



Zinzuwadia & Co.

Chartered Accountants



“Avoidance of Base Erosion and Profit Shifting :India”

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Introduction

- Multinational Companies around the world have taken the benefits of their round the world presence to avoid taxation by claiming benefits of the various provisions and Taxation
- Considering this 94 countries being members of The Organization for Economic Cooperation and Development (OECD) have signed the “MULTILATERAL CONVENTION TO IMPLEMENT TAX TREATY RELATED MEASURES TO PREVENT BASE EROSION AND PROFIT SHIFTING”, to eliminate the undue benefits taken by such Multinational Companies.
- India has signed the above stated Agreement as on 07th June 2017 and the rectified submission in relation to the same was made as on 26th September 2019

Amendments by India

India has made amendment in the following ways:-

1. Amendment in the Income Tax Act, 1961
2. Amendment in the Double Tax Avoidance Agreement with countries in accordance with the “MULTILATERAL CONVENTION TO IMPLEMENT TAX TREATY RELATED MEASURES TO PREVENT BASE EROSION AND PROFIT SHIFTING”

Amendment in the Income Tax Act, 1961

- The Person of Indian Origin would be considered resident if he visits India and stays for 120 days (Previously 182 days) during a financial year and if his total income earned in India for the year exceeds Rs. 15 lakhs (Rs. 1.5 Million)
- Indian Citizen is deemed resident of India for Tax purpose if his Indian Income exceeds Rs. 15 Lakhs (Rs. 1.5 million) if he is not liable to pay Tax in any other country.
- The Income Tax Act states that the benefit of the Double Tax Avoidance agreement shall be applicable while considering the same: - ***“without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in the said agreement for the indirect benefit to residents of any other country or territory), ”***

Amendment in the Double Tax Avoidance Agreement with countries in accordance with the “MULTILATERAL CONVENTION TO IMPLEMENT TAX TREATY RELATED MEASURES TO PREVENT BASE EROSION AND PROFIT SHIFTING”

- The White Paper Draft was prepared and signed by the countries as on 07th June 2017, in which the countries were required to submit their rectification request, India submitted its rectification as on 26th September 2019 and the Agreements for 22 countries were amended with effect from 01st October 2019.
- The changes effected by India and their understanding can be done article wise which is as follows

Amendment in the Double Tax Avoidance Agreement

Article	Effect of the change	Eariler Provision	Change in the Provision
Article 4 :- Dual Residency	Changes in determination of Residential Status for Non Individuals	Place of Effective Management is the country of Residence for the entity	In case of the Dual Residency the authorities of both the states will decide on the basis of the
Article 5 :- Elimination of Double Taxation	Four Countries Double Tax Avoidance Agreement with India need to be amended as per the agreement	The Income which is charged to Tax in one country cannot be taxed in other country	The Income taxed in one country will be taxed in other country however the Tax paid in the other contracting state will be allowed as credit,
Article 6 :- Preamble	All the Double Tax Avoidance Treaty Preamble needs to be changed	AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF AUSTRALIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME""	Intending to eliminate double taxation with respect to the taxes covered by the Agreement without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in the Agreement for the indirect benefit of residents of third jurisdictions),

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Article	Effect of the change	Eariler Provision	Change in the Provision
Article 7 :- Treaty Abuse	1. Stern Approach 2. Simplified Limitation on benefit Provision	Nothing in this Agreement shall affect the fiscal privileges of diplomatic or consular officials under the general rules of international law or under the provisions of special international agreements.	Notwithstanding any provisions of the Agreement, a benefit under the Agreement shall not be granted in respect of an item of income if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of the Agreement.

Note :- India has adopted Stern Approach as a interim approach. The Simplified Limitation on Benefit will be implemented afterwards. In that three benefits are given additionally (Residency, Tax credit adjustment of the Income Taxed, Request for cases not covered by DTAA). It will not apply to Individual , Government and Political Institutions, Listed Companies, Non Profit Organisations or benefit of the above.

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Article	Effect of the change	Eariler Provision	Change in the Provision
Article 8 :- Dividend	Short Term Investors	No Minimum Holding Requirement	365 days of holding shall be minimum to claim the benefit
Article 9 :- Alienation of Shares	Short Term Investors	No such condition of minimum period of derivation. Income will be taxed only in the source country.	The Time Period of derivation of value form Real Property is 365 days then the income will be charged only in the country which is the source.
Article 10:- Anti abuse rule for permanent establishment	Countries having Global Presence	No Such provision	E.g. :- A is enterprise India of having permanent establishment in United Kingdom derives income from Australia. As per DTAA the permanent establishment income is taxable in Australian and Australian Tax is less by more than 60% of tax in UK, then the income will be taxable in UK.

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Article	Effect of the change	Eariler Provision	Change in the Provision
Article 11 :- No Effect to Taxation of Resident	All Entities	No Such Provision	Taxation of Residents shall not be affected except that of genuine benefits of given under Double Tax Agreement
Article 13, 14 & 15:- Changes in Definition of Permanent Establishment	Companies having Global Presence	Permanent Establishment for Building and Construction , installation site service if exceeds 6 months.	<ul style="list-style-type: none"> • If single enterprise works for more than 30 days. • Associate Enterprise of the entity works for more than 30 days. • Aggegrate period exceeds 30 days then the first mentioned entity is permanent establishment.

Note :- The Definition of Associated Enterprise has changed for permanent establishment to entity holding more than 50% direct or indirect hold on the entity



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