ILE TAXATION LAW AND LEGAL STUDIES
VOLUME I AND ISSUE I OF 2023
APIS – 3920 – 0024 | ISBN - 978-81-961120-5-9

Published by
Institute of Legal Education
https://iledu.in

DOUBLE TAXATION

AUTHOR- SURBHI RASHMI, STUDENT AT LLOYD LAW COLLEGE, GREATER NOIDA

Best Citation - SURBHI RASHMI, DOUBLE TAXATION, *ILE TAXATION LAW AND LEGAL STUDIES (ILE TLLS)*, 1 (1) of 2023, Pg. 10-14, APIS – 3920 – 0024 | ISBN - 978-81-961120-5-9.

ABSTRACT

Double taxation refers to the imposition of taxes on the same income or asset by more than one jurisdiction. This phenomenon poses significant challenges for multinational corporations and individuals engaged in cross-border transactions, often leading to increased costs and reduced efficiency. This article provides an in-depth analysis of double taxation, examining its causes, consequences, and solutions.

The article begins by exploring the various forms of double taxation, including both economic double taxation and juridical double taxation, highlighting their implications on international business operations. It investigates the primary causes of double taxation, such as divergent tax systems, conflicting tax residency rules, and limited coordination among countries. Overall, this article serves as a comprehensive resource for understanding double taxation and its impact.

KEY TAKEAWAYS

- Double taxation refers to income tax being paid twice on the same source of income.
- Double taxation occurs when income is taxed at both the corporate level and personal level, as in the case of stock dividends.
- Double taxation also refers to the same income being taxed by two different countries.
- Double Taxation avoidance agreement (DTAA).
- Treaties between India and foreign Countries.

1. Introduction

The literal meaning of the word 'Double Taxation' is paying the tax twice. Double Taxation is a situation where tax was imposed on the person twice on the same source of Income, or on same assets or on any financial transaction. The term "double taxation" can also refer to the taxation of some income or assets twice. For 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).

2. Types of Double Taxation

There are mainly two types of double taxation:

- Corporate Double Taxation - This refers to the taxation on corporate profits through corporate taxation and dividend taxation (imposed on dividend pay-outs). It is a situation where a portion of an income is taxed twice in the same country iin the names of two different people.
- International Double Taxation - This refers to the taxation of foreign income in both the country where the income is derived and the country where the investor resides. On the other hand, we can say that the same person is subjected to both foreign and domestic taxes on money earned outside of India, this is referred to as legal or juridical double taxation. Due to the unusual circumstance, the taxpayer

is unfairly burdened by the double taxation of their income.

3. Reason behind the occurrence of Double Taxation

Double taxation usually happens because companies are regarded as distinct legal entities from their shareholders. As a result, companies pay taxes on their yearly income just like people do. Even if the earnings that provided the funds to pay the dividends were previously taxed at the corporate level, when corporations distribute dividends to shareholders, the dividend payments result in income-tax liabilities for the shareholders who receive them. Double taxation is usually an unexpected result of tax law.

4. Double Taxation Relief

- Legislation

Chapter IX of the income tax act i.e. section 90, section 90A and section 91 deal with the provision of Double Taxation Relief. As per section 90 central government may enter into the agreement with any country for providing relief in respect of Double taxation, for the avoidance of double taxation, for exchange of information for the prevention of evasion or avoidance of income tax charge, for recovery of income tax and make provisions necessary for implementing the agreement.

People who live in a country that has entered into an agreement with another country can claim double tax reduction in a special manner. However, in order to seek relief from double taxation, a person must first get a Tax Residence Certificate (TRC) from the government of the country in which they are currently residing. Section 91 of the Income Tax Act, 1961 provides for unilateral relief against double taxation. According to the provisions of this section, an individual can be relieved of being taxed twice by the government, irrespective of whether there is a DTAA between India and the foreign country in question or not.

The individual's tax liability depends on his place of residence and source of income. Non-Indian residents and non-ordinary residents are taxed based on their income from Indian sources, whereas residents and ordinary residents are taxed on their worldwide income.

An individual can accept the accompanying strategies as a feature of relief:-

Exemption System-Under exclusion framework, the taxpayer of a resident nation won't be taxed paying irrespective to where the income is created, though they are taxed on dependent on their source of income (the host nation), that is, just where the income is produced will have the taxing authority over the income. Under the exclusion strategy, the individual is required to submit a Tax Residence Certificate (TCS).

Credit System-It permits tax paid in one state to be utilized as a credit against a Taxpayer's obligation in another state. It will be as direct credit or indirect credit. The general thought behind the tax credit framework is to have the option to enable the business to work a similar path as though they work with indistinguishable laws and guidelines from their nation of origin.

5. Double Taxation Avoidance Agreement

A double tax avoidance agreement (DTAA), also known as a tax treaty, is a bilateral agreement between two countries that aims to eliminate or reduce the possibility of double taxation on income earned by individuals or companies in both countries. The primary purpose of DTAA is to promote cross-border trade and investment by providing clarity and certainty on the taxation of income and assets. DTAAs usually include provisions to prevent tax evasion and abuse. Under a DTAA, the countries involved agree on certain rules to determine the taxing rights on different types of income, such as business profits, dividends, interest, royalties, and capital gains. The agreement typically outlines the conditions under which a taxpayer can claim relief from double taxation, either by exemption, credit, or a combination of both.

By Exemption- Double taxation by exemption is a method used in some double tax avoidance agreements (DTAAs) to prevent the same income from being taxed twice. Under this method, one country agrees to exempt certain types of income earned by its residents or companies from taxation in that country, provided that the income is already taxed in the other country.

Credit-Double taxation relief by credit is another method used in double tax avoidance agreements (DTAAs) to alleviate the burden of double taxation on individuals or companies. Under this method, a taxpayer can claim a tax credit in their country of residence for the taxes paid in the foreign country where the income was earned. By providing a tax credit, the taxpayer effectively reduces their overall tax liability, ensuring that they are not taxed twice on the same income.

By Combination of both credit and exemption - Double taxation relief by a combination of both credit and exemption is a method used in some double tax avoidance agreements (DTAAs) to address double taxation on certain types of income. This method allows taxpayers to utilize a combination of tax credit and exemption provisions to mitigate the impact of double taxation. The combination of tax credit and exemption provisions aims to provide the taxpayer with the most favorable tax treatment, taking into account the specific circumstances and provisions of the DTAA.

There are various types of double taxation avoidance agreements (DTAAs) that countries can enter into to mitigate the impact of double taxation. The specific type of agreement will depend on the needs and objectives of the countries involved. Here are some common types of DTAAs:

Comprehensive DTAAs: These agreements cover a broad range of taxes, including income tax, capital gains tax, and sometimes wealth tax. They provide detailed rules for determining the taxing rights of each country and usually include provisions for the elimination of double taxation or its reduction through tax credits or exemptions.

Limited DTAAs: Limited DTAAs focus on specific types of income or specific industries. For example, there might be separate agreements for air transport income, shipping income, or dividends. These agreements address the specific tax issues and concerns related to those specific areas.

Exchange of Information Agreements: These agreements primarily focus on facilitating the exchange of information between countries' tax authorities. They aim to improve transparency and combat tax evasion and avoidance by allowing the sharing of taxpayer information, including bank and financial information.

Tax Information Exchange Agreements (TIEAs): TIEAs are similar to exchange of information agreements but are specifically designed for the exchange of tax-related information. They are typically used for countries that do not have a comprehensive DTAA in place but want to cooperate in tax matters.

Multilateral Conventions: Multilateral conventions, such as the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (BEPS), are agreements signed by multiple countries to implement international tax standards and combat tax avoidance and base erosion.

Regional Agreements: Some regions have their own regional tax agreements aimed at harmonizing tax rules and reducing double taxation among member countries. Examples include the European Union (EU) directives and agreements among the member states of the Association of Southeast Asian Nations (ASEAN).

6. Treaties

There are some examples of Double taxation avoidance agreements between India and different foreign countries.

ILE TAXATION LAW AND LEGAL STUDIES
VOLUME I AND ISSUE I OF 2023
APIS – 3920 – 0024 | ISBN - 978-81-961120-5-9
Published by
Institute of Legal Education
https://iledu.in

- India – Mauritius Treaty

The treaty between India and Mauritius regarding double taxation is known as the India-Mauritius Double Taxation Avoidance Agreement (DTAA). This agreement was signed between the two countries to prevent double taxation and promote economic cooperation.

The main provisions of the India-Mauritius DTAA are as follows:

Capital Gains Tax: One of the significant aspects of the treaty relates to the taxation of capital gains. Under the agreement, capital gains derived by a resident of Mauritius from the sale of shares of an Indian company are taxable only in Mauritius. This provision has made Mauritius a popular route for foreign investors routing their investments into India to take advantage of the capital gains tax exemption. Withholding Tax: The DTAA specifies the rates of withholding tax applicable to various types of income, such as dividends, interest, and royalties, earned by residents of one country from the other. These rates are generally lower than the domestic tax rates, providing relief to taxpayers.

Exchange of Information: The treaty also includes provisions for the exchange of information between the tax authorities of the two countries to prevent tax evasion and ensure compliance with the tax laws of each country. Tax Residency: The DTAA provides rules for determining tax residency in cases where an individual or a company may be considered a resident of both India and Mauritius. This helps in determining the jurisdiction that has the right to tax the individual or company's income. It is important to note that the India-Mauritius DTAA has been subject to revisions and amendments over the years.

India-Mauritius treaty was signed between the two nations in 1982 and a standout amongst the most significant highlights of the accord is the applicability of Article 13 which accommodated capital additions exception to Mauritius occupant on the exchange of Indian shares and securities. Following 33 years, the arrangement was therefore revised in 2016 and capital gains on ventures made in India through organizations in Mauritius turned out to be completely taxable.

The modified settlement holds that financial investors from Mauritius will be taxable at residential rates of India from April 1, 2019, which has been restricted to half of the household rate from the time of April 1st, 2017 till March 31st, 2019 subject to the Limitation of Benefits (LOB) article.

- India – Singapore Treaty

The treaty between India and Singapore regarding double taxation is known as the India-Singapore Double Taxation Avoidance Agreement (DTAA). This agreement aims to prevent double taxation and promote bilateral economic cooperation between the two countries.

The key provisions of the India-Singapore DTAA are as follows:

1. Residence-Based Taxation
2. Withholding Tax
3. Capital Gains Tax
4. Exchange of Information
5. Limitation of Benefits

The DTAA between Singapore and India was signed in 1994. The requirements of this agreement were adjusted by a convention marked on June 29, 2005, and the subsequent convention was marked on June 24, 2011. The DTAA among Indian and Singapore was revised on December 30th, 2016 by the signing of a Third Protocol. Interpreting the significance of Article 13 in the DTAA, the Limitation of Benefits condition was presented in the convention marked between the nations in 2005.

Article 13 determines the State wherein capital gains are liable to tax and the change gives that any capital gains that emerge on the sale of property or shares are taxable just in the

nation where the stockholder lives. It's important to note that the India-Singapore DTAA has undergone revisions over the years. One significant change occurred in 2016 when India renegotiated the treaty to address concerns over the potential misuse of the capital gains tax provision. The revised protocol introduced a source-based taxation for capital gains on shares acquired on or after April 1, 2017, with certain exceptions.

- India – Cyprus Treaty

The treaty between India and Cyprus regarding double taxation is known as the India-Cyprus Double Taxation Avoidance Agreement (DTAA).The underlying accord among Indians and Cyrus from June 1994 was supplanted with the Double Taxation Avoidance Agreement signed between both the nations on November 18th, 2016. This agreement is aimed at avoiding double taxation and promoting economic cooperation between the two countries. The underlying accord among Indians and Cyrus from June 1994 was supplanted with the Double Taxation Avoidance Agreement signed between both the nations on November 18th, 2016.

The key provisions of the India-Cyprus DTAA are as follows:

1. Residence-Based Taxation
2. Withholding Tax
3. Capital Gains Tax
4. Exchange of Information
5. Limitation of Benefits

7. Conclusion

Double taxation is a complex issue that occurs when the same income or assets are subject to taxation in multiple jurisdictions. It can create burdensome tax obligations, hinder cross-border trade and investment, and discourage economic growth. Furthermore, it is worth noting that tax laws and treaties can evolve over time as countries adapt to changing economic circumstances and address potential loopholes. To address double taxation, countries often enter into tax treaties or agreements, known as Double Taxation Avoidance Agreements (DTAAs), with the aim of preventing or alleviating double taxation. Overall, the existence of tax treaties and the efforts to mitigate double taxation play a crucial role in promoting cross-border economic activities, reducing tax burdens, and fostering international cooperation in the realm of taxation.