

1. How is the relief for double taxation calculated, e.g. through the exemption or credit method?

There are two ways by which relief can be provided:

Bilateral relief – When the Governments of two countries enter into an agreement to provide relief against double taxation by jointly working out the system to grant it. In India, bilateral relief is provided under Section 90 and 90A of the Income-tax Act, 1961.

Agreements in this kind of relief can be of two types:

Exemption Method

When two countries agree that income arising from specified sources, which are taxable in both the countries, should either be taxed in only one of them or that each of the two countries should tax only a particular specified portion of the income so that there is no overlapping.

Tax Credit Method

In this kind of agreement, single taxability is not provided but some relief is provided. The assessee is given a deduction though he is liable to have his income taxed in both the countries.

Method of Calculation of Double Taxation Relief under section 90, 90A.

1. First include the income earned and taxed in the foreign country along with the income earned in India.
2. Then calculate tax on the Total Income above.
3. Now calculate average rate of tax.
4. Then multiply such rate with the income earned from foreign country.
5. Deduct tax paid in the foreign country from the tax calculated in 4 steps above.

Such amount is relief u/s 90.

Example –In case of Resident individual.

Income earned in India =Rs500000

Income earned from foreign =200000(Tax paid there =Rs50000)

1. Total income is =500000+200000=700000
2. Tax calculated on 7,00,000/- is 118450/-
3. Average rate of tax is $(118450/700000) = 16.92\%$
4. Calculate average tax on foreign income i.e. $200000 * 16.92\% = \text{Rs. } 33840/-$
5. Tax paid in foreign country is Rs.50000
6. Hence relief u/s 90 is lower of 33840 and 50000 i.e. 33840/-

Therefore tax statement is,

Tax on Total income = 118450

Less: relief u/s 90 = 33840

Tax payable 84610/-

Relief U/s Section-91 Countries with which no Agreement Exists.

In any previous year, a person resident in India, has paid tax in any country with which India has no bilateral Agreement under section 90 for the relief or avoidance of double taxation in respect of his income which accrued or arose during the previous year under the Law in force in that country, by deduction or otherwise, he shall be entitled to the deduction from the Indian Income Tax payable by him calculated on such doubly taxed income at this Indian Rate of Tax or the rate of the said country whichever is lower or at the India Rate of Tax , if both rates are equal

2. Is the taxation of director's remuneration different from the taxation of employee's salary?

There is no difference between director remuneration and employee salary in India if remuneration is due/pay for handling day to day operation of the company. Salary received in India is considered as taxable under the Indian domestic tax laws (along with being taxed in the country where they are working as most countries adopt the source method of taxation) and tax calculation has been made accordingly.

Directors' fees and similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other Contracting State

3. How is the term "employer" interpreted, formally or economically?

Under Indian Code of Wages, 2017 "employer" means a person who employs one or more employees in his establishment.(interpreted formally)

- (i) in relation to an establishment which is a factory, the occupier of the factory as defined in clause (n) of section 2 of the Factories Act, 1948 and, where a person has been named as a manager of the factory under clause (f) of sub-section (1) of section 7 of the said Act, the person so named;
- (ii) (ii) in relation to any other establishment, the person who, or the authority which, has ultimate control over the affairs of the establishment and where the said affairs is entrusted to a manager or managing director, such manager or managing director; and
- (iii) (iii) contractor;

Overview of Article 15 of DTAA Meaning of the term "employer" - The term "employer" is not defined in the Convention

- i. Model commentaries suggest that substance over form test should be applied
- ii. Employer is the person who has rights on the work produced and bears the responsibility and risk. It needs to be seen whether employee provides services which are an integral part of business of the employer.
- iii. Real Employer in case of secondment contracts, deputation contracts and international hiring of labour will be the employer for Article 15

4. Which conditions need to be met to be regarded as formal or economic employer?

In India, employer must be registered under local authority/factory act and adhere to the regulations of Labour law/Code of Wages/PF/ESI as and when applicable.

5. When is the salary borne by the permanent establishment?

All the Act/Regulations which are mandatorily applicable to Indian Employer are applicable to permanent establishment too considering them as Indian employer.

6. How is the term permanent representative been interpreted in your country (i.e. implementation BEPS action point 7)?

There is no specific guideline for interpretation of permanent representative in India. However, essentially place of control and effective management defines the residential status / tax status of the entity.

7. How is an international redundancy payment been treated (allocation)?

International redundancy payment is always subject to personal taxation in India if the employer is resident of India (Indian resident company or permanent establishment)

8. How are the 182 days been calculated?

An individual 182 days are calculated in tax year if he/she is:

- present in India in that tax year for a period or periods totaling 182 days or more or
- present in India for at least 60 days or more during the tax year (182 days or more for a citizen of India/person of Indian origin on a visit to India; 182 days or more for a citizen of India who leaves India for employment abroad or as member of a crew of an Indian ship).

9. How is salary allocated, based on working days or do other possibilities exist?

It depends on employment agreement with the employees. Normally and generally it is on a monthly basis based on working days.

10. Who is considered to be a director according to the treaty definition?

Directors of Indian companies must be appointed according to the law and the bylaws and registered with the Register of Companies.

11. What is considered to be a director's remuneration (split between employee's salary and director's remuneration)?

There is no difference between director remuneration and employee salary in India if remuneration is due/pay for handling day to day operation of the company. Salary received in India is considered as taxable under the Indian domestic tax laws (along with being taxed in the country where they are working as most countries adopt the source method of taxation) and tax calculation has been made accordingly.

Directors' fees and similar payments derived by a resident director in his capacity as a member of the board of directors of a company

