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CRITICAL ANALYSIS ON DOUBLE TAXATION AVOIDANCE AGREEMENT

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The DTAA, or Double countries) so that taxpayers can avoid paying double taxes on their income earned from the source country as well as the residence country. At present, India has double tax avoidance treaties with more than 80 countries around the world. Taxation Avoidance Agreement is a tax treaty signed between India and another countryIt stands for Double Taxation Avoidance Agreement. A DTAA is a tax treaty signed between two or more countries. Its key objective is that tax-payers in these countries can avoid being taxed twice for the same income. A DTAA applies in cases where a tax-payer resides in one country and earns income in another. DTAAs can either be comprehensive to cover all sources of income or be limited to certain areas such as taxing of income from shipping, air transport, inheritance, etc.

India recently amended its Double Taxation Avoidance Agreement (DTAA) with Mauritius to plug certain loopholes. Now, a Mauritian entity will have to pay capital gains tax here while selling shares in a company in India from April 2017. Earlier, the company could avoid tax as it was not a 'resident' in India. It could get away from the taxman in Mauritius too, due to non-taxation of capital gains for its residents.[1] As a result, many shell entities sprang up in Mauritius to profit from investments in India and get away without paying taxes anywhere.

India has DTAAs with which nations

India has DTAAs with more than eighty countries, of which comprehensive agreements include those with Australia, Canada, Germany, Mauritius, Singapore, UAE, UK and USA.

Benefits of DTAA

DTAAs are intended to make a country an attractive investment destination by providing relief on dual taxation. Such relief is provided by exempting income earned abroad from tax in the resident country or providing credit to the extent taxes have already been paid abroad.

[1] www.incometexindia.gov.in

For example, if a person is sent on deputation abroad and receive emoluments during stint away from home, income may sometimes be subject to tax in both the countries. The person can claim relief when filing tax return for that financial year, if there is an applicable DTAA. Similarly, if the person is an NRI having investments in India, DTAA provisions may also be applicable to income from these investments or from their sale.

DTAAs also provide for concessional rates of tax in some cases. For instance, interest on NRI bank deposits attract 30 per cent TDS (tax deduction at source) here. But under the DTAAs that India has signed with several countries, tax is deducted at only 10 to 15 per cent. Many of India's DTAAs also have lower tax rates for royalty, fee for technical services, etc.

Example citing the working of DTAA:

An NRI individual living in X country maintains an NRO account with a bank based in India. The interest income on the balance amount in the NRO account is deemed as income that originates in India and hence is taxable in India.

In case, India and X nation are contracted under the DTAA, this income will have tax implications in accordance with the rate specified in the agreement. Otherwise, the interest income will attract tax @ 30.90 % i.e. the current withholding tax. Also, NRI is entitled to avail the benefits under the provisions of DTAA between India and his country of residence with respect to interest income on government securities, company fixed deposits, dividend and loans.

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For instance, interest on NRI bank deposits attract 30 per cent TDS (tax deduction at source) here. But under the DTAAs that India has signed with several countries, tax is deducted at only 10 to 15 per cent. Many of India's DTAAs also have lower tax rates for royalty, fee for technical services, etc.

Favorable tax treatment for capital gains under certain DTAAs such the one with Mauritius have encouraged a lot of foreign investment into India. Mauritius accounted for $93.65 billion or one-third of the total FDI flows into India between April 2000 and December 2015. It has also remained a favoured route for foreign portfolio investors. But the problem is DTAAs can become an incentive for even legitimate investors to route investments through low-tax regimes to sidestep taxation. This leads to loss of tax revenue for the country.

INTERNATIONAL DOUBLE TAXATION AGREEMENT

Cyprus double tax treaties

Cyprus has completed over 45 Double Taxation Treaties up to today and is also in negotiations with many countries for signing Treaties with them. The main purpose of these treaties is the avoidance of double taxation on income earned in any of these countries. Under these agreements, a credit is usually allowed against the tax levied by the country in which the taxpayer resides for taxes levied in the other treaty country and as a result the tax payer pays no more than the higher of the two rates. Further, some treaties provide for tax sparing credits whereby the tax credit allowed is not only with respect to tax actually paid in the other treaty country but also from tax which would have been otherwise payable had it not been for incentive measures in that other country which result in exemption or reduction of tax.

Australia

In principle, an Australian resident is taxed on all worldwide income, while a non-resident is taxed only on Australian-sourced income. Both legs of the principle offer an opportunity for taxation in more than one jurisdiction. To avoid double taxation of income by different jurisdictions, Australia has entered into double taxation avoidance agreements (DTAs) with a number of other countries, under which both countries agree on which taxes will be paid to which country. For example, in the case of royalties, the DTA with the United States says that the US will tax Australian residents at the rate of 5%, and Australia will tax it at normal rates

(i.e., 30% for companies) but give a credit for the 5% already paid. For Australian residents, this ends up working out the same as if the money had been earned within Australia - whilst still providing 5% credit to US

Germany

If a foreign citizen is in Germany for less than a relevant 183-day period (approximately six months) and is tax resident elsewhere, then it may be possible to claim tax relief under a particular Double Tax Treaty. The relevant 183 day period is either 183 days in a calendar year or in any period of 12 months, depending upon the particular treaty involved. So, for example, the Double Tax Treaty with the UK looks at a period of 183 days in the German tax year (which is the same as the calendar year); thus, a citizen of the UK could work in Germany from 1 September through the following 31 May (9 months) and then claim to be exempt from German tax.

Double taxation with the US

Double taxation can also happen within a single country. This typically happens when subnational jurisdictions have taxation powers, and jurisdictions have competing claims. In the United States a person may legally have only a single domicile. However, when a person dies different states may each claim that the person was domiciled in that state. Intangible personal property may then be taxed by each state making a claim. In the absence of specific laws prohibiting multiple taxation, and as long as the total of taxes does not exceed 100% of the value of the tangible personal property, the courts will allow such multiple taxation.

Also, since each state makes its own rules on who is a resident for tax purposes, someone may be subject to the claims by two states on his or her income. For example, if someone's legal/permanent domicile is in state A, which considers only permanent domicile to which one returns for residency but he or she spends 7 months of the year (say April–October) in state B where anyone who is there longer than 6 months is considered a part-year resident, that person will then owe taxes to both states on money earned in state B. College or university students may also be subject to claims of more than one state, generally if they leave their original state to attend school, and the second state considers students to be residents for tax purposes. In some cases one state will give a credit for taxes paid to another state, but not always.

INDIA- AGREEMENT WITH OTHER COUNTRIES

India has comprehensive DTAAs with 85 Countries which is in force. This means that there are agreed rates of tax and jurisdiction on specified types of income arising in a country to a tax resident of another country. Under the Income Tax Act 1961 of India,Duble Taxation is the loss for the tax payer so there are two provision Section 90 and 91 to avoid double taxation . Section 90 is for taxpayers who have paid the tax to a country with which India has signed DTAA, while Section 91 provides relief to tax payers who have paid tax to a country with which India has not signed a DTAA. This two provions are given to give some relief to its taxpayer

The Third Protocol also provides some provisions to facilitate relieving of economic double taxation in transfer pricing cases. This is a taxpayer friendly measure and is in line with India's commitments under Base Erosion and Profit Shifting (BEPS) Action Plan to meet the minimum standard of providing Mutual Agreement Procedure (MAP) access in transfer pricing cases. The Third Protocol also enables application of domestic law and measures concerning prevention of tax avoidance or tax evasion. Interestingly, Singapore's investment of $5.98 billion has over taken Mauritius's investment of $4.85 billion as the single largest investor for the year 2013-14

Taxation Avoidance Agreement (DTAA) Country List:

A total of 85 countries currently have DTAA agreements with India. The following countries having Double Taxation Avoidance Agreement with India. TDS rates on interests are listed below. (Listed alphabetically).[2]

Sl No.	Country	TDS Rate
1	Armenia	10%
2	Austria	15%
3	Australia	10%
4	Bangladesh	10%
5	Belarus	10%
6	Belgium	15%
7	Botswana	10%
8	Brazil	15%
9	Bulgaria	15%
10	Canada	15%
11	China	15%
12	Cyprus	10%
13	Czech Republic	10%
14	Denmark	15%
15	Egypt	10%

16	Estonia	10%
17	Ethiopia	10%
18	Finland	10%
19	France	10%
20	Georgia	10%
21	Germany	10%
22	Greece	As per agreement
23	Hashemite kingdom of Jordan	10%
24	Hungary	10%
25	Iceland	10%
26	Indonesia	10%
27	Ireland	10%
28	Israel	10%
29	Italy	15%
30	Japan	10%
31	Kazakhstan	10%
32	Kenya	15%

33	South Korea	15%
34	Kuwait	10%
35	Kyrgyz Republic	10%
36	Libya	As per agreement
37	Lithuania	10%
38	Luxembourg	10%
39	Malaysia	10%
40	Malta	10%
41	Mauritius	7.50-10%
42	Mongolia	15%
43	Montenegro	10%
44	Morocco	10%
45	Mozambique	10%
46	Myanmar	10%
47	Namibia	10%
48	Nepal	15%
49	Netherlands	10%

50	New Zealand	10%
51	Norway	15%
52	Oman	10%
53	Philippines	15%
54	Poland	15%
55	Portuguese Republic	10%
56	Qatar	10%
57	Romania	15%
58	Russia	10%
59	Saudi Arabia	10%
60	Serbia	10%
61	Singapore	15%
62	Slovenia	10%
63	South Africa	10%
64	Spain	15%
65	Sri Lanka	10%
66	Sudan	10%

67	Sweden	10%
68	Swiss Confederation	10%
69	Syrian Arab Republic	7.50%
70	Tajikistan	10%
71	Tanzania	12.50%
72	Thailand	25%
73	Trinidad and Tobago	10%
74	Turkey	15%
75	Turkmenistan	10%
76	UAE	12.50%
77	UAR (Egypt)	10%
78	Uganda	10%
79	UK	15%
80	Ukraine	10%
81	United Mexican States	10%
82	USA	15%
83	Uzbekistan	15%

84	Zambia	10%
85	Vietnam	10%

CONCLUSION

Double taxation is the levying of tax by two or more jurisdictions on the same declared income (in the case of income taxes), asset(in the case of capital taxes), or financial transaction (in the case of sales taxes). Double liability is mitigated in a number of ways, for example:

- the main taxing jurisdiction may exempt foreign-source income from tax,
- the main taxing jurisdiction may exempt foreign-source income from tax if tax had been paid on it in another jurisdiction, or above some benchmark to not include tax haven jurisdictions,
- the main taxing jurisdiction may tax the foreign-source income but give a credit for foreign jurisdiction taxes paid.
- There are certain provision section 90 and 91 which are giving relief from paying double tax and india has agreement with 88 countries to avoid such a loss to its citizen in which 85 is in force.