

Chapter 1 : Thailand Comprehensive Agreements

A Veritable Article-wise Commentary on OECD Model Tax Convention on Income and on Capital, accompanied with a comprehensive commentary on the principles of International Taxation and Law relating to Double Taxation Agreements, explained with the aid of the decisions of the Indian and foreign courts.

Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 8 applies. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State whether through a permanent establishment or otherwise shall not of itself constitute either company a permanent establishment of the other. Income derived by a resident of a Contracting State from immovable property including income from agriculture or forestry situated in the other Contracting State may be taxed in that other State. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, buildings, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere, in accordance with the provisions of and subject to the limitations of the tax laws of that State. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article. Profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State. Profits derived by a transportation enterprise which is a resident of a Contracting

State from the use, maintenance, or rental of containers including trailers and other equipment for the transport of containers used for the transport of goods or merchandise in international traffic shall be taxable only in that Contracting State unless the containers are used solely within the other Contracting State. The provisions of paragraphs 1 and 2 shall also apply to profits from the participation in a pool, a joint business or an international operating agency. Any case resulting in double taxation from the application of this Article may be resolved under the mutual agreement procedure. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State. Notwithstanding the provisions of paragraph 1, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the dividends. This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax in that Contracting State provided it is derived and beneficially owned by, or derived in connection with a loan or credit extended or endorsed by: Penalty charges for late payment shall not be regarded as interest for the purpose of this Article. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether he is resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated. Where by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention. Royalties and fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

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Where a Contracting State includes in the profits of an enterprise of that State, and taxes accordingly, profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of the Agreement and the competent authorities of the Contracting States shall, if necessary, consult each other. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the dividends. This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid. The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax in that State, provided that it is derived and beneficially owned by: Penalty charges for late payment shall not be regarded as interest for the purpose of this Article. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. Interest shall be deemed to arise in a Contracting State when the payer is the resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have, been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last mentioned amount. In such case, the excess part of the payments shall

remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph film, or films or tapes used for television or radio broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply 5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political sub-division, a local authority, or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection, with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment alone or with the whole enterprise or of such a fixed base, may be taxed in that other State. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State of which the alienator is a resident. Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State. Gains from the alienation of shares other than those mentioned in paragraph 4 in a company which is a resident of a Contracting State may be taxed in that State. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3, 4 and 5 may be taxed in accordance with the taxation laws of the respective Contracting States. Income derived by an individual who is a resident of a Contracting State from the performance of professional services or other activities of an independent character shall be taxable only in that State except in the following circumstances when such income may also be taxed in the other Contracting State: The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, surgeons, dentists and accountants. Subject to the provisions of Articles 16, 18, 19, 20 and 21, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration

as is derived therefrom may be taxed in that other State. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if: Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic, by an enterprise of a Contracting State may be taxed in that State. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State. Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised. The provisions of paragraphs 1 and 2, shall not apply to income from activities performed in a Contracting State by entertainers or sportsmen if the activities are substantially supported by public funds of one or both of the Contracting States or of political subdivisions or local authorities thereof. In such a case, the income shall be taxable only in the Contracting State of which the entertainer or sportsman is a resident. The provisions of Articles 15, 16, 17 and 18 shall apply to salaries, wages and other similar remuneration and to pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof. A student who is or was a resident of one of the Contracting States immediately before visiting the other Contracting State and who is present in that other Contracting State solely for the purpose of his education or training, shall besides grants and scholarships be exempt from tax in that other State on: The benefits of this Article shall extend only for such period of time as may be reasonable or customarily required to complete the education or training undertaken, but in no event shall any individual have the benefits of this Article, for more than six consecutive years from the date of his first arrival for the purposes of education or training in that other State. A professor, teacher or research scholar who is or was a resident of one of the Contracting States immediately before visiting the other Contracting State at the invitation of that other Contracting State or of a university, college, school or other approved institution, shall be exempt from tax in that other Contracting State on any remuneration for such teaching or research for a period not exceeding two years from the date of his first arrival in that other Contracting State. This Article shall apply to income from research only if such research is undertaken by the individual in the public interest and not primarily for the benefit of some private person or persons. For the purposes of this Article, an individual shall be deemed to be a resident of a Contracting State if he is resident in that State in the fiscal year in which he visits the other Contracting State or in the immediately preceding fiscal year. For the purposes of paragraph 1, "approved institution" means an institution which has been approved in this regard by the competent authority of the concerned Contracting State. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles and arising in the other Contracting State may also be taxed in that other State. 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 Agreement. Double taxation shall be eliminated as follows:

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The Types of Double Taxation[edit] There are two types of double taxation: International double taxation agreements[edit] Main article: Tax treaty It is not unusual for a business or individual who is resident in one country to make a taxable gain earnings, profits in another. This person may find that he is obliged by domestic laws to pay tax on that gain locally and pay again in the country in which the gain was made. Since this is inequitable, many nations make bilateral double taxation agreements with each other. In some cases, this requires that tax be paid in the country of residence and be exempt in the country in which it arises. In the remaining cases, the country where the gain arises deducts taxation at source " withholding tax " and the taxpayer receives a compensating foreign tax credit in the country of residence to reflect the fact that tax has already been paid. To do this, the taxpayer must declare himself in the foreign country to be non-resident there. So the second aspect of the agreement is that the two taxation authorities exchange information about such declarations, and so may investigate any anomalies that might indicate tax evasion. Control of unreasonable tax avoidance of corporations becomes more difficult and requires investigation of transfer pricing set for transfer of goods, intellectual property rights, and services, among its subsidiaries. Tax residence In the European Union , member states have concluded a multilateral agreement on information exchange. These people should have declared that foreign income in their own country of residence, so any difference suggests tax evasion. For a transition period, some states have a separate arrangement. A recent study [5] by BusinessEurope confirms that double taxation remains a problem for European MNEs and an obstacle for cross border trade and investments. In particular, the problematic areas are limitation in interest deductibility, foreign tax credits, permanent establishment issues and diverging qualifications or interpretations. Germany and Italy have been identified as the Member States in which most double taxation cases have occurred. Cyprus double tax treaties[edit] Cyprus has completed over 45 Double Taxation Treaties up to today and is also in negotiations with many countries for signing Treaties with them. The main purpose of these treaties is the avoidance of double taxation on income earned in any of these countries. Under these agreements, a credit is usually allowed against the tax levied by the country in which the taxpayer resides for taxes levied in the other treaty country and as a result the tax payer pays no more than the higher of the two rates. Further, some treaties provide for tax sparing credits whereby the tax credit allowed is not only with respect to tax actually paid in the other treaty country but also from tax which would have been otherwise payable had it not been for incentive measures in that other country which result in exemption or reduction of tax. German taxation avoidance[edit] If a foreign citizen is in Germany for less than a relevant day period approximately six months and is tax resident i. The relevant day period is either days in a calendar year or in any period of 12 months, depending upon the particular treaty involved. So, for example, the Double Tax Treaty with the UK looks at a period of days in the German tax year which is the same as the calendar year ; thus, a citizen of the UK could work in Germany from 1 September through the following 31 May 9 months and then claim to be exempt from German tax. As the double taxation avoidance agreements will give the protection of income from some countries, India[edit] India has comprehensive DTAA's with 88 countries, out of which 85 have entered into force. Under the Income Tax Act of India , there are two provisions, Section 90 and Section 91, which provide specific relief to taxpayers to save them from double taxation. Section 90 Bilateral Relief is for taxpayers who have paid the tax to a country with which India has signed DTAA, while Section 91 unilateral relief provides benefit to tax payers who have paid tax to a country with which India has not signed a DTAA. Thus, India gives relief to both kinds of taxpayers. The rates differ from country to country. A large number of foreign institutional investors who trade on the Indian stock markets operate from

Singapore and the second being Mauritius. According to the tax treaty between India and Mauritius, capital gains arising from the sale of shares are taxable in the country of residence of the shareholder and not in the country of residence of the company whose shares have been sold. Therefore, a company resident in Mauritius selling shares of an Indian company will not pay tax in India. Since there is no capital gains tax in Mauritius, the gain will escape tax altogether. The Protocol for amendment of the India-Mauritius Convention signed on 10 May, provides for source-based taxation of capital gains arising from alienation of shares acquired from 1 April in a company resident in India. Simultaneously, investments made before 1 April have been grandfathered and will not be subject to capital gains taxation in India. Taxation in India at full domestic tax rate will take place from financial year onwards. According to Goel, the problem of treaty abuse could have been easily solved by introducing special anti-avoidance rules in the treaty without India having to tax capital gains [7]. The revised DTAA between India and Cyprus signed on 18 November, provides for source based taxation of capital gains arising from alienation of shares, instead of residence based taxation provided under the DTAA signed in 1992. However, a grandfathering clause has been provided for investments made prior to 1 April, in respect of which capital gains would continue to be taxed in the country of which taxpayer is a resident. It also provides for assistance between the two countries for collection of taxes and updates the provisions related to Exchange of Information to accepted international standards. The Third Protocol amends the DTAA with effect from 1 April to provide for source based taxation of capital gains arising on transfer of shares in a company. This will curb revenue loss, prevent double non-taxation and streamline the flow of investments. In order to provide certainty to investors, investments in shares made before 1 April have been grandfathered subject to fulfillment of conditions in Limitation of Benefits clause as per Protocol. Further, a two-year transition period from 1 April to 31 March has been provided during which capital gains on shares will be taxed in source country at half of normal tax rate, subject to fulfillment of conditions in Limitation of Benefits clause. The Third Protocol also inserts provisions to facilitate relieving of economic double taxation in transfer pricing cases. The Third Protocol also enables application of domestic law and measures concerning prevention of tax avoidance or tax evasion. Both legs of the principle offer an opportunity for taxation in more than one jurisdiction. To avoid double taxation of income by different jurisdictions, Australia has entered into double taxation avoidance agreements DTAs with a number of other countries, under which both countries agree on which taxes will be paid to which country. United States[edit] U. However, there are some measures designed to reduce the international double taxation that results from this requirement. Second, the United States allows a foreign tax credit by which income tax paid to foreign countries can be offset against U. This can be a complex issue that often requires the services of a tax advisor. The foreign tax credit is not allowed for tax paid on earned income that is excluded under the rules described in the preceding paragraph i. This typically happens when subnational jurisdictions have taxation powers, and jurisdictions have competing claims. In the United States a person may legally have only a single domicile. However, when a person dies different states may each claim that the person was domiciled in that state. Intangible personal property may then be taxed by each state making a claim. College or university students may also be subject to claims of more than one state, generally if they leave their original state to attend school, and the second state considers students to be residents for tax purposes. In some cases one state will give a credit for taxes paid to another state, but not always. Taxation of corporate dividends[edit] Main article: Dividend tax In the United States, the term "double taxation" is also used to refer to dividend taxation. It refers to the taxation of dividend income when received by a shareholder that had been previously taxed at the corporate level. Foreign corporations are subject to United States income tax on their "effectively connected income", and are also subject to the branch profits tax on any of their profits not reinvested in the U. Thus, dealing with cross-border taxation matters turns into one of the significant financial and trade projects of China, and the problems of cross-border taxation is still increasing. In order to solve the problems, the multilateral tax treaties between countries, which can provide legal support to help enterprises from both sides with double taxation avoidance and tax issues solutions, are established. To fulfill the "going global" strategy of China and support the

domestic enterprises to adapt to the globalization situation, China has been making efforts on promoting and signing multilateral tax treaties with other countries to achieve mutual interests. By the end of November, China has officially signed double taxation avoidance agreements. Out of which 98 agreements have already entered into force. China also signed double taxation avoidance agreement with Taiwan in August, which has not entered into force yet. According to the Chinese State Administration of Taxation, the first double taxation avoidance agreement was signed with Japan in September. The latest agreement was signed with Cambodia in October. As for the situation of state disruption, China would continue the signed agreement after the disruption. For example, China first signed double taxation avoidance agreement with Czechoslovakia Socialist Republic in June. In, Czechoslovakia divided into two countries, Czech Republic and Slovakia Republic, and the initial agreement signed with Czechoslovakia Socialist Republic was continually used in two new countries. In August, China signed the new agreement with Czech Republic. And when it comes to the special case of Germany, China continued using the agreement with The Federal Republic of Germany after two Germanys reunited. China have signed double taxation avoidance agreement with many countries. Among them, there are not only countries which have made large investment in China, but also countries which as well-relationship recipient of Chinese investment. As for the agreement quantity, China is now next only to United Kingdom. For those countries which have not signed the double taxation avoidance agreements with China, some of them signed information exchange agreements with China. Eliminate the double taxation, decrease the tax cost of "going global" enterprises. Increase the certainty of taxation, decrease the risk of cross-border taxation 3. Decrease the tax burden of "going global" enterprises in the host country, improve the competitiveness of those enterprises. When taxation disputes occur, the agreements can provide bidirectional consultation mechanism, solve the existed disputed problems. Under general conditions, the tax rate under tax treaty is often lower than the domestic tax rate under the law of host country. This can obviously reduce the tax cost of enterprises, increase the willing of "going global" and the competitiveness of domestic enterprises, and bring the goodness. The intention of tax treaties is to avoid or eliminate double taxation. The term double taxation which existed in the tax treaties is mostly juridical double taxation, which "refers to circumstances where a taxpayer is subject to tax on the same income or capital in more than one jurisdiction". The initial aim of tax treaties is to avoid double taxation between two countries. Later, with closer the transnational economic relationships are, and the development of transnational enterprises, the governments realized it was necessary to enhance the cooperation through more well-established law together to face the tax evasion of transnational enterprises. Thus, some terms were added into the initial treaties, especially the information exchange terms and tax collection assistance terms. In this way, the second aim, to avoid tax evasion was appear in the theme. The impact and the aim of the tax treaties are integrated, they are both to avoid double taxation in order to improve economic exchanges and relationships, to enhance the government cooperation in order to avoid tax evasion. However, the side effect gradually appeared. The tax provides possibilities of avoiding tax in a legal way to transnational taxpayers. In order to avoid double taxation, the agreement divided the jurisdiction of taxation, including shared and excluded jurisdiction of taxation. It also established the limited tax rate in the origin countries. These all can be called the preferential treatments of the taxation agreement. The transnational enterprises, in order to get maximized profit, can use the terms of domestic law and taxation agreement, to avoid both taxation from origin country and residence country legally and achieve double taxation free. This can be a severe undermine to the international order, and a challenge to the domestic governments.

Chapter 4 : Double taxation - Wikipedia

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However, when the activities of such a broker or agent are carried on wholly or principally on behalf of that enterprise itself or on behalf of that enterprise and other enterprises controlling, or controlled by or subject to the same common control as, that enterprise, the person will not be considered a broker or agent of an independent status within the meaning of this paragraph. The fact that a company which is a resident of one of the Contracting States controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State whether through a permanent establishment or otherwise, shall not of itself make either company a permanent establishment of the other. The principles set forth in the preceding paragraphs of this Article shall be applied indetermning for the purposes of paragraph 5 of Article 11 and paragraph 5 of Article 12 of this Agreement whether there is a permanent establishment outside both Contracting States, and whether an enterprise, not being an enterprise of one of the Contracting States, has a permanent establishment in one of the Contracting States. Income from real property may be taxed in the Contracting State in which that property is situated. For the purposes of this Article, the term "real property": A lease of land, any other interest in or over land and any rights or property referred to in any of the sub-paragraphs of paragraph 2 shall be regarded as situated where the land; mineral or other deposits, oil or gas wells, quarries, natural resources or property, as the case may be, are situated or where the exploration may take place. The provisions of paragraph 1 shall apply to income derived from the direct use, letting or use in any other form of real property. The provisions of paragraphs 1, 3 and 4 shall also apply to the income from real property of an enterprise and to income from real property used for the performance of independent personal services. The profits of an enterprise of one of the Contracting States shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to: Subject to the provisions of paragraph 3, where an enterprise of one of the Contracting States carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment or with other enterprises with which it deals. In the determination of the profits of a permanent establishment, there shall be allowed as deductions, in accordance with and subject to the limitations of the law relating to tax in the Contracting State in which the permanent establishment is situated, expenses of the enterprise, being expenses which are incurred for the purposes of the business of the permanent establishment including executive and general administrative expenses so incurred, whether incurred in the Contracting State in which the permanent establishment is situated or elsewhere. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise. Where the correct amount of profits attributable to a permanent establishment is incapable of determination by the taxation authority of one of the Contracting States or the ascertaining thereof by that authority presents exceptional difficulties nothing in this Article shall affect the application of any law of that State relating to the determination of the tax liability of a person, provided that the law shall be applied, so far as the information available to that authority permits, in accordance with the principles of this Article. For the purposes of the preceding paragraphs of this Article, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary. Where profits include items of income which are dealt with separately in other Articles of this Agreement,

then the provisions of those Articles shall not be affected by the provisions of this Article. Nothing in this Article shall affect the operation of any law of a Contracting State relating to tax imposed on profits from insurance with nonresidents provided that if the relevant law in force in either Contracting State at the date of signature of this Agreement is varied otherwise than in minor respects so as not to affect its general character the Contracting States shall consult with each other with a view to agreeing to any amendment of this paragraph that may be appropriate. Profits from the operation of ships or aircraft, including interest on funds connected with that operation, derived by a resident of one of the Contracting States shall be taxable only in that State 2. Notwithstanding the provisions of paragraph 1 , such profits may be taxed in the other Contracting State where they are profits from the operations of ships or aircraft confined solely to places in that other State. The provisions of paragraphs 1 and 2 shall apply in relation to the share of the profits from the operation of ships or aircraft derived by a resident of one of the Contracting States through participation in a pool service, in a joint transport operating organisation or in an international operating agency. For the purposes of this Article, profits derived from the carriage by ships or aircraft of passengers, livestock, mail, goods or merchandise shipped in a Contracting State for discharge at another place in that State shall be treated as profits from operations of ships or aircraft confined solely to places in that State. Nothing in this Article shall affect the application of any law of a Contracting State relating to the determination of the tax liability of a person, including determinations in cases where the information available to the taxation authority of that State is inadequate to determine the income to be attributed to an enterprise, provided that that law shall be applied, so far as it is practicable to do so, consistently with the principles of this Article. Where profits on which an enterprise of one of the Contracting States has been charged to tax in that State are also included, by virtue of paragraph 1 or 2 , in the profits of an enterprise of the other Contracting State and charged to tax in that other State, and the profits so included are profits which might have been expected to have accrued to that enterprise of the other State if the conditions operative between the enterprises had been those which might have been expected to have operated between independent enterprises dealing wholly independently with one another, then the first-mentioned State shall make an appropriate adjustment to the amount of tax charged on those profits in the first-mentioned State. In determining such an adjustment, due regard shall be had to the other provisions of this Agreement and for this purpose the competent authorities of the Contracting States shall if necessary consult each other. Dividends paid by a company which is a resident of one of the Contracting States for the purposes of its tax, being dividends to which a resident of the other Contracting State is beneficially entitled, may be taxed in that other State. Such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident for the purposes of its tax, and according to the law of that State, but the tax so charged shall not exceed 15 per cent. The term "dividends" in this Article means income from shares and other income which is subjected to the same taxation treatment as income from shares by the laws of the Contracting State of which the company making the distribution is a resident for the purposes of its tax. The provisions of paragraphs 1 and 2 shall not apply if the person beneficially entitled to the dividends, being a resident of one of the Contracting States, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In any such case, the provisions of Article 7 or Article 14, as the case may be, shall apply. Dividends paid by a company which is a resident of one of the Contracting States, being dividends to which a person who is not a resident of the other Contracting State is beneficially entitled, shall be exempt from tax in that other State except insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or fixed base situated in that other State: Provided that this paragraph shall not apply in relation to dividends paid by any company which is a resident of Australia for the purposes of Australian tax and which is also a resident of India for the purposes of Indian tax. Interest arising in one of the Contracting States, being interest to which a resident of the other Contracting

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State is beneficially entitled, may be taxed in that other State. Such interest may also be taxed in the Contracting State in which it arises, and according to the law of that State, but the tax so charged shall not exceed 15 per cent. The term "interest" in this article includes interest from Government securities or from bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and interest from any other form of indebtedness as well as all other income assimilated to income from money lent by the law, relating to tax, of the Contracting State in which the income arises, but does not include interest referred to in paragraph 1 of Article 8. The provisions of paragraphs 1 and 2 shall not apply if the person beneficially entitled to the interest, being a resident of one of the Contracting States, carries on business in the other Contracting State, in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the indebtedness in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply. Interest shall be deemed to arise in a Contracting State when the payer is that State itself or a political sub-division or local authority of that State or a person who is a resident of that State for the purposes of its tax. Where, however, the person paying the interest, whether the person is a resident of one of the Contracting States or not, has in one of the Contracting States or outside both Contracting States a permanent establishment or fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated. Where, owing to a special relationship between the payer and the person beneficially entitled to the interest, or between both of them and some other person, the amount of the interest paid, having regard to the indebtedness for which it is paid, exceeds the amount which might have been expected to have been agreed upon by the payer and the person so entitled in the absence of such relationship, the provisions of this Article shall apply only to the last mentioned amount. In that case, the excess part of the amount of the interest paid shall remain taxable according to the law, relating to tax, of each Contracting State, but subject to the other provisions of this Agreement.

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The Double Taxation Convention entered into force on 25 October The convention is effective in India from 1 January and in the UK from: 1 January for Petroleum Revenue Tax.

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Chapter 9 : International Taxation > Double Taxation Avoidance Agreements

Double taxation is the levying of tax by two or more jurisdictions on the same declared income (in the case of income taxes), asset (in the case of capital taxes), or financial transaction (in the case of sales taxes).