DOUBLE TAXATION RELIEF

Double taxation means taxation of same income of a person in more than one country. There are two main rules of income taxation.

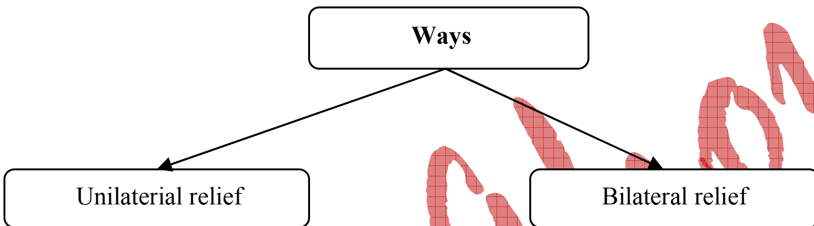
- Source of income rule
- Residence rule

Source of income rule : as per source of income rule, the income may be subject to tax in the country where the source of such income exist.

Residence rule : on the other hand residence rule stipulated that the power to tax should rest with the country in which the tax payee resides. In other words income earner may be tax on their residential status.

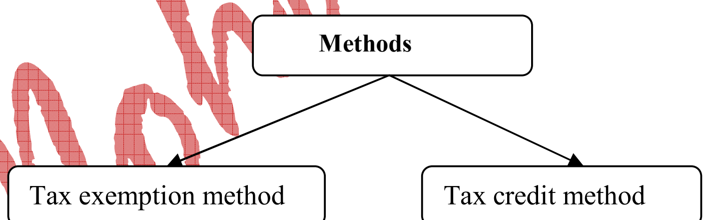
Some countries may follow a mixture of the above two rules.

There are two ways by which relief provided to the assessee from double taxation.



In such a case, then the person is granted relief by means of double taxation relief on doubly taxed income.

Bilateral relief (Sec-90):- The government of two countries can enter into Double Taxation Avoidance agreement (DTAA) so the same income may not be taxed twice. It based on the mutual agreement between two concern superagencies. There are two methods of bilateral relief.



Tax exemption method: - Under this method, a particular income is taxed in one of the two countries. However it can be included in total income for rate purpose only.

Method of calculation:-

Step 1:- Calculate tax on total income including foreign income to be taxed in India.

Step 2:- Calculate average rate of tax (total tax / total income)

Step 3:- Relief = Foreign income * rate as per step 2.

Tax credit method :- Under this method, the assessee is liable to have his income taxed in both the countries but is given a deduction, from a tax payable by him in the countries of residence, of a part of the taxes paid by him thereon, in the source country usually the lower of the two tax paid.

Method of calculation:-

Step 1:- Calculate tax on total income including foreign income to be taxed in India.

Step 2:- From it deduct tax paid in foreign country which is the amount of relief u/s 90.

Unilateral agreement [Sec- 91]

This section is applicable for those cases with whom India does not have an ADT agreement. Relief would be determined by the use of following steps:

Step 1 :- Calculate tax on total income including foreign income to be taxed in India including ED & SHEC.

Step 2:- Calculate average rate of Indian tax (total tax / total income)

Step 3 :- Calculate average rate of foreign tax (total tax paid in foreign / income of foreign country)

Step 4 :- Relief = Foreign income * rate as per step 2 / 3 whichever is lower.

Note: - If foreign income is more than total net taxable income, then relief is restricted to net taxable income i.e. NTI is taken to be the foreign income for this purpose.

Double Taxation Relief in case of specified associations [Sec-90A]

Provisions of (Sec-90A) are as under:

- There is a specified association in India.
- The specified associations executes any agreement with any specified association in any specified territory outside India.
- The Central Government by way of notification in the official gazette may make necessary provisions for adoption and implementation of such agreement for following acts:
    i. Grant of Double taxation relief to avoid double taxation.
    ii. Exchange of information for prevention tax evasion.
    iii. Recovery of Income Taxes
- The provisions of income tax shall apply to the extent more beneficial to the assessee to whom the above agreement applies.

New clause inserted in S. 90 w.e.f. 01/10/2009: Empowering Central Government to enter into agreement with specified non-sovereign territories

At present GOI is empowered to enter into DTAA with the Government of any other country for grant of double taxation relief and facilitating exchange of information to prevent evasion of tax.

The scope of (Sec-90) is expanded by empowering CG to enter into a DTAA or TIEA (Tax Information Exchange Agreement) with Non-Sovereign jurisdictions. The CG also has power to assign a meaning through notification to any term used in the agreement, which is neither defined under the act nor in the agreement. The Government has clarified the position of date of applicability of such meaning: As per amendment made by FA 2012, any meaning assigned through any notification to a term used in agreement but not defined in the agreement will be effective from the date of coming into force of DTAA.

Tax Residence Certificate (TRC) for claiming relief under DTAA:

As per existing provisions of section 90/90A, a taxpayer who is resident of one of the DTAA country is entitled to claim applicability of beneficial provisions either of the treat or of the domestic law. However, in many cases, the persons who are not tax resident of contracting country do claim benefit under DTAA entered into by the Government with that country. So, even third party residents claim benefits. At present, there is no requirement to obtain tax residency certificate (TRC) except from Mauritius. The provision has been amended to make submission of TRC necessary for claiming benefit of the DTAA.

General Anti Avoidance Rules (GAAR) - If General Anti Avoidance Rules are invoked, then provisions of DTAA will not be applicable.