

Preface

1. ***Author*** has felt when he ***qualified*** as Chartered Accountant (CA) in Year 1985 that ***legal provisions' interpretations*** are ***big challenge*** for legal professionals, govts' officials and public at large ***in India and outside India***.
 2. ***Author*** has ***realized*** that ***something*** should ***be developed to resolve this challenge*** in India and outside India.
 3. ***Author*** has ***started compiling*** Frequently Asked Questions (FAQs) on many subjects where his 100% ***answers are precisely based on Yes or No i.e. white or black nothing is grey***
 4. ***Author*** has ***compiled approximately 150 +(plus) research papers / books with 25 thousand + (plus) pages*** on many prevailing subjects / acts in India and outside India.
 5. ***Author's 1st paper book*** is now ***being published*** under head FAQs on Enforcement Directorate (ED) ***where 571 FAQs are replied*** based on Yes or No i.e. white or black nothing is grey
 6. This ***book*** is also ***containing***
 - (i) Foreign Exchange Management Act (***FEMA***) 1999 and rules / regulations
 - (ii) Prevention of Money Laundering Act (***PMLA***) 2002 and rules / regulations
 - (iii) Fugitive Economic Offenders Act (***FEOA***) 2018 and rules / regulations
 7. This ***book*** is ***published with Sai Kripa and dedicated*** to my father (late) ***Mr. M.R. Agarwal***, Mother ***Mrs. R.D. Agarwal***, wife ***Mrs. Snigdha Agarwal***, daughter ***Ms. Soumya Agarwal***, daughter ***Ms. Sanya Agarwal*** and dedicated team headed by ***Rajat Kumar***
- ***I trust that you will be enriched by reading this book***

With best wishes,
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Author's Profile

Mr. Satish Agarwal (FCA) is heading M/s Satish S Agarwal & Co. Chartered Accountants since 1985 with a team of dynamic young professionals serving clients from various business sectors including public listed companies and government undertakings. Firm was also registered with PCAOB (USA) for undertaking audits and other work of US GAAP.

He is regularly advising on several matters to Institute of Chartered Accountant of India (ICAI) and also to Ministry of Commerce (MoC) for Foreign Trade Agreements (FTAs) and World Trade Organization (WTO) for securing India's best interests.

He is continuously advising on Foreign Investments (FIs) in India and also on Overseas Direct Investments (ODIs) outside India.

He is known for his expertise in incorporating companies in most of countries across the world.

He has written around 150 +(plus) Research papers / books containing 25 thousand +(plus) pages available "freely" on certain portals like:

https://taxguru.in/author/satishagarwal307_1957

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Few out of abovementioned Research papers / books are as under:

- 1. Book on Enforcement Directorate (ED) in India- (Book with 617 pages)***
- 2. Director of Revenue Intelligence (DRI) in India***
- 3. Central Bureau of Investigation (CBI) in India***
- 4. National Investigation Agency (NIA) in India***
- 5. Serious Fraud Investigation Office (SFIO) in India***
- 6. Financial Intelligence Unit (FIU-IND) in India***
- 7. Central Vigilance Commission (CVC) in India***
- 8. Narcotics Control Bureau (NCB) in India***
- 9. Research & Analysis Wing (R&AW) in India***
- 10. Economic Offence Wing (EOW) in India***
- 11. Intelligence Bureau (IB) in India***
- 12. Director General of Income Tax Criminal Investigation (DGITCI) in India***
- 13. National Company Law Tribunal (NCLT) in India***
- 14. Security Exchange Board of India (SEBI) in India***
- 15. Prevention of Corruption (PC) Act, 1988 in India***

16. *Foreign Assets Investigation Unit (FAIU) in India*
17. *Book on International Financial Services Center (IFSC) in India (Book with 290 pages)*
18. *Replacement of Indian Penal Code (IPC) Criminal Procedure (CP) & Evidence Act (EA) in India*
19. *Undisclosed Foreign Income & Asset (UFIA)-Black Money Act, 2015*
20. *Statutory provisions for General Anti Avoidance Rule (GAAR) in India*
21. *Reserve Bank of India (RBI) Act, 1934*
22. *Foreign Exchange Management Act (FEMA) 1999 in India*
23. *Benami Transactions (Prohibition) Amendment Act, 2016 in India*
24. *Advance Pricing Agreements (APAs) in India*
25. *Annual Performance Report (APR) for Investments outside India*
26. *Foreign Trade Agreements (FTAs) executed by India*
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42. *Compounding of Contraventions under FEMA, 1999 in India*
43. *Foreign Branch Office (BO) + Liaison Office (LO) + Project Office (PO) under FEMA, 1999 in India*
44. *Annual Information Statement (AIS) in India*
45. *Investments by Non-Residents (NRIs) in India*
46. *Guidance for Doing Business in United States of America (USA)*
47. *Corporate Tax (CT) Law in UAE*
48. *Acquisition & Transfer for Immovable Properties by Non-Residents (NRs) in India*
49. *Foreign Company's Registration in India*
50. *Auditor Checks and Reporting for Indian Companies in India*
51. *Companies Auditor Report Order (CARO) 2020 in India*
52. *Tax Audit Report (TAR) + Accounting Standard (ASs) in India*
53. *World Trade Organisation (WTO) & Benefits for India*
54. *Deposits by Corporate in India*
55. *Expatriates + Foreign Citizens in India*
56. *Book on Foreign Investments (FIs) by Non-Residents of India (Non-RoI) (Book with 346 pages)*



Double Taxation Avoidance Agreement (DTAA) between India and USA

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Double Taxation Avoidance Agreement (DTAA) between India and USA

1. Meaning of DTAA between India and other country

- (i) **DTAA is tax treaty to be signed between 2 countries to help the taxpayer in avoiding double taxation on same income in 2 countries like India + USA (both).**
- (ii) **Hence DTAA is helping a resident of 1st country as earning the incomes in 2nd country to avoid double taxation on same income in 2 countries like India + USA (both).**
- (iii) **DTAA is helping the comprehensive treaty for 100% source of incomes or specific source of income like income from shipping + air travel + etc. (any)**
- (iv) **Now Govt. of India (Govt.) has signed approx. 90 DTAA's (treaties) with other countries like Australia + Canada + United Arab Emirates (UAE) + Germany + Mauritius + Singapore + United Kingdom (UK) + United States of America (USA) + etc. These 90 DTAA's are comprehensive + specific (both).**
- (v) **Hence Govt. has signed the DTAA's to avoid double income tax on same income in 2 countries like India + outside India (both) + to help the taxpayer from hardships.**

2. Meaning of DTAA between India and USA

- (i) **DTAA between India and USA is covering the income tax (only). DTAA is written in English + in Hindi (both) and signed on September 12th, 1989**
- (ii) **Hence DTAA between India and USA is not covering the non-income tax like GST + indirect taxes (both).**
- (iii) **Several treaties are signed between India and USA beside DTAA. These other treaties are impacting the USA tax law's + Indian tax law's (both) like:-**
 - (a) **Passive Income (PI) treaty**
 - (b) **Foreign Pension Fund (FPF) treaty**
 - (c) **Foreign Account Tax Compliance Act (FATCA) treaty for asset disclosure in India**



3. Applicability of DTAA between India and USA

- (i) DTAA between India and USA is covering following persons:-
 - (a) Individual
 - (b) Trust
 - (c) Partnership firm
 - (d) Company
 - (e) Any other entity
- (ii) DTAA between India and USA is covering following taxes:-
 - (a) Federal (central) Income tax in USA (only). Hence not covering the state's income tax + GST + Indirect Taxes (all) in USA.
 - (b) Income tax + surcharge + education cess (all) in India. Hence not covering the GST + indirect taxes (both) in India

4. Advantages (benefits) of DTAA between India and USA

- (i) DTAA is offering an exemption from Double Taxation to Indian investors + USA investors (both) to invest + to allow the Foreign Tax Credit (FTC) against tax deducted + tax paid (both) in India + in USA.
- (ii) DTAA is offering the reduction in rate of Income tax through prefixed rate of taxes in India + in USA (both).
- (iii) DTAA is offering the lower TDS through prefixed rate of TDS on interest + royalty + dividend (all) incomes in India + in USA (both).

5. Mandatory documents for availing the DTAA advantages

- Deductee of TDS as desired to avail DTAA advantages is needed to submit certain documents in scheduled time to deductor of TDS
 - (i) Self-certified copy of PAN of deductee of TDS
 - (ii) Self-certified copy of PIO (OCI) card of deductee of TDS where PIO card is issued by Indian embassy as located outside India
 - (iii) Self-certified copy of passport of deductee of TDS
 - (iv) Self-certified copy of Tax Residence Certificate (TRC) of deductee of TDS



6. Determination of Residential status of Person or Entity (both)

- (i) Generally tax resident is obliged to pay income tax under income tax act of country as based on residence + citizenship + domicile + place of management + place of incorporation + other similar factor (any).
- (ii) However tax resident of India + tax resident of USA as simultaneously for (both) countries are required to use the Tie-breaker rules for determination of residential status.
- (iii) Hence determination of residential status to be decided as based on certain factors under tie-breaker rules :-
 - (a) Taxpayer is treated as permanent residence of country where permanent residence is available.
 - (b) Taxpayer is treated as permanent residence of country as closest personal or economic ties (both) existed.
 - (c) Taxpayer is treated as permanent residence as based on habitual habitation where taxpayer is not having a permanent residence in India + USA (both) countries
 - (d) Taxpayer is treated as permanent residence as based on citizenship where taxpayer is usual abode (ordinarily reside) in India or USA (both) countries
 - (e) Taxpayer is treated as permanent residence as based on competent authorities of India + USA (both) countries where taxpayer is not citizen of India and USA (both) countries.

7. Elimination of Double Taxation effect through Indo USA DTAA

- (i) Elimination of Double Taxation through DTAA in India
 - Elimination of Double Taxation through DTAA in India for taxpayer having residency in India by claiming of Foreign Tax Credit (FTC) against tax paid + TDS (both) in USA :-
 - (a) By tax resident of India himself + by other person on behalf of tax resident of India (both)
 - (b) By deductor of TDS on equity shares of USA (domestic) company against shareholding by tax resident of India where shareholding of tax resident of India is exceeding 10% of total equity shares capital of USA company.



(c) *However tax residence of India is not permitted to claim the income tax refund in India against Income tax paid + TDS (both) in USA is exceeding the income tax payable in India*

(ii) *Elimination of Double Taxation through DTAA in USA*

- *Elimination of Double Taxation through DTAA in USA for taxpayer having residency in USA by claiming of Foreign Tax Credit (FTC) against tax paid + TDS (both) in India :-*

(a) *By resident of USA himself + by other person on behalf of resident of USA (both)*

(b) *By deductor of TDS on equity shares of Indian (domestic) company against shareholding by resident of USA where shareholding of resident of USA is exceeding 10% of total equity shares capital of Indian company.*

(c) *However tax residence of USA is not permitted to claim the income tax refund in USA against Income tax paid + TDS (both) in India in India is exceeding the income tax payable in USA*

8. Meaning of General Scope under Indo USA DTAA (Article 1)

(i) *DTAA is applicable to 100% tax resident of India + 100% tax resident of USA (both) except as specifically is provided in Indo USA DTAA*

(ii) *Moreover DTAA is not restricting in any manner + exclusion + exemption + deduction + credit + other allowance + etc. (all).*

9. Meaning of Taxes as Covered under Indo USA DTAA (Article 2)

(i) *Taxes as covered under DTAA in India*

(a) *Indian Income Tax*

(b) *Indian Surcharge on income tax*

(c) *Indian Education + health (both) cesses on income-tax + surcharge (both)*

(ii) *Taxes as not covered under DTAA in India*

- *Indian Income tax on undistributed income of company*

(iii) *Taxes as covered under DTAA in USA*

(a) *USA Federal (central) Income Tax as imposed by Internal Revenue Code (IRC)*

(b) *Excise tax as imposed on insurance premium paid to foreign insurer + private foundation (both)*



(iv) **Taxes as not covered under DTAA in USA**

- (a) **Accumulated Earnings Tax (AET)**
- (b) **Personal Holding Company Tax (PHCT)**
- (c) **Social Security Tax (SST)**

(v) **Taxes as not covered under DTAA in India + USA (both)**

- (a) **Tax + penalty (both) against default in legal compliance**
- (b) **Tax + penalty (both) against omission in legal compliance**

(vi) **Taxes as covered under DTAA in India + USA (both)**

- (a) **Any identical or substantially similar tax as imposed after date of signing of DTAA between India and USA.**
- (b) **Competent authority in India + Competent authority in USA (both) to notify to each other about significant change in taxation law in India + USA (both)**

10. Meaning of Definitions under Indo USA DTAA (Article 3)

(i) **Meaning of India under Indo USA DTAA**

- **Word India is including 100% land + territorial sea + air space + other maritime zone (all) where India has sovereign right + other right + jurisdiction (any) under Indian law + international law (both)**

(ii) **Meaning of USA under Indo USA DTAA**

- **Word USA is including 100% territorial areas of United States of America + territorial sea + air space + sea bed + subsoil (all) where USA has sovereign right + other right + jurisdiction (any) under USA law + international law (both)**

(iii) **Meaning of Company under Indo USA DTAA**

- **Word Company is including 100% body corporates to be treated as company or body corporate for determination of Income Tax in India + USA (both).**

(iv) **Meaning of Competent Authority under Indo USA DTAA**

- (a) **Word Competent Authority in India is Ministry of Finance (Department of Revenue) + authorised representative (both) of Govt. of India**



(b) **Word Competent Authority in USA is Secretary of Treasury + delegate (both) + authorised representative of Govt. of USA**

(v) **Meaning of application of Indo USA DTAA**

- **Competent Authority in India + in USA (both) are authorized to agree on common meaning of word as not specifically defined in DTAA through Mutual Agreement Procedure (MAP) Article 27**

11. Meaning of Resident under Indo USA DTAA (Article 4)

(i) **Word person is Including any person under laws of India or USA (any) as based on :-**

- (a) **Domicile**
- (b) **Residence**
- (c) **Citizenship**
- (d) **Place of management**
- (e) **Place of incorporation**
- (f) **Any other criterion of similar nature**

(ii) **Word person is not Including any person under laws of India or USA (any) as based on :-**

- (a) **Where person is liable to tax in India or USA (any) against income as based on source (only)**
- +**
- (b) **Where income is derived or paid by partnership + estate + trust (any) as tax resident of India or USA (any) in hands of partner or beneficiary (both).**

12. Meaning of Permanent Establishment (PE) under Indo USA DTAA (Article 5)

(i) **Meaning of PE is fixed place for carrying business 100% (wholly) + not 100% (substantially) both.**

(ii) **Meaning of PE is fixed place for carrying business :**

- (a) **Place of Management**
- (b) **Branch**
- (c) **Office**
- (d) **Factory**
- (e) **Workshop**
- (f) **Mine + oil well + gas well + quarry + any other place for extracting of natural resource (all)**



- (g) Warehouse for providing the storage facility for others as not for himself (only)
 - (h) Farm + plantation + any other place (all) where agriculture + forestry + plantation + any related activity is carried on (all).
 - (i) Store + premise (both) used for sales outlet
 - (j) Installation + structure (both) used for exploration + exploitation of natural resource where minimum use is exceeding the 120 day (in aggregate) in 12 month.
 - (k) Building site + construction + installation + assembly project + supervisory activity where minimum use is exceeding the 120 day (in aggregate) in 12 month.
 - (l) Furnishing of service other than already included services as defined under Royalties and Fees for Included Services (Article 12) of Indo USA DTAA by entity through employee or other personnel (both) where minimum period is exceeding the 90 day (in aggregate) in 12 month or service is performed for Associate Enterprise (AE) as defined under Associated Enterprises (Article 9)
- (iii) Meaning of PE is not including following fixed places :
- (a) Use of facility as solely for storage + display + occasional delivery of goods or merchandise (only) by enterprise.
 - (b) Maintenance of stock of goods or merchandise as solely for storage + display + occasional delivery (only) by enterprise.
 - (c) Maintenance of stock of goods + merchandise (both) solely for processing (only) by another enterprise.
 - (d) Maintenance of fixed place of business as solely for purchasing of goods + Merchandise + collecting of information (only) by enterprise.
 - (e) Maintenance of fixed place of business as solely for advertising + supply of information + scientific research + any other activity (all) having preparatory + auxiliary character (only) by enterprise.
- (iv) Meaning of Deemed PE is including following fixed places :



- (a) Where enterprise is having an authority + habitually exercising to conclude on behalf of enterprise (both) except activities are restricted to be exercised through fixed place of business (only).
- (b) Where enterprise is not having any authority but habitually maintaining the stock of goods + merchandise + regularly delivering the goods or merchandise (all) behalf of enterprise + some additional activities also performing.
- (c) Where enterprise is habitually securing the orders for 100% (wholly) + not 100% (substantially wholly).
- (v) Meaning of Not - Deemed PE is including following fixed places :
 - (a) Where enterprise is carrying on business through broker + general commission agent + any other agent of independent status as acting in ordinary course of business.
 - +
 - (b) Moreover activities of agent are not devoting the 100% (wholly) or not 100% (substantially wholly) on behalf of enterprise + transactions are made at Arm Length Price (ALP) between agent and enterprise.

13. Meaning of Income from Real Property under Indo USA DTAA (Article 6)

- (i) Where income as derived by tax resident of India or USA (any) from real property (immovable property) + income from agriculture + income from forestry (all) located in India or USA (any)
- (ii) Hence income as derived by tax resident of India or USA (any) from real property to be taxed as based on location of real property (only).

14. Meaning of Business Profit under Indo USA DTAA (Article 7)

- (i) Attributable business profit to be taxed in hands of PE in India where business + sale of goods or merchandise + other business activities (all) carried through PE as located in India by entity of USA.
- Or
- (ii) Attributable business profit to be taxed in hands of PE in USA where business + sale of goods or merchandise + other business activities (all) carried through PE as located in USA by entity of India.



(iii) **Determination of attributable business profit of PE**

- (a) **Deduction is permitted for reasonable allocation of executive + general administrative expenses + research and development expenses + interest + any other expense (all) incurred by PE + subject to limitation of taxation laws in India or USA (any)**
- (b) **Moreover deduction is permitted for payments to head office against reimbursement of actual expenses of PE (only).**
- (c) **However deduction is permitted for payments to head office of banking enterprise against interest on money as borrowed by PE in India or USA (any) from head office**
- (d) **Deduction is not permitted for payment to head office against royalties + fees + other similar payment against use of patent + know-how + any other right + commission + any other charge for specific service as performed by head office to PE.**
- (iv) **Attributable business profit to be taxed in hands of PE in India or USA (any) where profits are derived through trade + business + income from furnishing of services except as defined in (Article 12) (Royalties and Fees for Included Services) including income from rental tangible personal property.**
- (v) **Attributable business profit to be taxed in hands of PE in India or USA (any) where profits are derived through assets + activities of PE.**
- (vi) **Attributable business profit as not to be taxed in hands of PE in India or USA (any) where purchases of goods or merchandise (only) made by PE of enterprise.**

15. Meaning of Shipping and Air Transport under Indo USA DTAA (Article 8)

- (i) **Profits to be taxed in India in hands of enterprise as located in India where Profit as derived against operation of ship + aircraft (both) under international traffic.**

Or

- (ii) **Profits to be taxed in USA in hands of enterprise as located in USA where Profit as derived against operation of ship + aircraft (both) under international traffic.**

- (iii) **Profits to be taxed in India or USA (any) in hands of enterprise against transportation of passenger + mail + livestock + goods as carried by owner + lessee + charterer of ship + aircraft + including the followings:-**



- (a) *Sale of tickets for transportation on behalf of other enterprise.*
- (b) *Sale of other activity as directly connected with transportation.*
- (c) *Rental of ships + aircraft (both) + incidental to any activity as directly connected with transportation.*
- (iv) *Profits to be taxed in India or USA (any) in hands of enterprise against use + maintenance + rental of containers + trailers + barges + related equipment for transport of containers as used for operation of ships or aircrafts (both) under international traffic.*
- (v) *Profits to be taxed in India or USA (any) in hands of enterprise against participation in pool + joint business + international operating agency (all).*
- (vi) *Profits to be taxed in India or USA (any) in hands of enterprise against alienation of ship + aircraft + container (all) owned + operated (both) by enterprise.*

16. Meaning of Associated Enterprises (AE) under Indo USA DTAA (Article 9)

(i) Meaning of AE under Indo USA DTAA :-

(a) *Where enterprise or person (both) of India is participating as directly + indirectly (both) in management + control + capital of enterprise of USA. Hence enterprise of India + enterprise of USA (both) known as AE*

+

(b) *Where enterprise or person (both) of USA is participating as directly + indirectly (both) in management + control + capital of enterprise of India. Hence enterprise of USA + enterprise of India (both) known as AE*

(c) *Where conditions are made + imposed (both) between 2 dependent enterprises for having the commercial or financial relations as different from conditions to be made + imposed (both) between 2 independent enterprises. Hence dependent enterprise of India + enterprise of USA (both) known as AE*

(ii) Adjustment of business profit against business transaction between 2 dependent enterprises



- *Adjustment to be made in business profit against extra price charged by dependent enterprise from AE to be taxed in hands of purchaser of goods + services of India or USA (any) accordingly.*

17. Meaning of Income from Dividend under Indo USA DTAA (Article 10)

- (i) (a) *Dividend paid by Indian company to tax resident of USA to be taxed in USA.*
- (b) *Dividend paid by USA Company to tax resident of India to be taxed in India.*
- (ii) (a) *However dividend paid by Indian company to tax resident of USA to be taxed in USA @ 15% where tax resident of USA is beneficial owner of equity shares as exceeding the 10% total equity share of Indian company.*

Or

- *@25% where tax resident of USA is beneficial owner of equity shares as not exceeding the 10% total equity share of Indian company*

- (b) *Hence vice versa the dividend paid by USA company to tax resident of India be taxed in India @ 15% where tax resident of India is beneficial owner of equity shares as exceeding the 10% total equity share of USA company.*

Or

- *@ 25% where tax resident of India is beneficial owner of equity shares as not exceeding the 10% total equity share of USA Company*

18. Meaning of Income from Interest under Indo USA DTAA (Article 11)

- (i) (a) *Interest as arises in India + paid to tax resident of USA like bank or financial institution (both) to be taxed in USA.*
- (b) *Interest as arises in USA + interest as paid to tax resident of India like bank or financial institution (both) to be taxed in India.*
- (ii) (a) *However Interest paid on loan as granted by tax resident of USA like bank or financial institution to be taxed in USA @ 10% where tax resident of USA is beneficial owner of equity shares as exceeding the 10% total equity share of Indian bank or financial institution.*

Or

- *@15% where tax resident of USA is beneficial owner of equity shares as not exceeding the 10% total equity share of Indian bank or financial institution.*

- (b) *Hence vice versa the Interest paid on loan as granted by bank or financial institution as tax resident of India be taxed in India the @ 10% where tax*



resident of India is beneficial owner of equity shares as exceeding the 10% total equity share of USA bank or financial institution.

Or

- *@ 15% where tax resident of India is beneficial owner of equity shares as not exceeding the 10% total equity share of USA bank or financial institution*

19. Meaning of Royalties and Fees for Included Services DTAA (Article 12)

(i) (a) *Royalties and fees for included services as arising in India + paid to tax resident of USA (both) to be taxed in USA*

Or

(b) *Royalties and fees for included services as arising in USA + paid to tax resident of India (both) to be taxed in India*

(ii) *However royalties and fees for included services as arising in India under law of India to be taxed in India where beneficial owner of royalties or fees for included services is resident of USA.*

- *Income tax is not to exceed during first 5 taxable year of DTAA from 1990 to 1995:-*

(a) *@ 15% of gross amount of royalties or fees for included services as defined in (Article 12) where payer of royalties or fees is Govt. + political sub-division + public sector company (all)*

Or

(b) *@ 20% of gross amount of royalties or fees for included services as defined in (Article 12) where payer of royalties or fees is non Govt + non-political sub-division + non-public sector company (all)*

- *Income tax is not to exceed during subsequent taxable years from 1996 :-*

(c) *@ 15% of gross amount of royalties or fees for included services as defined in (Article 12)*

(iii) *Meaning of Royalties under Indo USA DTAA (Article 12)*

(a) *Payments as received against consideration for use + right to use + copyright of literary + artistic + scientific work + cinematograph film + work on film + tape + any other mean of reproduction for use with radio + television broadcasting + patent + trade mark + design + model + plan + secret formula + process + information for industrial + commercial + scientific*



experience + gains as derived from alienation of right or property as contingent on productivity + use + disposition

(b) Payments as received against consideration for use + right to use any industrial + commercial + scientific equipment except payments as derived by enterprise as defined under paragraph 1 of Shipping and Air Transport (Article 8)

(iv) Meaning of fees for included services is permitted under Indo USA DTAA

● *Meaning of fees for included services to include the payments of any kind to any person against consideration for rendering of technical + consultancy services + provision of services of technical + other personnel like :-*

(a) Ancillary + subsidiary for application + enjoyment (both) right + property + information.

Or

(b) Available technical knowledge + experience + skill + know-how + processes + consist of development + transfer of technical plan + technical design (all).

(v) Meaning of fees for included services is not permitted under Indo USA DTAA

(a) Service as Ancillary + subsidiary + inextricably + essentially as linked to sale of property except sale as described under paragraph 12 (iii) (a) as abovementioned.

(b) Service as Ancillary + subsidiary as linked to rental of ship + aircraft + container + other equipment as used for operation of ship + aircraft under international traffic.

(c) Service as Teaching in + teaching by educational institution (both)

(d) Service for personal use of individual + individual is making payment (both).

(e) Service for employee of resident taxpayer + making payment by individual + firm of individual against professional service as defined under Independent Personal Services (Article 15) of Indo USA DTAA.

(vi) Royalty + fee for included services (both) not covered under (Article 12) of Indo USA DTAA

(a) Royalty + fee for included services (both) not covered under (Article 12) of Indo USA DTAA where beneficial owner of royalty + fee for included services (both) is tax resident of India



+

(b) Carry on business in USA where royalty + fee for included services (both) arises through PE or fixed base (both) located in USA

+

(c) Royalty + fee for included services (both) attributable to PE and fixed base (both) in USA under Business Profits (Article 7) or Independent Personal Services (Article 15) to be taxed in USA.

(d) Hence Royalty + fee for included services (both) in USA to be taxed in USA where tax resident of India is carrying his business through PE or fixed base (both) to be taxed in USA

- Abovementioned answer will be vice-versa where tax resident of USA is beneficial owner of royalty + fee for included services (both) + carrying his business in India through PE or fixed base (both) in India to be taxed in India

(vii) Meaning of deemed royalty + fee for included services (both) under Indo USA DTAA

- Royalty + fee for included services (both) deemed to arise in India where payer is Govt. of India or political sub-division or local authority + tax resident of India + having PE or fixed base in India to be taxed in India

20. Meaning of Income from Capital Gains under Indo USA DTAA (Article 13)

(i) India + USA (both) are permitted to levy income tax on capital gains in accordance the domestic law as Capital Gains are not covered under Indo USA DTAA (Article 13)

(ii) Business gains against shipping + Air Transport (both) are covered under Indo USA DTAA (Article 8)

(iii) Hence capital gains are not covered under Indo USA DTAA – Article 8 + Article 13 (both).

21. Meaning of Permanent Establishment Tax under Indo USA DTAA (Article 14)

(i) Company as tax resident of India is liable for Permanent Establishment Tax (PET) in addition to normal tax to be paid in USA where portion of business profit of company is liable for tax in USA as not to exceed the amount of dividend

+



- (ii) *PET not to exceed the amount of interest as deductible in USA for computing the profits of company as attributable to PE or fixed base (both) in USA under Income from Immovable Property (Real Property) (Article 6) + Royalties and Fees for Included Services (Article 12) + Gains (Article 13) to be taxed in USA .*
- *Abovementioned answer will be vice - versa in USA where tax resident of USA is deriving income from India.*

22. Meaning of Independent Personal Services under Indo USA DTAA (Article 15)

- (i) *Income as derived by individual or firm of individuals (both) being tax resident of India through professional service + independent personal service + activity of similar nature in USA to be taxed in India. However income to be taxed in USA in following circumstances.*

(a) *Where individual or firm of individuals (both) having a fixed base or regularly personally available (both) in USA. Hence income as attributable to fixed base in USA to be taxed in USA*

Or

(b) *Where individual or firm of individuals (both) staying as exceeding the 90 day (in aggregate) in USA. Hence income to be taxed in USA*

- *Abovementioned answer will be vice - versa in USA where tax resident of USA is deriving income from India.*

- (ii) *Meaning of professional services includes:-*

- (a) *Independent scientific*
- (b) *Independent Literary*
- (c) *Independent Artistic*
- (d) *Independent Educational or teaching activity (both)*
- (e) *independent activity of physician*
- (f) *Independent surgeon*
- (g) *Independent lawyer*
- (h) *Independent engineer*
- (i) *Independent architect*
- (j) *Independent dentist*
- (k) *Independent accountant*



23. Meaning of Dependent Personal Services under Indo USA DTAA (Article 16)

- (i) Generally salaries + wages + other similar remuneration (all) derived by tax resident of India against employment in India to be taxed in India.
- (ii) However salaries + wages + other similar remuneration (all) derived by tax resident of India against employment in USA to be taxed in USA.
- (iii) This provision is subject to provisions under certain Articles like:-
 - (a) Directors' Fees (Article 17)
 - (b) Income Earned by Entertainers and Athletes (Article 18)
 - (c) Remuneration and Pensions in respect of Government Service (Article 19)
 - (d) Private Pensions, Annuities, Alimony and Child Support (Article 20)
 - (e) Payments received by Students and Apprentices (Article 21)
 - (f) Payments received by Professors, Teachers and Research Scholars (Article 22)
- (iv) Mandatory Satisfaction is required for applicability of provisions (Article 16)
 - (a) Where employee is staying in USA as not exceeding the 183 day (in aggregate) during taxable year
 - +
 - (b) Where remuneration is paid by non-resident employer himself or paid by other on behalf of non-resident employer
 - +
 - (c) Where remuneration is not borne by PE or fixed base or trade or business of non-resident employer in USA.
- (v) Abovementioned provision under (Article 16) is not applicable where remuneration is received against employment as exercised on ship or aircraft under international traffic. Hence employee as tax resident of India to be taxed in India (only).

24. Meaning of Income from Director's Fee under Indo USA DTAA (Article 17)

- (i) Directors' fee + similar payments (both) derived by tax resident of USA in capacity as director of Board of Directors (BODs) of Indian company to be taxed in India.
- (ii) Directors' fee + similar payments (both) derived by tax resident of India in capacity as director of Board of Directors (BODs) of USA Company to be taxed in USA.



25. Meaning of Income Earned by Entertainers and Athletes under (Article 18)

- (i) (a) *Income as derived by tax resident of India as entertainer like theatre + motion picture + radio + television artiste + musician+ athlete as exercised in USA + to be taxed in India (both).*
- (b) *But entertainer + athlete (both) deriving Income should not exceed the USD 1500 during tax year after deduction against 100% expenses as incurred by him for visit + performance (both).*
- (ii) *Income as derived by tax resident of India as entertainer + athlete (both) + activity is exercised in USA but income is received by other person + to be taxed in USA (both) under following heads :-*
 - (a) *Business Profits (Articles 7)*
 - (b) *Independent Personal Services (Article 15)*
 - (c) *Dependent Personal Services (Article 16)*
- *However entertainer + athlete + other person (all) established that not participated as directly + indirectly (both) in profits of other person in any manner including receipt of deferred remuneration + bonus + fee + dividend + partnership distribution + any other distribution (all).*
- (iii) *Income as derived by tax resident of India as entertainer + athlete (both) to be taxed in India beside activity is exercised in USA where visit of entertainer + athlete (both) sponsored as 100% (wholly) + not 100% (substantially) from public fund of Govt. or political sub-division or local authority (any)*
- (iv) *Competent authority in India + in USA (jointly) permitted to increase the amount of USD 1500*
- *Abovementioned answer will be vice - versa in USA where tax resident of USA is deriving income from India.*

26. Meaning of Income from Govt's Pension under Indo USA DTAA (Article 19)

- (i) *Income from Govt's non-pension service*
 - (a) *Remuneration other than pension as paid by Govt. of India + political subdivision + local authority (any) to individual against services as rendered to be taxed in India*



(b) *However remuneration to be taxed in USA where services are rendered in USA + individual is tax resident of USA + citizen of USA (all) or not became as resident of USA for rendering the services (only).*

(ii) *Income from Govt's pension service*

(a) *Remuneration as pension as paid by Govt. + political subdivision + local authority (any) to individual against services as rendered to be taxed in India*

(b) *However remuneration to be taxed in USA where services are rendered in USA + individual is tax resident of USA + citizen of USA (both) resident of USA for rendering the services (only).*

27. Meaning of Income from Private Pension under Indo USA DTAA (Article 19)

(i) *Income from private (non-Govt.) pension + annuity as derived by tax resident of India to be taxed in India where place of source of income in India.*

(ii) *Income from private (non-Govt.) pension + annuity as derived by tax resident of USA to be taxed in USA where place of source of income is India to be taxed in USA*

(iii) *However income from social security benefits + other public pensions as paid in India to tax resident of USA or citizen of USA to be taxed in India*

(iv) *Income from social security benefits + other public pensions as paid in USA to tax resident of India or citizen of India to be taxed in USA*

28. Meaning of Social Security / Public Pension under Indo USA DTAA (Article 20)

(i) *Money as received in India from social security or public pension by tax resident or citizen of USA to be taxed in India.*

(ii) *Money as received in USA from social security or public pension (both) by tax resident of India to be taxed in USA.*

29. Meaning of Payment Received by Students and Apprentices under (Article 21)

(i) *Student + business apprentice (both) tax resident of India before visiting USA for education + training (both) not to be taxed in USA against payment as received for maintenance + education + training (all)*

(ii) *Moreover student + business apprentice (both) tax resident of India not to be taxed in USA against payment as received for grant + scholarship + remuneration from employment (all).*



- (iii) *However benefits of (Article 21) are permitted for period as not exceeding the reasonable + customarily (both) required to complete the education + training (both) undertaken.*
- (iv) *Individual be deemed tax resident of India in current year as was tax resident in immediately preceding tax year.*
- *Abovementioned answer will be vice - versa in USA where tax resident of USA is deriving income from India.*

30. Meaning of Payments as Received by Professor + etc. under (Article 22)

- (i) *Individual as visiting to USA for working as professor + teacher + research scholar + etc. (all) for period as not exceeding the 2 year against teaching + engaging in research (both) at university + college + other recognised educational institution (any).*
- (ii) *Income from research (only) exempted from income tax in India where research is undertaken by individual in public interest + not primarily for benefit of private person (both).*
- *Abovementioned answer will be vice - versa in USA where tax resident of USA is deriving income from India.*

31. Meaning of Other Income under Indo USA DTAA (Article 23)

- (i) *(Article 23) as applicable where income not expressly is covered under any other article of Indo USA DTAA.*
- (ii) *(Article – 23) as applicable on income from immovable property as defined under paragraph 2 of Article 6 [Income from Immovable Property (Real Property)] where beneficial owner of income as tax resident of India is carrying business through PE + performing independent personal services through fixed base (both) + income is attributable to PE or fixed base (both) in USA under Business Profits (Article 7) or Independent Personal Services (Article 15) both to be taxed in USA.*
- *Abovementioned answer will be vice - versa in USA where tax resident of USA is deriving income from India.*



32. Meaning of Limitation of benefits under Indo USA DTAA (Article 24)

(i) **Non individual person** (like company + partnership firm + etc.) as resident of India + deriving income from USA (both) permitted for tax relief against income tax deducted (TDS) + income tax paid (both) in USA:-

(a) Where 1 or more individual residents + Govt. of India + political sub-division + local authority of India (any) is having beneficial interest as exceeding the 50% directly + indirectly (both) in non-individual person

+

(b) Where income of non-individual person is not used substantially as directly + indirectly (both) for meeting general liabilities + liabilities for interest or royalty (both) for resident of India + Govt. of India + Political sub division + local authority (any).

- Abovementioned answer will be vice - versa in USA where tax resident of USA is deriving income from India.

(ii) Abovementioned provision is not applicable where income as derived from USA against connection or incidental (both) by non-individual person for trade or business (both).

(iii) Abovementioned provision is not applicable where income as derived by Indian company as regularly being traded at recognized stock exchange :-

- In India:-


(a) At any stock exchange as recognised by Govt. of India under Securities Contracts Regulation Act, 1956

(b) At any other stock exchange as mutually agreed by competent authority of India + USA (both).

- In USA:-

(a) At NASDAQ System as owned by National Association of Securities Dealers, Inc.

(b) At any stock exchange as registered with Securities and Exchange Commission under national securities exchange through Securities Act of 1934.

 (iv) Competent authority in India + USA (both) permitted to grant tax relief against income tax where non individual person is not entitled to avail a relief

33. **Meaning of Tax Relief from Double taxation under Indo USA DTAA (Article 25)**

- (i) **Intelligent Revenue Service (IRS) of USA is permitting the Foreign Tax Credit (FTC) to resident or citizen of USA against income tax paid in India by himself + paid on behalf of him (both).**
- (ii) **Income tax department of India is permitting the Foreign Tax Credit (FTC) to resident of India against income tax paid in USA by himself + paid on behalf of him (both).**

34. **Meaning of Non- Discrimination under Indo USA DTAA (Article 26)**

- (i) (a) **Citizen of India + Citizen of USA (both) not required to obey to compliance of provisions + legal obligations (both) which are not same (different) for resident of India + resident of USA (both).**
 - (b) **Hence compliance of provisions + legal obligations (both) to be same for resident of India + resident of USA (both)**
- (ii) **However Discrimination is permitted under :-**
 - (a) **Paragraph 3 Business Profits (Article 7)**
 - (b) **Paragraph 1 of Associated Enterprises (Article 9)**
 - (c) **Paragraph 7 of Interest (Article 11)**
 - (d) **Paragraph 8 of Royalties and Fees for Included Services (Article 12)**
- (iii) (a) **Discrimination provision is not applicable on enterprise in India where enterprise is owning + controlling (both) equity capital of USA (domestic) company as directly + indirectly by 1 or more than 1 resident of USA as 100% (wholly) + not 100% (substantially) both.**
 - (b) **Hence enterprise in India is not treated as discriminated for taxation + any legal requirement (both).**
- **Abovementioned answer will be vice - versa in USA where tax resident of USA is deriving income from India.**
- (iv) **Indo USA DTAA is not preventing the India or USA (any) for imposing any tax as described under Permanent Establishment Tax (Article 14) + under Business profits (Article 7) both.**



35. Meaning of Mutual Agreement Procedure (MAP) under (Article 27)

- (i) Tax resident of India is permitted to approach the competent authority of India where tax resident of India has received a notice from income tax department in India + realizing that result of income tax to be computed is not in accordance with Indo USA DTAA (both) beside the remedy for same is available under Indian income tax laws.
- (ii) (a) Competent authority in India is required to review the objection as raised to arrive at satisfactory solution for tax resident of India
- (b) Competent authority in India is permitted to resolve the objected issue (matter) through MAP with Competent authority in USA where competent authority in India (themselves) is not able to arrive at satisfactory solution
- (iii) (a) Competent authority in India + in USA (both) mutually to put the best efforts to resolve through MAP against interpretation or application of Indo USA DTAA.
- (b) However competent authority in India + in USA (both) permitted to amend the Indo USA DTAA for eliminating an effect of double taxation as not already existed in DTAA.
- (iv) (a) Competent authority in India + in USA (both) permitted to communicate directly to tax resident in India for reaching on mutual consent through consultation to develop the Appropriate Bilateral Procedure (ABP) + condition + method + technique (all) for implementation of MAP.
- (b) Competent authority in India + in USA (both) permitted to devise the ABP + condition + method + technique (all) for facilitating the abovementioned bilateral action + implementation of MAP (both).
- Abovementioned answer will be vice - versa in USA where tax resident of USA is deriving income from India.

36. Meaning of exchange of Information + Administrative Assistance (Article 28)

- (i) (a) Competent authority in India + in USA (both) permitted to exchange the informations + documents (both) for carrying out the compliance of provisions for taxes under Indo USA DTAA + domestic laws of India or USA (any)



+

- (b) To prevent from fraud or evasion (any) against taxes to be recovered
- (ii) (a) Exchange of information is not restricted under General Scope (Article 1) + information as received by Govt. of India + Govt. of USA (both) treated as secret as obtained under domestic laws.
- (b) Information is treated as secret by transmitting country like India + USA (both).
- (c) Information + document (both) to be disclosed to person + authority + court + administrative body (all) involved in assessment + collection + administration of enforcement + prosecution (all) against finalisation of appeal for taxes in accordance with Indo USA DTAA.
- (d) Person + authority (both) permitted to use the information + document (both) for judicial purpose (only)
- (e) Person + authority (both) permitted to disclose the information + document (both) in public Court's proceedings or in judicial decision (any)
- (f) Competent authority in India + in USA (both) permitted to decide about appropriateness + nature of information or document (any) under exchange of information against tax avoidance in India + in USA (both) through consultation + development of appropriate condition + method + technique.
- (iii) (a) Exchange of information + document (both) may be on routine basis or on request (any).
- (b) Competent authority in India + in USA (both) permitted to mutually agree from time to time about list of informations + documents (both) to be delivered on routine basis.
- (iv) Provisions for exchange of informations are not mandatory :
- (a) For carrying the administrative measures where variances (differences) existed against laws + administrative practices between India and USA.
- (b) For supplying the informations as not obtainable under laws or normal course of administration in India or in USA (any).



(c) For supplying the informations as to be disclosed the trade + business + industrial + commercial + professional secret + trade process + information (any) against public policy in India or USA (any).

(v) Competent authority in India + in USA (both) required to provide the informations + document (both) in accordance with Information and Administrative Assistance (Article 28) in form of depositions of witnesses + authenticate copies of unedited original documents + books + papers + statements + records + accounts + writings (all) equivalent to depositions + documents (both) permitted under taxation laws in India + USA (both).

(vi) Applicability of Information and Administrative Assistance (Article 28) for following taxes:-

(a) In India

- Taxes to be included the Income Tax + Wealth Tax + Gift tax (all)

(b) In USA

- Taxes to be included the 100% as imposed under Title 26 of United States Code (USC).

37. Meaning of Diplomatic Agents and Consular Officer under (Article 29)

- DTAA between India and USA is not affecting the fiscal privileges of diplomatic agent + consular officer under general rules of international law + under provision of special agreement (all).

38. Meaning of Entry Into Force under Indo USA DTAA (Article 30)

- (i) India + USA (both) required to notify in writing through diplomatic channel after 100% completion about legal procedure to bring DTAA into force.
- (ii) DTAA between India and USA to enter into force on date of letter of notification + date of effective for applicability of provision.

(a) In India:-

- DTAA to be applied for income tax at source (TDS) against amount paid + amount credited (both) from April 1st after signing of DTAA



(b) *In USA:-*

- *DTAA to be applied for income tax at source (TDS) against amount paid + amount credited (both) from January 1st after signing of DTAA*
- *DTAA to be applicable for non-income tax from January 1st after signing of DTAA*

39. Meaning of Termination under Indo USA DTAA (Article 31)

- (i) *Indo USA DTAA to be enforced for indefinite period. However Govt. of India or Govt. of USA (any) permitted to give written notice for termination through diplomatic channel (only).*
- (ii) *Notice for termination is permitted after expiry 5 year from date of entry into force for Indo USA DTAA before June 30th in any calendar year.*
- (iii) *Effect on income + TDS + income tax + non income tax (all) due to termination of Indo USA DTAA as under :-*

(a) *In India:-*

- *Income + TDS + income tax paid (all) arising in tax year as beginning from April 1st to date of notice for termination is served to be proportionately computed under existing DTAA.*

(b) *In USA:-*

- *Income + TDS + income tax (all) arising in tax year as beginning from January 1st to date of notice for termination is served to be proportionately computed under existing DTAA.*
- *Non income tax as arising in tax year as beginning from January 01st to date of notice for termination is served to be proportionately computed under existing DTAA.*



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