Model Tax Convention

OECD Model
↓
B/w two developed countries
↓
Residence Principle (tax where entity is resident)
↓
32 Articles

UN Model
↓
B/w Developed & Developing countries
↓
Compromise b/w the source rule & residence rule.
↓
31 Articles

US Model
↓
B/w US & other countries
↓
30 Articles

Article 1 → Person covered → Resident of one or both the countries to the agreement

Article 2 → Taxes covered → Income Tax & any ~~tax~~ similar tax in future

☆ **Article 4** → Residence (Imp☆) → As ~~the~~ per the Domestic Tax laws of both the countries
↓
if person becomes resident of both countries then:

Individual

{ Permanent Home
Center of vital interest
Habitual Abode
Nationality
Mutual Agreement }

↓
Permanent home
↓
if Permanent Home in both countries then
↓
Personal & Economic relations are closer (Center of vital interest)
↓
Center of vital interest can't be determined & No Permanent Home
↓
where he/she has a habitual abode
↓
Habitual Abode in both countries → Nationality → National of both countries → settle by mutual agreement

Others
↓
Resident of both countries
↓
Authorities of both countries will decide by mutual agreement as regards to: POEM, Incorporation, Other factors
↓
Till the matter is decided by both govts by Mutual Agreement
↓
Assessee can't take the benefit of DTAA in either country.

★ Article 5 → Permanent Establishment (PE)

PE exists if:
(a) There is an Enterprise
(b) Carrying out Business
(c) There is a Place of Business
(d) Place of Business has effective power over the operations of the business
(e) Place of Business is Fixed

★ PE includes the following:
- Place of management
- Branch
- Office
- Mine & oil well
- workshop

As per OECD Model → Building site/construction project constitutes PE ↓ if it lasts more than 12 months

UN Model → wider definition → Lasts for only 6 months
↳ also includes assembly, installation projects & supervisory activities

Service PE
- OECD is silent on the matter
- UN Model → Services (including consultancy services) ↓ For aggregate 183 days/+ in a year ↓ PE in the country in which services are given to.

Insurance Company
- OECD is silent
- UN Model – Collects insurance premium through agent from other country → PE in the country of Premium

★ Article 7 → Business Profit

→ Only taxed in Residence State
→ right to tax on source rule → only if PE in that country.

★ Force of Attraction Rule (FOA Rule) → Only in UN Model
↓
when a foreign enterprise has PE in a country
↓
Profits derived from source country
↓
whether or not through its PE
↓
Taxed in the PE Foreign Country

(Continued behind FTC) →

ROA Rule (Continued)

India
↓
BB Ltd (Mumbai) — *Directly sells (not via Nepal centre) → Students

As per UN Model → FoA Rule → Taxed in Nepal

OECD Model → Taxed in India

Nepal → PE in Nepal
|
BB Center, Kathmandu (Taxed in Nepal)
↓
Students

So, in UN Model → Tax Attributable on Sales from (PE + Directly earned)

*Article 11 → Interest (earned) → Taxed by Residence Rule
↳ Source country can also tax → Max 10% (OECD Model)
↳ As per Bilateral Negotiations (UN Model)

Penalty charges for Late Payment → Don't include

*Article 12 → Royalties
- OECD → Only ~~Source~~ Residence State can tax
- UN Model → Residence / Source state both may tax

OECD Definition of Royalty excludes
- rentals used for broadcasting
- equipment rentals

*Article 12A → Fees for Technical Service → Only in UN Model

*Article 13 → Capital Gains → Computation as per domestic law
↳ residence rule applies

*Article 14 → Independent ~~Pro~~ Personal Service (Professional Service)
→ Only in UN Model. Not in OECD Model
→ Normally resident rule, but ~~source state~~ receptiant country applies, when:*
(a) Fixed Base in the country (or)
(b) Stay of more than 183 days in a year

} Tax in country where Professional Service is given.

Article 25 → Mutual Agreement Procedure | Article 26 → Exchange of Info