

A STUDY ON TAX TREATIES

India has one of the largest networks of tax treaties for the avoidance of double taxation and prevention of tax evasion. The country has DOUBLE TAX AVOIDANCE AGREEMENTS (DTAAs) with over 85 countries under Section 90 of the Income Tax Act, 1961.

- A DTAA simply mitigates double imposition of tax when there is a cross national flow of income and ensures tax neutrality. The agreement between the negotiating countries provides specific guidelines on how the income generated in one country and transferred to another is to be taxed by the source and resident country. This ensures protection to taxpayers against double taxation and prevent any deterrence that the double taxation may otherwise promote in the free flow of international trade, investment, and transfer of technology between two countries

RELEVANCY IN THE CONSTITUTION OF **INDIA**

- The Indian Constitution through its fundamental duties enshrined in Part IV of the Constitution envisages to promote international peace and security by fostering respect for international law and treaty obligations in the dealings of organized people with one and other.
- The Directive Principles form the fundamental feature and the social conscience of the Constitution and the Constitution enjoins upon the State to implement these directive principles
- The international treaties are to be respected and complied by the State as enshrined in the Directive Principles of State Policy.

UNDER THE INCOME TAX ACT

- The Parliament had made an exclusive Chapter in the Income Tax Act, 1961 in order to accommodate these treaties entered into by the Government of India. The very object of this provision is to promote mutual economic relations, trade and investment with the countries with whom the agreements are executed.
- Section 90 of the Income Tax Act, 1961 which deals with *in relation to the assessee to whom such agreement applies, the provisions of this Act shall apply to the extent they are more beneficial to that assessee.*

METHODS TO ELIMINATE DOUBLE TAXATION

- There exists two different methods of elimination of double taxation, viz., *the exemption method or the tax credit method*, the provisions of the particular DTAA only could indicate the particular method adopted with a particular country. No one method or strait-jacket formula has been adopted uniformly in all cases.

The OECD BEPS Multilateral Instrument and the Issue of Language

1. The current conventionality concerning the understanding of plurilingual charge settlements contains the accompanying perspectives:
 - a. courts may depend on a solitary content for instances of routine interpretation, that is, the point at which the content deciphered is 'clear' and no dissimilarity has 'emerged';
 - b. when there is a difference yet no content is assigned as common, courts may depend on the 'first content' by excellence of its being the content of beginning exchange and drafting;
 - c. when there is a dissimilarity and one content is assigned as overall, courts may depend on the last simply after it has been set up that the difference is 'material'.

Present status on inclusion of languages in the Eighth Schedule

- “As the evolution of dialects and languages is dynamic, influenced by socio-eco-political developments, it is difficult to fix any criterion for languages, whether to distinguish them from dialects, or for inclusion in the Eighth Schedule to the Constitution of India. Thus, both attempts, through the Pahwa (1996) and Sitakant Mohapatra (2003) Committees to evolve such fixed criteria have not borne fruit. The Government is conscious of the sentiments and requirements for inclusion of other languages in the Eighth Schedule and will examine the requests keeping in mind these sentiments, and other considerations such as evolution of dialects into language, widespread use of a language etc.”

List of languages in the Eighth Schedule

The Eighth Schedule to the Constitution consists of the following 22 languages:-
(1) Assamese, (2) Bengali, (3) Gujarati, (4) Hindi, (5) Kannada, (6) Kashmiri, (7) Konkani, (8) Malayalam, (9) Manipuri, (10) Marathi, (11) Nepali, (12) Oriya, (13) Punjabi, (14) Sanskrit, (15) Sindhi, (16) Tamil, (17) Telugu, (18) Urdu (19) Bodo, (20) Santhali, (21) Maithili and (22) Dogri.

Of these languages, 14 were initially included in the Constitution. Sindhi language was added in 1967. Thereafter three more languages viz., Konkani, Manipuri and Nepali were included in 1992. Subsequently Bodo, Dogri, Maithili and Santhali were added in 2004.

Constitutional provisions relating to Eighth Schedule

The Constitutional provisions relating to the Eighth Schedule occur in article 344(1) and 351 of the Constitution. Article 344(1) provides for the constitution of a Commission by the President on expiration of five years from the commencement of the Constitution and thereafter at the expiration of ten years from such commencement, which shall consist of a Chairman and such other members representing the different languages specified in the Eighth Schedule to make recommendations to the President for the progressive use of Hindi for official purposes of the Union.

CASELAW

In CIT vs. VR.S.R.M. Firm & Ors , the Madras High Court held that 'where there exists a provision to the contrary in the agreement, there is no scope for applying the law of any one of the respective contracting states to tax the income and the liability to tax has to be worked out in the manner and to the extent permitted or allowed under the terms of the agreement. In respect of some categories of income, total exemption or elimination is not contemplated and in certain other cases, the exemption depends upon the fulfillment of certain conditions and in all such cases only tax credit or relief can be accorded to the extent permissible under the various provisions of the agreement to avoid double taxation'