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(I.S.S.N 2321- 6417 (Online)
Ph: +918255090897 Website: journal.lawmantra.co.in
E-mail: info@lawmantra.co.in contact@lawmantra.co.in

INTERNATIONAL TAX PLANNING & ITS VARIOUS ASPECTS*

ABSTRACT

In the 21st century, global economy demands that one need to be well versed in legal, financial and accountancy area to get an overview and an expertise to understand International Taxation. International Tax Planning is gradually evolving and for the companies it becomes very significant to look upon it. Tax Planning brings new risk and challenges for the tax payers. Tax planning is done to get the maximum benefits of exemption, allowances, deductions etc. Tax Management is a crucial aspect with a view to minimize the tax cost. Tax Management is well-devised, systematic & well organized steps which are taken by the companies to ensure tax compliance. Taxes are one of the important sources of the government to generate revenues and tax payers make every possible attempt to avoid taxes. There is both legitimate and illegitimate ways to avoid taxes. Tax Avoidance is a legal or legitimate way to avoid taxes and it generally refers as a tool which takes benefits of the loopholes in law to avoid or transfer or reduce one's tax burden without breaking the law. On the other hand, Tax Evasion is an unethical tool to avoid liability of tax by dishonest means like falsification of accounts, concealment of income, violation in law etc and is thus illegitimate.

Tax planning is necessary when you are dealing from one country to another country as every country has its own tax laws. If one needs to take the benefits from it, one needs to have knowledge regarding laws of other country also but one may not know the laws of all the countries where company want to do business or transactions. It is necessary to know the scope of International Tax Planning, though it is slowly evolving but it becomes buzzword in the recent world because of its significant role particularly for big firms and multinational companies**.** This paper presents a detailed study of International Tax planning and its various aspects, its scope and the different concepts in it. Further, this paper is also talks about Double Taxation Avoidance Agreements (DTAA) and its reliefs, International Treaties with respect to International Tax Planning.

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Introduction

"It can be very well said that when a person is born there are two things certain which would occur in his life span, one is his death and the other is the burden of tax on that person."[1]

The term Tax planning can be defined as an arrangement of financial affairs of a person in such a manner so that he does not violate the legal provisions of the said act and at the same time, he receives maximum advantages of tax exemptions, deductions, rebates, allowances, concessions and

* **Mr. Ronit Sharma, 4th Year B.COM. L.L.B. (Hons.), Institute of Law, Nirma University & Mr. Lalit Joshi, 5th Year, Institute of Law, Nirma University Ahmedabad.**

[1] Yuvraj Thakore and Ashani Shah, 'General Anti – Avoidance Rule GAAR – An Indian and International Perspective', Legal Services India, available at http://www.legalservicesindia.com/article/article/general-anti-avoidance-rule-gaar-an-indian-and-international-perspective-1563-1.html, last seen on 14/07/2015.

others reliefs and benefits, which are permitted under the Income Tax Act, 1961. Because of this, the burden on the assessee is reduced to minimum.[2] It is the art of organizing your affairs in such a way that it avoids taxes. By utilizing effective tax planning strategies, you can have more cash to spare or more cash to spend.[3] This basically means that we have to plan a tax system in such a systematic and organized way so that we get maximum output with minimum tax cost. This is known as Tax Management. It becomes important for any firm or organization to plan a tax management in a proper way so that it can avoid tax and for that it has to make such a well structured system within the limits under the act so that maximum benefits of tax avoidance can be availed. There is a very thin line of difference between both Tax Avoidance and Tax Evasion. Tax Avoidance is a tool which takes benefits of the loopholes in the law to avoid or to transfer or to reduce one's tax burden and that too without breaking law and thus this constitute a legitimate i.e. legal. On the other hand, Tax Evasion refers to an unethical tool which is used to avoid liability of tax by dishonest means like violation of law, concealment of income, inflation of expenses, falsification of accounts, etc. There are lots of organizations and firms which have started giving more emphasis to tax planning particularly big firms and multinational companies. There are a lot of scams are happening now a day's regarding tax planning, tax avoidance and tax evasion. The reason because most of the tax payers whether individual tax payer or companies or corporation tax payer are try their best to evade from their tax liability and show as a legitimate way of avoiding tax. But in actual they are taking these benefits with a dishonest means, and then it becomes important to look at this particular area. Undoubtedly, tax planning is necessary as all tax payers try to reduce their tax liability so that their profit will increase.

Tax Planning is not only restricted to any jurisdiction of the country. It is difficult yet necessary for big firms and organizations that deal with other firms situated in a foreign country or have transactions with a foreign based company where tax rates and laws are different. For instance, Tax rate for a particular service or good in India will be different from those in US. We have to keep all these elements in mind and then plan a tax management system so that it benefits the firm, organization or individual as the case may be. Tax planning is necessary for a tax payer in his resident country so that he can avail the maximum advantages from it but it becomes more important for planning a tax when the business or transaction takes place in foreign country. There are the two main reasons of that: Firstly, laws of taxation differ from country to country i.e. every country has its own law and to take tax benefits one has to look and planned properly. Secondly, transaction cost in outside country attracts huge amounts of money, so that the tax benefits. Tax planning is a device which was not that important till the nineteenth century but after that it gradually became so significant that one cannot underestimate it. Even some of the reputed companies and big firms have made a separate management of professionals for tax planning and this show how crucial it is for them. Tax is charged on almost everything and when the funds are travelled from one country to other country, burden of paying the tax arises.

On a primary level, International tax Planning is truly basic and necessary. The subtle element is what makes one distraught. It looks quite simple to plan for tax and all but area of taxation is very broad that one can go mad to look at every aspect. International Tax Planning is of the view that the tax laws of any state are to a great extent limited to its local economy, but this is not the same with the people and the wealth as it flows easily outside the country. A person can roll out three essential improvements in his assessment circumstance through offshore tax jurisdictions. The first one is that he can change his residence, the geographic source of his income or form of tax planning entities that he uses.[4]

[2] DR. YOGENDRA BANGAR, Tax Laws and Practices, 24.1, (2nd ed., 2013).
[3] Bill Bischoff, *Why Tax Planning is so important*, My Market Watch, available at http://www.marketwatch.com/story/why-tax-planning-is-so-important-2014-07-01, last seen on 15/04/2016.
[4] The Lectric Law Library, available at http://www.lectlaw.com/filesh/bbg10.htm, last seen on 15/04/2016.

Importance of International Tax Planning

In the current scenario where the environment is dynamic and the competition is increasing on a daily basis, one has to look different from others to get placed well in the market. Tax Planning is considered as an important tool for the large firms and companies who deal with offshore activities. They have to look at various aspects before dealing in it and there the role of planning comes into picture. Tax which is one of the major aspects of the corporations to look upon as it plays a decisive role in generation of company's profits and losses. In the 21st Century, all the firms and companies is realizing that the Tax planning is crucial aspect and thus they are hiring persons who have quality and perspective to look into where the company stands in a near future. They hire such people and a separate management is made for them so that they can look into the company's affairs particularly in the field of Tax Planning and Tax Management. The need is felt when the companies indulge in lot of International transactions with other companies situated outside the country. Without the proper planning and professional expertise, a company may have to pay more taxes and will not be able to get allowances, exemptions and rebates. Tax Planning solved this problem. It is very important for the company as it actually helps the company to get the maximum benefits. The professional entities look into the activities of the company, consult them and give advice to the management regarding the Tax Avoidance.

International Tax Planning is particularly vital to consider when you are conceiving a Tax Planning Strategy for an offshore company formation. International Taxation can be a complex field and careful exploration ought to be embraced before considering your business development.[5] There is a large number of International Tax Planning structures, for example, Finance companies, holding and sub-holding organizations, Intellectual Property structures and Trading Companies are being set up to get benefits from the tax laws of other outside jurisdictions keeping in mind the end goal to make profit by ideal conditions of Double Taxation Agreements.[6] Engaging in the administrations of an expert corporate services firm can actually help to give consolation that the important examination and due diligence has been completed and complied with. It is critical to have thorough learning of the necessities of the nation in which you are setting up the business and in addition the nation of residence.[7]

The multi nationalization of corporate investment in the recent years has offered ascent to various International Tax Avoidance Schemes that may be eroding tax revenues in industrialized countries, however which might likewise reduce taxation rates on versatile capital, thus encourage venture. Both the welfare impacts of and the ideal reaction to International Tax Planning are subsequently equivocal. Assessing these variables in a straightforward general harmony model, we find that natives of high-Tax nations benefit from Tax Planning. Incomprehensibly, if duty rates are not very high, an increase in tax planning transactions causes an ascent in ideal corporate Tax rates, and a decrease in multinational speculation. In this way apprehensions of a "race to the base" in corporate Tax rates may be lost.[8]

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Elements of International Tax Planning

There are some dynamic factors which keep on changing and it makes business and organizations more complex to run. These dynamics are to be kept in mind while doing tax planning and tax

[5] Lawrence Smith, *The Importance of Tax Planning*, available at http://www.evancarmichael.com/Small-Business-Consulting/4950/The-Importance-of-International-Tax-Planning.html,last seen on 19/04/2016.

[6] *About us*, The Importance of Substance in International Tax Planning, available at http://www.act.com.mt/articles-publications/Importance-substance-international-tax.php, last seen on 19/04/2016.

[7] *Supra* Note 5.

[8] Qing Hong and Michael Smart, *In Praise of Tax Havens: International Tax Planning and Foreign Direct Investment*, 54(1), European Economic Review (2010).

management. These factors are Global markets, new business models, ever-changing operating and regulatory environments, competition, liquidity concerns, the impact of culture, the pace of change and the influence of new information technologies on them. All these factors have made the efficient management of a business on a global scale more complex than ever. [9]

These dynamic components cause tax planning and compliance for multinational organizations (MNCs) to turn out to be more perplexing, with the need to address and deal with various destinations on a worldwide scale. Best-in- class MNCs perceive that to deal with these complexities and also, to accomplish and manage competitiveness around the world effective tax rate (ETR), they require worldwide tax strategies that completely adjust with corporate technique, business arranging, and the operational foot shaped impression—instead of treat assessment as a result of such techniques to be overseen "down-stream." Alignment makes the open door for monetary efficiencies, enhanced liquidity, and long-term tax savings. On the other hand, an absence of alignment between business methods and tax planning can bring about missed opportunities and can create unnecessary and potentially significant tax risks and costs.[10]

Different areas of International Tax Planning

- **Form and Location of the organization –** It is the primary decision which is needed to be chosen for the selection of which form of organization. It depends on the financial requirements of that form of organization, its legal requirements and for the purpose of tax considerations.[11] For instance, suppose if Reliance Industry Ltd. wants to open its new business in US, then they have to look at the best suitable forms of organization like Partnership, Firms etc so that they can benefit from the maximum Tax management system as it is a legal way for the Tax Avoidance. Therefore, for any country who is planning to expand its business on a global level need to look at the form of business and its location so that they can make investment and at the same time get maximum amount of exemptions and allowances.
- **Source Rule -** An Income of a Person whether it is earned or otherwise, regardless of his residence will be burdened for tax in the source state. Most of the countries levy withholding assessments on income sourced in their jurisdiction. Withholding assessment of tax is a preliminary tax imposed at a source, and is widely connected in admiration of a wide range of payments including royalties, Capital gains, dividends, interest etc.[12]
- **Corporate Restructuring –** There are a lot of companies which are significantly started to shift on a global level. Due to increase in competition and for the global image of the company corporate structuring is taking place now days. Amalgamation, merger and de-merger are the common ways of doing that. To do that various aspects and provisions of other country has to be looked upon, if restructuring is being planned from the other country.
- **Foreign Collaboration Agreements –** The globalization of economic reforms all through the world has prompted an expanding level of reliance between countries in the fields of innovation, labor, money, and so on. While drafting foreign collaboration agreements both parties have to necessarily take into consideration the tax laws in the respective countries. This is vital in order to guarantee, from one viewpoint, that the statutory prerequisites under the different expense laws in India and the other nation are met, as additionally, then again, to

[9] Tim Anson, Frank Lopane, Tom Quinn and Michael Urse, Integrated Global Structuring: Aligning Global Business models and Tax Planning, Pricewaterhouse Coopers' International Tax Services, available at http://www.pwc.com/en_US/us/issues/integrated-global-structuring/assets/integrated_global_structuring.pdf, last seen on 20/04/2016.
[10] *Ibid.*
[11] *Supra* Note 2.
[12] Sanjay Iyer, *Introduction to International tax Planning,* Iyer Practice Advisers, available at http://www.iyerpractice.com/uploads/content/International_Tax_Planning.pdf, last seen on 20/04/2016.

minimize the weight of assessment which falls on the salary, benefits and increases emerging from the coordinated effort.

- **Joint Ventures Agreements–** Modern and Sophisticated technology from abroad, with or without foreign investment, are required by large number of Indian industries.[13] If we enter into the joint ventures with the foreign companies or industries then we will be able to fulfill the need of financial and technological requirements which is needed to expand the business. And for that, the area where we can enter into the joint Ventures is needed. The government of India together with Government of that Foreign State or States can make the policy and indulge into some plans while making their policy decisions. These business ventures are provided with the incentives and at the same time concessions are also given not only for direct tax laws but also for Indirect tax laws.
- **Double Taxation Avoidance Agreements –** Double Taxation means Taxation on the Income of person twice for the same income in more than one country. There are two main rules of Income Tax: 1. Source of Income Rule and 2. Residence Rule[14] for the purpose of computation of taxation.

Juridical v. Economical Double Taxation[15] -

Juridical Double Taxation – Juridical Double taxation occurs when the two states or more levy taxes on the same entity or the person on the same income for identical periods. It is the result of a conflict between two tax systems and arises due to overlapping claims of tax jurisdictions on the inter-related economic activities.[16]

Economical Double Taxation – It occurs when same economic transaction, item or income is taxed in two states or more during the same period but in the hands of different tax payers.[17]

Need of Double Taxation Avoidance Agreements – Suppose if a taxpayer is a resident of one country but has a source of income situated in a different country, it gives rise to possibility of Double Taxation.[18] This emerges from two essential rules that empower the country of residence and additionally the country where the source of Income exists to impose tax, to be specific, the source rule and the residence rule. However, if both these standards are to be applied at the same time to a business entity and it were to experience the ill effects of both the ends then the expense of working in a universal scale will get to be restrictive and hinder the process of globalization. Therefore DTTAs turned out to be exceptionally critical.[19]

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[13] *Supra* Note 2.

[14] As per the Source of Income rule, the Income may be subject to tax in the country where the Source of such income exists (where the business establishment is situated or where the property is situated or located) whether the person who earn the income is a resident in that country or not. On the Other hand, the income earner may be taxed on the basis of his residential status in that country.

[15] Anil D. Doshi and Tarun Kumar Singhal, International Taxation: A Compendium, the Chamber of Tax Consultants, Volume I, Third Edition, March 2013.

[16] Shivam Goel, *International taxation (Double Taxation Avoidance Agreements)*, Academia.edu, available at https://www.academia.edu/8740723/International_Taxation_Double_Taxation_Avoidance_Agreements_

[17] *Ibid.*

[18] Fiscal Committee, OECD Model Double Taxation Convention on Income and Capital, 1977, defines "double taxation" as- *The imposition of comparable taxes in two or more states on the same tax-payer in respect of the same subject matter and for identical periods.* Double Taxation Avoidance Agreements are also termed as 'Tax Treaties'.

[19] Double Taxation Avoidance Agreements can be divided into two main categories i.e. limited agreements and comprehensive agreements. Limited agreements are generally entered into to avoid double taxation relating to income derived from operation of aircrafts, ships, carriage of cargo and freight. While, comprehensive agreements are very elaborate documents which lay down in detail how incomes under various heads may be dealt with. Limits under various heads like income from immovable property, capital gains, dividends, interest, royalties, fees

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Tax Planning: Criteria to define Legitimate versus Illegitimate

Universally, the circle of levy tax has seen a steady tussle between its essential players - while governments consistently endeavors to amplify the income and broaden the expense base through progressive amendments to tax laws and streamlining tax organization, citizens try to mastermind their undertakings in a way so that the incidence of tax is minimized.

The landmark judgment of Supreme Court regarding International Planning in the case of Vodafone International Holdings B.V. v. Union of India and Anr.[20], held that Domestic law dealing with source of capital gains cannot be read as "look through" provisions to collect tax on sale of a foreign company.[21] In applying the judicial anti-avoidance rule, principle of "substance over form" should be applied to sham transactions aimed at tax evasion and not to genuine and strategic tax planning.[22] Transaction done was purely a bona fide Foreign Transaction and it did not fall under the Jurisdiction of India but in the jurisdiction of foreign.

In the recent judgment of the Delhi High Court in the case of CIT v. Shiv Raj Gupta, the court analyzed the principles laid down by the Supreme Court of India on legitimate v. illegitimate tax planning in the landmark case of Vodafone International Holdings B.V. v. Union of India ([2012] 341 ITR 1 SC).[23] It has been held in the context of taxability of non-compete fees which are received by an individual in connection with the selling of shares and at the same time controlling interest in the company.[24] The High Court observed that the true nature of the transaction was the sale of shares and transfer of control and management of a company in favor of the other group entity.[25] The taxpayer had indulged in abusive tax avoidance by camouflaging it as a 'non-compete' transaction[26]

In its above ruling, High Court of Delhi explains that the ruling of Vodafone rejects the economic substance & the business purpose tests & holds that a transaction which is entered by a taxpayer would amount and result into Tax Avoidance which is basically Illegitimate tax planning as when the taxpayer adopts a colorable device and indulges in a sham transaction or arrangement.[27] The High Court of Delhi observed the same and found that the dividing line between legitimate and illegitimate tax planning according to the Vodafone judgment is therefore ethically principled and moralistic.[28]

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for technical services, etc. and the manner of taxing the same are generally laid down in the comprehensive agreements. Some of the agreements provide for taxation of annuities and pensions.

[20] (2012) 341 ITR 1 SC.

[21] Selected Global Tax and Canadian Tax Developments, Recent Developments in International Tax Planning, available at https://www.investbarbados.org/docs/Recent%20Developments%20in%20International%20Tax%20Planning.pdf. , last seen on 24/04/2016.

[22] *Ibid.*

[23] Sanjay Sanghvi and Suhas Sagar, Legitimate versus Illegitimate tax planning – Delhi High Court dissects Vodafone, International tax Review (13/01/2015), available at http://www.internationaltaxreview.com/Article/3416759/Legitimate-versus-illegitimate-tax-planning-Delhi-High-Court-dissects-Vodafone.html, last seen on 26/04/2016.

[24] *Ibid.*

[25] KPMG, Non – Compete fees received by the tax payer are re – characterized as sale consideration for transfer of shares, KPMG Flash News (12/01/2015), available at http://www.kpmg.com/IN/en/services/Tax/FlashNews/ShivRajGupta.pdf, last seen on 26/04/2016.

[26] *Ibid.*

[27] *Supra* Note 23.

[28] *Ibid.*

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In this case it was concluded that, a Fact is not the test but the ambiguous and corrupt conduct, i.e. Colorable device, dishonest or sham, is the specified bright line, which is dividing the acceptable tax Avoidance and abusive tax avoidance.[29]

Reliefs in Double Taxation Avoidance Agreements

1. **Bilateral Relief:** The government of two countries enters into Double Taxation Avoidance Agreement (DTAA) for avoidance of double Taxation by devising mechanism to grant relief as per mutual agreement.[30] India has entered into agreements for relief against or avoidance of double taxation with more than 50 countries which include Sri Lanka, Switzerland, Sweden, Denmark, Japan, Federal Republic of Germany, Greece, etc.[31]
   - Bilateral Relief – May be of two ways, either of the two may be granted –
   - **Exemption Method: -** Under this method, the income from various specified sources which are likely to be taxed in both the countries is taxed only in one of the two countries.[32]
   - **Tax Credit Method: -** Under this method, the country of residence of the tax payer allows him credit for the tax charged thereon in the country of source.[33]
2. **Unilateral Relief:** In case when there is no Double Taxation Avoidance Agreements (DTAA) between two countries, relief can be provided by home country in respect of income taxed on the basis of source rule in some country.[34] Thus, this relief is known as unilateral relief.

Tax Havens: With respect to International Tax Planning

For today's multinational corporations (MNCs)[35], tax avoidance and the use of tax havens have become commonplace and even an integral part of modern business practice.[36] Although one may utilize the term 'tax avoidance' reciprocally with 'tax evasion' on the premise that a dollar or euro of lost income through tax evasion is the same as a dollar or euro of lost income through tax

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[29] *Ibid.*

[30] *Supra* Note 2.

[31] Double Taxation Relief, Institute of Chartered Accountant of India Knowledge Gateway, available at http://www.icaiknowledgegateway.org/littledms/folder1/chapter-15-double-taxation-relief.pdf, last seen on 26/04/2016.

[32] *Supra* Note 2.

[33] Anshul Agarwal, Double Taxation Relief, CA Club India, available at http://caclubindia.s3.amazonaws.com/cdn/forum/files/170755_727187_double_taxation_relief.pdf., last seen on 26/04/2016.

[34] *Supra* Note 2.

[35] To use a common definition, an MNC is "a national company in two or more countries operating in association, with one controlling the other in whole or in part." J. Coates, Towards a Code of Conduct for Multinationals, 10 PERSONNEL M GMT. 41 (1978), quoted in THOMAS DONALDSON, THE ETHICS OF INTERNATIONAL BUSINESS30 (1989).

[36] RONEN PALAN ET AL.,TAX HAVENS:HOW GLOBALIZATION REALLY WORKS4 (2010) ("Tax havens are not working on the margins of the world economy, but are an integral part of modern business practice."); Mihir A. Desai & Dhammika Dharmapala, Corporate Tax Avoidance and High-Powered Incentives, 79 J.FIN.ECON. 145, 177 (2006) ("Tax avoidance activities appear to be increasingly central to corporate financial decision making.")

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avoidance, there is a critical contrast between these terms: tax evasion is unlawful while tax avoidance is lawful.[37]

Tax Havens – There is no exact meaning of a Tax Haven. The OECD at first characterized the accompanying components of Tax Havens: no or taxes, lack of effective exchange of information, lack of transparency, and no requirement of substantial activity.[38] Different records have been created in authoritative recommendations and via specialists. Likewise, various jurisdictions have been distinguished as having Tax havens attributes.[39] Tax havens are the places and the countries where tax rates are low or may be no taxes at all. Multinationals frequently utilize transfer-pricing to under-report income in India and movement benefits to nations with zero or low tax rates.[40] Notwithstanding, the administration can't lift the corporate veil and build up review trails in a number of these transactions when tax havens don't share data or any information. The answer is to esteem any transaction with an organization or a company in the offending nation as a related party transaction and bring it under transfer pricing scrutiny.[41] The government needs lawful sponsorship to impose sanctions. It ought to enable itself under the law to distinguish nations that shield tax cheats. The proposal on the sanctions has originated from an inside government board or panel set up to suggest and recommend a tool-box of measures battle Tax evasion. There are the two measures: Firstly, to charge a higher withholding Tax on payments made to organizations or companies in offending nations and getting exchanges with entities in such nations under transfer price regulation which will control tax haven abuse. Secondly, a higher taxation rate will raise exchange or transaction costs for Indian citizens with business connect in non-cooperative jurisdictions.

Tax Treaties- For Effective Tax Planning

In the 21st Century, we have seen new developments and interest of a 19th Century trusted vehicle for Tax planning i.e. the double taxation treaty. Tax Treaties is useful tool for diminishing or reducing the overall tax. Tax has been charged in two ways. Some income is taxed on residence basis and some income is charged on Source basis.

How Treaties Work:

Treaties are generally negotiated between countries and are based mainly on one of the three models –

- The first model was created by the OECD i.e. Organization for Economic Co-operation & Development for use by its members. The interpretations and models are relied upon by large number of countries & updated regularly.
- This model was created by keeping in mind for developing countries, designed and created by the UNC (United Nations Commission) on ITL (International Trade Law).
- Lastly, a model is developed by United State (US) Treasury as the foundation for negotiating treaties.

These models are the preliminary point for two countries or nations to negotiate & enter into an account that works for them. While doing this, there will be agreement between the countries in

[37] Defining Tax Evasion, Tax Avoidance and Tax Planning, Taxpert, available at http://www.taxpert.nl/index.php?option=com_content&view=article&id=4570:defining-tax-evasion-tax-avoidance-and-tax-planning&catid=327&Itemid=252, last seen on 26/04/2016.

[38] Organization for economic Development and Cooperation, Harmful Tax Competition: An Emerging Global Issue, 1998, p.23.

[39] Jane G. Gravelle, Tax Havens: International Tax Avoidance and Evasion, Congressional Research Service, available at http://storage.globalcitizen.net/data/topic/knowledge/uploads/2013020617577790513_R40623.pdf, last seen on 27/04/2016.

[40] 'Deal with Tax Havens', The Economic Times (14/02/2011), available at http://articles.economictimes.indiatimes.com/2011-02-14/news/28540518_1_tax-havens-evaders-tax-rates, last seen on 27/04/2016.

[41] *Ibid.*

which precedence will take over internal law because of this residents of contracting state enjoys less & lowered risk of Double Taxation when selling, working etc in each others' states. Sometimes it also happens that new treaties are replace with old ones, negotiate protocols and make amendments in certain articles or clauses of existing treaties.

Relief is provided for NO Double Taxation –

Double Taxation Treaty relieves a tax payer from paying tax in another country. There are lots of exemptions given to the certain types of income. An article on relief from double taxation is also included in treaties which are more comprehensive. In this, a source country can be allowed being permitted for tax, on the other hand, the residence country provides exemption from tax.

Treaties can in any case be precious tools for relieving twofold tariff (double taxation) in the range of transfer pricing. This is on the grounds that "competent authority" alleviation is accessible in which the two nations' representatives or delegates concede to exchanges between related parties where transfer pricing audit has brought about additional income in one nation without a relating deduction in the other.[42]

Use of Treaties in Tax Planning –

Beyond these basics there are numerous distinctions from treaty to treaty, not just as to which contracting state has the right to tax[43], yet what different advantages and drawbacks are exemplified in treaties. In this way, it is important aspect for tax planners to peruse any pertinent or applicable treaty in its whole. Furthermore, to check for recent conventions and protocols when making arrangements or planning for tax.

For instance, a treaty may not accommodate an exception from tax on the offer of shares in the article covering capital gains, yet an exception or credit regarding simply such a transaction may be embodied in the article covering interest from twofold or double taxation.[44] Additionally, an impediment on advantages on account of withholding tax on interest may not show up in an article covering interest, yet rather in an article restricting advantages – that is additionally separate from an article characterizing or defining residence, which had been customarily the premise for figuring out who could claim treaty advantage.

Treaties between industrialized nations (other than the US) & rising economies regularly include 'tax sparing' to pull in Foreign Investment. While the tax treaty accommodates a diminished rate of withholding payments, for example, royalties, the beneficiary in the industrialized nation assumes a tax credit as though the treaties were not in effect and higher tax was paid.[45]

General Anti – Avoidance Rule (GAAR) with respect to India and Worldwide

Universally, tax avoidance has been perceived as a zone of concern and a several nations have communicated concern over tax avoidance and evasion. This is likewise clear from the way that either countries are administering the principle of General Anti-Avoidance Regulations in their tax code or reinforcing their current or existing code.

The issue with reference to whether reduction in tax liability or obligation through a transaction or a progression of exchanges is 'tax planning' or 'tax avoidance' has been the topic of debate both in

[42] 'Tax Treaties – How they work for effective tax planning', UHY – International Tax Treaties White Paper, available at http://www.uhy.com/wp-content/uploads/UHY-International-Tax-Treaties-White-Paper.pdf, last seen on 27/04/2016.
[43] *Ibid.*
[44] *Ibid.*
[45] I*bid.*

India and abroad for as long as quite a few years. In spite of the fact that, the Judiciary has endeavored to characterize the standards for deciding tax avoidance, the latest being the situation of Vodafone case, however considering the mindset of revenue authorities, the introduction of and the powers prescribed under the proposed anti-avoidance provisions are likely to have significant implications, both positive and negative.[46]

The tax authorities have on numerous occasions communicated their desire to introduce changes that would go about as an impediment to the utilization of advanced weapons of tax avoidance traversing crosswise over different jurisdictions. Further, the topic of 'substance over form' has reliably emerged throughout usage of tax laws. At present, India has particular anti - avoidance provisions engraved both in the domestic tax laws and in a portion of the tax treaties through the 'constraint of advantages' provisos. On the other hand, in an offer to control tax avoidance and uphold the idea of 'substance over form', the Indian revenue policymakers propose the presentation of a standout amongst the most huge contemporary tax reforms - the General Anti Avoidance Rules ("GAAR"). Albeit initially shaping a piece of the Direct Taxes Code ("DTC"), on the other hand, given the delay of DTC, GAAR is a part of tax reforms which was presented through the Union Budget 2012.[47]

Universally, tax avoidance has been perceived as a range of concern and a few nations have communicated concern over tax avoidance and tax evasion. This is likewise clear from the way that either countries are administering the convention of General Anti-Avoidance Regulations in their assessment code or reinforcing their current code. In India, the proposed Direct Tax Code 2010 (DTC 2010 or Code) tries to deliver the issues identifying with tax evasion and tax avoidance by bringing General Anti-Avoidance Rules (GAAR) in addition to various transactions - specific Anti-Avoidance provisions.[48]

Conclusion

It is not incorrect to say that a well structured and a systematic International tax Planning strategy in various areas can legally benefit for an international business. In the world of Globalization where all the countries want to progress and develop themselves economically and financially, they try to expand their business outside the country. There is a global trend in recent scenario to expand the business as many country as possible for a public image and for the maximizing profit. For that, tax planning is needed because no matter what sort of business you want to do, where you want to do, how you want to do, one thing is for sure that tax will follow you. Undoubtedly, international tax planning is very vast and complex particularly when it involves multi jurisdictions as it become quite tough to decide the laws applicable for tax. There are a lot of aspects and fundamental issues which is need to consider before adopting any particular strategy and because of that, a need of professional in this is much needed and thus become his role valuable in international tax planning. A professional will help in number of ways. For instance, a professional can help to provide a suitable and a better strategy before taking a decision. He will also assist to find out the most appropriate direction to step ahead.

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There are the lots of benefits of effective International tax planning like:

- International tax planning will help in minimizing international liabilities of tax legally.
- It helps in increasing working capital as tax liability will decrease.
- It further helps in guiding you that how you can take the advantages or benefits of double taxation treaties between the country where you reside and offshore countries.

[46] *Supra* Note 1.
[47] *Ibid.*
[48] *Ibid.*

- It also helps in improving efficiency in business and provides financial stability.
- It helps in the management of the assets safely and properly.
- It may also help in avoiding threats or potential issues arising from the transaction or business.

Thus International tax planning is a very important aspect for companies who engage in business with offshore countries and this is something which they cannot ignore. It a true to say that before planning something, one should aware all the advantages or benefits, risks, disadvantages and threats among all options which you are available with, so that you can plan while considering all these points and reach at a suitable conclusion.

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