

PRACTICAL ASPECT OF INTERNATIONAL TAXATION

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WHAT IS INTERNATIONAL TAXATION

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1. TAX LEVIED ON CROSS BORDER INCOME IS CALLED INTERNATIONAL TAXATION
2. TWO OR MORE COUNTRIES
3. INCOME FLOW FROM ONE COUNTRY TO OTHER

TYPE OF INTERNATIONAL TAXATION

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1. RESIDENCE BASED – RESIDENT TAXED ON WORLD INCOME
2. SOURCE BASED – LOCAL INCOME FROM SOURCE INSIDE COUNTRY IS TAXED – NORMALLY NON-RESIDENT ARE TAXED ON INCOME SOURCED IN THAT COUNTRY

DOUBLE TAXATION AND AVOIDANCE

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1. INCOME FLOWING FROM ONE COUNTRY TO ANOTHER MAY BE TAXED TOWICE
2. THIS MAY RENDER INTERNATIONAL BUSINESS UNVIABLE – HENCE AVOIDANCE REQUIRED

DOUBLE TAXATION AND AVOIDANCE

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1. DOUBLE TAXATION AVOIDANCE AGREEMENTS
SECTION 90 & 90A
2. AVOIDANCE WHERE NO AGREEMENT EXIST
SECTION 91

DOUBLE TAXATION AND AVOIDANCE

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1. DOUBLE TAXATION AVOIDANCE AGREEMENTS (DTAA) OR TREATY-AGREEMENT HAS BEEN SIGNED WITH 90+ COUNTRIES
2. THERE ARE THREE MODELS OF DTAA
UN MODEL
US MODEL
OECD MODEL

ALL THESE MODEL ARE SIMILAR WITH SOME FINE DIFFERENCES. MOST OF INDIAN TREATY ON UN MODEL

DOUBLE TAXATION AND AVOIDANCE

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1. MOST OF THE DTAA ARE COMPREHENSIVE BUT SOME ARE LIMITED – WHICH COVER SHIP, AIRCRAFT INCOME, ESTATES, INHERITANCE AND GIFTS
2. COMPREHENSIVE WILL COVER ALL ASPECTS

DOUBLE TAXATION AND AVOIDANCE

- ▶ **Language used by Treaties**
- ▶ Tax Treaties employ standard International language and standard terms. This is done in order to understand and interpret the same term in the same manner by both assessee as well as revenue. Language employed is technical and stereotyped. Some of the terms are explained below:
 - ▶ i. Contracting State – country which enters into Treaty
 - ▶ ii. State of Residence- Country where a person resides

DOUBLE TAXATION AND AVOIDANCE

▶ **Language used by Treaties**

- ▶ iii. State of Source- Country where income arises
- ▶ iv. Enterprise of a Contracting State- Any taxable unit (including individuals of a Contracting State)
- ▶ v. Permanent Establishment – A fixed base of an enterprise in the state of Source (usually a branch of a foreign company and in some cases wholly – owned subsidiaries as well)
- ▶ vi. Income arising in Contracting state – Income arising in a State of a source

VARIOUS ARTICLES OF DTAA

1. DEFINE APPLICABILITY

ARTICLE 1 – DEFINE APPLICABILITY –
RESIDENT AND CITIZEN

ARTICLE 2 – DEFINE TAXES COVERED-
INCOME TAX+ SURTAX

ARTICLE 31 – DEFINE TERMINATION-TIME
NOTICE MODE

TO UNDERSTAND WE WILL REFER TO INDIA
USA AGREEMENT

[Income Tax Department-DTAA-USA.docx](#)

VARIOUS ARTICLES OF DTAA

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2. DEFINATIONS

ARTICLE 3 – GENERAL DEFINATIONS

ARTICLE 4 – RESIDENCE

ARTICLE 5 – PERMANENT
ESTABLISHMENT

VARIOUS ARTICLES OF DTAA

3. ANTI-AVOIDANCE

ARTICLE 9 ASSOCIATED ENTERPRISES-
TRANSFER PRICING

ARTICLE 26 EXCHANGE OF
INFORMATION

ARTICLE 27 ASSISTANCE FOR
COLLECTION OF TAX

VARIOUS ARTICLES OF DTAA

4 SUBSTANTIVE ARTICLES

ARTICLE 7 BUSINESS PROFIT

ARTICLE 10 DIVIDEND

ARTICLE 11 INTEREST

ARTICLE 12 ROYALTY OR FEE FOR
TECHNICAL SERVICES

VARIOUS ARTICLES OF DTAA

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4 SUBSTANTIVE ARTICLES

ARTICLE 13 CAPITAL GAIN

ARTICLE 14 INDEPENDENT PERSONAL SERVICES

ARTICLE 15 DEPENDENT PERSONAL SERVICES

ARTICLE 21 OTHER INCOME

VARIOUS ARTICLES OF DTAA

5 OTHER ARTICLES ARTICLES

ARTICLE 23 METHOD OF ELIMINATION

ARTICLE 24 NON DISCREMINATION

ARTICLE 28 DIPLOMATS-PRIVILAGES NOT
AFFECTED

ARTICLE 29 TERRITORIAL EXTENSION

ARTICLE 30 ENTRY IN FORCE – DATE OF
COMMENCEMENT OF TREATY

PRACTICAL ASPECT

ROYALTY & FEE FOR TECHNICAL SERVICES OR INCLUDED SERVICES

MOSTLY USED FOR OUTWARD REMITTANCE

IT RATE 10%

DTAA RATE 10 TO 15%

IT RATE SHOULD BE USED

IMPORTANT ISSUES

SOME ISSUES LIKE 'MAKE AVAILABLE' CLAUSE IN INDO-US AND SOME OTHER AGREEMENTS-RECEIPT OF SERVICE SHOULD GET EQUIPPED WITH KNOWLEDGE OR EXPERTISE AND USE IT INDEPENDENTLY IN FUTURE

PRACTICAL ASPECT

FEE FOR TECHNICAL SERVICES OR INCLUDED SERVICES-
DEFINITION SECTION-9(1)(vii)-Explanation²

"fees for technical services" means any consideration (including any lump sum consideration) for the rendering of any managerial, technical or consultancy services (including the provision of services of technical or other personnel) but does not include consideration for any construction¹⁶, assembly, mining or like project undertaken by the recipient¹⁶ or consideration which would be income of the recipient chargeable under the head "Salaries".]

PRACTICAL ASPECT

COMMISSION ON EXPORT
COMMISSION AGENT WORK
OUTSIDE INDIA AND NOT
TAXABLE

GOVT ISSUED NOTIFICATION
AND WITHDRAWN BUT STILL
POSITION IS SAME

PRACTICAL ASPECT

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INDEPENDENT PERSONAL SERVICES

Income derived by a person who is an individual or firm of individuals (other than a company) who is a resident of a Contracting State from the performance in the other Contracting State of professional services or other independent activities of a similar character shall be taxable only in the first-mentioned State-fixed base-stay 90days

PRACTICAL ASPECT

DEPENDENT PERSONAL SERVICES

salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless employment in other State.

Presence for 183 days

Paid by employer/PE

PRACTICAL ASPECT

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FORM 15CA

[15CA.pdf](#)

FORM 15CB

[15CB.pdf](#)

Tax officer may call for
details of 15CA 15CB

DTAA VS DOMESTIC LAW

NORMALLY DTAA WILL PREVAIL
OVER DOMESTIC LAW

IF DOMESTIC LAW BENEFICIAL
ASSESSEE CAN CHOOSE

IN CASE OF TAX EVASION
COUNTRY MAY OVERRULE
TREATY

TAX RESIDENCY CERTIFICATE

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REQUIREMENT OF TAX RESIDENCY CERTIFICATE

[Residence Certificate-10FB.pdf](#)

FORM 10F [FORM NO. 10F.pdf](#)

TRC of Dubai

UNILATERAL TAX RELIEF

WHERE THERE IS NO DTAA
WITH ANY COUNTRY INDIA
ALLOW UNILATERAL TAX
RELIEF FROM DOUBLE
TAXATION

UNILATERAL TAX RELIEF

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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.

QUANTUM OF TAX RELIEF

Tax relief is not like TDS and no refund allowed

Benefit will be to the extent of tax payable on particular source of Income or tax paid whichever is less

SUPPLY AND SERVICES

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If there is contract of supply and erection of Machine than it is better to have separate contracts

TAX DEDUCTIO AT SOURCE

TAX DEDUCTION AT
SOURCE SECTION 195
IN ALL TAXABLE
REMITTANCE OUTSIDE
INDIA TDS TO BE
DEDUCTED

SALE OF PROPERTY BY NRI SOURCE

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NRI SELLING PROPERTY IN
INDIA

RATE 20%+SURCHARGE
+EDUCATION CESS

LOWER TAX DEDUCTION
CERTIFICATE 4% ALLOWED

CONSSIONAL RATE TO NON RESIDEDENTS

ON INTEREST AND DIVIDEND
- 20 % AND 5% ON CERTAIN
INTEREST

ROYALTY AND FEE FOR
TECHNICAL SERVICE – 10%
SECTION 115A – NO RETURN

GROSSING UP REQUIREMENT

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IF THE FOREIGN PAYEE DO
NOT AGREE FOR
DEDUCTION THAN
GROSSING UP IS REQUIRED

TAX DEDUCTION
CERTIFICATE

BRANCH OR WHOLLY OWNED SUBSIDIARY

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IF YOU SUPPLY ITEM OF
MACHINERY WHICH
REQUIRE INSTALLATION
ABROAD THAN YOU MAY BE
REQUIRED TO ESTABLISH
BRANCH OR WHOLLY
OWNED SUBSIDIARY

BRANCH OR WHOLLY OWNED SUBSIDIARY

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PROCEDURE FOR BRANCH OR SUBSIDIARY TO BE REGISTERED – PROCEDURE

- ▶ Net profit during the preceding three financial years
- ▶ Investment up to **400% of its net worth**
- ▶ ODI Form online

DOCUMENTS REQUIRED:-

- ▶ Registration Certificate of Indian Company
- ▶ Board Resolution for Investment
- ▶ Identity of Proposed Directors

All these document should be apostille / certified by consulate of other country.

TRANSFER PRICING

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As per Article 9 – Associated Enterprise

- ▶ Determination of price for transfer of goods/services at arm length – section 92 to 92F
- ▶ Prescribed Methods:-
 - (a) comparable uncontrolled price method;
 - (b) resale price method;
 - (c) cost plus method;
 - (d) profit split method;
 - (e) transactional net margin method; (Rule 10B)
 - (f) such other method as may be prescribed by the Board (Rule 10AB).

TRANSFER PRICING

- ▶ Transaction involves :
 - ▶ –Purchase/ sale/ lease of tangible/intangible property
 - ▶ –Provision of services
 - ▶ –Lending or borrowing money
 - ▶ –Any other transaction having a bearing on profit/ income/ losses/ assets of the enterprise
 - ▶ –Includes mutual agreement or arrangement for allocation or apportionment , or any contribution to, any cost or expense incurred
- ▶ intangibles like marketing intangibles, human capital, Business restructuring, inter-company guarantees, capital funding, etc.

TRANSFER PRICING

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Maintenance, keeping and furnishing of information – 92D – above Rs 1 Cr

Heavy penalty

Requirments-Rule 10D

- ▶ **Ownership structure**
- ▶ **Multinational group of which part**
- ▶ **Broad description of business**
- ▶ **Nature & term of International transaction etc.**

TRANSFER PRICING

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CA REPORT IN FORM 3CEB

- ▶ Particulars of Associated Enterprises
- ▶ Particulars of International Transactions
- ▶ Price as per books
- ▶ Price as per Transfer Price exercise
- ▶ Method used etc.

[Form3CEB.pdf](#)

THANK YOU