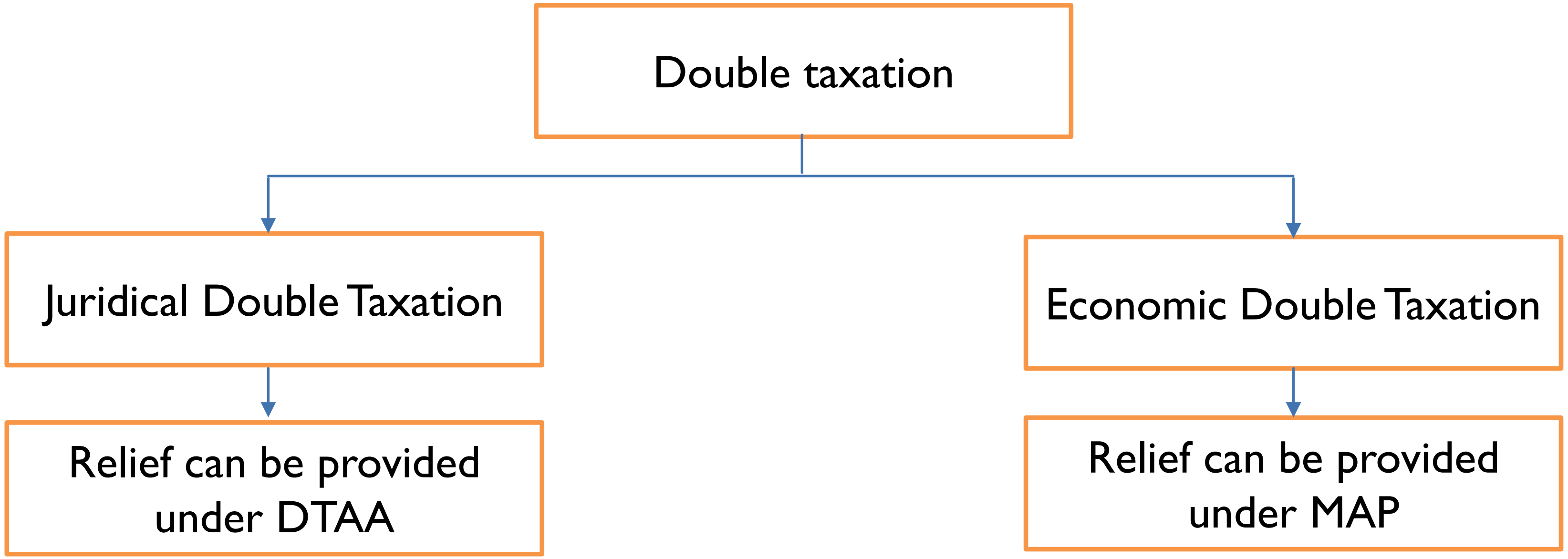
CA AVNEESH SHUKLA

CONTENT -NOTIFICATION 23/2020 (6TH MAY 2020) – APPLICATION FOR GIVING EFFECT TO MAP TERMS (RULE 44G)

BRIEF INTRODUCTION OF MAP (MUTUAL AGREEMENT PROCEDURE)

- MAP is a well established mean through which Tax administration resolve disputes regarding the application of DOUBLE TAX AVOIDANCE AGREEMENTS (DTAA).
- MAP also provide relief where automatic relief (tax credit, tax exemption etc.) is not available and also in case of Economic Double Taxation.



Juridical Double Taxation :- When the income is taxed twice in the hands of taxpayers- Once in the country of residence and once in the country of source.

Economic Double Taxation :- when the same income taxable in the hands of two taxpayers.

NEW RULE 44G :- WHEN INDIAN RESIDENT CONSIDER THAT ACTION OF TAX AUTHORITIES OF COUNTRY AND SPECIFIED TERRITORY OUTSIDE INDIA, IS NOT IN ACCORDANCE WITH THE TERMS OF MAP

1

- Assessee will make application to the ICA (Indian Competent authority i.e. Officer Authorised by Central Government) for invoking the MAP in Form No. 34F

2

- ICA shall convey his acceptance or rejection of application

3

- ICA shall call for the relevant records and additional document

4

- ICA shall endeavor to arrive at a mutually agreeable resolution of the tax disputes within twenty-four months.

5

- In case the MAP is invoked on account of action taken by any Indian tax authority, the resolution shall not result in
- ✓ decreasing the income or
- ✓ increasing the loss as declared in the return of income of the said year.

6

- If a resolution is arrived at between the ICA and authority of other country or specified territory, the same shall be communicated in writing to the assessee

7 & 8

- The assessee shall communicate his acceptance or non-acceptance of the resolution in writing to the ICA within thirty days of receipt of the communication, accompanied by proof of withdrawal of appeal, if any, pending on the issues.

9

- On receipt of assessee’s acceptance the ICA shall communicate the resolution and the acceptance by the assessee along with proof of withdrawal of appeal to the Principal Chief Commissioner or the Chief Commissioner or the Principal Director General or Director General who in turn shall forward it to the AO

10

- On receipt of communication the AO shall give effect to the resolution by an order in writing, within one month from the end of the month of receipt of communication and intimate the assessee about the tax payable if any.

11

- The assessee shall pay the tax within the time allowed by the AO and shall submit the proof of payment of taxes to the AO. AO shall withdraw the pending appeal pertaining to subject matter

12

- A copy of the order shall be sent to the ICA and to the assessee

13

- The amount of tax, interest or penalty already determined shall be adjusted in accordance with the resolution.

Note :-

1. With this notification CDBT has withdrawn erstwhile Rule 44H i.e. Action by Indian Competent Authority and Procedure for giving effect to the decision under the agreement.
2. Form 34F is given on the next slide.

"FORM NO. 34F

[See rule 44-G]

Form of application for an assessee, resident in India, seeking to invoke mutual agreement procedure provided for in agreements with other countries or specified territories

To

The Competent Authority in India

Foreign Tax and Tax Research Division,

Central Board of Direct Taxes,

Department of Revenue,

Ministry of Finance,

New Delhi

Madam/Sir,

Whereas the applicant is aggrieved by the action of the tax authority of -- (name of the country or specified territory) for the reasons given hereunder. The matter may kindly be taken up with the Competent Authority of ------------------------------ (name of the country or specified territory) under Article ----------- of the --- (specify the agreement) between India and ------------------------------ (name of the country or specified territory). The relevant details in this regard are as under:

(a) Name of the Applicant -

(b) Permanent Account No. /Aadhar -

(c) Circle /Ward -

(d) Assessment Year(s) -

(e) Previous Year(s) -

(f) Office Address & Telephone No. -

(g) Residential Address & Telephone No. (If applicable) -

(h) Status -

(i) Name and Designation of Tax Authority in the other country or specified territory (Treaty Partner) -

(j) Date of the notice or order giving rise to the action -

(k) Is the order/action of the Tax Authority of the Treaty Partner not in accordance with the agreement? If so, the reasons thereof -
(complete details may be provided in a separate sheet, if required)

(l) Details of remedy sought in the other country or specified territory, if any, with documentary evidence -

2. The following documents in support of the claim are enclosed: —

(I) Copy of notice or order giving rise to action

(II) Detailed reasons provided in respect of (k), if any

(III) Documents in respect of (l), if any

(IV) (Any other document)

Verification

I, _______________, son/daughter/wife of Shri ____________, solemnly declare that to the best of my knowledge and belief, the information given in this application and the annexures and statements accompanying it is correct and complete and particulars shown therein are truly stated and relate to the previous year(s) relevant to the assessment year.

2. I also declare that to the best of my knowledge; I have not concealed any fact or information which could be relevant for deciding my application.