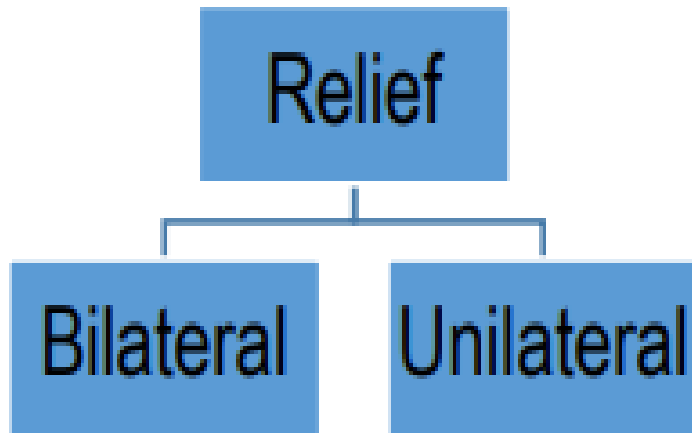


A close-up photograph of a hand holding a white rectangular card. The card has the text 'DOUBLE TAXATION AVOIDANCE AGREEMENT' written in bold, black, sans-serif capital letters. Each word is underlined with a short orange horizontal line. The background is a soft-focus image of a person's face and hands, suggesting a professional or legal setting.

DOUBLE TAXATION AVOIDANCE AGREEMENT

By **CMA** AMIT DEY,
M.Com , LLB.

TYPES OF RELIEF



Relief from double taxation can be provided in mainly two ways:

- **Bilateral Relief:** Under this method, the Governments of **two countries** can enter into an agreement to provide relief against double taxation by **mutually working out** the basis on which the relief is to be granted.
- India has entered into agreements for relief against or avoidance of double taxation with more than 50 countries which include Sri Lanka, Switzerland, Sweden, Denmark, Japan, Federal Republic of Germany, Greece, etc.
- **Unilateral Relief:** This method provides for relief of some kind by the **home country** even where **no mutual agreement** has been entered into by the two countries.

Bilateral Relief may be granted in either one of the following **methods**:

Exemption Method

- A particular income is taxed in only one of the two countries.

Tax Credit Method

- Income is taxable in both countries in accordance with their respective tax laws read with double taxation avoidance agreement.
- The country of resident of the tax payer, however, allows him credit for the tax charged thereon in the country of source.

In India, double taxation relief is provided by a combination of the two methods.

Agreement with foreign countries or specified territories - Bilateral relief [Section 90]

- Section 90(1) provides that the Central Government may enter into an agreement with the Government of any country outside India
or
- specified territory outside India,—
- **WHY ?**
 - for the granting of relief in respect of—
 1. income on which income-tax has been paid both in India and in that country or specified territory; or
 2. to promote mutual economic relations, trade and investment;

Benefit

1. for the **avoidance of double taxation** of income under this Act and under the corresponding law in force in that country or specified territory; or
2. for **exchange of information** for the **prevention of evasion or avoidance of income-tax** chargeable under this Act or under the corresponding law in force in that country or specified territory or
3. **investigation of cases** of such evasion or avoidance; or
4. for **recovery** of income-tax under this Act and under the corresponding law in force in that country or specified territory.

Is DTAA mandatory ?

- Where the Central Government has entered into such an agreement with the Government of any country outside India or specified territory outside India for granting relief of tax, or for avoidance of double taxation, then, in relation to the assessee to whom such agreement applies, the provisions of this Act shall apply to the extent **they are more beneficial to that assessee.**
- However, the provisions of Chapter X-A, **General Anti-avoidance rule**, shall **apply** to the assessee even if such provisions are **not beneficial to him.**

Meaning of terms used in any DTAA

	Situation	Solution
1	Term used in any DTAA with a foreign country or specified territory, and Not Defined in the <u>agreement</u> or <u>the Act</u> but assigned a meaning in the notification issued by the Central Government in the Official Gazette, which is still in force	The term shall have the meaning assigned in the said Notification and the meaning shall be deemed to have effect from the date on which the DTAA came into force.
2	Term used in any DTAA with a foreign country or specified territory, which is defined in the DTAA itself	The term shall have the same meaning assigned to it in the DTAA
3	Term used in any DTAA with a foreign country or specified territory, which is not defined in the said DTAA, but defined in the Income-tax Act , 1961	The term shall have the meaning assigned to it in the Income-tax Act , 1961 and explanation, if any, given to it by the Central Government

Illustration:

Illustration

- Examine the correctness or otherwise of the following statement with reference to the provisions of Income-tax Act, 1961.
- The double taxation avoidance treaties entered into by the Government of India override the domestic law.

Solution

The statement is correct.

- Section 90(2) provides that where a double taxation avoidance treaty 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 double taxation avoidance agreement 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)].

No Discrimination between Foreign Company Vs. Indian Company :

- The charge of tax in respect of a **Foreign Company** at a rate **Higher** than the rate at which a domestic company is chargeable, **shall not be regarded as less favorable charge** or levy of tax in respect of such foreign company.
- (Hint: Income Tax rate FC @ 40% vs DC @30/25%)

Double taxation relief to be extended to agreements (between specified associations) adopted by the Central Government [**Section 90A**]

Difference between Sec 90 & 90A

- Section 90A provides that any **specified association in India** may enter into an agreement with any **specified association** in the specified territory **outside India** and the Central Government may, by notification in the Official Gazette, make the necessary provisions for adopting and implementing such agreement
- Note: In Sec 90 Govt to Govt agreement ,here in Sec 90A Association to Association. The only difference.

Tax Residence Certificate (TRC)

- The DTAAs under section 90A are **intended to provide relief** to the taxpayer, who is **resident of one of the contracting country** to the agreement. But in many cases, taxpayers who were **not residents** of a contracting country also resorted to **claiming the benefits** under the agreement entered into by the Indian Government with the Government of the other country. In effect, third party residents claimed the unintended treaty benefits.
- Therefore, **section 90A(4)** provides that the non-resident to whom the agreement referred to in section 90A(1) applies, **shall be allowed to claim the relief under such agreement if a Tax Residence Certificate (TRC) obtained** by him from the Government of that country or specified territory is furnished, declaring his residence of the country outside India or the specified territory outside India, as the case may be.

Documents and information, to be furnished by the assessee for claiming treaty benefits (Documents For applying TRC):

prescribed by CBDT vide *Notification No. 57/2013 dated 01.08.2013*:

- **Status** (**individual, company, firm** etc.) of the assessee;
- **Nationality** (in case of an individual) or country or specified territory of **incorporation** or registration (in case of others);
- 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;
- **Period** for which the residential status, as mentioned in the certificate referred to in section 90(4) or section 90A(4), is applicable (i.e. **1 year**); and
- **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.

Note: However, the assessee may **not be required to provide the information** or any part thereof, if the information or the part thereof, as the case may be, **is already contained in the TRC** referred to in section 90(4) or section 90A(4). (Hint: At the time of Re-New – same doc not required)

Countries with which no agreement exists – Unilateral Agreements [Section 91]

In the case of income arising to an assessee in countries with which **India does not have any double taxation agreement**, relief would be granted under Section 91 provided all the following **conditions** are fulfilled:

- The assessee is a **Resident in India** during the previous year in respect of which the income is taxable.
- **The income accrues or arises to him outside India.**
- The income is **not deemed to accrue or arise in India** during the previous year.
- The income in question has been **subjected to income-tax in the foreign country** in the hands of the assessee (Tax Payable).
- The assessee has **paid tax on the income in the foreign country** (Tax Paid).
- There is **no agreement for relief from double taxation** between India and the other country where the income has accrued or arisen.

Foreign Tax Credit [Rule 128 of Income-tax Rules, 1962]

Year of availability of credit for foreign tax paid (**When we'll get the Credit**) ?

- An assessee, being a resident shall be allowed a credit for the amount of any **foreign tax paid by him** in a country or specified territory outside India, by way of deduction or otherwise, **in the year in which the income** corresponding to such tax has been offered to tax or **assessed to tax in India**, in the manner and to the extent as specified in this rule.
- However, in a case where income on which foreign tax has been paid or deducted, **is offered to tax in more than one year**, credit of foreign tax shall be allowed across those years **in the same proportion** in which the income **is offered to tax or assessed to tax in India**.

Components of income-tax in respect of which FTC is available like **interest, penalty** etc.

- Foreign Tax **Credit** (FTC) **is available against the amount of tax**, surcharge and cess payable under the Income-tax Act, 1961. However, it is **not** available in respect of any sum payable by way of interest, fee or penalty.

Manner of computing FTC

The credit of foreign tax would be the aggregate of the amounts of credit computed separately for each source of income arising from a particular country or specified territory outside India and shall be given effect to in the **following manner**:-

The credit would be the **lower** of

- the tax payable under the Income-tax Act, 1961 on such income and
- the foreign tax paid on such income.
- However, where the foreign tax paid exceeds the amount of tax payable in accordance with the provisions of the agreement for relief or avoidance of double taxation, **such excess has to be ignored**.
- Note: The credit would be determined by conversion of the currency of payment of foreign tax at the telegraphic transfer buying rate **TTBR** on the last day of the month immediately preceding the month in which such tax has been paid or deducted.
- Eg: Tax paid in USA 15th March 2022 – TTBR will be used dated on 28th Feb 2022

ILLUSTRATION

- An individual 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.

SOLUTION

- The assessee is a resident in India and accordingly, the income accruing or arising to him globally is chargeable to tax in India. However, section 91 specifies that if a person resident in India has paid tax in any country with which no agreement under section 90 exists, then, for the purpose of relief or avoidance of double taxation, **a deduction is allowed from the Indian income-tax payable by him, of a sum calculated on such doubly taxed income at Indian rate of tax or the rate of tax of such foreign country, whichever is lower, or at the Indian rate of tax, if both the rates are equal.** Accordingly, the assessee shall not be given any credit of the tax paid on the income in other country, but shall be allowed a deduction from the Indian income-tax payable by him as per section 91 read with Rule 128 on Foreign Tax Credit.



Thank You!

By **CMA** Amit Dey
M.com **LLB**