Introduction to International Taxation

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Agenda for To-day

- Why International Taxation
- What is International Taxation
- Purpose of International Taxation
- Objectives of International Taxation
- Legislation of International Taxation
- Jurisdiction of Taxation
Agenda for To-day

- Double Taxation Conflicts
- International Taxation Blue Print
- Key Concepts of International Taxation
- Steps to Apply Tax Treaties
- Role of Chartered Accountant
Why International Taxation?

- Globalization
- Borderless Global Economy - Internet
- Movement of People – Concurrent Earnings
- Growing Opportunities – Cross Border M & A
- To Define Taxing Rights among the States
- To Avoid Double Taxation Conflicts
What is International Taxation?

- International Tax is best regarded as the body of legal provisions of different countries that covers the tax aspects of cross-border transactions. It is concerned with Direct Taxes and Indirect Taxes.
  - Kevin Holmes

- Studying Non Resident provisions in a domestic law.

- Studying two domestics laws of two different countries.
What is International Taxation

- Purpose of International Taxation
- Objectives of International Taxation
- Legislation of International Taxation
Purpose of International Taxation

- Taxing Residents World Wide Income
- Taxing Non Residents National Income
Objectives of International Taxation

- Economic Efficiency
- Key Objects
- National Wealth Maximization
- Tax Equity
- Balance Capital Export & Import Neutrality
Legislation of International Taxation

- No separate Codified law – No separate tax - No separate court
- Provisions of Domestic law to handle Cross Border - Direct & Indirect Taxes
- Accepted Convention - Can not enforce tax on territory of another country
- EU Directives / Model Commentaries
Legislation of International Taxation

- International Law
- International Tax
- Tax Treaties
Jurisdiction of Taxation

- Source Jurisdiction of Taxation
- Residence Jurisdiction of Taxation
Double Taxation Conflicts

Source – Source Conflict

Source – Residence Conflict

Residence – Residence Conflict

Income Characterization Conflict

Assessee Characterization Conflict
International Taxation Blue Print

- Model Conventions
- Tax Treaties
  - Meaning
  - Objectives
  - Formation
  - Types
  - Coverage
  - Treaty Position in India
  - Structure
- Limitation of Benefits
- Interpretation of Treaties
Model Conventions

- OECD Model Convention
- UN Model Convention
- US Model Convention
A tax treaty is a formally concluded and ratified agreement between two independent nations (bilateral treaty) or more than two nations (multilateral treaty) on matters concerning taxation normally in written form.
Tax Treaties - Objectives

- Tax Credit / Relief
- Avoid Double Taxation
- Prevent Fiscal Evasion
- Allocating Taxing Jurisdiction
- Prevent Tax Discrimination
- Certainty of Tax Treatment to Investors
- Exchange of Information
- Ease in Recovery of Tax Dues
- Promote Investment & Mutual Relation
Tax Treaties – Formation

- A DTA develops in six stages, which follow a fairly well established procedure

1. Negotiation
2. Initialing
3. Signature
4. Ratification
5. Entry into force
6. Effective Date
Tax Treaties - Types

- Comprehensive Agreements – This is wider in scope addressing all sources of income.

- Limited Agreements – which has limited scope and covers –
  (1) income from operation of aircrafts and ships,
  (2) estates,
  (3) inheritance
  (4) Gifts
Tax Treaties - Coverage

- Bilateral Treaties – The treaty is entered into between two countries

- Multilateral Treaties – The treaty is entered into between two or three countries
Tax Treaties – Position in India

- Section 90 – The IT Act, 1961 empowers the Central government to enter into tax treaties with the government of any foreign country.

- India has entered into tax treaties with more than 90 countries
# Tax Treaties - Structure

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<tbody>
<tr>
<td>• Art. 1 – Persons Covered</td>
<td>• Active Income: Art. 7, 8, 14, 15, 16, 17, 19, 20 and 21</td>
<td>• Art. 9 – Associated Enterprises</td>
<td>• Art. 24 – Non Discrimination</td>
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<tr>
<td>• Art. 2 – Taxes Covered</td>
<td>• Passive Income: Art. 6, 10, 11, 12, 13 and 18.</td>
<td>• Art. 23 – Elimination of Double Taxation</td>
<td>• Art. 25 – Mutual Agreement Procedure</td>
</tr>
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<td>• Art. 3 – General Definitions</td>
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<td>• Art. 26 – Exchange Of Information</td>
<td>• Art. 28 – Members of Diplomatic Missions and Consular posts</td>
</tr>
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<td>• Art. 4 – Resident</td>
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<td>• Art. 27 – Assistance In Collection of Taxes</td>
<td>• Art. 29 – Territorial Extension</td>
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<td>• Art. 5 – Permanent Establishment</td>
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<td>• Art. 30 – Entry into Force</td>
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<td>• Art. 31 – Termination</td>
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Limitation of Benefits

- A limitation clause which permits only certain entities to enjoy treaty benefits

- Could be imposed by
  - Minimum expenditure requirement
  - Requirement that the entity is regulated, to be considered resident –such as stock exchange etc

- Netherland LOB, Singapore LOB, US LOB
Interpretation of Benefits

- MoU to an existing treaty can be considered for interpreting such treaty or an earlier treaty or another identically worded treaty enacted subsequently

- Protocol
  - A protocol is an indispensable and integral part of the treaty with the same binding force as the main clauses therein and can be relied upon
  - A protocol to a later treaty between two countries could apply while interpreting the predecessor treaty between the same countries
Interpretation of Benefits

- The preamble to a treaty could be used for interpretation

- Case laws under other Indian treaties
  - It is permissible to rely upon decisions rendered in respect of corresponding treaties

- Model Commentaries
Concepts of International Taxation

- State V/s. Other Contracting State
- Source Country V/s. Residence Country
- Taxable Subject V/s. Taxable Object
- Capital Importing Country V/s. Capital Exporting Country
- Juridical Double Taxation V/s. Economic Double Taxation
- Active Income V/s. Passive Income
Concepts of International Taxation

- Tie-Breaker rule for Residential Status
- Permanent Establishment
- Force of Attraction
- Associated Enterprises Transactions
- Beneficial Ownership
- Make Available Clause
- Tax Relief / Credits
Concepts of International Taxation

- Most Favored Nation Clause
- Treaty Shopping
- Thin Capitalization
- GAAR
- APA
- BEPS
Steps to Apply Tax Treaties

Step 1  What is the nature of the income ?
Step 2  Does treaty apply – (TRC) ?
Step 3  Determine which Article applies ?
Step 4  How are taxation rights assigned ?
Step 5  Determine the tax – (PAN/NO PE) ?
Step 6  Tax Credit or Tax Relief.
Role of Chartered Accountant

- Advisory Role in structuring cross border transactions
- Determining Arms length price
- Advising on Optimum usage of Tax Treaties
- Advising on Tax incentives across the globe
- Investment Consultancy to companies going global on tax & regulatory aspects.
- Advising on WHT on outbound payments and certification.
Thank You