E-Book

Foreign Tax Credits

The Institute of Chartered Accountants of India

(Set up by an Act of Parliament)

Southern India Regional Council

Chennai

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This e-book has been authored by

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FOREWORD

Foreign tax credits are non-refundable tax credits for income taxes that were paid to a foreign government as a result of income taxation. The foreign tax credit is available to those who work internationally or those with investment income from a foreign source. Taxpayers within the United States who also pay or accrue taxes in a foreign country may be entitled to a credit or a deduction for such taxes.

There are many Indian residents migrated abroad to countries like USA, UK, etc., for education purpose, for business or for employment purpose. Also, some companies may have global business operations and the global income may be taxed in two countries i.e. in source country as well as residence country. This envisaged the need for Foreign Tax credit rules.

A person can avail the benefit of foreign tax credit i.e. availing tax benefit for the tax to be paid in other country for the taxes already paid in one country. Availing Foreign Tax Credit ('FTC') in case of assesses with cross border transactions was contentious issue. In order to provide clarity, CBDT has notified Rule 128 of the Income Tax Act, 1961 vide Notification No. 54/2016 dated 27th June, 2016 which is effective from 1st April, 2017. This will help in reducing litigation and shall avoid double taxation and encourage international transactions.

We are pleased to present before our members and other stakeholders this e-book, **Foreign Tax Credit** covering all the important aspects.

On behalf of SIRC, I wish to place our sincere gratitude and appreciation to CA. Abhinaya M A, for sharing his rich experience and expertise on the Foreign Tax Credit amongst our members through this e-book. I also take the privilege of thanking CA. Rohit Rastogi for reviewing the basic draft of e-book and adding value to the substance of the e-book.

In an e-book publication meant for professional accountants like this, there is a scope for further improvement on contents, presentation and coverage. Accordingly comments and suggestions on the e-book are welcome at sirc@icai.in

CA.China Masthan Talakayala
Chairman, SIRC of ICAI

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Abbreviations

Abbreviation	Description
AAR	Authority for Advance Rulings
Co.	Company
CBDT	Central Board of Direct Taxes
DTAA	Double Taxation Avoidance Agreement
ETR	Effective Tax Rate
FTC	Foreign Tax Credit
FTS	Fees for Technical Service
IT Act	Income-tax Act, 1961
IT Rules	Income-tax Rules, 1962
ITAT	Income Tax Appellate Tribunal
MAT	Minimum Alternate Taxes
OECD	Organization of Economic Co-operation and Development
SEZ	Special Economic Zone
STPI	Software Technology Park of India
TDS	Tax deducted at source
TCS	Tax collected at source
UTC	Underlying Tax Credit

1. Background

We are all living in a global village, but are we taxed at a global level?

Globalization is revolutionizing the world by integrating national economies, cultures, technology and management. With just a click, individuals can move money across borders and corporations can transact with their affiliates across global supply chains. On the flip side, such new phenomenon has blurred the national boundaries, thereby fundamentally affecting the jurisdictional tax systems.

At one end, tax evasion and avoidance is prevailing in the economies leading to the loss of revenue that could have financed social spending and infrastructure investments. Various jurisdictions are bringing up anti-tax avoidance policies[1] in order to depose such instances.

On the other end, there exists a major challenge of "**double taxation of income"**. Typically, double taxation of income arises in a situation where there is a conflict between *source* country (country where income arises/ accrues) and *residence* country (country where the recipient of such income is located) and taxes are levied in both *source* and *residence* countries in respect of the same income. For instance, *residence* country taxes the global income of their tax resident whereas *source* country taxes the income which is sourced in their jurisdiction leading to double taxation.

Two types of international double taxation encountered by the taxpayers is as follows:

- *Juridical double taxation,* which arises when the **same income** is taxable in the hands of the **same person** in more than one country.
  Eg – Royalty paid by US Co. to Indian Co. shall be taxed in the hands of Indian Co. in US (*source basis*) and in India (*residence basis*).

[1] India has implemented General Anti-avoidance rules under the Income-tax Act, Limitation of Benefits for conduits, beneficial ownership conditions under tax treaties, Principle Purpose Test vide Multilateral Instruments etc.

- *Economic double taxation*, which arises when **different persons** are taxable in respect of the **same income** in more than one country.

  Eg – Profits of an Indian Co. taxed in the hands of Indian Co. as Business income in India. The *same* profits, being distributed to shareholders is taxed as dividend income in their *residence* country.

To ease the hardship of getting doubly taxed, the concept of giving credit for taxes paid in *source* country seems to have emanated in USA during 1918 after World war-I. Later, as the taxation system evolved, countries began entering into Double Taxation Avoidance Agreements (DTAAs), simply called as '**Tax treaties**' to provide relief to the taxpayers who are tax residents of either of the countries involved. To be specific, Article 24[2] of DTAAs deal with the subject – 'ELIMINATION OF DOUBLE TAXATION', which provides relief in respect of doubly taxed income.

India has entered into approx. 96 DTAAs with various jurisdictions[3] with the objective of promoting mutual economic relations, trade and investments, avoidance of double taxation, exchange of information and assistance in recovery of taxes. That apart, certain jurisdictions, including India provide double taxation relief unilaterally, in the absence of tax treaties with such other foreign jurisdiction.

The aim of this e-book is to have an outlook on different methods of eliminating double taxation and to deep dive into the claim of Tax credits as applicable in Indian scenario.

[2] In predominant DTAAs, Article 24 deals with elimination/ avoidance of double taxation
[3] https://www.incometaxindia.gov.in/pages/international-taxation/dtaa.aspx

2. Methods of eliminating double taxation

In today's tax arena, two leading methodologies are adopted for the elimination of double taxation of income by *Residence* country. Such methodologies are prescribed under the Article 23A and 23B of the *Model Tax Convention on Income and on capital* brought out by the OECD[4]. Such methodologies are discussed below:

a) Exemption method

Under this method, the *residence* country does not impose any taxes on the income, which may be taxed in the *source* country. The principle of exemption can be applied in any of the ways explained below:

Full exemption: The income which may be taxed in *source* country is not at all considered by *residence* country for the purposes of its taxation. In other words, *residence* country, apart from exempting such income from its taxation, does not even factor such income for determining the tax on the rest of the income (viz. even for ascertaining tax slab rates etc.).

Exemption with progression: As against the full exemption method, residence country retains the right to consider such income when determining the tax to be imposed on the rest of the income.

b) Credit method

Under this method, the *residence* country levies tax on the basis of taxpayer's total income which arises from a different *source* country and later, allows a deduction from its own tax for the tax paid in the other state. Contrasting to the 'exemption method' where 'income' is the subject matter, the credit method prioritizes the 'tax' on such income. The principle of credit can be applied in any of the two ways explained below:

Full credit: *Residence* country allows a deduction of entire amount of tax paid in *source* country on such income, which is doubly taxed (i.e., in *source* and *residence* country).

Ordinary credit: Residence country allows a deduction restricted to that part of its own tax which is appropriate to the income which may be taxed in the other State.

[4] OECD (2017), Model Tax Convention on Income and on Capital

Different methods can be adopted for different income streams, as incorporated in the tax treaties. For better understanding, the above methods are illustrated in the case study below.

Case study #1:

The total income of Mr. A, resident in India is INR 10,00,000/- comprising of

- Salary earned in India - INR 7,50,000/-
- Dividend income from UK Co. - UKP 2500 (Consider 1 UKP as INR 100)

In India, the rate of tax on an income of INR 10,00,000/- is 30%[5] and on an income of INR 7,50,000/- is 20%. In UK, the rate of tax is 40%.

The relief of double taxation of income under various methods is tabulated below.

Particulars	Full Exemption	Exemption with progression	Full credit	Ordinary credit
Income taxable in *Source* country (UK)	2,50,000	2,50,000	2,50,000	2,50,000
Applicable tax rate	40%	40%	40%	40%
Taxes payable in UK (1)	**1,00,000**	**1,00,000**	**1,00,000**	**1,00,000**
Income taxable in *Residence* country (India)	7,50,000	7,50,000	10,00,000	10,00,000
Applicable tax rate	20%	30%	30%	30%
Taxes payable in India	1,50,000	2,25,000	3,00,000	3,00,000
Less: Tax credit	NA	NA	(1,00,000)	(75,000) #2,50,000*30%
Net tax payable in India (2)	**1,50,000**	**2,25,000**	**2,00,000**	**2,25,000**
Total taxes payable (1) + (2)	**2,50,000**	**3,25,000**	**3,00,000**	**3,25,000**

As evident from the above, full exemption and full credit method provides seamless relief of tax on doubly taxed income. Yet, not all the jurisdictions incorporate such method.

[5] Rates of taxes employed in case studies are for illustration purposes only. Actual rates can differ

Now, let us understand some special forms of tax credit as can be seen in some tax treaties.

3. Special forms of tax credits

a) Underlying tax credit:

Ordinarily, Foreign tax credit is allowed in the *residence* country in respect of taxes paid in *source* country as agreed mutually between them, which will mitigate juridical double taxation. On the other hand, a predominant way of elimination of economic double taxation is by granting 'Underlying tax credit'.

As already discussed, economic double taxation arises when the same income is subjected to tax in the hands of different persons in two different countries. A classic example is the taxation of business profits in the hands of company and taxation of dividends paid out of such profits in the hands of shareholders, which gives rise to double taxation of the same profits. Such scenario is avoidable by inclusion of UTC clause in DTAAs.

UTC has the effect of reducing the Effective Tax Rate of taxpayers. The concept and effect of UTC can be better understood from a numerical example given below.

Case study #2:

Blue Ray Co., is a company incorporated in UK. The company earned a profit of INR 100 crores for the FY 2021-22, which is subjected to a corporate tax rate of 20%. The company distributed entire profits available after taxes as dividends to its shareholders, resident in India.

The tax rate for dividends in UK and India is 10% and 20% respectively. India-UK DTAA provides for the benefit of UTC.

Now, the effect of UTC can be evidenced by comparing the Effective tax payable under situations - with UTC and without UTC as tabulated below.

INR crores

Particulars	Without UTC	With UTC
In UK		
Profits earned by Blue ray Co.	100	100
Less: Corporate tax	**(20)**	**(20)**
Distributable profits	80	80
Profits distributed as dividends	80	80
Less: Taxes at UK @ 10%	**(8)**	**(8)**
Amount paid to shareholders	72	72
In India		
Amount received by shareholders in India	72	72
Less: Taxes in India @ 20%	(16)	(16)
Add: Ordinary tax credit#	8	8
Add: Underlying tax credit	0	8*
Amount available in the hands of shareholders	64	72
Taxes paid	**36**	**28**

 # Taxes paid in UK available as credit

** Corporate tax paid on profit of INR 100 crores in UK represents underlying tax. UTC credit available of INR 20 crores is restricted to the maximum limit of taxes paid in India.*

DTAAs entered into, by India with countries such as Australia, Mauritius, Singapore, USA, UK grants UTC benefit. Illustratively, the extract of **Article 23 - ELIMINATION OF DOUBLE TAXATION** under **India-Mauritius tax treaty** is given below:

> *"1. The laws in force in either of the Contracting States shall continue to govern the taxation of income in the respective Contracting States except where provisions to the contrary are made in this Convention.*

2. (a) The amount of Mauritius tax payable, under the laws of Mauritius and in accordance with the provisions of this Convention, whether directly or by deduction, by a resident of India, in respect of profits or income arising in Mauritius, which has been subjected to tax both in India and in Mauritius, shall be allowed as a credit against the Indian tax payable in respect of such profits or income provided that such credit shall not exceed the Indian tax (as computed before allowing any such credit) which is appropriate to the profits or income arising in Mauritius. Further, where such resident is a company by which surtax is payable in India, the credit aforesaid shall be allowed in the first instance against income-tax payable by the company in India and as to the balance, if any, against surtax payable by it in India.

(b) In the case of a dividend paid by a company which is a resident of Mauritius to a company which is a resident of India and which owns at least 10 per cent of the shares of the company paying the dividend, the credit shall take into account [in addition to any Mauritius tax for which credit may be allowed under the provisions of sub-paragraph (a) of this paragraph] the Mauritius tax payable by the company in respect of the profits out of which such dividend is paid.

4. (a) The amount of Indian tax payable under the laws of India and in accordance with the provisions of this Convention, whether directly or by deduction, by a resident of Mauritius, in respect of profits or income arising in India, which has been subjected to tax both in India and Mauritius shall be allowed as a credit against Mauritius tax payable in respect of such profits or income provided that such credit shall not exceed the Mauritius tax (as computed before allowing any such credit) is appropriate to the profits or income arising in India.

(b) In the case of a dividend paid by a company which is a resident of India to a company which is a resident of Mauritius and which owns at least 10 per cent of the shares of the company paying the dividend, the credit shall take into account [in addition to any Indian tax for which credit may be allowed under the provisions of sub-paragraph (a) of this paragraph] the Indian tax payable by the company in respect of the profits out of which such dividend is paid.*"*

It is interesting to note that in the above-mentioned DTAA between India and Mauritius, reciprocal UTC benefits are provided. Contrastingly, some DTAAs viz. India – USA DTAA provides only for a one-sided benefit. That is, USA provides UTC benefit to its residents in respect of dividend income received from India, where as India does not provide so. This is evident from the extract of **Article 25 - RELIEF FROM DOUBLE TAXATION** under **India – USA DTAA** given below:

> *"1. In accordance with the provisions and subject to the limitations of the law of the United States (as it may be amended from time to time without changing the general principle hereof), the United States shall allow to a resident or citizen of the United States as a credit against the United States tax on income: (a) the income tax paid to India by or on behalf of such citizen or resident; and* ***(b) in the case of a United States company owning at least 10 percent of the voting stock of a company which is a resident of India and from which the United States company receives dividends, the income tax paid to India by or on behalf of the distributing company with respect to the profits out of which the dividends are paid.***
>
> *2. (a) Where a resident of India derives income which, in accordance with the provisions of this Convention, may be taxed in the United States, India shall allow as a deduction from the tax on the income of that resident an amount equal to the income tax paid in the United States, whether directly or by deduction. Such deduction shall not, however, exceed that part of the income tax (as computed before the deduction is given) which is attributable to the income which may be taxed in the United States. (b) Further, where such resident is a company by which a surtax is payable in India, the deduction in respect of income tax paid in the United States shall be allowed in the first instance from income tax payable by the company in India and as to the balance, if any, from surtax payable by it in India."*

Further, as one can observe from the above that DTAAs lists certain conditions, mainly, the percentage of holding to qualify for UTC. This shows that the jurisdictions wish to provide the benefit of UTC only for major holdings and not for meagre ones.

b) <u>Tax sparing</u>:

Another special form of tax credit that can be evidenced from DTAAs is 'Tax sparing credit'. The idea behind its introduction is to provide economic incentives for investing in developing nations. Such provision in a tax treaty allows FTC for the taxes that have been 'spared' under the incentive programme of the *source* country.

For instance, the *residence* country will allow as a deduction the amount of tax which the *source* country *could* have imposed in accordance with its local laws even if *source* country has waived all/ part of that tax under special provisions for the promotion of its economic development, similar to tax holiday regimes.

Indian tax treaties with various jurisdictions such as Australia, Belgium, Bangladesh, Canada, Malaysia, Singapore, Philippines, Russia, Oman, Jordan etc. have a provision of claiming tax sparing credit.

Illustratively, the extract of **Article 24 - METHODS OF ELIMINATION OF DOUBLE TAXATION** under **India-Australia** tax treaty is given as follows:

> *"2. In paragraph (1), Indian tax paid shall include:*
>
> *(a) subject to sub-paragraph (b) an amount equivalent to the amount of any Indian tax foregone which, under the law of India relating to Indian tax and in accordance with this Agreement, would have been payable as Indian tax on income* ***but for an exemption from, or reduction of, Indian tax on that income in accordance with****:*
>
> *(i)* ***section 10(4), 10(15)(iv), 10A, 10B, 80HHC, 80HHD or 80-I of the Income-tax Act, 1961,*** *insofar as those provisions were in force on, and have not been modified since, the date of signature of this Agreement, or have been modified only in minor respects so as not to affect their general character; or*
>
> *(ii) any other provision which may subsequently be made granting an exemption from or reduction of Indian tax which the Treasurer of Australia and the Ministry of Finance of India agree from time to time in letters exchanged for this purpose to be of a substantially similar character, if that provision has not been modified thereafter or has been modified only in minor respects so as not to affect its general character; and….."*

It is interesting to note that while Australia provides tax sparing credit in respect of taxes paid in India to Australian tax residents, India does not provide a reciprocal tax-credits to Indian residents in respect of Australian taxes spared.

Contrastingly, **India-Philippines** tax treaty provides for reciprocal tax-credits as can be evidenced from the extract of **Article 24 - ELIMINATION OF DOUBLE TAXATION** given below:

> *"3. The term "Philippine tax payable" shall be* ***deemed to include the amount of Philippine tax which would have been paid if the Philippine tax had not been exempted or reduced*** *in accordance with this Convention and the special incentive laws designed to promote economic development in the Philippines, effective on the date of signature of this Convention, or which may be introduced in the future in the Philippine taxation laws in modification of, or in addition to, the existing laws.*
>
> *5. For the purposes of the credit referred to in paragraph 4, the term "Indian tax payable" shall be* ***deemed to include any amount which would have been payable as Indian tax for any assessment year but for an exemption or reduction of tax granted for that year or any part thereof by the special incentive measures under the provisions of the Income-tax Act, 1961*** *(43 of 1961), which are designed to promote economic development, or which may be introduced hereafter in modification of, or in addition to, the existing provisions for promoting economic development in India."*

One may also note that some of the DTAA's [India - *Australia* (as seen above), *Singapore, Mauritius, Bangladesh, Spain*], specifically list out the specific exemption/deductions in the source country under which the tax spared will qualify for the FTC, some other DTAA's [Oman, Jordan, *Philippines* (as seen above)] contains a much more general Tax Sparing provision which grants the benefit to *taxes which would have been payable but for the tax incentives granted under the laws of the Contracting State and which are designed to promote economic development*.

The most orthodox form of computation of tax sparing credit is to calculate the difference between tax payable in the *source* country under the "ordinary tax regime" and tax payable under the relevant "tax incentive regime". Yet, it is essential to observe the language of the relevant DTAA for computation of tax sparing credit to be availed in *residence* country.

Case study #3:

Seashore Limited, a company incorporated in India has set up a branch office in tax free zone in Russia, by virtue of which no income taxes are payable in Russia. The branch earned a profit of 1,000,000 Russian Rubles (1 Russian Ruble = INR 1.20).

The tax rate in Russia and India is 13% and 25% respectively. The tax sparing credit shall be computed by reference to the **Article 23 - METHODS OF ELIMINATION OF DOUBLE TAXATION** of **India – Russia** DTAA:

"2. In the case of India, double taxation is eliminated as follows:

where a resident of India derives income which, in accordance with the provisions of this Agreement, may be taxed in Russia, India shall allow as a deduction from the tax on the income of that resident ***an amount equal to the income-tax paid in Russia whether directly or by deduction at source****. Such deduction in either case shall not, however, exceed that part of the income-tax (as computed before the deduction is given) which is attributable to the income which may be taxed in Russia.*

3. For the purposes of this Article ***the term "tax" paid or payable as mentioned in paragraphs 1 and 2 of this Article shall be deemed to include the tax which would have been paid but for any exemption or reduction of tax granted under incentive provisions contained in the law of a Contracting State*** *designed to promote economic development to the extent that such exemption or reduction is granted for profits from industrial, construction, manufacturing or agricultural activities provided that the activities have been carried out within the Contracting State."*

As reflected in the above article of DTAA, the computation involves a two-step process. First, compute "what the tax payable would be" if the income had been subject to the ordinary tax liability in Russia. Second, ascertain "what the actual tax payable is", based on the qualifying tax incentives. The tax sparing credit equals the difference between these factors.

Foreign taxes deemed to be paid = (INR 12,00,000 * 13%) – (INR 12,00,000 * NIL)

= INR 1,56,000/-

Indian taxes payable = INR 12,00,000 * 25%

= INR 3,00,000/-

Tax sparing credit (Lower of the above) = INR 1,56,000/-

4. FTC claim under India Income-tax Law

Claim of FTC by the Indian resident in respect of foreign sourced income is incorporated into Indian domestic tax laws vide Chapter IX – 'Double taxation relief' - Section 90 and 91 of the Income-tax Act, 1961.

a) Bilateral relief under Section 90 of the IT Act:

Section 90 of the IT Act[6] provides for a 'bilateral relief' where India has entered into DTAAs with foreign countries. It is a settled law that the DTAA shall always prevail over the provisions of the IT Act.

In order to avail bilateral relief under Section 90 of the IT Act read with the relevant DTAA, the recipient of income shall be a tax resident in India pursuant to **Section 6**[7] of the IT Act read with **Article 4** – **RESIDENCE** of the relevant DTAA. Once it is ascertained that the taxpayer is eligible to access the DTAA, the taxpayer can avail bilateral relief as per the method prescribed under the said DTAA.

Predominantly, India grants bilateral relief by adopting '*Exemption with progression*' method (or) '*Ordinary credit*' method as may be prescribed under the article dealing with 'Elimination / avoidance of double taxation' of the specific DTAA entered into by India with the foreign country. Such method differs from country to country and for different sources of income. Let's observe the language of few DTAAs.

Article 25 - ELIMINATION OF DOUBLE TAXATION of India – UAE DTAA

> *"1. The laws in force in either of the Contracting States shall continue to govern the taxation of income and capital in the respective Contracting States except where express provisions to the contrary are made in this Agreement.*

[6] Corresponds to Section 49A of the IT Act, 1922

[7] Section 6(1): Individual shall be a tax resident in India when he stays atleast 182 days in India; An individual can also be treated as a tax resident in India, upon satisfaction of deemed residential status provisions.
Section 6(2): A firm/ HUF/ AOP/ BOI shall be a tax resident in India except when the control and management of its affairs is wholly situated outside India.
Section 6(3): A company shall be a tax resident in India, if it is an Indian company or its Place of Effective Management is situated in India.

2. Where a resident of India derives income or owns capital which, in accordance with the provisions of this Agreement, may be taxed in U.A.E., India shall allow as ***a deduction from the tax on the income of that resident an amount equal to the income-tax paid in U.A.E. whether directly or by deduction****; and as a deduction from the tax on the capital of that resident an amount equal to the capital tax paid in U.A.E. Such deduction in either case shall not, however, exceed that part of the income-tax or capital tax (as computed before the deduction is given) which is attributable, as the case may be, to the income or the capital which may be taxed in U.A.E. Further, when such resident is a company by which surtax is payable in India, the deduction in respect of income-tax paid in U.A.E. shall be allowed in the first instance from income-tax payable by the company in India and as to the balance, if any, from the surtax payable by it in India.*

3. Subject to the laws of the U.A.E. where a resident of the U.A.E. derives income which in accordance with the provisions of this Agreement may be taxed in India, the U.A.E. ***shall allow as a deduction from the tax on income of that person*** *an amount equal to the tax on income paid in India. Such deduction shall not, however, exceed that part of income-tax as computed before the deduction is given, which is attributable to the income which may be taxed in the U.A.E.*

4. For the purpose of paragraph (3), the term 'tax paid in India' shall be deemed to include the amount of Indian tax which would have been paid if the Indian tax had not been exempted or reduced in accordance with the special incentive measures under the provisions of the Income-tax Act, 1961, which are designed to promote economic development in India, effective on the date of signature of this Agreement, or which may be introduced in the future in modification of, or in addition to, the existing provisions for promoting economic development in India, and such other incentive measures which may be agreed upon from time to time by the Contracting States.

5. Where, in accordance with any provision of the Agreement, income derived or capital owned by a resident of a Contracting State ***is exempt from tax in that State, such State may, nevertheless, in calculating the amount of tax on the remaining income or capital of such resident, take into account the exempted income or capital****.*

From the above extract, it can be observed that the tax treaty provides relief from double taxation by '*ordinary credit*' method employed in Para 2 / Para 3 and '*exemption with progression*' method in Para 5 of Article 25.

Now, let's take another instance of ***Article 23 - METHODS FOR THE ELIMINATION OF DOUBLE TAXATION of India – Brazil DTAA***

1. Subject to the provisions of paragraphs 3 and 4, where a resident of a Contracting State derives income which, in accordance with the provisions of this Convention may be taxed in the other Contracting State, ***the first-mentioned State shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in that other State.***

Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to the income which may taxed in that other State.

2. For the deduction mentioned in paragraph 1, the tax paid in that other State shall always be deemed to have been paid at the rate of 25 per cent of the gross amount of interest referred to in paragraph 2 of Article 11 and of royalties referred to in paragraph 2(b) of Article 12, provided however, that the tax so deemed to have been paid shall not exceed the tax leviable on that income in the first-mentioned State.

3. Where a company which is a resident of a Contracting State derives dividends which, in accordance with the provisions of paragraph 2 of Article 10 may be taxed in the other Contracting State, the first-mentioned State shall exempt such dividends from tax.

4. Where a resident of India derives profits which, in accordance with the provisions of paragraph 5 of Article 10 may be taxed in Brazil, India shall exempt such profits from tax.

It is interesting to note that India – Brazil DTAA provides for double taxation relief by adopting 'full exemption' method as evident from Para 3 above, in respect of dividend income alone, while adopting 'ordinary credit method' in respect of other income.

Next, we shall observe ***Article 23 - ELIMINATION OF DOUBLE TAXATION of India – Namibia DTAA***

> *1. In Namibia, double taxation shall be eliminated as follows:*
>
> *Where a resident of Namibia derives income or capital gains from India, the amount of tax on that income or gains payable,* ***whether directly or by deduction,*** *in India in accordance with the provisions of this Convention,* ***may be credited against the Namibian tax imposed on that resident. The amount of credit, however, shall not exceed the amount of the Namibian tax*** *on that income or gains computed in accordance with the taxation laws and regulations of Namibia.*
>
> *2. In India, double taxation shall be eliminated as follows:*
>
> *Where a resident of India derives income or capital gains from Namibia, which, in accordance with the provisions of this Convention may be taxed in Namibia, then* ***India shall allow as a deduction from the tax on the income of that resident an amount equal to the tax on income or capital gains*** *paid in Namibia, whether directly or by deduction."*

It is quite fascinating to observe from the above extract that India provides relief by following 'full credit' method in respect of Namibian income whereas Namibia relieves double taxation by following 'ordinary credit' method.

As evidenced from the above extracts, India employs varied methods of eliminating double taxation in its DTAAs and bilateral relief shall be allowed, by referring to the method agreed in the respective DTAA.

At any case, FTC cannot result in a refund situation in *residence* country. In other words, a taxpayer cannot claim refund in *residence* country in respect of taxes paid in foreign *source* country. Such position has been confirmed by the Kolkata bench of ITAT in the case of **Arvind Metals & Minerals (P) Ltd.**[8]. Consequently, Effective Tax Rate shall always be the higher of tax rates in *source* country or *residence* country.

[8] I.T.A No.777/Kol/2010

Case study #4:

(Situation: Taxpayer earns only foreign sourced income)

Ostrich AG, a company incorporated in Switzerland, is a wholly owned subsidiary of Ostrich India Private Limited, India. Ostrich AG remitted dividends of INR 100 Crore to the holding company. As per India – Swiss confederation DTAA, the rate of tax on dividends in Switzerland is 10%. Corporate tax rate in India is 25%. The relief in this case shall be computed in the following manner:

Under **India – Swiss confederation** DTAA, **Article 23 - ELIMINATION OF DOUBLE TAXATION** provides for '*ordinary credit*' method as evident from the extract as follows:

> *"1. (a) Subject to any provisions of the law of India which may from time to time be in force and which relates to the relief of taxes paid in a country outside India, where a resident of India derives income which, in accordance with the provisions of this Agreement, may be taxed in Switzerland,* ***India shall allow as a deduction from the tax on the income of that resident an amount equal to the income-tax paid in Switzerland whether directly or by deduction. Such deduction shall not, however, exceed that part of the income-tax (as computed before the deduction is given) which is attributable to the income which may be taxed in Switzerland.*** *"*

Particulars	Amount in INR cr
Dividend income	100
Taxes paid in Switzerland @ 10% (A)	**10**
Taxes payable in India @ 25%	25
Less: Foreign Tax credit (As per Article 23 of India – Switzerland DTAA)	(10)
Net tax paid in India (B)	**15**
Taxes paid (A) + (B)	**25**
ETR on doubly taxed income ETR = INR 25 / INR 100	**25%** *(corresponds to higher of source / residence country tax rate)*

Case study #5:

(Situation: Taxpayer earns both domestic and foreign sourced income)

Mr. Sun, an individual resident in India, has rendered technical services in Japan for a consideration of JPY 500,000 (viz. INR 2,50,000). As per India – Japan DTAA, the rate of tax on technical fee in Japan is 10%.

Mr. Sun also earned INR 5,00,000 as taxable salary income in India. In India, the tax slab rates are as below under the simplified tax regime:

Upto INR 2,50,000 – NIL
INR 2,50,001 to INR 5,00,000 – 5%
INR 5,00,000 to INR 7,50,000 – 10%
The relief in this case shall be computed in the following manner:

Under **India – Japan** DTAA, **Article 23 - ELIMINATION OF DOUBLE TAXATION** provides for 'ordinary credit' method as extracted below:

> *"2. Double taxation shall be avoided in the case of India as follows:*
>
> *(a) Where a resident of India derives income which, in accordance with the provisions of this Convention, may be taxed in Japan, India shall allow as a* ***deduction from the tax on the income of that resident an amount equal to the Japanese tax paid in Japan, whether directly or by deduction. Such deduction in either case shall not, however, exceed that part of the income-tax (as computed before the deduction is given) which is attributable, as the case may be, to the income which may be taxed in Japan.*** *Further, where such resident is a company by which surtax is payable in India, the deduction in respect of income-tax paid in Japan shall be allowed in the first instance from income-tax payable by the company in India and as to the balance, if any, from surtax payable by it in India."*

Computation of taxes and FTC in this case is as follows:

Particulars	Amount in INR
Technical fee paid in Japan	2,50,000
Taxes paid in Japan @ 10% (A)	**25,000**
Income taxable in India *(INR 2,50,000 + INR 5,00,000)*	7,50,000
Taxes payable in India (as per slab rates)	37,500
Less: Foreign Tax credit#	(12,500)
Net tax paid in India (B)	**25,000**
Taxes paid (A) + (B)	**50,000**
ETR on doubly taxed income ETR = INR 25,000 [INR 25,000 + INR 12,500 - INR 12,500] INR 2,50,000	**10%** *(corresponds to higher of source/ residence country tax rate)*
ETR on other income ETR = INR 25,000 INR 5,00,000	**5%**

As per Article 23 of India – Japan DTAA, FTC shall not exceed that part of the income-tax which is attributable to the income which may be taxed in Japan. FTC shall be calculated in the following manner[9]:

Doubly taxed income = INR 2,50,000

(A) Taxes paid in Japan on doubly taxed income = $\frac{\text{Tax paid in Japan} * \text{Doubly taxed income}}{\text{Income chargeable to tax in Japan}}$

$= \frac{\text{INR 25,000} * \text{INR 2,50,000}}{\text{INR 2,50,000}}$

= INR 25,000/-

(B) Taxes paid in India on doubly taxed income = $\frac{\text{Tax paid in India} * \text{Doubly taxed income}}{\text{Income chargeable to tax in India}}$

$= \frac{\text{INR 37,500} * \text{INR 2,50,000}}{\text{INR 7,50,000}}$

= INR 12,500/-

FTC claimable (Lower of the above) = **INR 12,500/-**

[9] This computation method has been affirmed by Kolkata ITAT in the case of Arvind Metals & Minerals (P) Ltd. (I.T.A No.777/Kol/2010); Delhi ITAT in the case of Manpreet Singh Gambhir (I.T.A No. 4448/Del/2002); Delhi ITAT in the case of Harish N. Salve (I.T.A. No. 7356/Del/2018)

Case study #6:

(Situation: Taxpayer incurs expenditure in respect of foreign sourced income)

ONG Ltd., a company incorporated in India provided maintenance services for oil well located in Saudi Arabia and earned 50,000 Saudi Riyal (INR 10,00,000), which was taxed at 20% in Saudi Arabia on gross basis. The company incurred an expenditure of INR 3,50,000/- in rendering such services. The corporate tax rate in India is 25%. The company did not earn any other income.

Article 23 - METHODS FOR ELIMINATION OF DOUBLE TAXATION of **India – Saudi Arabia** DTAA provides as follows:

> *"1. Where a resident of a Contracting State derives income which, in accordance with the provisions of this Convention, may be taxed in the other Contracting State, the first-mentioned Contracting State shall allow as a deduction from the tax on the income of that resident, an amount equal to the tax paid in the other Contracting State.*
>
> *Such deduction shall not, however, exceed that portion of the tax as computed before the deduction is given, which is attributable, as the case may be, to the income which may be taxed in the other Contracting State."*

In this case, FTC shall be calculated as tabulated below:

Particulars	Amount in INR
Income taxed in Saudi Arabia	10,00,000
Taxes paid in Saudi Arabia @ 20% (A)	**2,00,000**
Gross receipts	10,00,000
Less: Business expenditure	(3,50,000)
Income chargeable to tax in India	6,50,000
Taxes payable in India @ 25%	1,62,500
Less: Foreign Tax credit#	(1,30,000)
Net tax paid in India (B)	**32,500**
Taxes paid (A) + (B)	**2,32,500**

ETR on doubly taxed income ETR = INR 1,62,500 / INR 6,50,000	**25%** *(corresponds to higher of source / residence country tax rate)*
ETR on other income ETR = INR 70,000 / INR 3,50,000 [INR 2,00,000 – INR 1,30,000]	**20%**

#Computation of FTC:

Doubly taxed income = INR 6,50,000

(A) Taxes paid in Saudi on doubly taxed income = $\frac{\text{Tax paid in Saudi} * \text{Doubly taxed income}}{\text{Income chargeable to tax in Saudi}}$

$= \frac{\text{INR 2,00,000} * \text{INR 6,50,000}}{\text{INR 10,00,000}}$

= INR 1,30,000/-

(B) Taxes paid in India on doubly taxed income = $\frac{\text{Tax paid in India} * \text{Doubly taxed income}}{\text{Income chargeable to tax in India}}$

$= \frac{\text{INR 1,62,500} * \text{INR 6,50,000}}{\text{INR 6,50,000}}$

= INR 1,62,500/-

FTC claimable (Lower of the above) = **INR 1,30,000/-**

Now that we're well versed with the accessing tax treaty for double taxation relief, it is important to understand the *modus operandi* for claiming FTC in India. After a long battle, Rule 128 of the Income-tax Rules, 1962 was introduced w.e.f. April 1, 2017 clarifying the same. The same is discussed subsequently in this e-book.

b) Unilateral relief under Section 91 of the IT Act:

Section 91 of the IT Act[10] provides for a 'unilateral relief', where there is no DTAA between India and the foreign country involved (For instance – Cayman Islands, Bahrain etc.). In this case, FTC is calculated on such **doubly taxed income** at the *lower* of the following rates:

- Indian rate of tax; or
- Foreign country's rate of tax

Where both rates are equal, FTC shall be considered to have been calculated at Indian rate of tax. It is critical to appreciate the meaning of the term 'Indian rate of tax'. As per explanation to Section 91 of the IT Act,

$$\text{Indian rate of tax} = \frac{\text{Indian income-tax subject to relief except FTC}}{\text{Total income}}$$

Unilateral relief would be granted upon fulfilment of all the following conditions:

- The taxpayer is an Indian tax resident during the period in which such income is taxable
- The income accrues/ arises to him outside India.
- The income is not deemed to accrue/ arise in India during the previous year
- The income in question has been subjected to income-tax in the foreign country **in the hands of the taxpayer.**
- The assessee has **paid** tax on the income in the foreign country, unlike in the case of bilateral relief, where tax sparing credits could be available.

Case study #7:

Aura Ltd., a tax resident in India earned technical fee of 20,000 Bahraini Dinar from Bahrain with which India has not entered into any tax treaty. The company has not earned any other income in India, but incurred an expenditure of INR 15,00,000 in earning such income. The company paid taxes at the rate of 5% in Bahrain. In India, the company shall be taxed at the rate of 25%.

[10] Corresponds to Section 49D of the IT Act, 1922

In the given case, Aura Ltd. shall be entitled to unilateral relief under Section 91 of the IT Act, by showing proof of taxes paid in Bahrain. The relief shall be calculated as follows:

Particulars	Amount in INR
Income chargeable to tax in Bahrain (1BHD = INR 200)	40,00,000
Taxes paid in Bahrain @ 5% (A)	**2,00,000**
Business income	40,00,000
Less: Business expenditure	(15,00,000)
Income chargeable to tax in India	25,00,000
Taxes payable in India @ 25%	6,25,000
Foreign Tax credit#	(1,25,000)
Net tax paid in India (B)	**5,00,000**
Taxes paid (A) + (B)	**7,00,000**

 # Computation of FTC:

Doubly taxed income = INR 25,00,000

Lower of tax rates:

- Indian tax rate = 25%
- Foreign tax rate = 5%

FTC claimable u/s 91 = 5% on INR 25,00,000 = **INR 1,25,000**

c) Mechanism for claim of FTC:

As per section 295(2)(ha) of the Act, the CBDT is empowered to make Rules to provide for the procedure for granting relief of income tax paid in a foreign country u/s 90/ 90A/ 91 of the IT Act against income tax payable under the IT Act. Pursuant to the same, Rule 128 of IT Rules, which prescribes the mechanism for claim of FTC has been inserted by virtue of Notification no. 54/2016 dated 27th June 2016, with effect from 1st April 2017.

It is notable that the power of the CBDT is restricted to provide for the procedure for claiming FTC. However, a superficial look at the rule indicates that they seek to provide for the extent to

which FTC should be granted, which leads to questioning of legality of rules. Yet, such questioning being kept apart, various principles laid down under Rule 128 is discussed below:

❖ ***Computation of FTC***

Step 1: Ascertain the doubly taxed income (Quantum of income which is taxed both in India and foreign country)

Step 2: Compute tax payable under the IT Act on such doubly taxed income.

Step 3: Compute foreign tax 'paid' on such doubly taxed income

Foreign tax is defined as the taxes covered under the DTAA, in respect of a country with which India has entered into an agreement for the relief or avoidance of double taxation of income in terms of section 90 of the IT Act. On the other hand, where no such DTAA is in place, *foreign tax* refers to the tax payable under the law in force in that country in the nature of income-tax.

Step 4: FTC shall be lower of step 2 and step 3

It shall be noted that the above mechanism is sub-judice to the provisions of the relevant DTAA as discussed in case study #4 to #6.

❖ ***Year of claim of FTC***

FTC shall be claimable in India in the year in which the income corresponding to such tax has been offered / assessed to tax in India. Where income is offered across years, FTC shall be claimable in proportion to income offered in such years.

Case study #8:

In June 2022, Mr. X earns royalty income in Netherlands of INR 10,00,000 on which tax paid in Netherlands amounted to INR 1,00,000.

The Dutch tax year runs from January 1 through December 31. On the other hand, in India, tax assessment year runs from April 1 through March 31.

Eligible FTC on royalty income shall be claimable only in AY 2023-24 (Previous year 2022-23), when such income is offered to tax in India.

Case study #9:

On March 27, 2022, Mr. Y received interest income in UK of INR 1,25,00,000 and on April 2, 2022, interest income of INR 1,00,00,000 is earned, on which aggregate taxes paid in UK amounted to INR 22,50,000. In UK, the tax year runs from April 6 through March 5. The interest income shall be taxable in the fiscal year April 6, 2021 to April 5, 2022.

In India, such interest income shall be chargeable to tax in AY 2022-23 to the tune of INR 1,25,00,000/- and AY 2023-24 to the extent of INR 1,00,00,000/-.

Eligible FTC on income of INR 1,25,00,000/- shall be claimable in AY 2022-23 and on the balance income in AY 2023-24. In other words, FTC is claimable when the respective income is offered to tax in India.

❖ ***Claim against taxes***

FTC shall be claimable only against tax, surcharge and cess and not against interest, late fee or penalty.

For instance, where there is no tax payable in India but for late fee, FTC shall not be claimable against such late fee. Also, FTC cannot be claimed against interest u/s 234A, 234B, 234C etc. chargeable under the provisions of the Act.

Case study #10:

Robot & Co., a tax resident in India, had a doubly taxed income of INR 10,00,000/- on which taxes paid in *source* country @ 10% amounted to INR 3,50,000/-. The firm submitted the computation of his total income in India as tabulated below:

Particulars	Amount in INR
Income from business (Gross receipts)	35,00,000
Less: Business expenditure	(25,00,000)
Income chargeable to tax in India	10,00,000
Taxes payable in India @ 30%	3,00,000
Add: Interest u/s 234A and 234C of the IT Act	1,00,000
Add: Late fee u/s 234F of the IT Act	10,000
Total taxes including interest and fee payable in India	4,10,000
Foreign Tax credit (Doubly taxed income = INR 10,00,000) Lower of - ▪ Tax payable in India = INR3,00,000 * INR10,00,000 / INR 10,00,000 = INR 3,00,000 ▪ Foreign tax paid = INR 3,50,000 * INR 10,00,000 / INR 35,00,000 = **INR 1,00,000**	(1,00,000)
Net tax paid in India	**3,10,000**

* Tax payable in India for the purpose of calculating FTC shall not include interest and fee payable under the IT Act

❖ ***Claim against Book profit tax***

FTC shall be allowable against Book profit tax / Minimum Alternate Tax payable under Section 115JB of the IT Act, in the same manner as allowable against tax payable under normal provisions.

However, where the FTC allowable against MAT exceeds those allowable under normal provisions, such excess shall be ignored while computing MAT credits under Section 115JAA of the IT Act.

The said rule is clarificatory and will obviate taking claim of excess FTC twice viz. first, directly upon payment of taxes when being paid under MAT and second, indirectly by means of MAT credit against future tax liabilities.

Case study #11:

Tax paid by Ms. A in Australia = INR 10 crores

Tax payable under normal provisions in India = INR 3 crores

Tax payable under MAT = INR 15 crores

FTC allowable shall be lower of

(a) Indian tax payable – INR 15 crores

(b) Foreign tax paid – INR 10 crores

i.e., INR 10 crores. Ms. A shall pay tax of INR 5 crores in India, after a claim of INR 10 crores of FTC

In this case, while computing MAT Credit u/s 115JAA of the IT Act, the amount of INR 7 crores (claim against MAT – INR 10 crores *minus* claim against tax under normal provisions – INR 3 crores) shall be ignored.

Hence, Ms. A could possibly claim INR 5 crores as MAT credit (INR 12 crores *minus* INR 7 crores).

❖ ***Disputed foreign tax***

Prima facie, no credit shall be allowed in respect of foreign tax paid under dispute. However, FTC can be claimed in respect of such foreign taxes in the year in which corresponding income is offered to tax in India upon satisfaction of the following conditions within 6 months from the end of the month in which the dispute is finally settled:

- ***Condition 1***: Taxpayer furnishes evidence of settlement of dispute
- ***Condition 2***: Taxpayer furnishes the evidence to the effect that the liability for payment of foreign tax has been discharged by him.

- ***Condition 3***: Taxpayer furnishes an undertaking that no refund in respect of such amount has directly/ indirectly been claimed.

Case study #12:

Ocean Ltd., a company resident in India, is in receipt of income in the nature of royalty from UK in FY 2018-19. The company is of the opinion that no tax be payable on this amount as per the provisions of India – UK DTAA. However, the tax authorities of UK are of the opinion that Ocean Ltd. is liable to pay tax in UK, which was disputed by way of an appeal. The company has offered such income to tax in India in FY 2018-19.

The company, being Indian company is liable to file its Income Tax Return in India for FY 2018-19 by November 30, 2018. As on the date of filing of Indian Income Tax Return, the dispute in relation to tax on royalty income from UK is pending. The tax being disputed, the company shall not be claimable as FTC in India in FY 2018-19.

Later, the dispute gets settled against Ocean Ltd. by order of HMRC of UK on May 15, 2022 and the company deposits such disputed tax with UK authorities on June 1, 2020. Here, the disputed tax shall be rightfully claimable as FTC in India in the year in which such income was offered to tax in India viz. FY 2018-19.

In this regard, Rule 128 of the IT Rules prescribes submission of proof of settlement of dispute etc. within 6 months from the end of the month in which such dispute was settled. However, there is no guidance given in the Rule as to the year in which such taxes shall be claimable as FTC viz. whether claimable in the year of settlement of dispute or year of offering such income to tax in India.

It shall be noted that there is no practical possibility of claim for FY 2018-19 since the due date for filing Form 67 and Income tax Return in India for FY 2018-19 has elapsed. In the absence of any such mechanism, the taxpayer might be required to file a petition before the jurisdictional Assessing Officer for claim thereof.

❖ ***Source-wise and country-wise computation***

FTC shall be computed separately for each source of income country-wise. Such view has been upheld by the Hon'ble Bombay HC in the case of **Bombay Burmah Trading Corporation Ltd.**[11], especially in the context of Section 91 of the IT Act.

Case study #13:

Star Ltd., a company incorporated in India is engaged in the business of software development and maintenance services across the world. The company earned taxable income under the head 'Profits and gains from business or profession' of INR 20 crores in India. Corporate tax rate in India 25%.

The company earned foreign sourced income as follows:

- Fees for technical services earned in USA of INR 5 crores (Rate of tax in USA – 15%)
- Royalty earned in Netherlands of INR 2 crores (Rate of tax in Netherlands – 10%) and related expenses amounted to INR 0.50 crores.
- The company had a PE in Netherlands, which was closed few years ago. Business loss of INR 3 crores brought forward.
- Dividends earned from investments in Netherlands of INR 1.50 crores (Rate of tax in Netherlands – 5%)

In this case, FTC shall be calculated source of income wise and country-wise in the following manner:

Particulars	Amount in INR Cr.
Gross receipts	7.00
Less: Business expenditure	(0.50)
Business income	6.50
Less: Business loss	(3.00)
Income from business/ profession	3.50
Income from other sources (Dividend income)	1.50

[11] [2003] 259 ITR 423

Total income	**5.00**
Tax payable in India @ 25%	**1.25**
Less: Foreign Tax credit	
▪ ***FTS earned in USA*** (Doubly taxed income= INR 2 crores*) Taxes paid in India on doubly taxed income = INR 0.50 cr. Taxes paid in USA on doubly taxed income = INR 0.75 cr. FTC = Lower of the above = **INR 0.50 cr.**	(0.50)
▪ ***Royalty earned in Netherlands*** (Doubly taxed income = INR 1.50 crores*) Taxes paid in India on doubly taxed income = INR 0.375 cr. Taxes paid in Netherlands on doubly taxed income = INR 0.15 cr. FTC = Lower of the above = **INR 0.150 cr.**	(0.15)
▪ ***Dividends earned in Netherlands*** (Doubly taxed income = INR 1.50 crores) Taxes paid in India on doubly taxed income = INR 0.375 cr. Taxes paid in Netherlands on doubly taxed income = INR 0.075 cr. FTC = Lower of the above = **INR 0.075 cr.**	(0.075)
Net tax payable in India	**0.525**

** Losses of INR 3 crores brought forward is off set against FTS earned in USA. Alternatively, such losses to some extent can also be off set against income earned in Netherlands.*

❖ ***Conversion of foreign exchange***

For the purpose of computing FTC, *Foreign tax* shall be calculated by converting the tax paid in foreign currency on the basis of the **Telegraphic Transfer buying rate** on the date on which such tax has been paid or deducted.

Where taxes were deducted / paid on various dates, such foreign taxes paid in foreign currency shall be converted into INR using the Telegraphic Transfer buying rate on the specified dates.

❖ ***Compliance requirements***

In order to claim FTC under the provisions of the Act, the taxpayer is mandated to furnish on/before due date for filing Return of Income under Section 139(1) of the IT Act

- **Form no. 67** (Refer *Image* below) disclosing foreign sourced income and tax paid in *source* country therein for computing FTC.
- a certificate specifying nature of income and amount of tax deducted / paid by taxpayer from the tax authority of *source* country (or) from the person responsible for deduction of tax at source.

  Where it is not feasible to obtain such certificate, a statement signed by the taxpayer along with the proof of payment of taxes in source country shall be submitted.

FORM NO. 67

[*See* rule 128]

Statement of income from a country or specified territory outside India and Foreign Tax Credit

PAQRT A

1. Name of the assessee .....
2. *Permanent Account Number or Aadhaar Number* | | | | | | | | | | |
3. Address .....

   .....
4. Assessment year .....
5. Details of income from a country or specified territory outside India and Foreign Tax Credit claimed

Sl. No.	*Name of the country/ specified territory*	*Source of income*	*Income from outside India*	*Tax paid outside India*		*Tax payable on such income under normal provisions in India*	*Tax payable on such income under section 115JB/JC*	*Credit claimed under section 90/90A*			*Credit claimed under section 91 Amount*	*Total foreign tax credit claimed*
				Amount	*Rate*			*Article No. of Double Taxation Avoidance Agreements*	*Rate of tax as per Double Taxation Avoidance Agreements*	*Amount*		
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
		Salary										
		House property										
		Business/ professional income										
		Long term capital gain										
		Short term capital gain										
		Interest income										
		Dividend										
		Royalty not being part of business income										
		Fees for technical services not being part of business income										
		Others (specify)										

PART B

1.(*a*)	Whether any refund of foreign tax has been claimed in any prior accounting year as a result of carry backward of losses	Yes/No
(*b*)	If reply to (*a*) above is Yes, furnish the following details:—	
	(*i*) the accounting year to which such loss pertains	.....
	(*ii*) the accounting year(s) in which set off of carry backward of loss has been undertaken	.....
	(*iii*) refund claimed for the accounting year(s)	.....
	(*iv*) previous year to which refund referred to in (*iii*) relates	.....
2.(*a*)	Whether credit for any foreign tax has been claimed which is under dispute	Yes/No
(*b*)	If reply to (*a*) above is Yes, furnish the following details:—	
	(*i*) the nature and amount of income in respect of which tax is disputed	.....
	(*ii*) the amount of such disputed tax	.....

Verification

I, ... son/daughter of ....., holding [*Permanent Account Number or Aadhaar Number*] ..... solemnly declare that to the best of my knowledge and belief, the information given in Part A and Part B of the statement above is correct and complete and is truly stated.

I further declare that I am making this statement in my capacity as ..... and I am also competent to make this statement and verify it.

Verified today the ..... day of ..... 20 .....

Place: ……. *(Signature)*

Note: Attach certificate or statement and proof of payment/deduction of foreign tax as referred to in clause (*ii*) of sub-rule (8) of rule 128.

Image: Form 67

❖ ***Carry backward of losses***

Some countries provide for carry backward of losses. For instance, Netherlands provide for carry backward of losses for one year; USA provides for carry backward of losses for upto 2 years. Where carry backward of losses of current year in *source* country results in refund of foreign tax paid in prior years, which has been claimed as FTC in India, Form 67 shall be filed.

Case study #14:

Glass Ltd., a company incorporated in India (*Residence* country), has a branch office in USA (*source* country), which earned income/ incurred losses as tabulated below:

Year	Income / (Loss)	Tax paid
Year 1	$1,000,000	$250,000
Year 2	($1,500,000)	NIL

In Year 1, the company paid taxes in USA of $ 250,000 and claimed the same as FTC in its tax return filed in India. Later, the company opted to carry back the losses incurred in Year 2 for set off against Year 1 and claimed a refund of $ 250,000 in USA.

In this case, the company has claimed a refund of taxes paid in USA, while also claiming FTC in India, which amounts to double deduction. Hence, Form 67 is required to be filed in India, mentioning the details of carry backward of losses.

While the rule mandates filing of Form 67 in the year in which such carry forward of losses is claimed/ opted (viz. in Year 2), the provisions of the Act is silent on the year in which such FTC shall have to be claimed. Practically, it might be simpler in offering FTC claimed to tax in year 2, rather than year 1 (where due date for filing revised return could have elapsed).

5. Issues in claiming FTC in India

While the IT Act and the DTAA provides for methodology in computing and claiming FTC, there are interpretational/ other issues arising while applying such provisions, which is discussed in the ensuing paragraphs.

ISSUE NO. 1: Eligible persons for claiming FTC in India

FTC is allowable by *residence* country to the persons who are considered to be tax residents as per the domestic tax laws of such country. In India, persons who are 'residents', irrespective of whether they are Resident and ordinarily resident (ROR) (or) Resident but not ordinarily resident (RNOR), shall be eligible to claim FTC in respect of taxes paid in *source* country.

In this regard, it is notable that the Hon'ble Delhi bench of ITAT in the case of **Aditya Khanna**[12] has clarified that the Resident but not ordinarily resident in India are also equally eligible to claim FTC in India in respect of taxes paid abroad on doubly taxed income.

ISSUE NO. 2: Scope of taxes eligible for FTC claim

Bilateral relief u/s 90 of the IT Act

The taxpayer shall be eligible to claim FTC only in respect of 'taxes' covered under DTAA as prescribed under Section 90 of the Act. There may be varying definitions of 'tax' in different DTAAs which India has entered into, which would be described in **Article 2 – TAXES COVERED** of the respective DTAAs.

For instance,

India – Germany DTAA covers the the Einkommensteuer (income-tax), the Korperschaftsteuer (corporation-tax), the Vermogensteuer (capital tax) and the Gewerbesteuer (trade tax).

India – Denmark DTAA covers the income-tax to the State, the municipal income-tax, the income-tax to the country municipalities, the old age pension contribution, the seamen's tax, the

[12] ITA No. 6668/Del/2015

special income-tax, the church tax, the tax on dividends, the contribution to the sickness "per diem" fund, the hydrocarbon tax, the capital tax to the State.

India – USA DTAA covers the Federal income taxes imposed by the Internal Revenue Code (but excluding the accumulated earnings tax, the personal holding company tax, and social security taxes), and the exercise taxes imposed on insurance premiums paid to foreign insurers and with respect to private foundations.

It shall be noted that the FTC shall not be available for taxes other than those covered under the definition of 'taxes' in DTAA. For instance, no FTC is available in respect of taxes levied by cantons in USA as it is not covered within the scope of 'taxes' under India – USA tax treaty. Such a view has been taken by the Hon'ble Delhi bench of ITAT in the case of **Manpreet Singh Gambhir**[13]**.** On the other hand, the option of claiming such taxes as FTC under unilateral relief cannot be ignored (discussed in ensuing paragraphs).

Unilateral relief u/s 91 of the IT Act

Where there is no DTAA, FTC shall be available in respect of the tax payable under the law in force in that country in the nature of 'income-tax'. The expression 'Income-tax' includes any excess profits tax or business profits tax charged on the profits by the Government of any part of that country or a local authority in that country. Thus, only such taxes meeting the above definition shall be eligible for unilateral relief under Section 91 of the IT Act.

ISSUE NO. 3: Relief against state taxes

Taxes paid in cantons / states of USA can be subjected to relief under Section 91 of the IT Act as there is no tax treaty entered into by India with such canton/ state. Such view has been observed by the Hon'ble Karnataka HC in the case of **Wipro Ltd.**[14] and the Hon'ble Mumbai bench of ITAT in the case of **Tata Sons Ltd.**[15]

ISSUE NO. 4: Differences in tax period

There may be a mis-match of tax period (Assessment year) in India and in foreign country.

[13] [2008] 26 SOT 208
[14] [2015] 62 taxmann.com 26
[15] [2011] 43 SOT 27

For instance, an income assessed in India in AY 2020-21 on accrual basis, whereas, in the foreign country the same income is assessed in the AY 2021-22 on receipt basis, when taxes are paid in that foreign country. The result would be that income would be assessable in India in AY 2016-17, whereas FTC will not be available as the same is not 'paid' in the foreign country. *Note that the DTAA provisions could relieve double taxation even if taxes are not actually paid but chargeable in the foreign country.*

A corollary situation arises when taxes were paid in *source* country in the year 2021 whereas FTC is claimed in *residence* country in AY 2022-23. In this case, since taxes were actually paid in *source* country, though not in the period relevant for the AY. Such position was upheld by the Hon'ble Bombay HC in the case of **Petroleum India International**[16]. HC observed that FTC for the year is not dependent upon the payment of taxes in *source* country also being made in the '*same year'*.

Another point to be noted is the practical difficulties in claiming FTC in India, where the fiscal year is different in *source* and *residence* country. For instance, India follows Financial Year April 1 to March 31 as tax assessment year, while US follows calendar year January 1 to December 31 as tax assessment year. This is better explained through the following case study.

Case study #15:

Bridgestone Ltd., an Indian company has a branch office in USA, is required to file its Return of Income in India for FY 2021-22 by November 30, 2022. On the other hand, the branch has time until January 31, 2022 to pay taxes on income for the period 2021 and shall file its Return of Income for 2021 by April 18, 2022.

Conversely, Indian tax return shall be filed for the period April 1, 2021 to December 31, 2021 (Part I) & January 1, 2022 to March 31, 2022 (Part II). While details of tax paid for Part I shall be available at the instance of filing return in India, it is practically not possible to obtain details of tax paid during Part II by November 30, 2022 (since it will be available only by April 2023), thereby, raising the question of claiming FTC in respect of such taxes in India.

[16] ITA no. 3653 of 2009

In this case, the company might choose to claim FTC where taxes during Part II has been paid by way of Tax deduction at source and adjust it for actual taxes at the time of assessment proceedings of the company in India. If no assessment has been undertaken, practically the claim cannot be adjusted for any changes.

However, its successful execution would depend either on the robustness of the exchange of information mechanism with the other state (in scenarios covered by tax treaties), or on the taxpayer's meticulousness in reporting the refund to the Indian tax authorities.

ISSUE NO. 5: Computation of doubly taxed income

It is interesting to note the definition of 'doubly taxed income' as observed by the Hon'ble Madras High Court in the case of **CIT vs. O.VR.SV.VR. Arunachalam Chettiar**[17]**.** Such expression indicates that it is only that portion of the income on which tax has in fact been imposed and been paid by the assessee that is eligible for the double tax relief.

Further, the Hon'ble Rajasthan HC in the case of **R.N.Jhanji**[18] observed that the amount claimed as a deduction under Chapter VI-A are not 'doubly taxed' and hence, no relief can be claimed of such amount.

Case study #16:

In 2021, Ms. Alfa, a tax resident in India registered a patent in India in accordance with the Patents Act, 1970 for a water purifying machine. She entered into an agreement with Eureka Ltd., a company incorporated in UK towards using her know-how/ process for manufacturing water purifier, against which she was paid royalty of UKP 10,000 in USA during FY 2021-22.

Such income was repatriated to India in June 2022 and hence, eligible for deduction under Section 80RRB of the IT Act. Royalty income was subjected to tax in UK at the rate of 15% under India – UK DTAA.

In India, tax is payable as per slab rates (under simplified tax regime) as indicated below:

Upto INR 2,50,000 – NIL

[17] [1963] 49 ITR 574 (Mad)
[18] [1990] 185 ITR 586 (Raj)

INR 2,50,001 to INR 5,00,000 – 5%

INR 5,00,000 to INR 7,50,000 – 10%

Now, let's look at India – UK DTAA for relief of double taxation:

> *"2. Subject to the provisions of the law of India regarding the allowance as a credit against Indian tax of tax paid in a territory outside India (which shall not affect the general principle hereof), the amount of the United Kingdom tax paid, under the laws of the United Kingdom and in accordance with the provisions of this Convention, whether directly or by deduction, by a resident of India, in respect of* ***income*** *from sources within the United Kingdom which has been* ***subjected to tax both in India and the United Kingdom*** *shall be allowed as* ***a credit against the Indian tax payable in respect of such income but in an amount not exceeding that proportion of Indian tax which such income bears to the entire income chargeable to Indian tax.****"*

As evident, India – UK provides for 'ordinary credit' method. Accordingly, FTC shall be calculated as follows:

Particulars	**Amount in INR**
Royalty paid in UK (1 UKP = INR 100)	10,00,000
Taxes paid in UK @ 15% (A)	**1,50,000**
Royalty income in India	10,00,000
Less: Deduction under Section 80RRB Lower of (a) Actual royalty – INR 10,00,000 (b) INR 3,00,000	(3,00,000)
Taxable income in India	7,00,000
Taxes payable in India	32,500
Less: Foreign Tax credit As per Article 24 of India – UK DTAA, lower of ▪ Taxes paid in UK – INR 1,50,000 ▪ Taxes paid in India on UK sourced income – INR 1,05,000[#]	(32,500)
Net tax paid in India (B)	**NIL**

Taxes paid (A) + (B)	**1,50,000**

Deduction under Section 80RRB of the IT Act is not doubly taxed and hence, doubly taxed income in this case is INR 7,00,000/-.

FTC shall not exceed that proportion of Indian tax which, such income bears to the entire income chargeable to Indian tax.

Prescribed limit under India – UK DTAA = $\frac{\text{INR 1,50,000 * INR 7,00,000}}{\text{INR 10,00,000}}$ = **INR 1,05,000/-**

At this juncture, it is also essential to understand that doubly taxed income shall be computed factoring deductions in respect of expenditure incurred in relation to such income, as allowable under the provisions of the IT Act, apart from Chapter VI-A deductions. In this regard, the ruling of the Ahmedabad bench of ITAT in the case of **Elitecore Technologies Private Limited**[19] and **Virmati Software & Telecommunication Limited**[20] shall be referred, wherein the ITAT referred to UN Model convention[21] wherein the basis of calculation of income tax is referred as 'Net income' viz. Gross receipts less allowable deductions.

Therefore, it is the gross income derived from the *source* country *less* any allowable deductions (specific or proportional) connected with such income which is to be subjected to double tax relief. Also, allocation of proportional deductions amongst income can be justified in some situations, such as when business operations are somewhat evenly or even in a significant manner, spread over the *residence* and *source* jurisdiction. Where such fact is not present, the deductions shall be allowable based on facts and circumstances of each case.

ISSUE NO. 6: Stage of claiming FTC by salaried employees

Employees of Multi-national enterprises are casually sent on a short-term assignment to a foreign jurisdiction for a period ranging 6-8 months. Such an employee may be subject to tax in such foreign jurisdiction while also be liable to tax in India, as an Indian tax resident. In this regard, a question arises as to whether the tax paid in foreign jurisdiction shall be factored as FTC for computing tax deductible at source under Section 192 of the IT Act.

[19] ITA No.623/Ahd/2015
[20] ITA No. 1135/Ahd/2017
[21] UN Model convention on income and capital (2017)

The AAR in the case of **Texas Instruments (India) Pvt. Ltd** [22]had ruled that the FTC may be considered by the Indian employer at the withholding stage for resident employees so that incidence of double taxation is resolved.

It is relevant to note certain practical aspects in this regard. The CBDT releases a circular clarifying the methodology for deduction of taxes at source under Section 192 of the IT Act. In that manner, the CBDT has released the Circular no. 4/2022 dated 15-03-2022 for the financial year 2021-22. However, there is no mechanism prescribed therein for factoring FTC at the instance of deduction of taxes at source. On the other hand, the tax withholding returns filed by the employers also does not have any dedicated space to factor FTC of employees. Further, the current rules allow employees to file Form 67 on the e-filing portal in order to claim FTC only once, at the time of their return filing.

Therefore, though the AAR had allowed such a position, the said benefit is practically available only at the time of filing Income tax returns, which may lead to blockage of cash of such employees.

ISSUE NO. 7: Allowability of FTC against income exempt in India

One of the interesting aspects is the allowability of FTC on income which is exempt in India, say profits from export from STPI unit (section 10A)/SEZ unit (section 10AA), wherein tax on such income has been paid in foreign jurisdiction. From the provisions of the IT Act read with IT Rules, it is not explicit as to whether FTC would be available where income subjected to foreign tax, is exempt u/s 10 of the IT Act.

In this regard, the ruling of the Hon'ble Karnataka High Court in the case of **Wipro Ltd.**[23] is notable, wherein it was observed that income derived by an unit eligible to claim exemption under section 10A/ 10AA of the IT Act is chargeable to tax under section 4 and consequently, covered under the scope of total income prescribed in section 5 of the IT Act. However, no tax

is charged since it has been granted an exemption under section 10A/ 10AA of the IT Act for a limited period of 10 years as prescribed.

[22] AAR No 1299 of 2012 (Jan. 29, 2018)
[23] [2015] 62 taxmann.com 26

Merely because the exemption has been granted, it cannot be postulated that the taxpayer is not liable to tax as the said exemption granted had the effect of suspending the collection of tax only for a period of 10 years and therefore, FTC was held to be allowable.

ISSUE NO. 8: Tax sparing credit

While tax sparing credit is not recognized in Indian IT Act, the DTAA, wherever provides so shall bestow the taxpayer with such benefit. This upholds the overriding position of DTAA over the domestic tax laws.

Such a view has been upheld by the Hon'ble Delhi bench of ITAT in the case of **Polyplex Corpn Ltd.**[24]. In this case, the ITAT allowed the FTC of 10% tax to the Indian company by invoking tax sparing provisions of India – Thailand DTAA, on dividend received from its Thailand subsidiary, despite the fact that the company was not liable to pay any tax in Thailand by virtue of exemption granted as per the Investment Promotion Act of Thailand.

Such position has also been upheld by the Delhi bench of ITAT in the case of **Krishak Bharathi Co-operative Ltd.**[25].

On the other hand, such credit is not allowable in India, where no tax treaty exists with such jurisdiction

ISSUE NO. 9: Joint/ consolidated tax returns in source country

In certain jurisdictions such as USA, UK, France, Australia, the practice of group relief for affiliates, filing joint/ consolidated returns by individual-spouse, holding-subsidiary companies etc is prevalent. By virtue of such schemes, certain incentives/ relief is also available in such countries. On the other hand, such concept is not applicable in India.

In that case, there is no clear view as to the manner of computation of FTC, especially where certain exemptions/ deductions are available on account of group filing. Conservatively, one may opt to claim FTC to the extent of taxes paid in *source* country proportionate to the income of such taxpayer offered to tax outside India, considering applicable relief.

[24] [2019] 103 taxmann.com 71
[25] [2017] 80 taxmann.com 326 (Del)

ISSUE NO. 10: Non-granting of FTC is a valid subject matter of appeal

Under a scrutiny assessment carried out pursuant to Section 143(3)/147/144 of the IT Act, various claims made by the taxpayer in its Return of Income filed for the respective AY is adjudicated. Specifically, vide the assessment order passed under the aforesaid provisions, the Assessing Officer assesses the total income of the assesse, whereas the tax credits in the form of TDS, TCS, advance tax, FTC etc. shall be factored in the computation of tax payable annexed to such assessment order.

In that manner, where FTC has not been granted by the Assessing Officer[26] while computing tax payable pursuant to the assessment order, a question arises as to whether such denial can be a '*subject matter of appeal*' before Commissioner of Income-tax (Appeals)[27], as this does not involve any 'assessment of income' per se.

In this regard, Section 246A of the Act provides that term "assessment order" does not include only the assessment of the total income but also the determination of tax payable, after adjusting tax credits. Such a position has been clarified by the Mumbai bench of ITAT in the case of **Capgemini Business Services (India) Limited[28]**. Therefore, **denial of FTC by the Assessing officer/ any tax authority can be a subject matter of appeal before appellate authorities.**

ISSUE NO. 11: Tax treaty benefit not accessible

In India, bilateral relief under Section 90 of the Act is provided where India has entered into DTAA with the country. On the other hand, such relief shall be permissible only when the taxpayer is eligible to access the tax treaty benefits upon satisfaction of various conditions viz. residential status, beneficial ownership, Principle Purpose test, Limitation of benefit clause etc.

Where such conditions prescribed for accessing tax treaty benefits is not satisfied by a taxpayer, bilateral relief shall not be available. On the other hand, one could contend that the taxes paid in *source* country shall be allowable as such income has suffered double taxation.

In this regard, it shall be noted that the language of Section 91 of the Act indicates provision of unilateral relief only in cases where there is no DTAA between India and such other country. Still, in principle, unilateral relief could be provided in such cases following the Hon'ble UK

[26] Now, National Faceless Assessment Centre
[27] Now, National Faceless Appeal Centre
[28] ITA No.1164/Mum/2010

First Tier Tribunal ruling in the case of **Aozora GMAC Investments Limited**[29] , wherein the taxpayer, failing to satisfy Limitation of Benefits clause of UK – USA DTAA, was provided unilateral relief in respect of taxes paid in *source* country.

ISSUE NO. 12: Taxes not in accordance with convention

In the context of bilateral relief under Section 90 of the Act, it is essential that the taxes paid in *source* country is in accordance with the DTAA between the source and *residence* country. Such language can be found in many DTAAs as a pre-requisite for claiming FTC in *residence* country. For instance, the relevant portion of Article 25 – ELIMINATION OF DOUBLE TAXATION in India – USA DTAA is extracted below:

> *(a) Where a resident of India derives income which, **in accordance with the provisions of this Convention**, **may be taxed** in the United States, India shall allow as a deduction from the tax on the income of that resident an amount equal to the income tax paid in the United States, whether directly or by deduction. Such deduction shall not, however, exceed that part of the income tax (as computed before the deduction is given) which is attributable to the income which may be taxed in the United States.*

There could be differences in characterisation of income between *source* country and *residence* country. For instance, while *source* country invokes Article 12 – ROYALTIES and FEES FOR TECHNICAL SERVICES interpreting service income as Fees for technical services, the *residence* country could contend that such income, being in the nature of business profits, shall not be taxable in *source* country in the absence of Permanent establishment. In that case, the *residence* country could even deny FTC on the ground that such taxes are not levied in accordance with the DTAA. However, the Kolkata bench of ITAT in the case of **Som Datt Builders (P.) Ltd.**[30] has clarified that the availability of FTC is not hindered where the *source* and *residence* country does not tax such income under the same head.

In case taxes has been paid in *source* country, which is not required to be paid as per DTAA, a question arises as to whether such taxes are paid '*in accordance with convention*'. Such question has been answered by the Hon'ble UK First Tier Tribunal in the case of **G E Financial**

[29] TC/2016/06360 / [2021] UKFTT 0099 (TC)
[30] [1989] 29 ITD 495 (Kol)

Investments[31]**.** The Court interpreted the phrase '*in accordance with convention*' as those taxes levied under the Articles of DTAA and at the rates specified in the DTAA. Thus, any taxes paid in excess of what is levied under the DTAA shall not be in accordance with the convention and therefore, not eligible for FTC in the *residence* country. While this situation has not knocked the doors of the Indian judiciaries yet, the above view could be expected in our country as well.

ISSUE NO. 13: Impact of non-filing / belated filing of Form 67

Rule 128 of the IT Rules mandates filing of Form 67 on/before due date for filing tax return for claiming FTC. It is notable that the due date for filing such form / the mandate to file such form is not prescribed in the provisions of the Act but only in the IT Rules. This shall be contrasted with the claim of deduction under Section 80IAC, 80IA, 80IB etc. where the filing of audit report is mandated under the Act itself.

A possible view can be taken that filing of such form is merely a directory requirement and is subservient to the provisions of the Act. Hence, non-filing/ belated filing of Form 67 ought not to have any impact on the claim of FTC. Also, Rule 128 of the IT Rules does not mention any consequences for non-filing of such form.

Such position has been upheld by the Bangalore bench of ITAT in the case of **Brinda Ramakrishna**[32] and **42 Hertz Software India Private Limited**[33] and Surat bench of ITAT in the case of **Sanjay Patil**[34]. However, this position could be litigated by tax authorities below the ITAT.

ISSUE NO. 14: FTC in the hands of PE in India (Triangular cases)

Foreign companies are regarded as non-residents unless their Place of Effective Management (PoEM) is situated in India[35]. On the other hand, a Foreign company could establish its presence, by virtue of which a Permanent establishment (PE) in India. For example, branch office, godown, installation site etc. Indian PE is always taxed on net basis, after allowing deductions in respect of expenditure incurred.

The question to be addressed is whether taxes paid outside India by such Indian PE shall be allowable as FTC in the hands of PE in India.

[31] TC/2017/08123/ [2021] UKFTT 0210 (TC)
[32] ITA. No. 454/Bang/2021
[33] ITA no. 29/Bang/2021
[34] ITA No.189/SRT/ 2021
[35] Section 6 of the IT Act

While such situations are not enumerated in the Indian domestic laws, we shall refer to the OECD model tax convention commentary[36] wherein *Article 24: Non-discrimination* of DTAA provides for equal treatment between resident of a country and permanent establishment situated in such country.

By virtue of such article, a possible view can be taken that any relief provided for in the domestic laws of India for residents of India is also to be granted to a PE in India of a foreign company.

The extract of **Article 26 – NON-DISCRIMINATION** of **India – Singapore** DTAA is as follows:

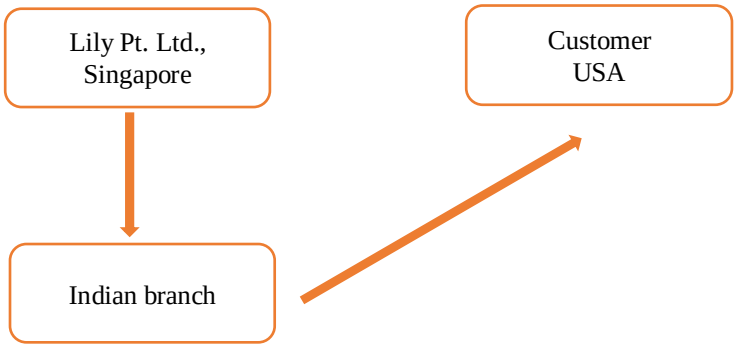
> *"2. The taxation on a **permanent establishment** which an enterprise of a Contracting State has in the other Contracting State **shall not be less favourably levied** in that other State **than the taxation levied on enterprises of that other State carrying on the same activities in the same circumstances or under the same conditions**. This provision shall not be construed as preventing a Contracting State from charging the profits of a permanent establishment which an enterprise of the other Contracting State has in the first-mentioned State at a rate of tax which is higher than that imposed on the profits of a similar enterprise of the first-mentioned Contracting State, nor as being in conflict with the provisions of paragraph 3 of Article 7 of this Agreement.*

As can be observed from the above, the Indian PE of a foreign company shall be allowed FTC, at par with the Indian companies, who are eligible to claim such FTC.

Case study #17:

Lily Pt. Ltd., a resident of Singapore is engaged into the business of manufacturing and trading fashion apparels. The company has set up a branch office in India (forms a PE), which also engaged itself in the trading activity. In exercising such activities, the Indian PE earned $ 10,000 by performing maintenance services for apparels sold, on which tax @ 15% has been deducted at source in USA. Such income is absolutely attributable to PE in India.

[36] Commentary on Article 23A and 23B



Now, we shall ascertain as to whether FTC of $ 1500 is claimable in India.

As discussed above, pursuant to Article 24 – Non-discrimination of **India – Singapore DTAA**, Indian PE shall be treated at par with Indian company and hence, shall be eligible to claim FTC under **India – USA DTAA** in respect of taxes paid in USA (*source* country). It shall also be

Noted that Singapore Company shall factor the income offered to tax in India by PE and consider the taxes paid in India for computing FTC thereof to be off-set against Singapore tax payable.

ISSUE NO. 15: General Anti-Avoidance Rules

GAAR, introduced with effect from April 1, 2017, aims to curb tax evasion by emphasising the doctrine of 'substance over form'. Broadly speaking, GAAR will identify 'Impermissible Avoidance arrangements' and can enable tax authorities to re-characterise such arrangements and deny tax benefits under the IT Act / tax treaty benefits so as to curtain the means of tax avoidance. Section 90(2A) of the IT Act specifically provides that the chapter X-A (GAAR), shall override the provisions of the tax treaty as well, thereby denying FTC claim.

ISSUE NO. 16: Carry forward / Carry backward of FTC

While several countries allow carry forward and/ or carry backward of excess FTC, Indian tax law does not contain any such provision. For instance, USA allows a taxpayer to carry back excess FTC for 1 year and carry forward the excess for 10 years; UK allows a taxpayer to carry back for 3 years and carry forward the excess FTC without any limitation.

Since Indian tax law does not provide for any carry forward / carry backward of excess FTC, such excess FTC shall lapse.

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