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Double Taxation Avoidance Agreement And Tax Evasion An Indian Outlook

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Abstract- *Double Taxation avoidance agreement or DTAA as its known. Introduced under section 90 of the Income Tax Act of 1961, the intended segment serves the purpose to prevent citizens from being liable for dual taxes for the same income. I.e. NRI who work abroad and get their salary from the said foreign nation and are taxed for the same in said country and in turn they need not again be charged for the same income statement.*

That said DTAA had been put in effect to prevent dual taxation then again, there are those who have misused it to their own benefit, the paper will be attempting to address India's competent agreements in respect to DTAA in nations like Mauritius, Cayman Islands and addressing the pros and cons of the act itself and not mention the loopholes within the system and analyze incidents where the DTAA has been of due consideration. Even now while normal people are benefitted by the DTAA, it has been relied on to ensure the common taxpayer is not negated for their hard-earned money, all the while the corporates and money managers utilize the same agreement to fulfill their greedy agenda. In all the paper will listing incidents similar to Hutchison where the DTAA act had been taken for granted, all the while the paper will be focusing on DTAA pacts made between core countries and impending variances.

Keywords- DTAA Act, Treaties, Tax avoidance, loopholes

I. INTRODUCTION

As indicated DTAA, came into effect in order to avoid dual taxing of the same income source for dual countries, mostly applicable to NRI. The Income Tax Act of 1961 and the sub-section 90 granted the central government authority to enact tax Income treaties with Nations. In accordance with the same section 90(2), the citizen may either choose the provision of the DTAA or the Income-tax act either of which may prove beneficial to the citizen. Currently, there are over 80 Countries which India has maintained DTAA, as a state in the Figure below.

Double Taxation Avoidance Agreement (DTAA) Country list

S. NO.	COUNTRY	WITHHOLDING TAX	S. NO.	COUNTRY	WITHHOLDING TAX
1	Armenia	10%	41	Mozambique	10%
2	Australia	15%	42	Myanmar	10%
3	Austria	10%	43	Namibia	10%
4	Bangladesh	10%	44	Nepal	10%
5	Belarus	10%	45	Netherlands	10%
6	Belgium	15%	46	New Zealand	10%
7	Brazil	15%	47	Norway	10%
8	Bulgaria	15%	48	Oman	10%
9	Botswana	10%	49	Philippines	15%
10	Canada	15%	50	Poland	15%
11	China	10%	51	Portuguese Republic	10%
12	Cyprus	10%	52	Qatar	10%
13	Czech Republic	10%	53	Romania	15%
14	Denmark	15%	54	Russia	10%
15	Estonia	10%	55	Saudi Arabia	10%
16	Ethiopia	10%	56	Serbia	10%
17	Finland	10%	57	Singapore	15%
18	France	10%	58	Slovenia	10%
19	Germany	10%	59	South Africa	10%
20	Georgia	10%	60	Spain	15%
21	Hungary	10%	61	Sri Lanka	10%
22	Iceland	10%	62	Sudan	10%
23	Indonesia	10%	63	Sweden	10%
24	Ireland	10%	64	Switzerland	10%
25	Israel	10%	65	Syria	10%
26	Italy	15%	66	Tanzania	10%
27	Japan	10%	67	Tajikistan	10%
28	Jordan	10%	68	Thailand	25%
29	Kazakhstan	10%	69	Trinidad and Tobago	10%
30	Kenya	15%	70	Turkey	15%
31	Korea	15%	71	Turkmenistan	10%
32	Kuwait	10%	72	Uganda	10%
33	KyrgyzRepublic	10%	73	Ukraine	10%
34	Lithuania	10%	74	UnitedArab Emirates	12.50%
35	Luxembourg	10%	75	UnitedMexicanStates	10%
36	Malaysia	10%	76	United Kingdom	15.00%
37	Malta	10%	77	United States	15%
38	Mongolia	15%	78	Uzbekistan	10.00%
39	Montenegro	10%	79	Vietnam	10%
40	Morocco	10%	80	Zambia	10.00%

Source: https://www.onlinesbi.com/nri/pdf/DTAA%20Country%20List.pdf

If one were to notice the, above chart the exchange rates vary from 10% to 15%, in concern to the DTTA many

global investors have opted the use of what is commonly referred as Treaty Shopping.

"Treaty shopping" commonly referred to a predicament where an individual, resident to a particular country (the individual native/home country) and the individual earns income or capital gains from yet another country (deemed as root nation-state), is able to benefit from a tax treaty amid the root nation-state and yet another nation-state (say the "third" nation-state). This staturehabitually arises where an individual is resident in the home country but the home country does not have a tax treaty with the source country.

Efficient utilization of Treaty Shopping may result

A beneficial tax treaty between the intermediate country (wherein the depositor proposes to set up an entity/firm/organization to route their firms/entity/organizations asset) amid the destination country wherein the investment is proposed to be furnished and income earned from promising tax laws internally in stated transitional country.

The treaty shopping thus grants an opportunity to benefit the provisions of DTAA even while the root nation need not have a functioning DTAA treaty.

That said the root nation does not receive any form of Tax in concern to the same, in most cases the root country objects it and deems it as a foul play.

For example, an entity/organization/firm ("X") resident in the Cayman Islands (the home country) may own an entity/organization/firm ("S") in the U.S. (the source country). Dividends paid from to X would be subject to a 30 percent in U.S. withholding tax. If X were to form an entity/organization/firm ("F") in the U.K. and transfer the stock of S to F, dividends would be paid from S to F and, without anti-treaty shopping rules, these shares would qualify for benefits under the U.S.-U.K. Income Tax Treaty.

If this method were to be successful, the dividend withholding tax and its correspondence would be reduced to zero and since U.K is lenient in its concept and laws, the overall ratio of the group being charge would really be low.

Such instances are nothing new there have been instances when measures of such nature have been put to test, for example most countries tackle this condition with adding restraints to their Tax Laws. Mainly regarded as "limitation on benefits Clause" or "LOB". Other sovereign nations, such as Canada, normally rely on anti-treaty shopping provisions, rather than including the rules within as existent treaty itself. In all prospect the limitation on benefits clause aims at curbing illicit use of the DTAA or similar treaties that serve a similar resolve. That said the clauses of LOB is to be considered as most complex measures ever taken into account in respect to tax treaties, they vary from nation to nation.

Currently the noted examples of the LOB, are the Swiss, Dutch, US, while limitation on benefits clauses vary from treaty to treaty, they all have some common elements. In the commercial context, the most common test applied is the overtly operated commercial test. Where a commercial is privately held, the test applied becomes the active trade or business test. The active trade or business rules are often where the treaties diverge.

The acts describe that in the event a notable discrepancy/substantial value of Income/profit or transfer of asset to be found it would be put under scrutiny and in the event any discrepancy is found, it would be taken into account.

Loopholes and Instances

That said international tax treaties, have in its own self nominal variations depending on these factors, an entity of firm may end up benefiting from the incident or suffering huge losses in concern to the same.

The latest example can be seen in the buyoff stated by Hutchison over 2007 Vodafone deal, where Hutchison sold over 67% of its deemed shares in Hutchison essar limited which currently known as Vodafone, the deal took place in the Cayman Islands but Hutchison which is based in Hong Kong shares no said treaty with India in respect to DTAA, and needless to say that in turn prompts liability upon Hutchison/Vodafone.

The above is a predicament where the enlisted entity in order to avoid tax has setup a proxy or shell company, to route their transactions where in which the parent/root country will be bound by DTAA, and thus the entity need not shell out a single coin, in respect to tax for its transaction regardless of whatever it may be.

Thus, even now the DTAA has become ideal stature for many investor, Mauritius accounted for $93.65 billion or one-third of the total FDI flows into India between April 2000 and December 2015 It has also maintained as a notable route for foreign portfolio investors. But the problem is DTAAs can become an incentive for even legitimate investors to route

investments through low-tax regimes to sidestep taxation. This leads to loss of tax revenue for the country.

II. RESEARCH METHODOLOGY

This research methodology is likely to be descriptive in nature. In this study authors used Secondary data for collection.

III. CONCLUSION

For us to prosper, the economy has to grow. And for growth in today's globalized world, foreign investments are an unavoidable segment. DTAAs end providing an actual understanding on how inherent border transactions would be taxed and this encourages investors with foreign portfolio to take the plunge in all it serves as a good meal where the one who orders it knows what all he gets from it.

If you are sent on delegation outside India and you receive remunerations while your first undertaking in a foreign land, your income may sometimes be subject to tax in both the countries. You can claim relief when filing your tax return for that financial year, if there is an applicable DTAA. Similarly, if you are an NRI having investments in India, DTAA provisions may also be applicable to an individual's income from these investments or from their intended sale.

However, given India's narrow tax base, it can ill-afford a tax regime that allows big fish to completely evade the tax net, citing a DTAA. Hence the ongoing drive to plug loopholes in these agreements.

That said in order for a nation to grow its economy me be sustainable in its own self, lest the whole system would collapse and even the minute form of loss holds a huge crack in that frame.

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