub section (2AB) of section 35 of the act relating to in-house scientific research and development facility	6(7A) (c)	3CLA	https://incometaxindia.gov.in/forms/income-tax%20rules/itr62form3cla.pdf

Section	Details	Reports / Certificates	Rule	Form No.	Weblink
	manufacturing and production of any article (Other than article mentioned in 11th schedule of the act) – Report from an accountant is required to verify the correctness and genuineness of expenses claimed as R&D expenditure as 100% deduction is allowed u/s 35(2AB).				
9(1)(i)	Section 9 of the Income tax act specifically talks about the Income which is deemed to accrue or arise in India. This is generally covering non-resident assessee (Including Individuals and Entities) who are deriving income in India directly or through some business connections in India – Report from an accountant is required to substantiate the income which is deemed to accrue or arise in India. This report also states how the organization's income in India will be deemed to accrue or arise. This report serves as a bridge between the taxpayers and the tax authorities.	Income attributable to asset located in India under section 9 of the Income Tax Act 1961	11UC (2)	3CT	https://incometaxindia.gov.in/forms/income-tax%20rules/itr62form3ct.pdf

Section	Details	Reports / Certificates	Rule	Form No.	Weblink
2(48)	<p>Every infrastructure capital company or infrastructure capital fund or infrastructure debt fund or public sector company shall submit within two months from the end of each financial year referred to in sub-clause (i) or sub-clause (ii) of clause (iv) of sub-rule (3), or, as the case may be, in sub-clause (i) or sub-clause (ii) of clause (v) of sub-rule (3), a certificate from an accountant specifying the amount invested in each year in Form No. 5BA.</p> <p>Report from an Accountant is required to check and verify the details of investment made out of the funds realised by issue of zero-coupon bond</p>	Certificate of an accountant under sub-rule (6) of rule 8B	8B(6)	5BA	https://incometaxindia.gov.in/forms/income-tax%20rules/103520000000089819.pdf
142(2A)	<p>Section 142(2A) talks about special Audit and Inventory valuation. If at any stage of the proceedings, AO has an opinion with regards,</p> <ul style="list-style-type: none"> To the nature and complexity of the accounts, 	Audit report under clause (i) of section 142(2A) of the Income-tax Act, 1961	14A	6B	https://incometaxindia.gov.in/forms/income-tax%20rules/103120000000007128.pdf

Section	Details	Reports / Certificates	Rule	Form No.	Weblink
	<ul style="list-style-type: none"> ● Volume of the accounts ● Doubts about the correctness of the accounts, ● Multiplicity of transactions in the accounts or ● Specialized nature of business activity of the assessee, and ● The interests of the revenue <p>AO may direct [with previous approval of Principal Chief Commissioner (PCC) or Chief Commissioner (CC) or the Principal Commissioner (PC) or Commissioner (C)] to Assessee to verify books of accounts from Accountant. - Report from accountant in form no 6B is required if special audit required to be conducted as per the direction by AO.</p>				

Section	Details	Reports / Certificates	Rule	Form No.	Weblink
10(23C)(iv)/(v)/(vi)/(via) and 12(A)(1)(b)(ii)	<p>As per section 10(23C) every charitable or religious trust or any other trust, educational institution, hospitals are required to spend 85% of its Income generated during the financial year, in case if the same is not spent within the same financial year, then it shall be deemed to be the income of that previous year.</p> <p>A c c o u n t a n t required to file Form 10B/10(BB) online with Income tax department stating the comprehensive details of the entity along with the unspent amount (if minimum 85% not spent) which is accumulated and set apart for application to charitable or religious purpose.</p>	<p>Audit report under clause (b) of the tenth proviso to clause (23C) of section 10 and sub-clause (ii) of clause (b) of sub-section (1) of section 12A of the Income-tax Act, 1961, in the case of a fund or trust or institution or any university or other educational institution or any hospital or other medical institution which is required to be furnished under clause (b) of the tenth proviso to clause (23C) of section 10 or a trust or institution which is required to be furnished under sub-clause (ii) of clause (b) of section 12A</p>	16CC/17B	10B/10BB	<p>https://incometaxindia.gov.in/forms/income-tax%20rules/103120000000007798.pdf</p>
13B	<p>Every electoral trust receiving voluntary contribution required to get the accounts to be audited by an accountant -Audit report to be given in Form 10BC</p>	<p>Audit report under (sub-rule (12) of rule 17CA) of the Income-tax Rules, 1962, in the case of an electoral trust</p>	17CA (12)	10BC	<p>https://incometaxindia.gov.in/forms/income-tax%20rules/103120000000009097.pdf</p>

Section	Details	Reports / Certificates	Rule	Form No.	Weblink
80-IA(7)/80-IB/80-IC/80-IE	<p>Section 80-IA applicable on deduction in respect of profit and gains of business engaged in infrastructure development,</p> <p>Section 80-IB for eligible business, Industrial undertakings engaged in manufacture or production of article or thing or operation of cold storage plan</p> <p>Section 80-IC relates to Special provisions in respect of certain undertakings or enterprises in certain special category States</p> <p>Section 80-IE relates to Special provisions in respect of certain undertakings in North-Eastern States</p> <p>Assessee claiming deduction in respect of eligible business / undertaking / enterprise etc.</p> <p>Audit report is required to be filed by all assessee in form no 10CCB</p>	Audit report under section 80-IA(7)/80-IB/80-IC/80-IE	18BBB(1)	10CCB	https://incometaxindia.gov.in/forms/income-tax%20rules/103120000000007813.pdf

Section	Details	Reports / Certificates	Rule	Form No.	Weblink
80-IA(6)	Assessee claiming deduction in respect of profits and gains derived from the business of Housing or other activities which are an integral part of a Highway Project.	Certificate under sub-rule (3) of rule 18BBE of the Income-tax Rules, 1962	18BBE(3)	10CCC	https://incometaxindia.gov.in/forms/income-tax%20rules/103120000000007819.pdf
80LA(3)(i)	Section 80LA provides tax benefits in the form of deduction w.r.t certain income of offshore banking units of an International Financial Services Centre or working from Special economic zone. 100% deduction is allowed for any 10 consecutive years out of the 15 Years. Report from Accountant is required to be filed along with the return. This report serves as a certification that the assessee meets the criteria as given in section 80LA	Report under section 80LA(3) of the Income-tax Act, 1961	19AE	10CCF	https://incometaxindia.gov.in/forms/income-tax%20rules/103120000000007822.pdf
80JJAA(2)(c)	Section 80JJAA talks about deduction in respect of hiring of new employees, this deduction enjoyed by all the taxpayers having a factory. Such assessee is eligible for deduction of	Report under section 80JJAA of the Income-tax Act, 1961	19AB	10DA	https://incometaxindia.gov.in/forms/income-tax%20rules/103120000000007823.pdf

Section	Details	Reports / Certificates	Rule	Form No.	Weblink
	30% of additional employee cost/wages for 3 years - Report from accountant is required to verify the correctness and genuineness of deduction claimed for additional cost paid to such newly hired workmen.				
10(23FF)	Income of the nature of capital gains, arising or received by - (name of the specified fund), on account of transfer of share of a company resident in India, by the specified fund to the extent attributable to units held by non-resident (not being a permanent establishment of a non-resident in India) which is exempt under clause (23FF) of section 10 of the Act and the total income exempt under the said clause	Certificate to be issued by accountant under clause (23FF) of section 10 of the Income-tax Act, 1961	2DD(3)	10-IJ	https://incometaxindia.gov.in/forms/income-tax%20rules/103520000000087061.pdf
195(6)	Section 195(6) applicable wherein if any amount payable to non-resident, then the person responsible to make such payment is required to furnish such information	Certificate from accountant for amount payable in foreign currency	37BB (i) (ii)(a)	15CB	https://incometaxindia.gov.in/Pages/downloads/forms.aspx

Section	Details	Reports / Certificates	Rule	Form No.	Weblink
	in a prescribed manner -Certificate from accountant is required for such remittance.				
201(1)	As per section 201(1) if any person incurred any expenditure wherein TDS is required to be deducted and such person makes default in the deduction or payment of TDS shall be treated as 'Assessee in default', further assessee should not be treated as assessee in default if payee and payer have satisfied certain condition and a Certificate from an accountant is furnished in the format prescribed u/s 201(1).	Form for furnishing a c c o u n t a n t certificate under the first proviso to sub-section (1) of section 201 of the Income-tax Act, 1961	31ACB(1)	26A	https://incometaxindia.gov.in/forms/income-tax%20rules/103120000000007373.pdf
206C(6A)	Section 206C(6A) provides that is any person does not collect the whole or part of the tax (TCS) or collect the same but does not deposit it to the government then he shall be deemed to be an assessee in default. Assessee should not be treated as assessee in default if certain conditions are satisfied and	Certificate of accountant under first proviso to sub-section (6A) of section 206C of the Income-tax Act, 1961 for certifying the furnishing of return of income, payment of tax etc. by the buyer/licensee/lessee	37J(1)	27BA	https://incometaxindia.gov.in/forms/income-tax%20rules/103120000000007866.pdf

Section	Details	Reports / Certificates	Rule	Form No.	Weblink
	a Certificate from an accountant is furnished in the format prescribed u/s 206C(6A).				
115JB(4)	<p>Section 115JB applicable on all companies including foreign companies which specifically provides for calculation of tax payable as per MAT (Minimum Alternate Tax) regime, if total tax payable under normal provision is less than the 15% of Book Profit –</p> <p>Report from Accountant is required in form 29B which certifies that book profit is calculated in accordance with the provision of Income Tax Act, such report should be submitted at least 1 month before the due date of furnishing return of income u/s 139(1) or in response to a notice u/s 142(1)</p>	Report under section 115JB of the Income-tax Act, 1961 for computing the book profits of the company	40B	29B	https://incometaxindia.gov.in/forms/income-tax%20rules/103120000000007874.pdf
115JC(3)	<p>Section 115JC applicable on all persons other than companies which specifically provides for calculation of tax payable as per AMT (Alternate Minimum Tax) regime, if total</p>	Report under section 115JC of the Income-tax Act, 1961 for computing Adjusted Total Income and Alternate Minimum Tax of the person other than a company	40BA	29C	https://incometaxindia.gov.in/forms/income-tax%20rules/103120000000007875.pdf

Section	Details	Reports / Certificates	Rule	Form No.	Weblink
	<p>tax payable under normal provision is less than the 18.5% of Adjusted Total Income –</p> <p>Report from Accountant is required in form 29C which certifies that adjusted total income is calculated in accordance with the provision of Income Tax Act, such report should be submitted on or before the due date of furnishing return of income u/s 139(1).</p>				
10A(5)	<p>Manufacturer assessee deriving Profits and Gains from an undertaking by the export of articles or things or computer software. Details relating to the claim by the exporter for deduction under section 10AA of the Income-tax Act, 1961</p>	<p>Report under section 10AA of the Income-tax Act, 1961</p>	16D	56F	<p>https://incometaxindia.gov.in/forms/income-tax%20rules/103120000000007933.pdf</p>
72A(2)(b)(iii)	<p>Corporate assessee being an Amalgamated company to furnish Certificate from the principal officer duly verified by an accountant regarding achievement of the prescribed level of production and continuance of such level of production in subsequent years</p>	<p>Certificate from the principal officer of the amalgamated company and duly verified by an accountant regarding achievement of the prescribed level of production and continuance of such level of production in subsequent years</p>	9C(b)	62	<p>ITR62FORM62https://incometaxindia.gov.in/forms/income-tax%20rules/103120000000007947.pdf</p>

Section	Details	Reports / Certificates	Rule	Form No.	Weblink
115U(2)	<p>Section 115U provides that any income accrue/arise/received by a person out of the investment made in a venture capital company or venture capital fund shall be taxable in the same manner as if the person made direct investment in such venture capital company (It means income of the fund is not taxed in the hands of the funds since such funds passed this income to its unit holder hence such unit holder will be taxed as per the respective tax slabs –</p> <p>Report from an Accountant is required to verify whether the income distributed by such venture capital company or fund is correctly reported and complying all the provision of this act.</p>	Statement of income paid or credited by Venture Capital Company or Venture Capital Fund to be furnished under section 115U of the Income-tax Act, 1961	12C(2)	64	https://incometaxindia.gov.in/forms/income-tax%20rules/10312000000007950.pdf
115UA(4)	As per Section 115UA, any income distributed by a business trust to its unit holders shall be deemed to be of the same nature and in the same proportion in the hands of the	Statement of income distributed by a business trust to be furnished under section 115UA of the Income-tax Act, 1961	12CA (2) (i)	64A	https://incometaxindia.gov.in/forms/income-tax%20rules/itr62form64a.pdf

Section	Details	Reports / Certificates	Rule	Form No.	Weblink
	<p>unit holder as it had been received by, or accrued to, the business trust—</p> <p>Report from an Accountant is required to verify that the income which is passed on to the unit holder is accurately reported.</p>				
115UB(7)	<p>As per Section 115UB any income accruing or arising to, or received by, a person, being a unit holder of an investment fund, out of investments made in the investment fund, shall be chargeable to income-tax in the same manner as if it were the income accruing or arising to, or received by, such person had the investments made by the investment fund been made directly by him –</p> <p>Report from an accountant is required to verify that the income so distributed to the investor is accurate and in compliance of the provision of Income Tax Act.</p>	Statement of income paid or credited by investment fund to be furnished under section 115UB of the Income- tax Act, 1961	12CB(1)(ii)	64D	https://incometaxindia.gov.in/forms/income-tax%20rules/itr62form_64d.pdf

Section	Details	Reports / Certificates	Rule	Form No.	Weblink
115TCA(4)	<p>As per section 115TCA any income accruing or arising to, or received by, a person being an investor of a securitisation trust, out of investments made in the securitisation trust, shall be chargeable to income-tax in the same manner as if it were the income accruing or arising to, or received by, such person, had the investments by the securitisation trust been made directly by him –</p> <p>Report from an accountant is required to verify that the income so distributed is in accordance with the provision of Income Tax Act.</p>	Statement of income paid or credited by a securitisation trust to be furnished under section 115TCA of the Income-tax Act, 1961	12CC(2) (i)	64E	https://incometaxindia.gov.in/forms/income-tax%20rules/103120000000026281.pdf
115VW(ii)	Audit report in case of Tonnage Tax Scheme– A concept of tonnage tax scheme brought in Finance Act 2004 so that Indian shipping industry can be promoted, and an option given to such shipping companies to assess their income as per the normal provision or as per tonnage tax regime - Audit report	Audit Report under clause (ii) of section 115VW of the Income-tax Act, 1961	11T	66	https://incometaxindia.gov.in/forms/income-tax%20rules/103120000000007952.pdf

WARNING

Regulation 27 of the Company Secretaries Regulations, 1982

In the event of any misconduct by a registered student or a candidate enrolled for any examination conducted by the Institute, the Council or any Committee formed by the Council in this regard, may suo-moto or on receipt of a complaint, if it is satisfied that, the misconduct is proved after such investigation as it may deem necessary and after giving such student or candidate an opportunity of being heard, suspend or debar him from appearing in any one or more examinations, cancel his examination result, or registration as a student, or debar him from re-registration as a student, or take such action as may be deemed fit.

It may be noted that according to regulation 2(ja) of the Company Secretaries Regulations, 1982, 'misconduct' in relation to a registered student or a candidate enrolled for any examination conducted by the Institute means behaviour in disorderly manner in relation to the Institute or in or around an examination centre or premises, or breach of any provision of the Act, rule, regulation, notification, condition, guideline, direction, advisory, circular of the Institute, or adoption of malpractices with regard to postal or oral tuition or resorting to or attempting to resort to unfair means in connection with writing of any examination conducted by the Institute, or tampering with the Institute's record or database, writing or sharing information about the Institute on public forums, social networking or any print or electronic media which is defamatory or any other act which may harm, damage, hamper or challenge the secrecy, decorum or sanctity of examination or training or any policy of the Institute.

PROFESSIONAL PROGRAMME
ADVANCED DIRECT TAX LAWS & PRACTICE
GROUP 1 • ELECTIVE PAPER 4.5

(This Test Paper is for recapitulate and practice for the students. Students need not to submit responses/ answers to this test paper to the Institute)

Time allowed: 3 hours

Maximum Mark: 100

Answer all Questions

Question No. 1

Rust Ltd. is engaged in the business of manufacturing copper bottles. As a Company Secretary you are the key person and heading the taxation wing of the Company. The CFO of the Company approached you for the tax computation for the AY 2026-27. The following information are shared with you:

Profit and Loss Account shows a net profit of Rs. 72,00,000 for the year ended 31st March 2026, after debiting/crediting the following items:

- a) One time license fee of Rs. 12,00,000 paid to a foreign Company for obtaining franchise on 1st July, 2025.
- b) Rs. 12,000 and Rs. 18,000 paid in cash on 15th October 2025 by two separate voucher to a contractor who carried out certain repair work in the office premises.
- c) Rs. 2,50,000 being expenses incurred on the travelling of the wife of Managing Director, who accompanied him on tour to Beijing on invitation of Trade and Commerce Chamber, China.
- d) Dividend of Rs. 5,50,000/- received from a foreign Company, in which Rust Ltd. hold 28% in nominal value of share capital of the Company. Rs. 50,000 spent on earning this income.
- e) Depreciation on tangible fixed assets Rs. 1,50,000.
- f) Rs. 15,00,000 and Rs. 2,50,000 being amounts waived by a bank out of principal and arrear interest, respectively, in one-time settlement. The loan was obtained for meeting working capital requirements two year back.
- g) Provisions for gratuity based on actuarial valuation is Rs. 15,00,000. Actual gratuity paid Rs. 5,00,000/- was debited to provision for gratuity account.
- h) The opening and closing stock of the year were Rs. 18,00,000 and Rs. 18,72,000 respectively and were undervalued by 10% on cost.

Additional Information:

- i. During the year, the Company purchased 5,000 nos. of shares of RK (Pvt.) Ltd. at Rs. 20 per share. The Fair Market Value of such shares on the date of transaction was Rs. 40 per share.
- ii. A debt of Rs. 8,00,000 was claimed as bad debts in F.Y. 2020-21, but the Assessing officer allowed only Rs. 4,00,000 as bad debt. In FY 2025-26, Rs. 3 lakh was recovered from that debt, was not given in books of accounts.

- iii. Provision for audit fee of Rs. 1,00,000/- was made in the books for the year ending 31st March 2026 without deducting tax at source. Such fee was paid to the auditors in September, 2026 after deducting tax u/s 194J and the tax so deducted was deposited on 7th October 2026.
- iv. Depreciation on tangible fixed assets as per Income Tax Law is: Rs. 1,75,000

You are required to:

- a) Calculate the Total Income of the Company and reasons/rational for your treatment of above adjustment in the tax computation.

(18 marks)

- b) Ascertain the tax payable by Rust Ltd. on the Total income of the financial year 2025-26. Ignore MAT Provisions & provisions of section 115BAA.

*(7 marks)***Question No.2**

KP (P) Ltd., a domestic Company having two undertakings engaged in manufacture cement and steel, decided to hive off cement division to SA(P) Ltd, a domestic Indian Company by way of demerger. The net book value of assets of KP(P) Ltd. was Rs. 60 Crore before demerger. The net book value of assets transferred to SA(P) Ltd. was Rs. 15 Crore. The demerger was made in February 2026. In the scheme of demerger, it was fixed that for each equity shares of Rs. 10 each (fully paid up) of KP(P) Ltd, two equity shares of Rs. 10 each (Fully paid) were to be issued.

Tirlok held 25,000 equity shares in KP(P) Ltd. which were acquired in the Financial Year 2003-04 for Rs. 6,00,000. Tirlok received 50,000 equity shares from SA(P) Ltd. Consequent to demerger, he sold all the shares of SA(P) Ltd. for Rs. 8,00,000 in March 2026.

In this background you are requested to answer the following:

- (a) Does the transaction of demerger attract any Income Tax Liability in the hands of KP(P) Ltd. and SA(P) Ltd.
- (b) State the conditions in brief, which are to be satisfied under the Act for a demerger.
- (c) Compute the capital gain that could arise in the hands of Tirlok on receipt of shares of SA(P) Ltd.
- (d) Compute the Capital gains that could arise in the hands of Tirlok on sale of shares of SA(P) Ltd.
- (e) Will the sale of shares by Tirlok affect the tax benefit availed by KP(P) Ltd, and/or SA (P) Ltd?

CII for FY 2003-04: 109 CII for FY 2025-26: 376

*(3 marks each)***Question No.3**

- a) Examine the circumstances where the appellant shall be entitled to produce additional evidence, oral or documentary, before the Commissioner of Income Tax (Appeals) other than the evidence produced during the proceedings before the Assessing Officer.
- b) Company A and Company B who has entered into Advance Pricing Agreement (APA) and eligible for rollback provisions merged to form Company AB. Is the Company AB eligible for rollback provisions as it was formed on the merger of Company A and Company B?
- c) The gross total income of Yuvraj Co. Ltd., Indore was Rs. 70 Lakh which is wholly attributable to a unit located in SEZ since April, 2012. Adjustments to total income made by the Assessing Officer by

applying the transfer pricing provisions enhanced their total income by Rs. 50 Lakh. What is the total income of the year chargeable to tax and explain why?

(5 marks each)

Attempt all the parts of either Q. No. 4 or Q. No. 4A

Question No.4

- a) Under the provisions of a tax treaty between India and Dubai, any capital gains arising from the sale of shares of Sun India Ltd, an Indian Company would be taxable only in Dubai if the transferor is a resident of Dubai except where the transferor holds more than 10% interest in the capital stock of Sun India Ltd. A company, Gama Inc, being resident in Dubai, makes an investment in Sun India Ltd. through two wholly owned subsidiaries (Fama Inc. and Gama Inc.) located in Dubai. Each subsidiary holds 9.95% shareholding in the Indian Company, the total adding to 19.9% of equity of Sun India Ltd. The subsidiaries sell the shares of Sun India Ltd. and claim exemption as each is holding less than 10% equity shares in the Indian Company. Can GAAR be invoked to deny treaty benefit?
- b) XYZ Ltd., a non-banking finance company was engaged in the business of leasing and hire purchase. It purchased motor cars from Yamaha motors and leased out these vehicles to its customers. The lease agreement with the customer stated that XYZ Ltd. was empowered to repossess the vehicle, in case the lessee committed a default. Registration of the vehicle in the name of lessee, during the period of lease is mandatory as per the Motor Vehicles Act, 1988. XYZ Ltd. Claimed Rs. 10,00,000 as depreciation on the vehicles leased out for the year ending 31.3.2019. The claim was rejected by the Assessing Officer on the ground that the assessee had merely financed the purchase of motor cars and was neither the owner nor the user of these assets. Is the action of the Assessing Officer valid? Discuss.
- c) Mr. Aman is proprietor of M/s. Kunal Textile which is engaged in garment manufacturing business. The entire block of Plant & Machinery chargeable to depreciation @ 15%, has 15 different machinery items as at 31-03-2020. One of the machinery used for packing had become obsolete and was discarded by Mr. Aman in July 2017. Assessee filed its return for AY 2021-22 claiming total depreciation of Rs. 50 lacs which includes Rs 5.00 lacs being the depreciation claimed on the machinery item discarded by Mr. Aman. The A.O. disallowed the claim of depreciation of Rs 5.00 lacs during the course of scrutiny assessment. Comment on the validity of action taken by A.O.

(5 marks each)

OR (Alternate to Q. No. 4)

Question No.4A

- i. When can uncontrolled transactions be said comparable to international transactions? Which data can be used for the comparability of an uncontrolled transaction with an international transaction? Furnish your answer in the context of transfer pricing provisions.
- ii. "The concept of Permanent Establishment is one of the most important concepts in determining the tax implications of cross border transactions". Explain the significance thereof, when such transactions are governed by Double Taxation Avoidance Agreements (DTAA).
- iii. Discuss the provision of section 44AB with respect to applicability of Tax Audit?

(5 marks each)

Question No.5

- a) Ram Manohar & Sons HUF, consisting of Karta Ram Manohar, his wife, two sons and daughter, is running Ragistan Departmental Stores. Both the sons, who are having professional/technical qualifications as a Chartered Accountant and as an Automobile Engineer started in partnership, a garage for the repairing of motor cars, with a clear understanding that the technical side of the business be looked after by the Engineer, while the general administration and finance part be taken care by the Chartered Accountant. They had taken an interest-free loan of Rs. 15,00,000 from the HUF for starting the venture. The business of garage resulted in a net profit of Rs. 12,50,000 for the year ended 31st March, 2019. The Assessing Officer proposes to assess the income from the business of motor garage in the hands of the HUF. Examine the validity of the proposition of the Assessing Officer in the light of a decided case law, if any.

(5 marks)

- b) Examine the correctness of the following statements in the context of provisions contained in the Income-tax Act, 1961 relevant for the previous year 2025-26:
- i. The additions to income made by invoking the provisions of section 68 are subject to normal rates of tax as applicable to the assessee.
 - ii. The provisions of AMT are applicable to all persons other than companies.
 - iii. Resident and ordinary resident having no income chargeable to tax, but having interest in property outside India is not required to file a return of income u/s 139(1).

*(10 marks)****Attempt all the parts of either Q. No. 6 or Q. No. 6A*****Question No.6**

- a) Narmada is an individual resident retired from the service of Prasar Bharati aged 61 years, is a well known dramatist deriving income of Rs. 2,20,000 from theatrical works played abroad. Tax of Rs. 11,000 was deducted in the country where the play's were performed. India does not have any Double Tax Avoidance Agreement under section 90 of the Income-tax Act, 1961, with that country. Her income in India amounted to Rs. 9,60,000. In view of tax planning, she has deposited Rs. 1,30,000 in PPF and paid contribution to approved Pension Fund of LIC Rs. 45,000. She also contributed Rs. 27,000 to Central Government Health Scheme during the previous year and gave payment of medical insurance premium of Rs. 28,000 to insure the health of her mother a non-resident aged 85 years, who is not dependent on her. Compute the tax liability of Narmada for the assessment year 2026-27, assuming that she does not opt for section 115BAC.

(5 marks)

- b) Ayush Motors Limited an Indian Company declared income of Rs. 300 crore computed in accordance with Chapter IV-D but before making any adjustments in respect of the following transactions for the previous year 2025-26.
- i. 10,000 cars sold to Rida Ltd., US company, which holds 30% shares in Ayush Motors Ltd. at a price which is less by \$ 200 each car than the price charged from Shingto Ltd. an independent buyer.
 - ii. Royalty of \$ 1,20,00,000 was paid to Kyoto Ltd. a US Company, for use of technical know-how in the manufacturing of car. However, Kyoto Ltd. has provided the same know-how to another Indian company for \$ 90,00,000. Kyoto Ltd. is the sole owner of technology used by Ayush Motors Ltd. in its manufacturing process.

- iii. Loan of EURO 1000 crores carrying interest @ 10% p.a. advanced by Dorf Ltd., a German company, was outstanding on 31st March, 2026. The total book value of assets of Ayush Motors Ltd. on the date was Rs. 90,000 crores. The said German company had also advanced a loan of similar amount to another Indian company @ 9% p.a. Total interest paid for the year was EURO 100 crores.

Explain in detail the provisions of the Act affecting all these transactions and compute the income of the company chargeable to tax for assessment year 2026-27 keeping in mind that the value of 1 \$ and of 1 EURO was Rs. 63 and Rs. 84, respectively, throughout the year.

(10 marks)

OR (Alternate to Q. No. 6)

Question No. 6A

Shilpa Ltd. is engaged in the business of manufacturing fabrics since 1st April, 2012 and earned a profit of Rs. 750 lakh for the previous year ended 31st March, 2026 after debiting or crediting the following items :

- Industrial power tariff concession of Rs. 4.80 lakh, received from Karnataka State Government was credited to Profit and Loss account.
- An amount of Rs. 52 lakh is charged as depreciation on the basis of useful life of assets as per the provisions of Indian Companies Act.
- An amount of Rs. 12 lakh being received as dividend from Domestic Company.
- The company has provided Rs. 18 lakh being sum paid to workers on agreement to be entered with the workers union towards periodical wage revision once in every three years.
- Loss of Rs. 17 lakh, due to destruction of a machine purchase cost worth Rs. 24 lakh by fire due to short circuit and Rs. 3 lakh received as scrap value. The insurance company did not admit the claim of the company on charge of gross negligence.
- Long term capital gain of Rs. 3 lakh on sale of equity shares on which Securities Transaction Tax was paid at the time of acquisition and sale.
- Provision for gratuity based on actuarial valuation was Rs. 320 lakh. Actual gratuity paid debited to gratuity provision account was Rs. 160 lakh.
- Advertisement charges Rs. 2.30 lakh, paid by cheque for advertisement published in the souvenir of a political party registered with the Election Commission of India.
- Interest given on advance money received from a buyer on 31st March, 2026 was Rs. 2 lakh, on which tax has not be deducted at source.

Additional Information:

- Normal depreciation computed as per the Income Tax Rules is Rs. 71 lakh.
- GST Rs. 8 lakh collected from its customers was paid by the company on the due dates. On an appeal, the High Court directed the GST department to refund Rs. 3 lakh to the company. The company in turn refunded Rs. 2 lakh to the customers from whom it was collected and the balance Rs. 1 lakh is still lying under the head 'Current Liabilities'.

You are required to compute the Total Income for the assessment year 2026-27. Also explain the reasons for treatment of each item by applying the relevant provisions of Income-tax Law.

(15 Marks)

