Income from Government Services, Pensions, Students, Elimination of Double Taxation Etc.

ARTICLE 24
ELIMINATION OF DOUBLE TAXATION

- These Articles deal with the so-called juridical double taxation where the same income or capital is taxable in the hands of the same person by more than one State.
- This case has to be distinguished especially from the so-called economic double taxation, i.e. where two different persons are taxable in respect of the same income or capital. If two States wish to solve problems of economic double taxation, they must do so in bilateral negotiations.
- International juridical double taxation may arise in three cases:
  - where a country subjects the same person to tax on his worldwide income or capital;
  - where a person is a resident of a country and derives income from, or owns capital in other country and both countries impose tax on that income or capital;
  - where each Contracting State subjects the same person, not being a resident of either Contracting State to tax on income derived from, or capital owned in, a Contracting State; this may result, for instance, in the case where a non-resident person has a permanent establishment in one Contracting State (E) through which he derives income from, or owns capital in, the other Contracting State (S) (concurrent limited tax liability).

ARTICLE 24
ELIMINATION OF DOUBLE TAXATION

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ARTICLE 24
ELIMINATION OF DOUBLE TAXATION

- For some items of income or capital, an exclusive right to tax is given to one of the Contracting States, and the relevant Article states that the income or capital in question "shall be taxable only" in a Contracting State. The words "shall be taxable only" in a Contracting State preclude the other Contracting State from taxing, thus double taxation is avoided. The State to which the exclusive right to tax is given is normally the State of which the taxpayer is a resident, but in a few cases, the exclusive right may be given to the country of source also.
- For other items of income or capital, the attribution of the right to tax is not exclusive, and the relevant Article then states that the income or capital in question "may be taxed" in the country of source as well as country of residence. In such case the country of residence must give relief so as to avoid the double taxation.
- In the existing conventions, two leading principles are followed for the elimination of double taxation by the State of which the taxpayer is a resident.
  - The principle of exemption
  - The principle of credit

ARTICLE 24
ELIMINATION OF DOUBLE TAXATION

A. <u>The principle of exemption</u>

- Under the principle of exemption, the State of residence does not tax the income which according to the Convention may be taxed in State of source.
- The principle of exemption may be applied by two main methods:
  - a) the income which may be taxed in State of source is not taken into account at all by State of residence for the purposes of its tax; State of residence is not entitled to take the income so exempted into consideration when determining the tax to be imposed on the rest of the income; this method is called “full exemption”;
  - b) the income which may be taxed in State of source is not taxed by State of residence , but State of residence retains the right to take that income into consideration when determining the tax to be imposed on the rest of the income; this method is called “exemption with progression”.

ARTICLE 24
ELIMINATION OF DOUBLE TAXATION

B. <u>The principle of credit</u>

- Under the principle of credit, the State of residence calculates its tax on the basis of the taxpayer's total income including the income from the State of source which, according to the Convention, may be taxed in that other State (but not including income which shall be taxable only in State of source). It then allows a deduction from its own tax for the tax paid in the other State.
- The principle of credit may be applied by two main methods:
  - ✓ a) State of residence allows the deduction of the total amount of tax paid in the State of source, this method is called "full credit";
  - ✓ b) the deduction given by State of residence for the tax paid in the State of source is restricted to that part of its own tax which is appropriate to the income which may be taxed in the other State; this method is called "ordinary credit".
- Fundamentally, the difference between the methods is that the exemption methods look at income, while the credit methods look at tax.
- The expression income include losses and therefore losses incurred state of source will have to be given the same treatment as profits arising in the state of source.
- It is not necessary that both states should tax the income under the identical head.
- State of residence should allow credit for tax paid in state of source irrespective of whether a claim was made by the tax payer in the return of income or during assessment proceedings.
- No refund can be claimed by taxpayer in state of residence for taxes paid in state of source

ARTICLE 24
ELIMINATION OF DOUBLE TAXATION

- An example in figures will facilitate the explanation of the effects of the various methods.
- Suppose the total income to be 100,000, of which 80,000 is derived from one State (State of residence R) and 20,000 from the other State (State of source S).
- Assume that in State R the rate of tax on an income of 100,000 is 35 per cent and on an income of 80,000 is 30 per cent.
- Assume further that in State S the rate of tax is either
- 20 per cent — case (i) — or
- 40 per cent — case (ii) —
- so that the tax payable therein on 20,000 is 4,000 in case (i)
- or 8,000 in case (ii), respectively.

ARTICLE 24
ELIMINATION OF DOUBLE TAXATION

a) **Full exemption**

State R imposes tax on 80,000 at the rate of tax applicable to 80,000, i.e. at 30 per cent.

	Case (i)	Case (i)
Tax in State R, 30% of 80,000	24,000	24,000
Plus tax in State S	4,000	8,000
TOTAL TAXES	28,000	32,000
Relief given by State R	11,000	11,000

ARTICLE 24
ELIMINATION OF DOUBLE TAXATION

b) **Exemption with progression**

State R imposes tax on 80,000 at the rate of tax applicable to total income wherever it arises (100,000), i.e. at 35 per cent.

	Case (i)	Case (i)
Tax in State R, 35% of 80,000	28,000	28,000
Plus tax in State S	4,000	8,000
TOTAL TAXES	32,000	36,000
Relief given by State R	7,000	7,000

ARTICLE 24
ELIMINATION OF DOUBLE TAXATION

a) **Full credit**

State R computes tax on total income of 100,000 at the rate of 35 per cent and allows the deduction of the tax due in State S on the income from S.

	Case (i)	Case (i)
Tax in State R, 35% of 1,00,000	35,000	35,000
less tax in State S	-4,000	-8,000
Taxes Due	31,000	27,000
TOTAL TAXES PAID	35,000	35,000
Relief given by State R	4,000	8,000

ARTICLE 24
ELIMINATION OF DOUBLE TAXATION

b) Ordinary credit

State R computes tax on total income of 100,000 at the rate of 35 per cent and allows the deduction of the tax due in State S on the income from S, but in no case it allows more than the portion of tax in State R attributable to the income from S (maximum deduction). The maximum deduction would be 35 per cent of 20,000 = 7,000.

	Case (i)	Case (i)
Tax in State R, 35% of 1,00,000	35,000	35,000
less tax in State S (Maximum Deduction)	-4,000	-7,000
Taxes Due	31,000	28,000
TOTAL TAXES PAID	35,000	36,000
Relief given by State R	4,000	7,000

ARTICLE 24

RULES FOR GRANT OF FOREIGN TAX CREDIT

- Rule 128 to the Income-tax Rules, 1962 provides the rules for grant of Foreign Tax Credit (FTC).
- A resident assessee is allowed FTC if any tax has been paid by him in a country or specified territory outside India. Grant of FTC shall be allowed only in the year in which the income corresponding to such tax has been offered to tax or assessed to tax in India.
- Where income on which foreign tax has been paid or deducted, is offered to tax in more than one year, credit of foreign tax shall be allowed across those years in the same proportion in which the income is offered to tax or assessed to tax in India.
- Where a DTAA has been entered into, eligible foreign tax shall be the taxes covered under the respective DTAA.
- However, where no DTAA has been entered between India and the foreign country, eligible foreign tax shall mean the tax payable under the law in force in that country in the nature of income-tax referred to in clause (iv) of the Explanation to section 91 of the Act.
- An assessee would be allowed to claim FTC against the amount of tax, surcharge and cess payable by such assessee in India under the Act. However, it has been clarified that claim of FTC will not be allowed in respect of any sum payable by way of interest or penalty.

ARTICLE 24

RULES FOR GRANT OF FOREIGN TAX CREDIT

- No credit shall be available in respect of any amount of foreign tax or part thereof which is disputed in any manner by the assessee. However, if the dispute in relation to foreign tax credit is finally settled than credit of such disputed tax shall be allowed for the year in which such income is offered to tax or assessed to tax in india if the assessee within six months from the end of the month in which the dispute is finally settled, and furnishes evidence of settlement of dispute, evidence of discharge of such disputed foreign tax, and an undertaking that no refund in respect of such amount has directly or indirectly been claimed or shall be claimed.
- Credit of foreign tax shall be the aggregate of the amounts of credit computed separately for each source of income arising from a particular country. Further, the credit allowable shall be the lower of the tax payable under the act on such income and the foreign tax paid on such income. Where foreign tax paid exceeds tax payable in accordance with DTAA, such excess shall be ignored.
- The credit shall be determined by conversion of the currency of payment of foreign tax at the telegraphic transfer buying rate on the last day of the month immediately preceding the month in which such tax has been paid or deducted.
- The credit of foreign tax shall be allowed against MAT in the same manner as is allowable against tax payable under the normal provisions of the act. If the amount of FTC available against the tax payable under MAT exceeds the amount of tax credit available against the normal provisions, then such excess shall be ignored.

ARTICLE 24

RULES FOR GRANT OF FOREIGN TAX CREDIT

- For claiming FTC, assessee shall be required to furnish following documents :-
  - A statement of income and foreign tax paid or deducted in Form No.67;
  - Certificate or statement specifying the nature of income and the amount of tax deducted there from or paid by the assessee,-
  - from the tax authority of foreign country; or
  - From the person responsible for deduction of such tax; or
  - a statement signed by the assessee if it is accompanied by an acknowledgment of online payment or bank counter foil or challan for payment of tax where the payment has been made by the assessee or proof of deduction where the tax has been deducted.
- Such documents shall be furnished on or before the duedate return of income under section 139(1) of the Act.
- Form No.67 shall also be furnished in a case where the carry backward of loss of the current year results in refund of foreign tax for which credit has been claimed in any earlier previous year or years.

ARTICLE 24
GRANT OF FOREIGN TAX CREDIT – CASE LAWS

- Madras High Court, in the case of Commissioner of Income-tax v. Best & Crompton Engg. Ltd. reported in [2006] 156 Taxman 216 (Madras), the unilateral relief is granted only in respect of the "doubly taxed income", which means that, that part of the income is actually included in the assessee's total income. The word "income" as it is understood for the purpose of section 91 would be the income computed in the normal sense before adjustment of deduction under section 35B. What is contemplated by the term or expression "income" in the said section is not an exact quantum or measure of the income as computed either in India or abroad for the purpose of taxation in the respective countries, but the income as ordinarily understood in a commercial business sense. This is so, because the Indian tax laws may not be identical to the laws obtaining in another country and the computation of income in either country would not result in the same quantum of income since each country has its own fiscal policies and tax structure and allowances.
- It is not in dispute that the income earned by the respondent-assessee in Iran was Rs. 25,61,426. The said section 91 speaks of the income which accrued or arose outside India. Hence, the income which accrued or arose outside India, viz., in Iran was prior to the adjustments contemplated under section 35B. It is on that income, the respondent-assessee is entitled to the benefit of double income-tax relief. The curtailment of the benefit in this regard by imputing the deduction under section 35B to the income from Iran is clearly erroneous.
- The Assessing Officer had done the weighted deduction under section 35B amounting to Rs. 20,00,056 from Iranian income and worked out the double taxation relief on the sum of Rs. 5,61,370.

ARTICLE 24
GRANT OF FOREIGN TAX CREDIT – CASE LAWS

- ITAT MUMBAI in the case of **Assistant Commissioner of Income-tax, Circle-2, Mumbai v. Ms. Aishwarya K. Rai reported in [2010] 2 ITR(T) 644 (Mumbai)** had analyzed article relating to method of elimination of double taxation in tax treaty between India and UK and DTAA between India and USA.
- It was held that when these two articles are read in conjunction with section 90, it becomes clear that the amount of tax paid under the laws of UK/USA shall be allowed as credit against the Indian tax payable in respect of such income. There is a rider in these articles which restricts the allowability of credit to an amount not exceeding that proportion of Indian tax which such income bears to the entire income chargeable to Indian tax.
- The amount of tax deducted at source in UK and USA amounting to Rs.49.19 lakhs constitutes 17.42 per cent of the gross professional fees received by the assessee and the average rate of tax on her gross total income for the assessment year under consideration comes to 30 per cent under the provisions of the Income-tax Act, 1961. Even if we consider the claim of deduction under section 80RR at 15 per cent of the professional income derived by the assessee in exercise of her profession abroad, the proportionate rate of Indian tax on such income remains at a still higher level.
- In view of the patent language of the relevant Articles, as reproduced above, it becomes abundantly clear that the assessee was entitled to the credit for tax deducted at source on foreign income, which income was duly offered for taxation in India.

LIMITATION OF BENEFITS

- The "Limitation of Benefits" ('LoB') Article in a DTAA is an anti-abuse provision which prevents improper use of the DTAAs by specifying a set of circumstances under which certain persons may not qualify for the treaty benefits. The purpose of this article is to prevent abuse by third-country residents of benefits of bilateral income tax treaties. It is the principal weapon to shut down treaty shopping.
- Some DTAAs contain liberalised provisions either in terms of tax rates or in scope of taxation, etc. and tend to attract residents of the third country to structure transactions through these countries solely obtain benefits of such DTAAs, typically through conduit companies. This phenomenon is commonly referred to as 'treaty shopping'.
- X Co, which is based in Country X, derives income from Country S (source country) and pays a 30 percent withholding tax on that income. Country X has no tax treaty with Country S but Country S has a favourable tax treaty with Country R. X Co therefore establishes a subsidiary, R Co, in Country R (residence country) and routes its investments in Country S through R Co. The effect is to reduce the Country S withholding tax on the income of X Co. even though X Co. was not an intended beneficiary of the treaty between Country R and Country S.
- Under such LoB clause the benefit of the DTAA is not available if the sole purpose of becoming a resident in one of the Contracting States is to avail the treaty benefits.

What is MFN ?

- The most-favoured nation ('MFN') clause is generally negotiated to ensure that residents of a particular country should not be treated less favourably in comparison to residents of another country or a group of other countries.
- The MFN clause or protocol to a treaty is understood to be an integral part of a treaty.
- The applicability of MFN clauses is generally dependent upon the way the clause is worded. In case the language requires that any affirmative action in the form of notification/order is necessary to give effect to the protocol, the protocol will only come into force as and when such a notification/order is issued. However, if the protocol is silent on this aspect, the protocol applies automatically and no notification/order is required to give effect to the terms of the protocol.
- Hon'ble Delhi High Court in the case of *Steria (India) Ltd. v. CIT[2016] 72 taxmann.com 1 (Delhi)* had held that the words "a rate lower or a scope more restricted" occurring in clause 7 of the protocol to the India-France tax treaty envisages that there could be a benefit on either score, i.e., a lower rate or more restricted scope. One does not exclude the other.
- It was held that the restricted definition of FTS in the India-UK tax treaty, which excludes managerial services from the ambit of taxation, could be imported in the India – France tax treaty by virtue of the protocol. The Delhi HC also upheld the status of a protocol to a tax treaty to be at par with the tax treaty itself.

Indian Tax Treaties having MFN clause

OECD MEMBER STATES

- Belgium
- France
- Netherlands
- Norway
- Spain
- Sweden
- Switzerland

NON-OECD STATES

- Israel
- Kazakhstan
- Philippines
- Russia
- Sri Lanka

Applying the MFN clause

	Indo-France w.e.f . 01.04.1995	Indo-German w.e.f. 01.04.1997	Indo-Sweden w.e.f. 01.04.1998
Interest	15%	10%	10%
Royalty/FTS	20%	10%	10%
Use of Equipment	20%	10%	NIL

TAX HAVEN

- **OECD recognizes following factors for considering a jurisdiction as Tax Haven:**

  - Whether it imposes no or only nominal taxes
  - Whether there is a lack of transparency
  - Whether there are laws or administrative practices that prevent the effective exchange of information for tax purposes with other governments
  - Whether there is an absence of a requirement that the activity be substantial

Effects of Tax Havens

- **Treaty shopping:** Routing of income arising in one country to a person in another country through an intermediary country to obtain the tax advantage of tax treaties

- **Round Tripping:** Where Indians use Tax Havens registered companies and Tax Havens offshore trusts to hold assets abroad beyond the reach of Indian tax laws

- **Holding company located in Tax Haven:** Entities operating in India and having a holding company in Tax Haven to avoid capital gains tax

ARTICLE 8
SHIPPING AND AIR TRANSPORT

- Paragraph 1 confers the exclusive taxing right to the State of residence concerning profits from the operation of ships or aircraft in international traffic.
- The profits covered consist in the first place of the profits directly obtained by the enterprise from the transportation of passengers or cargo by ships or aircraft (whether owned, leased or otherwise at the disposal of the enterprise) that it operates in international traffic.
- Profits will also include other activity directly connected with such transportation the rental of ships or aircraft incidental to any activity directly connected with such transportation.
- Containers are used extensively in international transport. Such containers frequently are also used in inland transport. Profits derived by an enterprise engaged in international transport from the lease of containers are usually either directly connected or ancillary to its operation of ships or aircraft in international traffic and in such cases fall within the scope of the paragraph.
- The same conclusion would apply with respect to profits derived by such an enterprise from the short-term storage of such containers (e.g. where the enterprise charges a customer for keeping a loaded container in a warehouse pending delivery) or from detention charges for the late return of containers.

ARTICLE 8
SHIPPING AND AIR TRANSPORT

- Where an airline or shipping company provides goods (e.g. spares) to, or performs services for, other enterprises and such activities are directly connected or ancillary to the enterprise's operation of ships or aircraft in international traffic, the profits from the provision of such goods or services to other enterprises will fall under the paragraph.
- Interest on funds connected with the operation of ships or aircraft in international traffic shall be regarded as profits derived from the operation of such ships or aircraft and the provisions of Article 11 shall not apply in relation to such interest.
- Enterprises engaged in international transport may enter into pooling arrangements for the purposes of reducing the costs of maintaining facilities needed for the operation of their ships or aircraft in other countries. Profits from participation in a pool, a joint business, or an international operating agency will also form
- Gains derived by an enterprise from the alienation of ships, aircraft or containers owned and operated by the enterprise will also be taxed accordingly.

ARTICLE 19
REMUNERATION AND PENSIONS IN RESPECT OF GOVERNMENT SERVICE

- Taxing rights on salaries, wages and similar remuneration, earned by an individual in government service, is exclusively given to the contracting state making the payment.
- The state of residence of the employee must exempt such income from tax unless it is the "paying state". The place of rendering service is immaterial.
- It is also in conformity with the conception of international courtesy which is at the basis of the Article and with the provisions of the Vienna Conventions on Diplomatic and Consular Relations.
- The provisions of the Article apply to payments made not only by a State but also by its political subdivisions and local authorities. The services rendered to the State, political subdivision or local authority need not be rendered "in the discharge of functions of a governmental nature" unless the expression "in the discharge of functions of a governmental nature" is mentioned in their bilateral conventions for e.g. India- UK treaty.
- The term "salaries, wages and other similar remuneration ... paid" is generally understood to include benefits in kind received in respect of services rendered to a State or political subdivision or local authority thereof (e.g. the use of a residence or automobile, health or life insurance coverage and club memberships).

ARTICLE 19
REMUNERATION AND PENSIONS IN RESPECT OF GOVERNMENT SERVICE

- As an exception, these taxing rights are given exclusively to the residence state of the individual employee if the services are rendered in that state, and the resident individual is national of that state or if he is a non-national, he did not become a national solely for rendering the services. According to the Vienna Conventions, the receiving State is allowed to tax remuneration paid to certain categories of personnel of foreign diplomatic missions and consular posts, who are permanent residents or nationals of that State.
- Pension paid to an individual by a government is also exclusively taxable in the paying state if it is paid in respect of past services. The other contracting state must grant exemption, even if the pensioner is one of its residents. Again as an exception, the pension is taxable only by the state of residence if the pensioner is resident as well as national of that state.
- The provisions of Articles 16 (Dependent Personal Services), 17 (Directors' Fees), 18 (Income Earned by Entertainers and Athletes) and 20 (Private Pensions, Annuities, Alimony and Child Support) shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by the government or its political sub-division or a local authority thereof.

ARTICLE 20
PRIVATE PENSIONS, ANNUITIES, ALIMONY AND CHILD SUPPORT

- Income from private pension, annuity and other similar payments for past private employment services are taxable exclusively only in the state of residence of the individual pensioner.
- The source state has no taxing rights on such payments.
- The place where the past employment was exercised do not affect the taxing rights under this article.
- This article includes widows’ and orphans’ pensions and other similar payments, such as annuities paid in respect of the past employment.
- Social security benefits and other public pensions paid by a Contracting State may only be taxable in the state of source depending upon the terms of treaty for e.g. USA. However, if there is no mention in this article regarding such payment than it will be covered by Article 21 i.e. other income.
- The term "pension" means a periodic payment made in consideration of past services or by way of compensation for injuries received in the course of performance of services.
- The term "annuity" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

ARTICLE 20
PRIVATE PENSIONS, ANNUITIES, ALIMONY AND CHILD SUPPORT

- Alimony paid to a resident of a Contracting State shall be taxable only in that State. The term "alimony" as used in this paragraph means periodic payments made pursuant to a written separation agreement or a decree of divorce, separate maintenance, or compulsory support, which payments are taxable to the recipient under the laws of the State of which he is a resident.
- Periodic payments for the support of a minor child made pursuant to a written separation agreement or a decree of divorce, separate maintenance or compulsory support, paid by a resident of a Contracting State to a resident of the other Contracting State, shall be taxable only in the first-mentioned State.

ARTICLE 20
PRIVATE PENSIONS, ANNUITIES, ALIMONY AND CHILD SUPPORT

- Alimony paid to a resident of a Contracting State shall be taxable only in that State. The term "alimony" as used in this paragraph means periodic payments made pursuant to a written separation agreement or a decree of divorce, separate maintenance, or compulsory support, which payments are taxable to the recipient under the laws of the State of which he is a resident.
- Periodic payments for the support of a minor child made pursuant to a written separation agreement or a decree of divorce, separate maintenance or compulsory support, paid by a resident of a Contracting State to a resident of the other Contracting State, shall be taxable only in the first-mentioned State.

ARTICLE 21
STUDENTS AND TRAINEES

- The rule established in this Article concerns certain payments received by students or business apprentices for the purpose of their maintenance, education or training. All such payments received from sources outside the State in which the student or business apprentice concerned is staying shall be exempted from tax in that State.
- The Article covers only payments received for the purpose of the recipient's maintenance, education or training. It does not, therefore, apply to a payment, or any part thereof, that is remuneration for services rendered by the recipient and which is covered by Article 15.
- Payments which a student or business apprentice receives as remuneration from employment in the country of his study or training, in an amount not exceeding a sum equivalent to 3000 US dollars during any fiscal year shall be exempt from tax in the first-mentioned State during the period ending five years after the date of his first arrival in the first-mentioned Contracting State. (India SA Treaty)

ARTICLE 22 - TEACHERS
ARTICLE 23 - OTHER INCOME

- Article 22 states that an individual who visits a Contracting State for a period not exceeding two years for the purpose of teaching or engaging in research at a University, college or other recognised educational institution in that State, and who was immediately before that visit a resident of the other Contracting State, shall be exempted from tax by the state of teaching or research work on any remuneration for such teaching or research for a period not exceeding two years from the date he first visits that State for such purpose.
- Article 22 shall only apply to income from research if such research is undertaken by the individual in the public interest and not primarily for the benefit of some other private person of persons.
- Article 23 provides a general rule relating to income not dealt with in the foregoing Articles of the Convention. It gives exclusive right to tax is given to the State of residence.

ARTICLE 25
NON-DISCRIMINATION

- This Article prevents differences in tax treatment that are solely based on nationality. It does not prohibit discrimination against non-residents.
- While the Article seeks to eliminate distinctions that are solely based on certain grounds, it is not intended to provide foreign nationals, non-residents, enterprises of other States or domestic enterprises owned or controlled by non-residents with a tax treatment that is better than that of nationals, residents or domestic enterprises owned or controlled by residents.
- Likewise, the provisions of the Article cannot be interpreted as to require most favoured-nation treatment.
- Likewise, the provisions of the Article are not to be construed as obliging a State which accords special taxation privileges to its own public bodies or services as such, to extend the same privileges to the public bodies and services of the other State.
- Neither are they to be construed as obliging a State which accords special taxation privileges to private institutions not for profit whose activities are performed for purposes of public benefit, which are specific to that State, to extend the same privileges to similar institutions whose activities are not for its benefit.
- The expression “less favourable” has not been defined in the convention or domestic tax laws. It means materially disadvantageous.

ARTICLE 26
MUTUAL AGREEMENT PROCEDURE

- This Article institutes a mutual agreement procedure for resolving difficulties arising out of the application of the Convention in the broadest sense of the term. It provides that the competent authorities shall endeavour by mutual agreement to resolve the situation of taxpayers subjected to taxation not in accordance with the provisions of the Convention.
- It invites and authorises the competent authorities of the two States to resolve by mutual agreement problems relating to the interpretation or application of the Convention and, furthermore, to consult together for the elimination of double taxation in cases not provided for in the Convention.
- As regards the practical operation of the mutual agreement procedure, the Article, merely authorises the competent authorities to communicate with each other directly, without going through diplomatic channels, and, if it seems advisable to them, to have an oral exchange of opinions through a joint commission appointed especially for the purpose. Article 27 applies to the exchange of information for the purposes of the provisions of this Article. The confidentiality of information exchanged for the purposes of a mutual agreement procedure is thus ensured.
- It also provides a mechanism that allows a taxpayer to request the arbitration of unresolved issues that have prevented competent authorities from reaching a mutual agreement within two years.

ARTICLE 26
EXCHANGE OF INFORMATION

- In view of the increasing internationalisation of economic relations, the Contracting States have a growing interest in the reciprocal supply of information on the basis of which domestic taxation laws have to be administered and carrying out the provisions of this Convention.
- The scope of exchange of information covers all tax matters without prejudice to the general rules and legal provisions governing the rights of defendants and witnesses in judicial proceedings.
- The exchange of information is not restricted by Article 1 (General Scope). Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State. However, if the information is originally regarded as secret in the transmitting State, it shall be disclosed only to persons or authorities (including Courts and administrative bodies) involved in the assessment, collection, or administration of, the enforcement or prosecution in respect of or the determination of appeals in relation to, the taxes which are the subject of the Convention. Such persons or authorities shall use the information only for such purposes, but may disclose the information in public Court proceedings or in judicial decisions. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use.

ARTICLE 26
EXCHANGE OF INFORMATION

- The competent authorities shall, through consultation, develop appropriate conditions, methods and techniques concerning the matters in respect of which such exchange of information shall be made, including, where appropriate, exchange of information regarding tax avoidance.
- The exchange of information or documents shall be either on a routine basis or on request with reference to particular cases, or otherwise. The competent authorities of the Contracting States shall agree from time to time on the list of information or documents which shall be furnished on a routine basis.
- In no case shall the aforesaid provisions be construed so as to impose on a Contracting State the obligation :
  - (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
  - (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
  - (c) to supply information which would disclose any trade, business, industrial, commercial, or professional secret or trade process, or information the disclosure of which would be country to public policy (ordre public).

ARTICLE 28
ASSISTANCE IN THE COLLECTION OF TAXES

- The Contracting States shall lend assistance to each other in the collection of revenue claims in respect of taxes covered by the Convention. This assistance is not restricted by Article 1. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.
- The term "revenue claim" as used in this Article means an amount owed in respect of taxes covered by this Convention, insofar as the taxation thereunder is not contrary to this Agreement or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.
- When a revenue claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. That revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.