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A Close Look into Double Taxation Avoidance Agreements with India: Some Relevant Issues in International Taxation

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Abstract:

In the current era of cross -border transactions across the world, due to unique growth in international trade and commerce and increasing interaction among the nations, residents of one country extend their sphere of business operations to other countries where income is earned. One of the most significant results of globalization is the noticeable impact of one country's domestic tax policies on the economy of another country. This has led to the need for incessantly assessing the tax regimes of various countries and bringing about indispensable reforms. International double taxation has adverse effects on the trade and services and on movement of capital and people. Taxation of the same income by two or more countries would constitute a prohibitive burden on the tax-payer. In view of the above discussion, the article attempts to evaluate various facets of bilateral Double Taxation Avoidance Agreements (DTAAs) with particular reference to India's network of DTAAs as a tool of tax coordination used by nations to distribute rights to tax different bases in the global fiscal commons. More precisely, an attempt has been made, in this article, to analyze and provide a brief account of the various insights in respect of double taxation avoidance agreements with India. By means of Double Taxation Avoidance Agreements, each country accommodates the claims of other nations within their fiscal arena to develop international trade and investments with minimal barriers. However, the international tax regime has to be restructured constantly so as to respond to the current challenges and drawbacks.

Keywords: Double taxation, avoidance agreements, India, bilateral, income tax.

1.Introduction

In the current era of cross -border transactions across the world, due to unique growth in international trade and commerce and increasing interaction among the nations, residents of one country extend their sphere of business operations to other countries where income is earned. One of the most significant results of globalization is the noticeable impact of one country's domestic tax policies on the economy of another country. This has led to the need for incessantly assessing the tax regimes of various countries and bringing about indispensable reforms. Therefore, the consequence of taxation is one of the important considerations for any trade and investment decision in any other countries. Fiscal jurisdiction is often the most aggressively protected jurisdiction in India. Consequently, even in times when economies are going global & borders vanishing, leading to liquid movement of goods, services and capital, double taxation is still one of the major obstacles to the development of inter-country economic relations. India are often forced to negotiate and accommodate the claims of other nations within their heavily defended fiscal jurisdiction by the means of double taxation avoidance agreements, in order to bring down the barriers to global trade.

Where a taxpayer is resident in one country but has a source of income situated in another country, it gives rise to possible double taxation. This arises from two basic rules that enable the country of residence as well as the country where the source of income exists to impose tax, namely, (i) source rule and (ii) the residence rule. The source rule holds that income is to be taxed in the country in which it originates irrespective of whether the income accrues to a resident or a nonresident whereas the residence rule stipulates that the power to tax should rest with the country in which the taxpayer resides. If both rules apply simultaneously to a business entity and it were to suffer tax at both ends, the cost of operating in an international scale would become prohibitive and deter the process of globalization. It is from this point of view that Double taxation avoidance Agreements (DTAA) become very significant.

Therefore, International double taxation has adverse effects on the trade and services and on movement of capital and people. Taxation of the same income by two or more countries would constitute a prohibitive burden on the tax-payer. The domestic laws of most countries, including India, mitigate this difficulty by affording unilateral relief in respect of such doubly taxed income (Section 91 of the Income Tax Act). But as this is not a satisfactory solution in view of the divergence in the rules for determining sources of income in various countries, the tax treaties try to remove tax obstacles that inhibit trade and services and movement of capital and persons between the countries concerned. It helps in improving the general investment climate.

The double tax treaties (also called Double Taxation Avoidance Agreements or "DTAA") are negotiated under public international law and governed by the principles laid down under the Vienna Convention on the Law of Treaties. It is in the interest of all countries to ensure that undue tax burden is not cast on persons earning income by taxing them twice, once in the country of residence and again in the country where the income is derived. At the same time sufficient precautions are also needed to guard against tax evasion and to facilitate tax recoveries.

In view of the above discussion, the article attempts to evaluate various facets of bilateral Double Taxation Avoidance Agreements (DTAAs) with particular reference to India's network of DTAAs as a tool of tax coordination used by nations to distribute rights to tax different bases in the global fiscal commons. More precisely, an attempt has been made, in this article, to analyze and provide a brief account of the various insights in respect of double taxation avoidance agreements with India.

2. Concept of Double Taxation Avoidance Agreements (DTAAs):

One of the most deeply protected jurisdictions of a country is its fiscal jurisdiction. Therefore, in the era of globalization, double taxation continues to be one of the major impediments to the development of international economic relations. An individual who earned income has to pay income tax in the country in which the income was earned and also in the country in which such person was resident. As such, the liability to tax on the aforesaid income arises in the country of source and the country of residence. The Fiscal Committee of OECD in the Model Double Taxation Convention on Income and Capital, 1977, defines double taxation as 'the imposition of comparable taxes in two or more states on the same tax payer in respect of the same subject matter and for identical periods'. Whereas a tax payer's own country (referred to as home country) has a sovereign right to tax him, the source of income may be in some other country (referred to as host country) which also claims right to tax the income arising in that country. Nations are often forced to discuss and settle the claims of other nations by means of double taxation avoidance agreements, in order to bring down the barriers to international trade. Double tax treaties are settlements between two countries, which include the elimination of international double taxation, promotion of exchange of goods, persons, services and investment of capital. This is because, the interaction of two tax systems of two different countries can result in double taxation. Every country seeks to tax the income generated within its territory on the basis of one or more connecting factors such as location of the source, residence of taxable entity and so on. Double Taxation of the same income would cause severe consequences on the future of international trade. Countries of the world therefore aim at eliminating the prevalence of double taxation. Such agreements are known as "Double Tax Avoidance Agreements" (DTAA) also termed as "Tax Treaties". Following the footsteps of most countries of the world that levy tax on income / capital, India has also imposed Income Tax on the "total world income" i.e. income earned anywhere in the world. The result is that income arising to a resident out of India is subjected to tax in India as it is part of total world income and, also in host country which provides the source for that income. In order to avoid the hardship of double taxation, Government of India has entered into Double Taxation Avoidance Agreements with several countries. The statutory authority to enter into such agreements is vested in the Central Government by the provisions contained in Section 90 of the Income Tax Act in terms of which India has, by the end of March 2002, entered into 64 agreements of this nature which deal with different types of income which may be subjected to double taxation. Therefore, Double Tax Avoidance Agreements comprise of consensus between two countries aiming at elimination of double taxation. Double Taxation Avoidance Agreements between two countries would focus on mitigating the incidence of double taxation. It would promote exchange of goods, persons, services and investment of capital among such countries. These are bilateral economic agreements wherein the countries concerned assess the sacrifices and advantages which the treaty brings for each contracting nation.

DTAAs taken care of technical know-how and service fees, reduced rates of tax on dividend, interest, and royalties received by residents of one country from other. When the rate of tax is higher in the Indian Income Tax Act, 1961 than the rate prescribed in the DDTA, then the rate prescribed in the DDTA shall be applied i.e. the rate which is better to the taxpayer would be applied. Depending on their scope, double taxation avoidance agreements are classified as Comprehensive and Limited. Comprehensive DTAAs are those which cover almost all types of incomes covered by any model convention. Many a time a treaty covers wealth tax, gift tax, surtax. Etc. too. While comprehensive Double Taxation Agreements provide for taxes on income, capital gains and capital, Limited Double Taxation Agreements refer only to income from shipping and air transport,or estates, inheritance and gifts. Comprehensive agreements ensure that the taxpayers in both the countries would be treated equally, in respect to problems relating to double taxation.

3.Necessity of Double Taxation Avoidance Agreements:

Double taxation is the systematic imposition of two or more taxes on the same income (in the case of income taxes), asset (in the case of capital taxes), or financial transaction (in the case of sales taxes). It refers to taxation by two or more countries of the same income, asset or transaction, for example, income paid by an entity of one country to a resident of a different country. The double liability is often mitigated by tax treaties between countries. Therefore, double taxation can be defined as the levy of taxes on income / capital in the hands of the same tax payer in more than one country in respect of the same income or capital for the same period. The problem gets complicated since taxation schemes of different countries contain divergent notions regarding definition of income as source. The position becomes anomalous in a situation where an assessee residing in one country earns income in another country, and the tax rates in both the countries are higher than 50%. If taxed at both places on the same income the assessee will be left with a negative income. This is bound to affect the economic growth.

To avoid such a hardship to individuals and also with a view to seeing that national economic growth does not suffer, Double Taxation Avoidance Agreements (D.T.A.A.) is entered into with other countries.

Such tax treaties, therefore, serve the purpose of providing full protection to tax payers against double taxation and thus prevent the discouragement which double taxation may provide in the free flow of international trade and international investment. Besides, such treaties generally contain provisions for mutual exchange of information and for reducing litigation.

Therefore, the need for Agreement for Double Tax Avoidance arises because of conflicting rules in two different countries regarding chargeability of income based on receipt and accrual, residential status etc. As there is no clear definition of income and taxability thereof, which is accepted internationally, an income may become liable to tax in two countries.

In such a case, the two countries have an Agreement for Double Tax Avoidance, in which case the possibilities are:

1. The income is taxed only in one country.
2. The income is exempt in both countries.
3. The income is taxed in both countries, but credit for tax paid in one country is given against tax payable in the other country.

In India, the Central Government, acting under Section 90 of the Income Tax Act, has been authorized to enter into double tax avoidance agreements (hereinafter referred to as tax treaties) with other countries.

The object of a Double Taxation Avoidance Agreement is to provide for the tax claims of two governments both legitimately interested in taxing a particular source of income either by assigning to one of the two the whole claim or else by prescribing the basis on which tax claims is to be shared between them. The need and purpose of tax treaties has been summarized by the OECD in the ‘Model Tax Convention on Income and on Capital’ in the following words:

‘It is desirable to clarify, standardize, and confirm the fiscal situation of taxpayers who are engaged, industrial, financial, or any other activities in other countries through the application by all countries of common solutions to identical cases of double taxation’.

The objectives of double taxation avoidance agreements can be enumerated in the following words:
First, they help in avoiding and alleviating the adverse burden of international double taxation, by -

a) laying down rules for division of revenue between two countries;

b)exempting certain incomes from tax in either country;

c) reducing the applicable rates of tax on certain incomes taxable in either countries.

Secondly, and equally importantly tax treaties help a taxpayer of one country to know with greater certainty the potential limits of his tax liabilities in the other country.

Still, another benefit from the tax-payers point of view is that, to a substantial extent, a tax treaty provides against non-discrimination of foreign tax payers or the permanent establishments in the source countries vis-à-vis domestic tax payers. Treaties must help in avoiding and alleviating the burden of double taxation prevailing in the international arena. The tax treaties must clarify and help the taxpayer to know with certainty of his potential tax liability in other country where he is carrying on industrial or other activities. Tax Treaties must ensure that there is no discrimination between foreign tax payers who has permanent establishment in the source countries and domestic tax payers of such countries. Treaties are made with the aim of allocation of taxes between treaty nations and the prevention of tax avoidance and/or tax evasion. The treaties must also ensure that equal and fair treatment of tax payers having different residential status, resolving differences in taxing the income and exchange of information and other details among treaty partners.

Moreover, DTAAs serve at least four other important coordination functions. First, they ensure that countries adopt common definitions for factors that determine taxing rights and taxable events. Crucial among these is the definition of a permanent establishment. Most treaties also specify a Mutual Agreement Procedure (MAP) which is invoked when interpretation of treaty provisions is disputed. Third, to prevent abuse of treaty concessions, treaties increasingly incorporate restrictions and rules, such as a general anti-avoidance rule (GAAR), that allow tax authorities to determine if a transaction is only undertaken for tax avoidance or not. Benefit limitation tests and controlled foreign corporation (CFC) rules also place limits on claims of residence in countries eligible for treaty concessions. Fourth, exchange of tax information on either a routine basis or in response to a special request is provided for in most treaties to assist countries counter tax evasion. A fifth area, assistance in collection of taxes, is present in some treaties that follow the OECD Model Convention. However, two related OECD conventions (one a multilateral convention) for tax collection assistance also serve as the basis for separate bilateral agreements between some countries.

4. Salient Features of Double Taxation Avoidance Agreements (DTAAs) agreements between India & other countries:

According to the World Investment Report (UNCTAD, 2009), as of 2008 there were 2805 comprehensive or limited bilateral treaties between countries from a possible maximum of around 50,000 treaties. These treaties are usually between countries with substantial trade or other economic relations. Most treaties are between pairs of developed countries while, of the balance, most are between developed and developing countries. DTAAs (a) provide reciprocal concessions to mitigate double taxation, (b) assign taxation rights roughly in accordance with that "existing consensus" described below and (c) largely though not rigidly follow the OECD Model Tax Convention or, for developing countries, the UN Tax Convention. Recent treaties contain new clauses following the OECD Model Tax Conventions of 2005 to 2010 which extend areas of cooperation to administrative and information issues. While current treaties deal mainly with the right to tax incomes and, occasionally, capital, the OECD‟s recent Model VAT Guidelines could expand the scope of bilateral treaties in future to also cover the VAT (Owens, 2002).

A typical DTA Agreement between India and another country covers only residents of India and the other contracting country who has entered into the agreement with India. A person who is not resident either of India or of the other contracting country cannot claim any benefit under the said DTA Agreement. Such agreement generally provides that the laws of the two contracting states will govern the taxation of income in respective states except when express provision to the contrary is made in the agreement.
A situation may arise when originally the tax provision in the other contracting state offered concessional treatment compared to India at a particular time but Indian laws were subsequently amended to bring

incidence of tax to a level lower than the tax rate existing in the other contracting state.

Since the tax treaties are meant to be beneficial and not intended to put tax payers of a contracting state to a disadvantage, it is provided in Sec. 90 that a beneficial provision under the Indian Income Tax Act will not be denied to residents of contracting state merely because the corresponding provision in tax treaty is less beneficial. Some Double Taxation Avoidance agreements provide that income by way of interest, royalty or fee for technical services is charged to tax on net basis.

This may result in tax deducted at source from sums paid to Non-residents which may be more than the final tax liability.

The Assessing Officer has therefore been empowered u/s 195 to determine the appropriate proportion of the amount from which tax is to be deducted at source. There are instances where as per the Income-tax Act, tax is required to be deducted at a rate prescribed in tax treaty. However this may require foreign companies to apply for refund. To prevent such difficulties Sec. 2(37A) provides that tax may be deducted at source at the rate applicable in a particular case as per section 195 on the sums payable to non-residents or in accordance with the rates specified in D.T.A. Agreements.

4.1.Types of relief:

Relief from double taxation can be provided mainly in two ways (i) Bilateral relief (ii) Unilateral relief.

(i) 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 relief is to be granted. India has entered into agreement for relief against or avoidance of double taxation with 77 countries up to May,2010.

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

(a) Exemption method, by which a particular income is taxed in only one of the two countries; and

(b) Tax relief methods under which, an income is taxable in both countries in accordance with the respective tax laws read with the Double Taxation Avoidance Agreements. However, the country of residence of the taxpayer 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.

(ii) Unilateral relief :

This method provides for relief of some kind by the home country where no mutual agreement has been entered into between the countries.

4.2. Double Taxation Relief Provisions under the Act:

Section 90 and 91 of the Income Tax Act, 1961 provides for double taxation relief in India.

4.2.1.Agreement with foreign countries or specified territories –Bilateral Relief [Section 90]:

(i) 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-

(a) for granting of relief in respect of –

(i) income on which income tax has been paid both in India and in that country or specified territory; or

(ii) income tax chargeable under this Act and under the corresponding law in force in that country or specified territory to promote mutual economic relations, trade and investment; or

(b) 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

Accordingly, the Central Government has notified that where such an agreement provides that any income of a resident of India may be taxed in the other country, then such income shall be included in his total income chargeable to tax in India in accordance with the provision of Income Tax Act,1961, and relief shall be granted in accordance with the method of elimination or avoidance of double taxation provided in such Agreement[Notification No.91/2008, dated 28.8.2008].

(c) for the 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 investigation of cases of such evasion or avoidance; or

(d) for recovery of income tax under this Act and under the corresponding law in force in that country or specified territory.

The Central Government may, by notification in the Official Gazette, make such provision as may be necessary for implementing the agreement.

(ii)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 provision of this act shall apply to the extent they are more beneficial to that assessee.

(iii) Any term used but not defined in this Act or in the agreement referred to above shall have the same meaning as assigned to it in the notification issued by the Central Government in the Official Gazette in this behalf, unless the context otherwise requires, provided the same is not inconsistent with the provisions of this Act or the agreement.

(iv) 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 favourable charge or levy of tax in respect of such foreign company.

(v)

4.2.2.Double taxation relief to be extended to agreements (between specified Associations) adopted by the Central Government [Section 90A]:

(i) Section 90A provides that any specified association in India may enter into an agreement with any specified association in 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 for –

(I) grant of double taxable relief,

(II) avoidance of double taxation of income,

(III) exchange of information for the prevention of evasion or avoidance of income tax

(IV) recovery of income tax.

(ii) In relation to any assessee to whom the said agreement applies, the provisions of the Income Tax Act,1961 shall apply to the extent they are more beneficial to that assessee.

(iii) Any term used but not defined in the Income Tax Act, 1961 or in the said agreement shall have the same meaning as assigned to it in the said notification, unless the context requires otherwise and it is not inconsistent with the provisions of the Act or the said agreement.

(iv) The charge of tax at higher rate for a company incorporated in the specified territory outside India as compared to a domestic company would not be considered as less favourable charge or levy of tax in respect of such company.

(v) For the purpose of this section, ‘specified association’ means any institution, association or body, whether incorporated or not, functioning under any law for the time being in force in India or laws of the specified territory outside India which may be notified as such by the Central Government and ‘specified territory’ means any area outside India which may be notified by the Central Government.

4.2.3. Countries with which no agreement exists-Unilateral Agreements [Section 91]:

In 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 conditions are fulfilled:

(a) The assessee is a resident in India during the previous year in respect of which the income is taxable.

(b) The income arises or accrues to him outside India.

(c) The income is not deemed to accrue or arise in India during the previous year.

(d) The income has been subjected to income tax in the foreign country in the hands of the assessee.

(e) The assessee has paid tax on the income in the foreign country.

(f) There is no agreement for relief from double taxation between India and other country where the income has accrued or arisen.

In such a case, the assessee shall be entitled to a deduction from the Income tax payable by him. The deduction would be a sum calculated on such doubly taxed income at the Indian rate of tax or the rate of tax in the said country, whichever is lower, or at the Indian rate of tax if the both rates are equal.

Subsection (2) provides that where a person who is resident in India in any previous year has any agricultural income in Pakistan in respect of which he has paid the income tax payable in that country, he shall be entitled to a deduction from the Indian income tax payable in that country, he shall be entitled to a deduction from the Indian income tax payable in that country, he shall be entitled to a deduction from Indian income tax payable by him to the following extent:

(i) of the amount of tax paid in Pakistan on such income which is liable to tax under this Act; or

(ii) of a sum calculated on that income at the Indian rate of tax, whichever is less.

Subsection (3) provides for relief to a non resident assessee in respect of his share in the income of a registered firm assesses as resident in India in any previous year, provided all the following conditions are fulfilled-

(a) The share income from the firm should include income accruing or arising outside India during that previous year;

(b) Such income should not be deemed to accrue or arise in India;

(c) The income should accrue or arise in a country with which India has no agreement under Section 90 for the relief or avoidance of double taxation;

(d) The assessee shall have paid income tax in respect of such income according to the law in force in that country.

In such a case, the assessee will be entitled to a deduction from the Indian income tax payable by him. The deduction will be sum calculated on such doubly taxed income so included, at the Indian rate of tax or the rate of tax of the said country, whichever is lower, or at the Indian rate of tax, if both the rates are equal.

One of the important terms that transpire in all the Double Taxation Avoidance Agreements is the term 'Permanent Establishment (PE)'. It was not been defined in the Income Tax Act, 1961. However, as per the Double Taxation avoidance agreements, Permanent Establishment includes a wide variety of arrangements. Double taxation avoidance agreements usually restrict the jurisdiction of the contracting states to taxing income of a foreign enterprise only if such enterprise carries on business in another country through permanent establishment. It is a fixed place of business through which business activities of enterprise is wholly or partially conducted in that country for generation of income.

Section 92F of the Indian Income Tax Act, 1961 explains the term "Permanent Establishment (PE)" as a fixed place of business through which the business of the enterprise is wholly or partly carried out. OECD and UN model conventions also provide for definition of the term permanent establishment as it includes a place of management, a branch, an office, a factory, a workshop etc. There is an international accord on the attribution of profits earned by Permanent Establishment on the basis of 'Separate Enterprises' concept and the relevance of the 'arm's length principle'.

4.3. Methods of Eliminating Double Taxation:

The objective of double taxation can be obtained through tax treaties involving various methods or a combination of the following methods:

(i)Exemption Method:
One method of avoiding double taxation is for the residence country to altogether exclude foreign income

from its tax base. The country of source is then given exclusive right to tax such incomes. This is known as complete exemption method and is sometimes followed in respect of profits attributable to foreign permanent establishments or income from immovable property. Indian tax treaties with Denmark, Norway and Sweden embody with respect to certain incomes.

(ii)Credit Method:

This method reflects the underline concept that the resident remains liable in the country of residence on its global income, however as far the quantum of tax liabilities is concerned credit for tax paid in the source country is given by the residence country against its domestic tax as if the foreign tax were paid to the country of residence itself.

(iii)Tax Sparing:

One of the aims of the Indian Double Taxation Avoidance Agreements is to stimulate foreign investment flows in India from foreign developed countries. One way to achieve this aim is to let the investor to preserve to himself/itself benefits of tax incentives available in India for such investments. This is done through "Tax Sparing". Here the tax credit is allowed by the country of its residence, not only in respect of taxes actually paid by it in India but also in respect of those taxes India forgoes due to its fiscal incentive provisions under the Indian Income Tax Act. Thus, tax sparing credit is an extension of the normal and regular tax credit to taxes that are spared by the source country i.e. forgiven or reduced due to rebates with the intention of providing incentives for investments.

The regular tax credit is a measure for prevention of double taxation, but the tax sparing credit extends the relief granted by the source country to the investor in the residence country by the way of an incentive to stimulate foreign investment flows and does not seek reciprocal arrangements by the developing countries.

5. Current Scenario of Double Taxation Avoidance Agreements in India:

The Indian Income Tax Act, 1961 administrate the taxation of income accrued in India. As per Section 5 of the Income Tax Act, 1961 residents of India are liable to tax on their global income and non-residents are taxed only on income that has its source in India.

Recently, finance minister of India had asked the ministry of finance to review all the 77 double taxation avoidance agreements (DTAA) that the government had signed so far. The review is being done in order to comply guidelines of Organization for Economic Co-operation and Development (OECD) on sharing information on flow and parking of black money in various countries and to fulfill India's commitment at the G-20 Nations summit.

OECD has blacklisted over 25 nations for tax relaxations they offer for parking funds. These include Mauritius, Cyprus, Switzerland and the Netherlands. Tax havens allow easy parking of money either through investments or deposits. They may offer a range of incentives including a nominal capital gains tax for companies to complete financial secrecy of accounts held by individuals and corporate.

The principle followed in India is to tax residents on their global income and tax non-residents on their Indian source income. However, unilateral tax credits for foreign taxes paid are allowed to residents under section 91 of the Indian Income Tax Act.

India: (a) has a network of 77 comprehensive DTAAs, the oldest, with Greece, signed in 1965; (b) is also reported to be in the process of negotiating another 12 treaties with autonomous territories; and (c) is also a signatory to the 2005 multilateral SAARC avoidance of double tax convention and some other bilateral treaties which, however, are not comprehensive. Comprehensive DTAAs are listed along with their signing dates in Table 1.

The dates of signing different treaties suggest that the initiative for the DTAAs may not always have come from India in the early years. *Greece* being a major shipping nation would benefit from a treaty that gave the right to tax shipping income to the residence country – which the India-Greece treaty does. The next five treaties, with Egypt, Tanzania, Libya, Zambia and Sri Lanka, signed by a protectionist, high tax India, seem to offer no clear advantage to it, given limited cross-border factor flows. The seventh treaty, with Mauritius in 1982, has turned out to be a major source of revenue loss for India as discussed below. Treaties with major source countries for investment and technology for India or labour and capital from

India (and two low tax countries) were signed mainly in the early 1990s. After 2000 India's treaties appear to once again be with countries with which it has limited economic relations. A key policy issue is if India really requires all these tax treaties. The previous discussion suggests that the economic rationale for treaties (except for administrative information sharing) is limited except where productive factor flows respond elastically to tax treaty rights allocations and tax rates.

[Insert Table-1 here]

The source country has residual rights after withholding taxes to tax active income while the residence country has residual rights over passive income. Table 2 provides an overview of allocation of taxing rights obtaining in most (but not all) of India's DTAAs. In particular, for business income, source countries have only the right to tax permanent establishments defined largely as in the UN Model Convention. Besides this allocation of bases, almost all Indian treaties provide for double tax relief via foreign tax credits. Sportsmen (source countries can levy withholding tax), students and teachers merit special mention (taxing rights, if any, are with the country of prior residence in both cases) in most Indian tax treaties.

[Insert Table-2 here]

Table 3 lists rates of withholding taxes in most Indian DTAAs and also rates applicable in the absence of a DTAA.

[Insert Table-3 here]

Most treaties provide for taxpayers to elect voluntary to take advantage of treaty provisions or not. So if non-treaty withholding rates are more favourable, they can elect not to have taxes withheld at the higher rate. Even without further information about rates of tax on foreign source income in the partner countries, variation across countries of withholding rates seen in the table suggests that scope for treaty shopping exists for all four types of income. This suggests the need either for widespread revision of withholding tax rates to bring about greater uniformity, or more widespread treaty revision to introduce effective beneficial ownership clauses.

These agreements follow a near uniform pattern in as much as India has guided itself by the UN model of double taxation avoidance agreements. The agreements allocate jurisdiction between the source and residence country. Wherever such jurisdiction is given to both the countries, the agreements prescribe maximum rate of taxation in the source country which is generally lower than the rate of tax under the domestic laws of that country. The double taxation in such cases are avoided by the residence country agreeing to give credit for tax paid in the source country thereby reducing tax payable in the residence country by the amount of tax paid in the source country. These agreements give the right of taxation in respect of the income of the nature of interest, dividend, royalty and fees for technical services to the country of residence. However the source country is also given the right but such taxation in the source country has to be limited to the rates prescribed in the agreement. The rate of taxation is on gross receipts without deduction of expenses.

6.Conclusion:

It has been found from the discussion above that India has entered into a wide network of tax treaties with various countries all over the world to facilitate free flow of capital into and from India. The regime of international taxation exists through bilateral tax treaties based upon model treaties, developed by the OECD and the UN, between the Contracting States. India principally goes after the UN model convention and one therefore finds the tax-sparing and credit methods for elimination of double taxation in most Indian treaties as well as more source-based taxation in respect of the articles on ‘royalties’ and ‘other income’ than in the OECD model convention. Double Taxation Avoidance Agreements are evidently an interaction of two tax systems each belonging to different country, which aim to mitigate the effect of double taxation. Double taxation is still one of the major obstacles to the development of inter-country economic relations. Every country seeks to tax the income generated within its territory on the basis of one or more connecting factors. By means of Double Taxation Avoidance Agreements, each country accommodates the claims of other nations within their fiscal arena to develop international trade and investments with minimal barriers. However, the international tax regime has to be restructured constantly so as to respond to the current challenges and drawbacks. It is also of great importance for India to take advantage of the current global move to greater transparency and openness by strengthening information sharing and administrative assistance provisions in its DTAAs.

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Table 1: India's DTAA Partners and Year of Signing the DTAA

(numbered from first DTAA signed to most recent)

Country	**Year signed**	**Country**	**Year signed**	**Country**	**Year signed**
Developed Countries		**Asian Developing Countries**		5. Zambia	5/6/1981
1. Greece	11/2/1965	6. Sri Lanka4	27/1/1982	10. Kenya	12/4/1985

8. Finland	10/6/1983	7. Mauritius	24/8/1982	24. Brazil	11/3/1992
13. New Zealand	3/12/1986	9. Syria	6/2/1984	43. Turkey	1/2/1997
14. Norway	31/12/1986	11.Thailand	13/3/1986	49. South Africa	28/11/1997
18. Netherlands	21/1/1989	13. Korea	1/8/1986	53. Namibia	22/1/1999
19. Denmark	13/6/1989	16. Indonesia	19/12/1987	55. Trinidad & Tobago	13/10/1999
21. Japan	29/12/1989	17. Nepal4	1/11/1988	58. Morocco	20/2/2000
22. USA	18/12/1990	25. Bangladesh4	27/5/1992	65. Sudan	15/4/2004
23. Australia	30/12/1991	26. UAE	22/9/1993	66. Uganda	27/8/2004
27. UK	26/10/1993	29. Philippines	21/3/1994	*73. Mexico*	*10/9/2007*
32. France	1/8/1994	30. Singapore	27/5/1994	76. Botswana	20/1/2008
33. Cyprus	21/12/1994	32. China	21/11/1994	**Ex Soviet Bloc Countries**	
34. Switzerland	29/12/1994	35. Vietnam	2/2/1995	15. Romania	14/11/1987
35. Spain	12/1/1995	40. Mongolia	29/3/1996	20. Poland	26/10/1989
37. Malta	8/2/1995	41. Israel	15/5/1996	28. Uzbekistan	25/1/1994
39. Italy	23/11/1995	45. Oman	3/6/1997	38. Bulgaria	23/6/1995
42. Germany	26/10/1996	56. Jordan	16/10/1999	46. Turkmenistan	7/7/1997
44. Canada	6/5/1997	57. Qatar	15/1/2000	48. Kazakhstan	2/10/1997
47. Belgium	1/10/1997	64. Malaysia	14/8/2003	51. Russia	11/4/1998
50. Sweden	25/12/1997	70. Saudi Arabia	1/11/2006	52. Belarus	17/7/1998
59. Portugal	20/4/2000	72. Kuwait	17/10/2007	54. Czech Republic	27/9/1999
61. Austria	5/9/2001	*74. Hong Kong*	2/11/2007	60. Kyrgyz Republic	10/1/2001
63. Ireland	26/12/2001	**Other Developing Countries**		62. Ukraine	31/10/2001
71. Luxembourg	*25/4/2007*	2. UAR (Egypt)	20/2/1969	67. Armenia	9/9/2004
75. Iceland	21/12/2007	3. Tanzania	5/9/1979	68. Slovenia	17/2/2005
		4. Libya	2/3/1981	69. Hungary	4/3/2005
				77. Serbia	23/9/2008

Notes:

1. Information for three jurisdictions (Luxembourg, Hong Kong and Mexico, given in italics) has been taken from newspaper reports-they are not listed in Ministry of Finance, Government of India Website. Of these Hong Kong is a ‘specified territory’ and not a sovereign nation.

2.According to the Ministry of Finance, Government of India website , treaties with Sierra Leone, Gambia, Nigeria and Gold Coast(Now, Ghana) have lapsed or been terminated.

3. Comprehensive or information exchange treaties are reported to be in the negotiation stage with Myanmar and nine 'specified territories' including Bermuda. The British Virgin Islands,Caymand Islands ,Gibraldar,Guernsay,The Isle of Man, Jersey, The Netherlands Antilles and Macau[See Tax Treaties Analysis,2010, April,13.]

4. As of November 13,2005, India also has a multilateral treaty with SAARC countries " SAARC Limited Multilateral Agreement on Avoidance of Double Taxation and Mutual Administrative Assistance in Tax Matters" with Bangladesh, Bhutan, Maldives, Nepal, Pakistan and Srilanka. However, the treaty only contains articles relating to professions to (a) Professors, teachers and research scholars and (b) students ,besides articles relating to tax administration including mutual agreement, exchange of information ,service of documents and collection assistance. There are also novel articles relating to training and sharing of tax policy. The impact on earlier DTAAs with Srilanka, Nepal, Bangladesh requires clarification.

Source: Government of India, Ministry of Finance (No date),Dept. of Revenue, Income Tax Dept, International Taxation(DTAAs Comprehensive Agreements-with respect to taxes on income) available at: http: /law. Imcometaxindia.govt.in/TaxmannDit/IntTax/Dtaa.aspx accessed May, 25, 2010 [cited in DasGupta, Arindam, July, 2010].

Table 2: "Typical" rights to tax non-residents in India's DTAAs for different types of income or income of specified entities

Sl	Nature of Income or other receipt	Source country taxing rights	Residence country taxing rights	Remarks
1	Income from Immovable Property	Yes	No	Withholding rates are prescribed in most cases in the (Indian) Income Tax Act, 1961.
2	Business Profits	Only profits of a Permanent Establishment (PE) (if any) in source	Yes	Double Taxation Relief (DTR) given in residence for source tax on the PE. Withholding rates are prescribed in most cases in the (Indian) Income Tax Act, 1961.
3	Profits, etc from Shipping and Inland Waterways	On profits earned in source	Yes	Not present as a separate article in all DTAAs
4	Profits etc. from Transport & Air Transport	No	Yes	
5	Profits of Associated Enterprises	Included in profits of source associate	No	Relief to be allowed in residence for source tax
6	Dividends	Withholding tax on source dividend at	Yes	DTR to be allowed in residence for

		rate specified		source tax. Usually higher withholding rates are prescribed in the (Indian) Income Tax Act, 1961. The DTAA rate applies if specified.
6a	Dividends received by residence entity from PE in source or entity with fixed place of business, etc. in source	Apportioned as with business profits or income from independent personal services as appropriate	Yes	DTR to be allowed in residence for source tax. Usually higher withholding rates are prescribed in the (Indian) Income Tax Act, 1961. The DTAA rate applies if specified.
7	Interest	Withholding tax on source interest at rate specified (b) Interest received by PE taxable in source	Yes	DTR to be allowed in residence for source tax. Usually higher withholding rates are prescribed in the (Indian) Income Tax Act, 1961. The DTAA rate applies if specified.
8	Royalties (and technical fees)	Withholding tax on source royalties at rate specified (b) Royalties received by PE taxable in source	Yes	DTR to be allowed in residence for source tax. Usually higher withholding rates are prescribed in the (Indian) Income Tax Act, 1961. The DTAA rate applies if specified.
9	Capital Gains	(a) On source immoveable property gains (b) On gains from moveable property and shares in some cases	On gains from moveable property and shares in some cases	Withholding rates are prescribed in the (Indian) Income Tax Act, 1961. Withholding can be waived if requested and merited.

				Residence country taxing rights of gains from share sales are a major concern of India in relation to its DTAAs with Mauritius, Singapore, UAE and Cyprus.
10	Income from Independent Personal Services	Income of PE or entity with fixed place of business, etc. in source apportioned	Yes	DTR to be allowed in residence for source tax Withholding rates are prescribed in most cases in the (Indian) Income Tax Act, 1961.
11	Income from Dependent Personal Services/Income from employment	If stay at least at or above prescribed minimum	If stay is below prescribed minimum	DTR to be allowed in residence for source tax. Withholding rates are prescribed in most cases in the (Indian) Income Tax Act, 1961.
12	Directors" Fees, and Remuneration Of Top-Level Managerial Officials	Yes	No	
13	Income of Artistes and Sportsmen	Yes	No	Withholding rates are prescribed in the (Indian) Income Tax Act, 1961.
14	Pensions	No	Yes	
15	Remuneration and Pensions for Government Service	Yes for source nationals	Yes for residence nationals	
16	Payments to Students, Trainees, etc	(a) Not usually mentioned if source is not place of study (b) Taxable if source coincides with residence after a period	(a) Exempt for specified duration if place of study/residence is not source (b) Taxable if source coincides with residence	

			after a period	
17	Payment to Professors, Teachers and Researchers	Yes, if duration is at least at or above specified minimum	Yes, if duration is below specified minimum.	
18	Other Income	No	Yes	Some DTAAs (e.g. Singapore) allow double taxation
19	Capital	Yes (in country of income source)	No	Present in few DTAAs and not uniform
20	Elimination of Double Taxation	No	Yes	Credit method (deduction of source taxes from residence taxes) in most DTAAs
21	Mutual Agreement Procedure	NA	NA	Present in all India DTAAs
22	Exchange of Information or Document	NA	NA	Present in most India DTAAs
23	Collection Assistance	NA	NA	Absent in 70% of India's DTAAs especially those signed in earlier years

Source: Government of India, Ministry of Finance (No date), Dept. of Revenue, Income Tax Dept, International Taxation (DTAAs Comprehensive Agreements-with respect to taxes on income) available at: http: /law. Imcometaxindia.govt.in/TaxmannDit/IntTax/Dtaa.aspx accessed May,25,2010 [cited in DasGupta , Arindam,July, 2010].

Table 3: Withholding tax rates in selected Indian DTAAs (as in 2010-11)

(All figures are tax rates in percent)

	Dividend [not covered by section 115-O]	**Interest**	**Royalty**	**Fees for technical service**
With No Tax Treaty (u/s 115A)	***20***	***20***	***10***	***10***
Armenia	10	10	10	10
Australia	15	15	[N2]	[N2]
Austria	10	10	10	10
Bangladesh	15 (10/10) [N5]	10 [N1]	10	
Belarus	15 (10/25) [N5]	10 [N1]	15	15

Belgium	15	15, 10 [N6]	10	10
Botswana	10 (7.5/25) [N5]	10	10	10
Brazil	15	15 [N1]	15 (trademark use: 25)	No separate provision
Bulgaria	15	15 [N1]	20, 15 [N9]	20
Canada	25 (15/10) [N5]	15 [N1]	10-20	10-20
China	10	10 [N1]	10	10
Cyprus	15 (10/10) [N5]	10 [N1]	15	10
Czeck Republic	10	10 [N1]	10	10
Denmark	20 (15/25) [N5]	15, 10 [N1], [N6]	20	20
Germany	10	10 [N1]	10	10
Finland	15	10 [N1]	15, 10 [N10]	As for royalty
France	10	10	10	10
Greece	20	20	30	No separate provision
Hungary	10	10	10	10
Indonesia	15 (10/25) [N5]	10 [N1]	15	No separate provision
Iceland	10	10	10	10
Ireland	10-15	10 [N1]	10	10
Israel	10	10 [N1]	10	10
Italy	20 (15/10) [N5]	15 [N1]	20	20
Japan	10	10	10	10
Jordan	10	10 [N1]	20	20
Kazakstan	10	10 [N1]	10	10
Kenya	15	15 [N1]	20	17.50
Korea	20 (15/20) [N5]	15, 10 [N1], [N6]	15	15
Kuwait	10	10	10	10
Kyrgyz Republic	10	10	15	15
Libyan Arab Jamahiriya	20	20	30	No separate provision
Malaysia	10	10	10	10
Malta	15 (10/25) [N5]	10 [N1]	15	10
Mangolia	15	15 [N1]	15	25
Mauritius	15 (5/10) [N5]	20 (*Nil* in some cases) [N1]	15	No separate provision
Morocco	10	10 [N1]	10	10
Namibia	10	10 [N1]	10	10
Nepal	20 (10/10) [N5]	15,10 [N1], [N6]	15	
Netherlands	10	10 [N1]	10	10

New Zealand	15	10 [N1]	10	10
Norway	20 (15/25) [N5]	15 [N1]	10	10
Oman	12.5 (10/10) [N5]	10 [N1]	15	15
Philippines	20 (15/10) [N5]	15, 10 [N6]	15[N11]	No separate provision
Poland	15	15 [N1]	22.50	22.50
Portuguese Republic	10	10	10	10
Quatar	5-10	10 [N1]	10	10
Romania	20 (15/25) [N5]	15 [N1]	22.50	22.50
Russian Federation	10	10 [N1]	10	10
Saudi Arabia	5	10	10	
Serbia and Montenergro	15 (5/25) [N5]	10	10	10
Singapore	15 (10/25) [N5]	15, 10 [N6]	10	10
Slovenia	5-15	10	10	10
South Africa	10	10 [N1]	10	10
Spain	15	15 [N1]	20, 10 [N3]	20, 10 [N3]
Sri Lanka	15	10 [N1]	10	10
Sudan	10	10	10	No separate provision
Sweden	10	10 [N1]	10	10
Swiss	10	10 [N4]	10	10
Syria [N7]	*Nil*	7.5 [N1]	10	No separate provision
Tanzania	15 (10/ 10 for at least 6 months prior to the dividend date) [N5]	12.50	20	No separate provision
Thailand	20 (15/10 and company is an industrial company) [N5]	20, 10 [N6]	15	No separate provision
Trinidad and Tobago	10	10 [N1]	10	10
Turkey	15	15, 10 [N1], [N6]	15	15
Turkmenistan	10	10 [N1]	10	10
Uganda	10	10	10	10
Ukraine	10-15	10 [N1]	10	10
United Arab Emirates	15 (5/25) [N5]	12.5, 5 [N6]	10	No separate provision

United Arab Republic [N8]	10	20	30	No separate provision
United Kingdom	15	15, 10 [N1], [N6]	[N2]	[N2]
United States	20 (15/10) [N5]	15, 10 [N6]	[N2]	[N2]
Uzbekistan	15	15 [N1]	15	15
Vietnam	10	10 [N1]	10	10
Zambia	15 (5/25 for at least 6 months prior to the dividend date) [N5]	10 [N1]	10	No separate provision

Notes:

N1: Dividend/interest earned by the Govt and institutions like the Reserve Bank of India exempt from taxation in the source country.

N2: Royalties and fees for technical services are taxable in the source country at (a) 10% for rental of equipment and services provided along with know-how and technical services; (b) in any other case (i) during the first five years of the agreement: 15% if the payer is the Government or specified organisation; and 20% otherwise; and (ii) in subsequent years, 15% in all cases.

Income of Government and certain institutions will be exempt from taxation in the country of source.

N3: Royalties and fees for technical services are taxable in the source country at: (a) 10% for royalties relating to use of, or the right to use, industrial, commercial or scientific equipment; (b) 20% for fees for technical services and other royalties.

N4: 10% of the gross interest on loans made or guaranteed by a bank or other financial institution carrying on bona fide banking or financing business or by an enterprise which holds directly or indirectly at least 20% of the capital.

N5: (A/B) means rate A% applies if at least B% of company shares is owned by the recipient.

N6: The lower rate applies if the recipient is a bank (and, in some DTAAs, an insurance company or specified financial institution).

N7: In the DTAA with Syria, the residence country has the right to tax dividends.

N8: In the UAR (i.e. Egypt) DTAA the source country has the right to tax all four income types.

N9: The lower rate applies to iterary, artistic, scientific works other than films or tapes used for radio or television broadcasting.

N10: The lower rate is for equipment royalty. Rates were 15%-20% during 1997-2001.

N11: If payable under a collaboration agreement approved by the Govt. of India.

Source: Adapted from Government of India, Income Tax Department website http://law.incometaxindia.gov.in/DIT/File_opener.aspx?fn=http://law.incometaxindia.gov.in/Directtaxlaws/dtrr2005/R10.htm accessed June 25, 2010[cited in DasGupta , Arindam,July, 2010].