



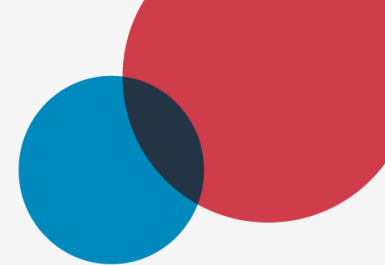
SOME RELEVANT TREATY ISSUES

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August 29,
2018

Your global tax partner

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GLOSSARY

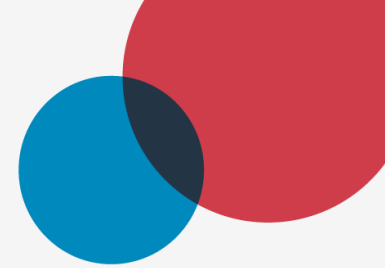


Abbreviation	Full form
MFN	Most Favoured Nation Principle
MAP	Mutual Agreement Procedures
DTAA	Double Taxation Avoidance Agreement
US	United States
UN	United Nations
OECD	The Organization for Economic Co-operation and Development
CBDT	Central Board of Direct Taxes
FTC	Foreign tax credit
The Act	The Income-tax Act, 1961
CA	Certifying Authority

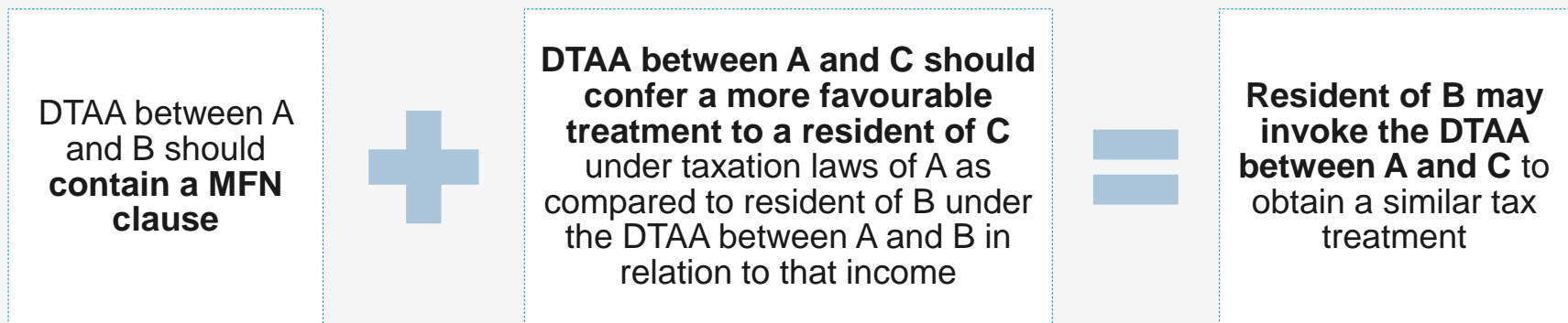


**MFN
PRINCIPLE**

MFN PRINCIPLE - CONCEPT



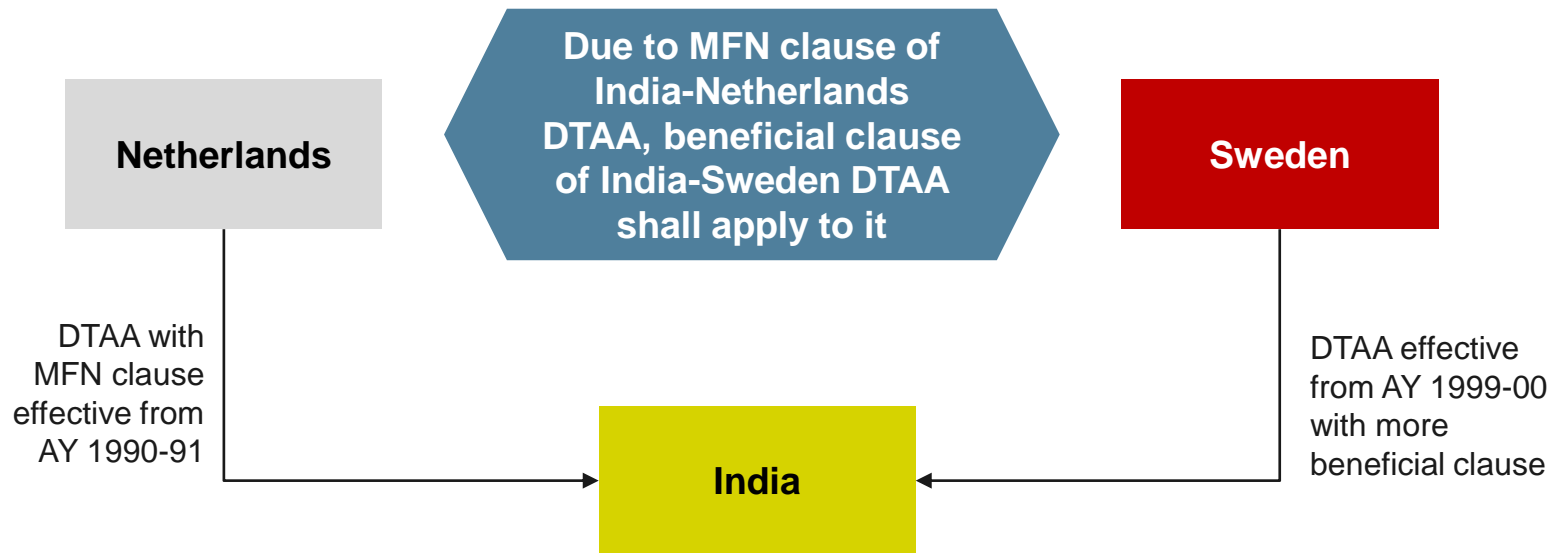
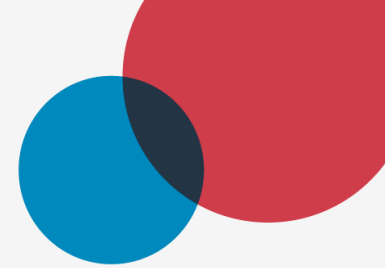
Binds a contracting State ('A') to offer to a resident of the other contracting State ('B'), the same benefits which A may offer to a resident of a third State ('C')



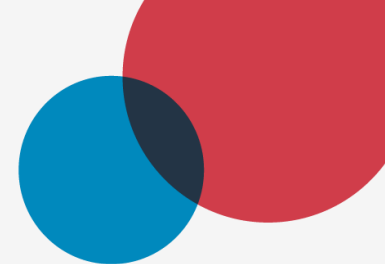
The **objective** of MFN clause is two fold:

- ❖ To guarantee that no discriminatory treatment when compared with a third country; and
- ❖ To offer a better treatment because of favourable change in policy

MECHANICS OF MFN CLAUSE IN INDIAN DTAA

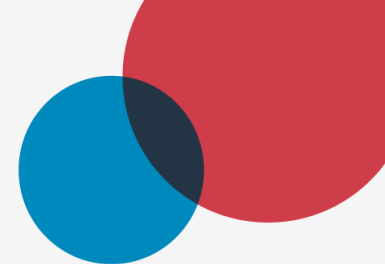


ILLUSTRATIVE LIST OF MFN CLAUSE



Sr. No.	Country	Effective AY	DTAA clause	Remarks
1	Belgium	1999-00	Para 1 of Protocol	Scope of royalty and FTS is restricted due to India – Sweden tax treaty
2	France	1996-97	Para 7 of Protocol	Scope of royalty and FTS is restricted due to India – Sweden tax treaty
3	Hungary	2007-08	Para 4 of Protocol	MFN clause covers dividend, interest, royalty and FTS
4	Netherlands	1990-91	Protocol IV	Scope of royalty and FTS is restricted
5	Norway	1988-89	Article 12(2)	Tax rate on FTS income is restricted
6	Philippines	1996-97	Para 4 of Protocol	Provides for giving effect of changes in Air Transport and Shipping Business only if the same are entered into by Philippines only

ILLUSTRATIVE LIST OF MFN CLAUSE



Sr. No.	Country	Effective AY	DTAA clause	Remarks
7	Saudi Arabia	2008-09	Para 9 of Protocol	Covers expenses mentioned in Article 7(3)
8	Spain	1997-98	Para 7 of Protocol	Scope of royalty and FTS is restricted due to India – Sweden tax treaty
9	Sri-Lanka	1982-83	Whole Protocol	MFN clause relates to construction and service PE and income from shipping business only
10	Sweden	1999-00	Para 3 of Protocol	Scope of FTS is restricted due to India-Canada and India-Portugal DTAA
11	Swiss confederation	1996-97	Para 4 of Protocol	Tax rate of royalty and FTS are reduced and scope of FTS is broadened by revising DTAA
12	United kingdom	1995-96	Article 7(6)	MFN clause provides for only HO expenses

CASE STUDY - 1

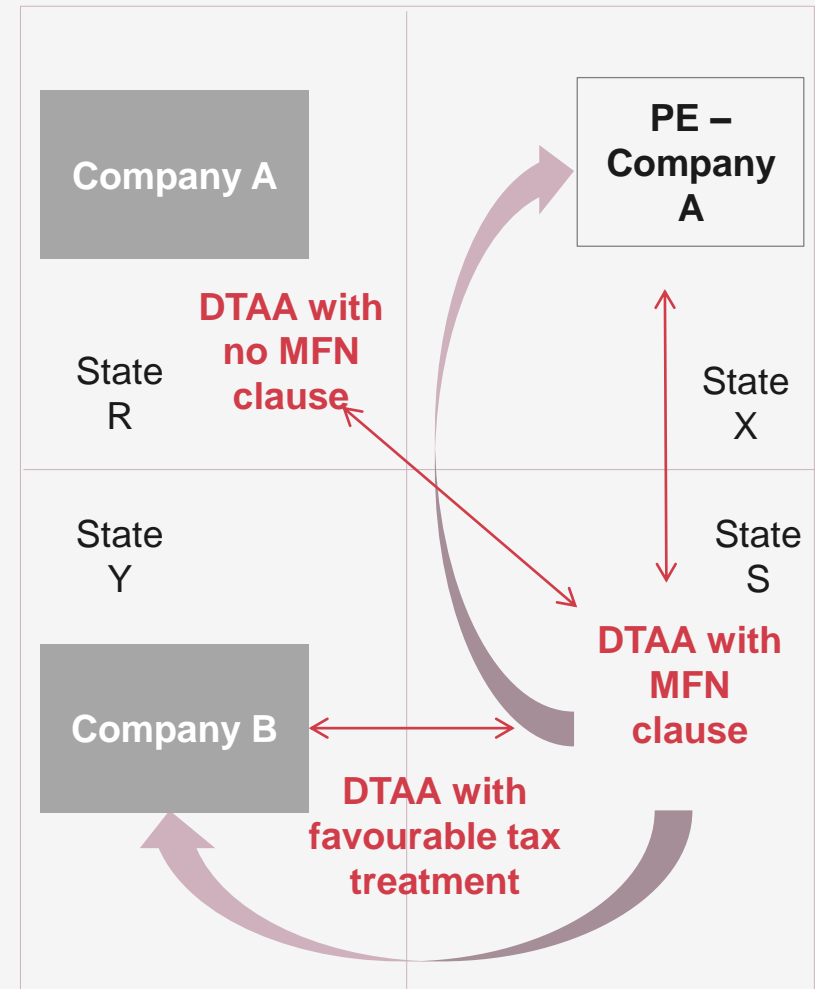


Brief facts

- ❖ Company A, a resident of State R has a PE in State X
- ❖ The PE earns income from State S
- ❖ DTAA between States S and X contains a MFN clause relating to income of the nature earned by the PE; no such MFN clause in the DTAA between States S and R
- ❖ Similar income earned by a resident of State Y is eligible to a favorable tax treatment in State S under the DTAA between States S and Y

Issue under consideration

- ❖ Would the PE / Company A be eligible to avail the beneficial tax treatment as under the DTAA between States S and Y in relation to the income earned from State S?

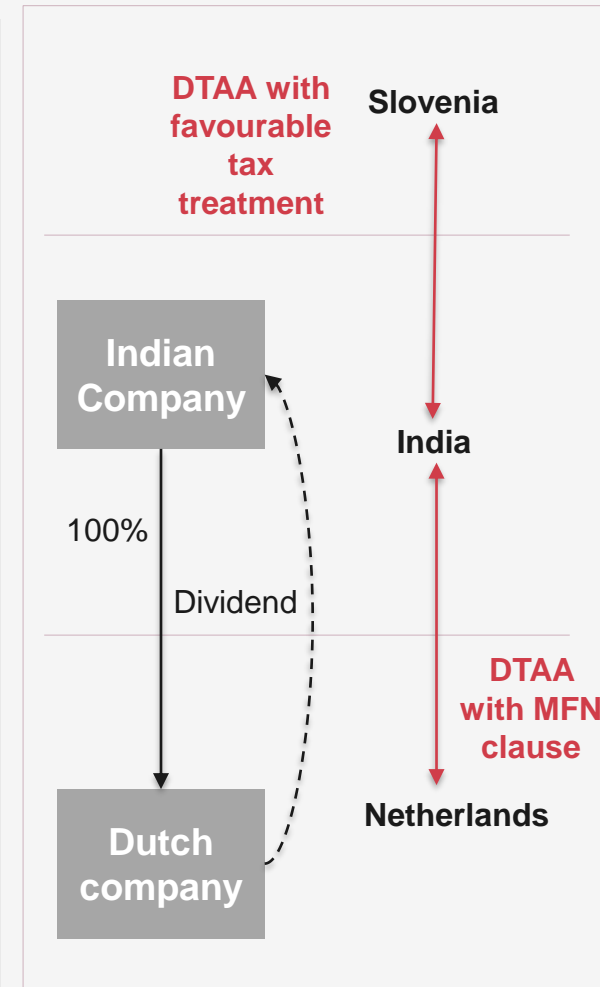


CASE STUDY - 2 (1/2)

Brief facts

- ❖ Case of a Dutch company paying dividends to its Indian parent
- ❖ India-Netherlands DTAA provides for a 15% tax withholding, however the two countries agreed to MFN clause on inter alia dividends from October 26, 1996 – comparable concessional treatment where a more favourable DTAA is signed with an OECD member country

“If after the signature of this Convention under any Convention or Agreement between India and a third State which is a member of the OECD India should limit its taxation at source on dividends, interest, royalties, fees for technical services or payments for the use of equipment to a rate lower or a scope more restricted than the rate or scope provided for in this Convention on the said items of income, then, as from the date on which the relevant India Convention or Agreement enters into force the same rate or scope as provided for in that Convention or Agreement on the said items of income shall also apply under this Convention.”



CASE STUDY - 2 (2/2)

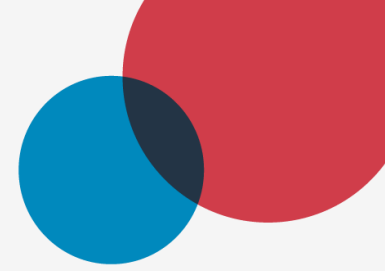


- ❖ India-Slovenia entered into a DTAA on January 13, 2003 which provided for a 5% tax withholding on dividends, if a minimum of 10% shareholding exists for the recipient of the dividend
- ❖ On July 21, 2010 Slovenia became a member of the OECD

Issues under consideration

- ❖ Whether MFN clause benefit would apply to Indian residents when they earn dividend income from the Netherlands? From when?
- ❖ Would the 10% threshold make the 5% rate applicable selectively?

CASE STUDY - 3



Brief facts

- ❖ India-France entered into a DTAA on August 1, 1994 which provided a 10% rate of tax on royalty and FTS in the source country, if the recipient is the beneficial owner
- ❖ Protocol to India-France DTAA provides that where an agreement has been entered into between India and another OECD member nation after September 1, 1989, the rate lower or scope more restricted under such agreement to be imported
- ❖ Subsequently, the CBDT issued a notification and notified only applicability of lower tax rate under the MFN clause

Issue under consideration

- ❖ Whether MFN Clause benefit in respect of restricted scope would apply under the India-France DTAA pursuant to the CBDT notification?



TAX CREDIT

DOUBLE TAXATION - CONCEPT



Types of Double Taxation

Economic Double Taxation

Same income is taxed to two different persons either in same jurisdiction or in two different jurisdictions

Juridical Double Taxation

Same income is taxed doubly to one person

Causes of Double Taxation

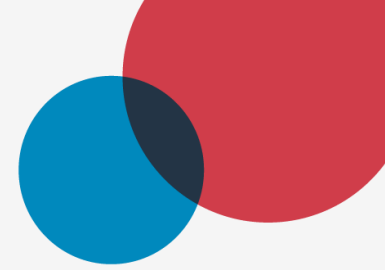


One State claims tax on the basis of “**source of income**” and other on the basis of “**residence**”

Both States claim tax on incomes based on “**residence**” – remedied through the tie-breaker rule



APPROACHES FOR ELIMINATION OF DOUBLE TAXATION



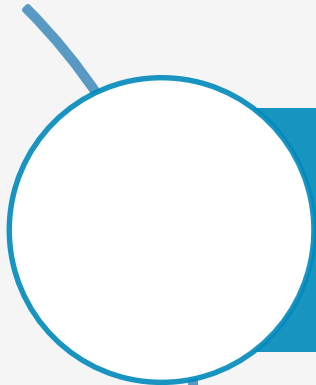
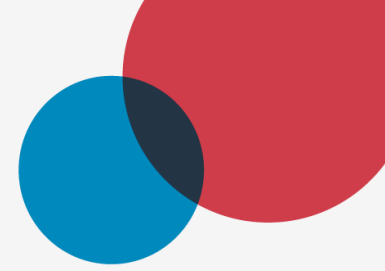
Unilateral Tax Credit

- ❖ Non-DTAA countries
- ❖ Provisions contained in the domestic law
- ❖ Resident State allows credit for taxes paid in source State unilaterally
- ❖ Credit for taxes typically cannot exceed the residence State's tax on the foreign income

Bilateral Agreements

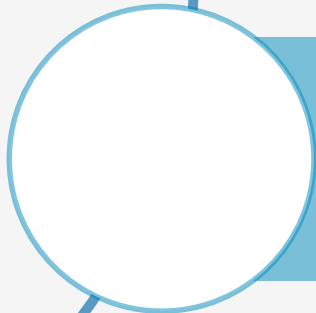
- ❖ Tax treaties
- ❖ Model conventions provide for options for contracting States to agree on a methodology to avoid / relieve from double taxation
- ❖ Generally countries adopt a particular approach as a principle and apply that to most / all of their tax treaties – for instance, India applies the credit method rather than the exemption method

OECD, UN AND US MODEL



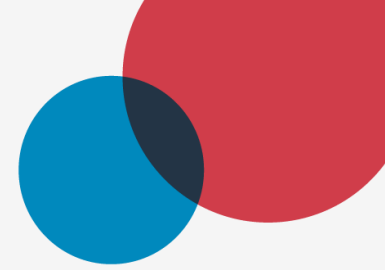
Article 23 of the OECD, UN and US Model commentaries deal with the methods of elimination of double taxation

- Article 23A - Exemption Method
- Article 23B - Credit Method



US MC follows only the credit method of elimination of double taxation

MC ARTICLE 23B – CREDIT METHOD



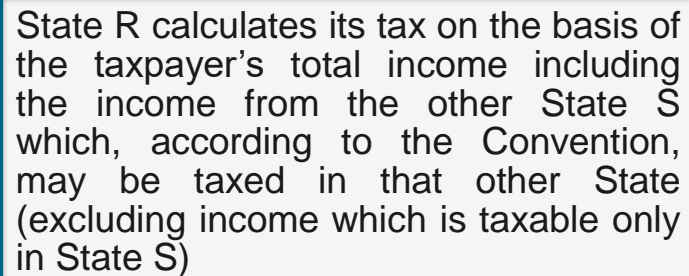
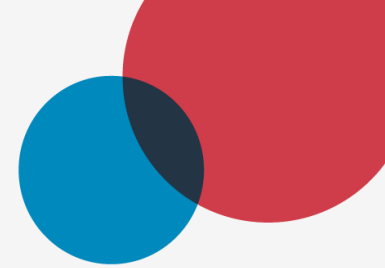
Paragraph 1

- ❖ Provides for allowance of credit of the tax paid in the other contracting State
- ❖ The credit is restricted to the amount of tax as computed before deduction is given, which is otherwise attributable to the income taxed in the other State

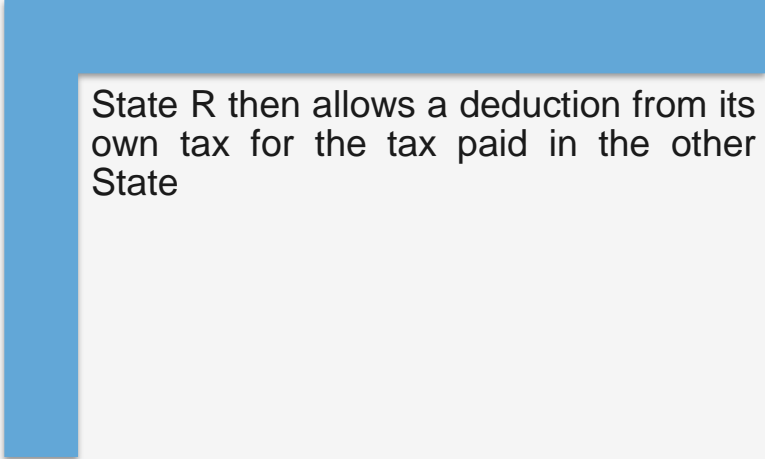
Paragraph 2

- ❖ Provides for including income derived by a resident of a contracting State in the total income, even if based on the DTC such income is exempt from tax

TAX CREDIT MECHANISM



State R calculates its tax on the basis of the taxpayer's total income including the income from the other State S which, according to the Convention, may be taxed in that other State (excluding income which is taxable only in State S)



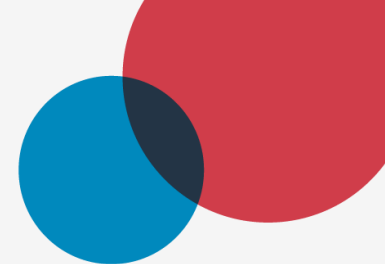
State R then allows a deduction from its own tax for the tax paid in the other State

METHODS OF TAX CREDIT



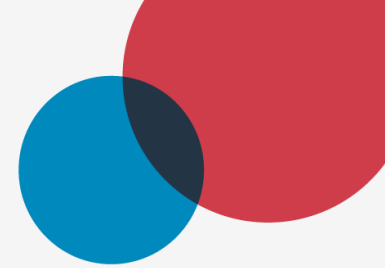
Full Credit	Ordinary Credit
<ul style="list-style-type: none">❖ State R allows deduction of total amount of tax paid in State S	<ul style="list-style-type: none">❖ State R allows credit of tax paid in the state S restricted to that part of income tax which is attributable to the income taxable in the State R❖ Credit limited to lower of:<ul style="list-style-type: none">• Foreign tax paid directly or through the payer• Domestic tax due if foreign income was earned at home in the same accounting period❖ Tax payable<ul style="list-style-type: none">• If home tax > Foreign tax then pay difference as residual tax• If foreign tax > Home tax then no extra tax due (leads to excess tax credits)❖ Direct credit for taxes paid❖ Indirect credit / underlying tax credit (explained in ensuing slides)❖ Tax sparing credit (explained in ensuing slides)

ILLUSTRATION – METHODS OF TAX CREDIT



Particulars	Ordinary credit method	Full credit method
Total Income	100	100
Income from COS	20	20
Tax liability in COS @ 35%	7	7
Tax liability in COR @ 30% (without considering credit)	30	30
Less: Tax credit available in COR	6*	7
Net liability in COR	24	23
* 30% of 20		

INDIRECT CREDIT/ UNDERLYING TAX CREDIT

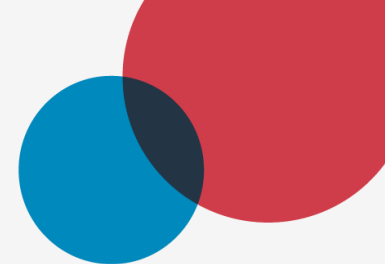


- ❖ It relieves economic double taxation on same income (foreign dividend income), which has already suffered tax in form of corporate profits tax
- ❖ Typically granted only if certain percentage of shares held by recipient in the capital of the payer company (mostly 10% or more holdings)
- ❖ Basic Formula:

$$\text{Gross Dividend} * \text{Profits before tax} / \text{Profits after tax}$$

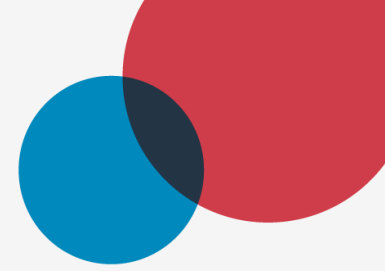
- ❖ Credit available for single tier (usual) subsidiary or several tiers with complex calculations for gross up
- ❖ Presently, India's DTAA's with Australia, Mauritius, Singapore, US and UK provide for grant of underlying tax credit

UNDERLYING TAX CREDIT - ILLUSTRATION



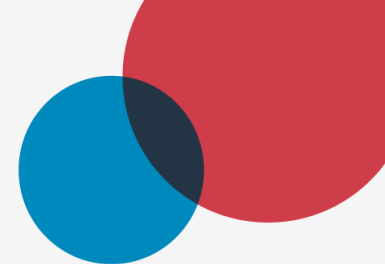
Particulars	Amounts
Profit before taxation	100
Tax @ 40%	40
Profit after tax	60
Dividend distributed	30
Profit carried forward	30
Income of the shareholder	30
Withholding tax in source State (say 10%)	3
Underlying tax credit $[30 * 100 / 60] = 50$ 40% [tax] on 50	20
Maximum tax credit available in shareholder's State: - Direct credit of 3 - Underlying tax credit of 20	23

TAX SPARING CREDIT



- ❖ Under tax sparing credit, country of residence provides deemed credit for tax waived under special incentive schemes country of source
- ❖ Assumes that the regular tax has been paid in the source country although the tax was actually waived (i.e., not paid) for reasons of economic policy
- ❖ Typically provided for under tax treaties. It is usually not provided in the domestic tax laws
- ❖ Indian tax treaties with various nations such as Japan, Canada, Singapore, Philippines, Russia have provision of claiming tax sparing credit
- ❖ However, the procedure mentioned in Income Tax Rules requires proof of deduction/payment of tax in foreign country for availment of tax credit, which is not possible in the case of tax sparing credit

TAX CREDIT - ILLUSTRATION



Particulars	Direct credit	Indirect credit		No TS	TS	TS and UTC
		(1)	(2)			
Host country:						
Foreign income	100	100	100	100	100	100
Foreign tax (30%)	(30)	(30)	(30)	NIL	NIL	15
Gross dividend paid	70	70	70	100	100	85
Withholding tax (10%)	(7)	(7)	(7)	(10)	(10)	(9)
Net dividend	63	63	63	90	90	76
Home country:						
Dividend income	70	100	70	100	100	85
Home tax (40%)	(28)	(40)	(28)	(40)	(40)	(34)
Foreign tax credit:						
-Direct	7	7	7	10	10	9
-Indirect	-	30	21	-	-	13
-TS	-	-	-	-	30	13
Net tax payable	21	3	NIL	30	NIL	NIL

TAX CREDIT - LIMITATION



Under the ordinary credit rules, the total creditable foreign tax is limited to the domestic tax on the same income in the residence country

Per-item basis

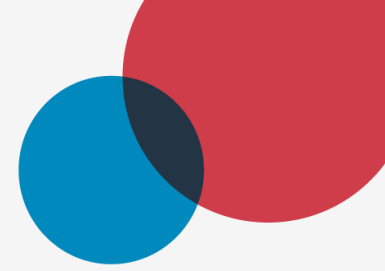
Per-source basis

Per-country limitation

**Worldwide or overall
limitation**

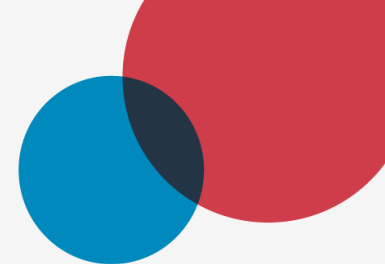
Per-category limitation

TAX CREDIT – CONFLICTS IN MC



- ❖ DTAA relief given by State R
 - Conflicts due to different characterization of items of income under domestic laws of contracting States
- ❖ DTAA relief not given by State R
 - Conflicts due to disagreements on facts or interpretation of the DTAA
 - Remedied by MAP
- ❖ Double non-taxation must be avoided
 - Relief given by State R only if taxed in State S in accordance with the provisions of the DTAA

TAX CREDIT – FTC RULES



CBDT issued **rules in respect of claiming tax credit of taxes paid abroad**, *inter-alia* include the following:

Meaning of foreign tax

- ❖ In respect of a country with which India has entered into a double taxation avoidance agreement (tax treaty) - taxes covered under that tax treaty. In respect of any other country - the tax payable under the law in force in that country in the nature of income-tax.

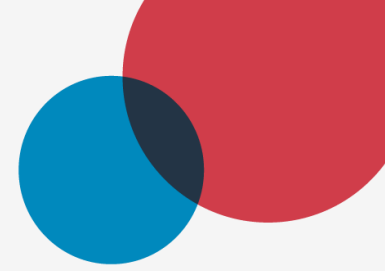
Tax against which FTC is available

- ❖ FTC shall be available against the amount of tax, surcharge and cess payable under the Act
- ❖ FTC shall also be allowed against tax payment under Minimum Alternate Tax/ Alternate Minimum Tax provisions

FTC shall not be available

- ❖ Against payment of any interest, fee or penalty under the Act
- ❖ Any amount of foreign tax disputed by the taxpayer

TAX CREDIT – SOME ISSUES



- ❖ Availability of credit in State R where tax amount in State S is pending payment / paid in a different year / is under litigation
- ❖ Eligibility of credit for certain unique taxes imposed by certain countries – for instance the DDT imposed by India
- ❖ Tax credits in triangular cases – income earned in State S by a PE (i.e., that is attributable to a PE) in State A, which is a resident of State R
- ❖ Tax credits and their availability when the States differ in:
 - classification of income
 - year of taxation
 - status of the tax payer (partnerships – pass through, etc)
- ❖ Which taxes are creditable – federal, state?
- ❖ How is income to be computed – difficulties in computing net income



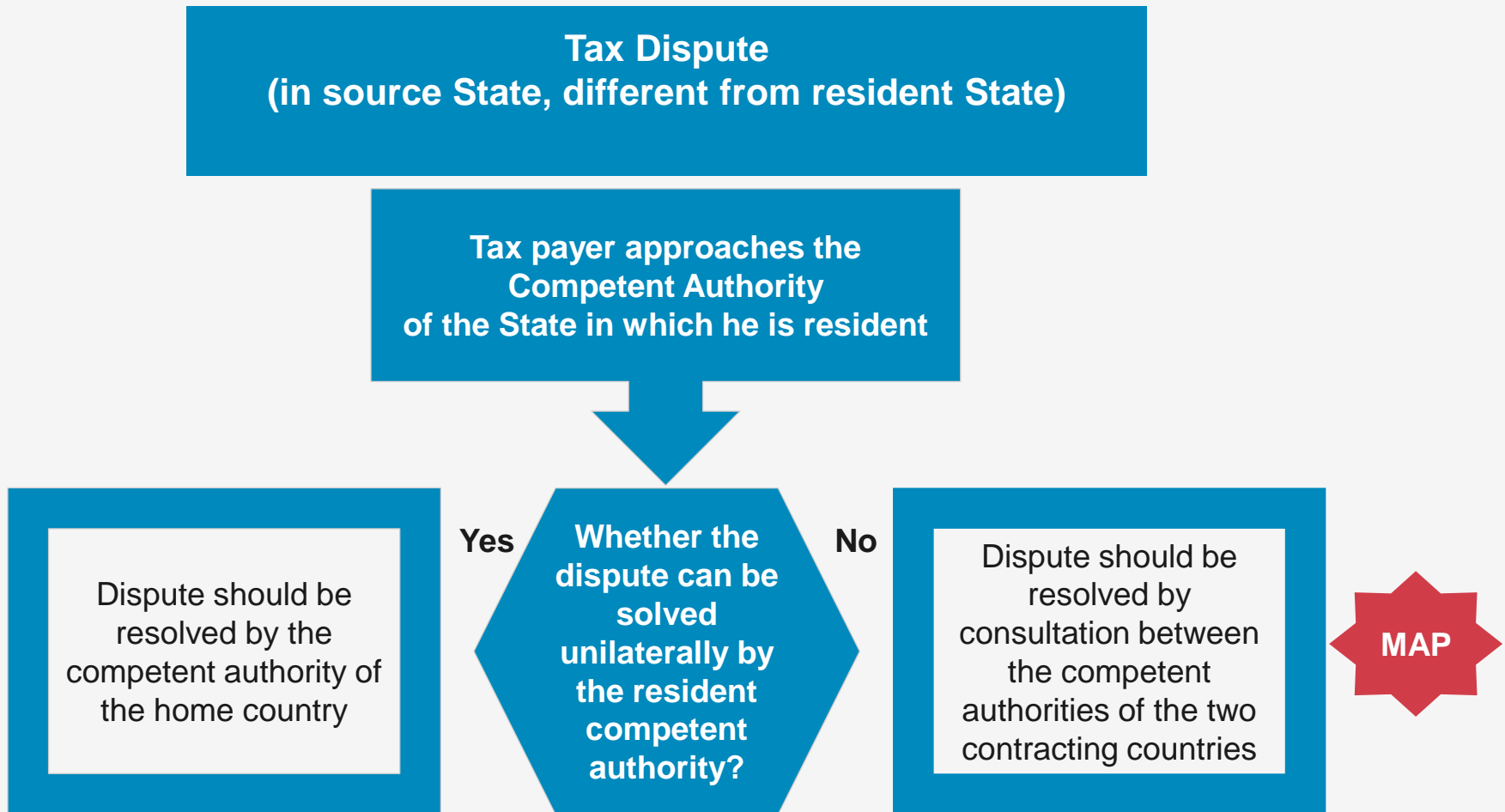
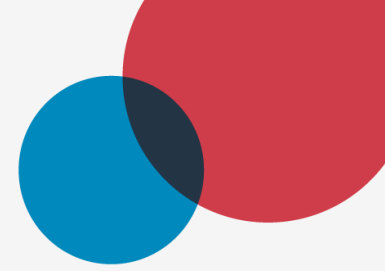
MAP

MAP – CONCEPT (1/2)

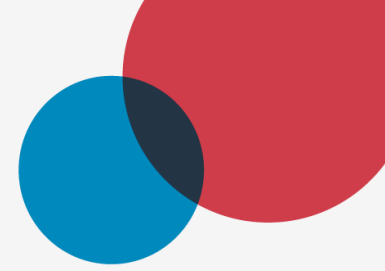


- ❖ Dispute resolution mechanism under the DTAA – essentially for difference in interpretation and implementation of a DTAA
- ❖ Special procedure outside and independent of domestic law
 - Applicable to specific tax payer
 - Details of resolutions not available in public domain
 - Cannot be used as precedent by other tax payers
- ❖ Competent authorities of the two states resolve disputes by negotiations / consultations
 - Not only merits but other considerations also play a part

MAP – CONCEPT (2/2)



MAP APPLICABILITY (1/2)



Who can apply for a MAP?

- ❖ A citizen or resident of a contracting state

Whom to apply to?

- ❖ The application should be made to the CA of the country of residence or citizenship / nationality of the applicant

Who is the competent authority?

- ❖ CA is neither defined under the OECD model nor under the UN model. However, all tax treaties under Article 3, contain reference to the government body, which would be the CA for the purpose of the DTAA
- ❖ For instance, in India, rule 44G of the Income-tax Rules, 1962, defines the term CA to mean an officer authorized by the Central Government (ie., Ministry of Finance, Department of Revenue)

MAP can generally be invoked in the following situations:

- ❖ where a person considers that he has not been taxed in accordance with the provisions of DTAA
- ❖ difficulties over interpretation or application of DTAA
- ❖ where the elimination of double taxation is not provided in DTAA

One view is that MAP can even be adopted in case of adverse withholding tax orders

MAP APPLICABILITY (2/2)



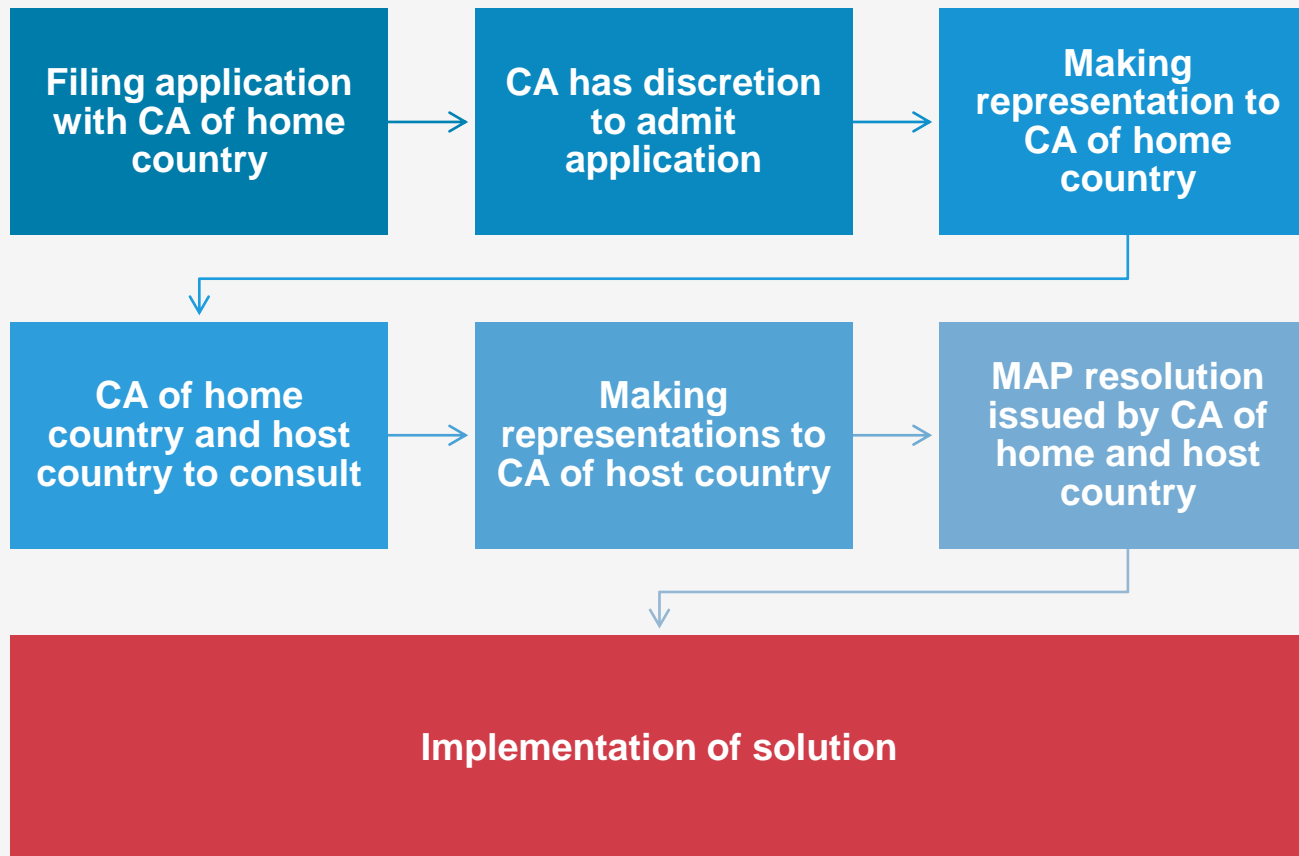
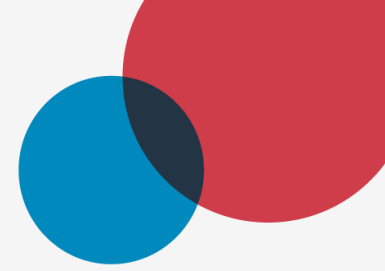
CA may refuse to refer a case under MAP in cases where there is no prospect of success on account of the reasons stated below:

- ❖ the taxpayer has not provided sufficient information
- ❖ the proposed interpretation contradicts the positions otherwise adopted by the CA
- ❖ the case concerns only an issue under domestic law
- ❖ a MAP resolution has earlier not been reached successfully
- ❖ time limits have lapsed under the DTAA or national law
- ❖ no double taxation has occurred
- ❖ the amount involved is negligible
- ❖ the taxpayer is guilty of tax evasion or tax fraud

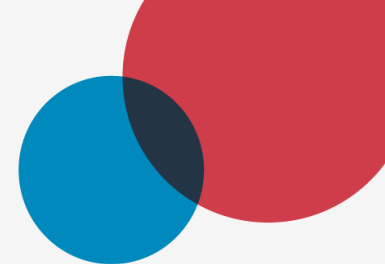
Commonly referred cases under MAP:

- ❖ Attribution of executive and general administrative expenses to a permanent establishment
- ❖ Existence of a permanent establishment
- ❖ Taxation in the state of the payer of the excess part of interest and royalties in the hands of the payee
- ❖ Application of thin capitalization rules when the state of the debtor company has treated interest as dividend
- ❖ Transfer pricing issues especially relating to corresponding adjustments to be made under Article 9(2)

MECHANICS OF MAP



TIME LIMITS FOR MAP



Time limit to apply for MAP

- ❖ OECD and UN model convention provides that the procedure should be commenced within 3 years of the first notification of the action resulting in taxation not in accordance with the convention
- ❖ In most tax treaties, a time frame of 3 years is specified. The time limit of 3 years begins from the date of first notice of the assessment or an official demand or any instrument for the collection of levy of tax

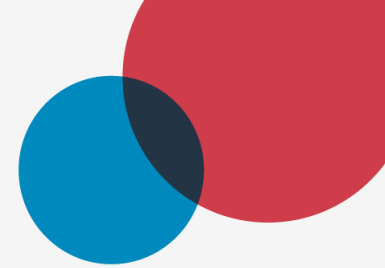
Time limit for settlement of dispute under MAP

- ❖ There is no time limit for settlement of dispute under MAP\
- ❖ In practice, the MAP process may take about 18 to 24 months from its initiation

Time limit for implementation of MAP results

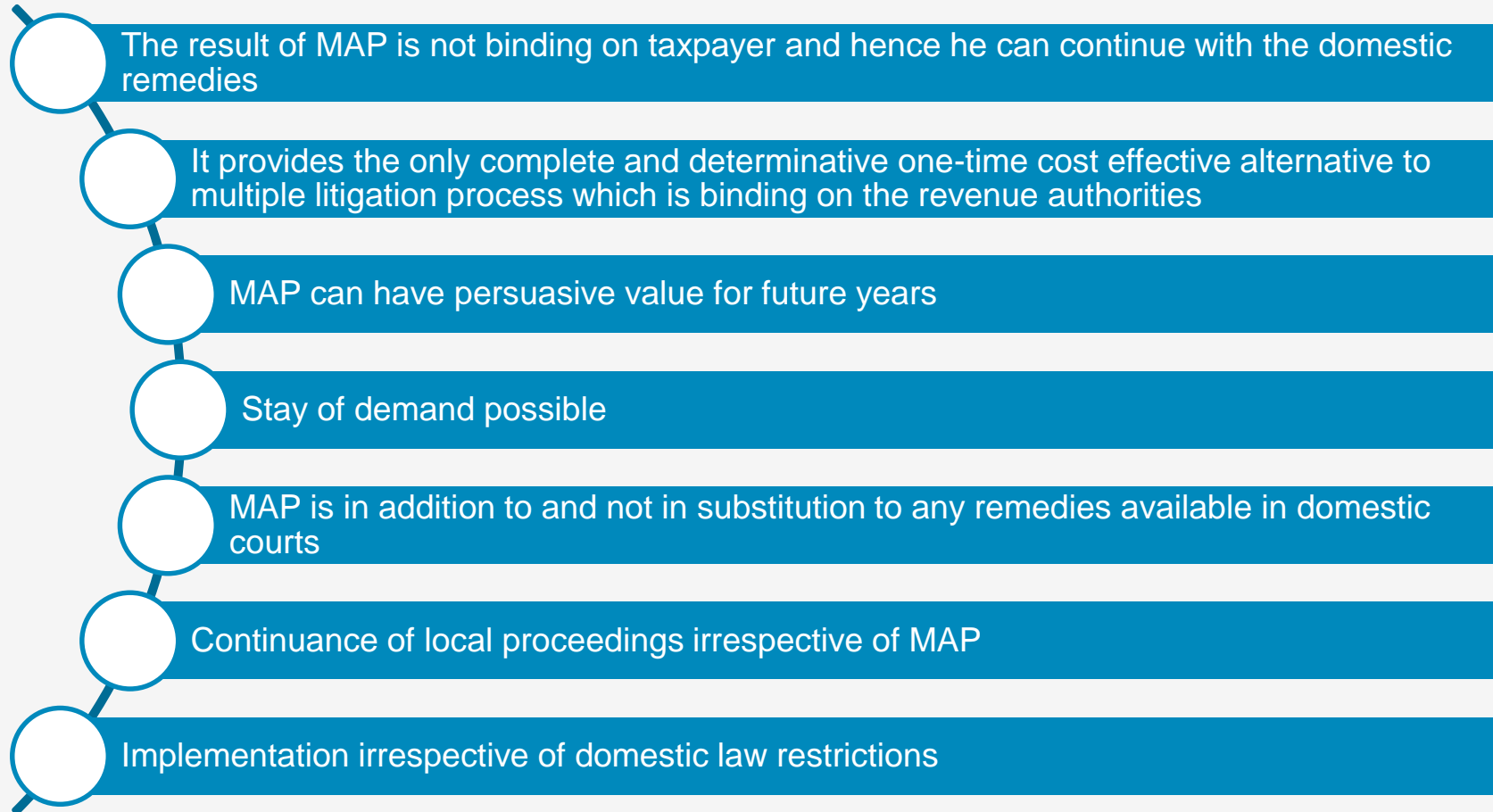
- ❖ These procedural elements would be provided for under the domestic law of the concerned States. For instance, in India, under the rules, an officer should give effect to the resolution within 90 days of its communication, if the tax payer:
 - gives his acceptance to the resolution under MAP
 - withdraws his appeal, if any, pending on the issues which was subject matter under MAP and intimates the officer with proof of the withdrawal

MAP AND DOMESTIC LAW ACTIONS



- ❖ Where agreement is reached between the CA, the MAP result is binding on the Revenue Authorities. However, rule 44H of the rules provides that the applicant has an option of not accepting results of the MAP proceedings
- ❖ In practice, the question of filing an appeal after MAP resolution would not arise as domestic time limits would have elapsed by then
- ❖ However, following alternative mechanism may be availed when no solution is reached under MAP:
 - an opinion of the Committee of Fiscal Affairs could be sought as regards interpretation of specific provisions which are under dispute (applicable in OECD countries only)
 - where bilateral conventions are executed, generally such disputes can be settled through arbitration process
- ❖ MAP to typically override the domestic court decisions

MERITS OF MAP



DEMERITS OF MAP



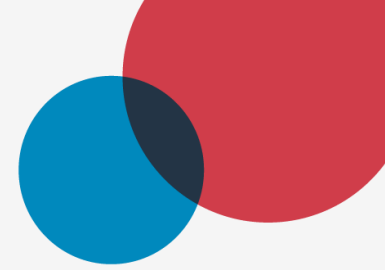
It is not incumbent on the CA to reach a resolution

No prescribed time limit / schedule which effectively dilutes the impact of MAP resolution

Lack of transparency regarding MAP procedures which hinders the process

Not binding for future years

COMPARISON – OECD, UN AND US MODEL



MAP article under OECD, UN and US Model are enclosed as Annexure – 1. Further, a comparative analysis of the MAP article under these models is as under:

UN and
OECD MC
are
similar

US Model differs from the UN / OECD in the following ways

Except that UN model provides for implementation of MAP through bilateral / unilateral procedures

Application may be presented to competent authority of either State

Any agreement reached between the Competent Authorities to be implemented notwithstanding any procedural limitations

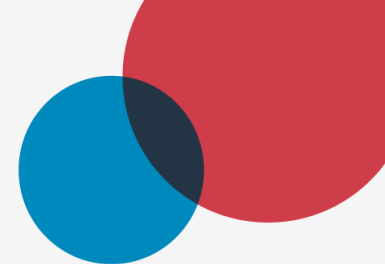
Time period of 3 years not prescribed

Competent authorities may communicate directly with each other

Assessment and collection procedures are stated to stay suspended during the period a MAP application is pending

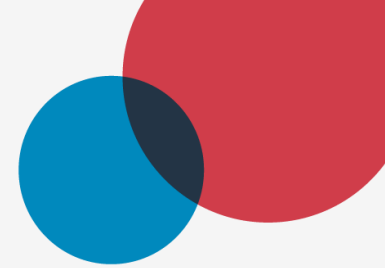
Illustrative list of items that the competent authorities of the two States may agree to

BEPS ACTION PLAN 14



- ❖ Development of a minimum standard with respect to:
 - resolution of treaty-related disputes,
 - commitment to its rapid implementation; and
 - agreement to ensure its effective implementation through a robust peer-based monitoring mechanism
- ❖ Minimum standard to ensure that:
 - treaty obligations related to MAP are fully implemented in good faith and that cases are resolved in a timely manner;
 - implementation of administrative processes that promote prevention and timely resolution of treaty-related disputes; and
 - taxpayers can access the MAP when eligible
- ❖ The minimum standard is also complemented by a set of best practices
- ❖ Few countries (including Australia, France, Germany, Japan, the UK, US) have declared their commitment to provide for mandatory binding MAP arbitration in their bilateral tax treaties as a mechanism to guarantee that treaty-related disputes will be resolved within a specified timeframe

EFFECT OF MLI ON MAP

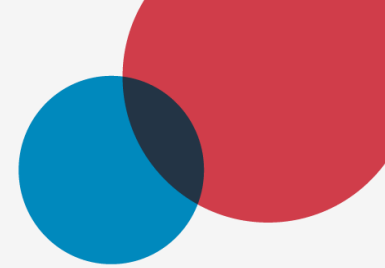


- ❖ Some tax treaties lack a specific article (Article 9(2) of the OECD and UN Model Convention for corresponding adjustments between jurisdictions on transfer pricing matters), which resulted in India taking a position that the resolution of such disputes through MAP was not possible
- ❖ Article 17 of the MLI is supposed to apply in the absence of provisions in CTAs that require a corresponding adjustment if the other treaty party makes a transfer pricing adjustment
- ❖ India has chosen to apply this provision, except where a similar provision already exists—that is, this provision will be added to its treaties with signatories that do not have such a provision
- ❖ This will open up access to transfer pricing related disputes in MAP for several treaties



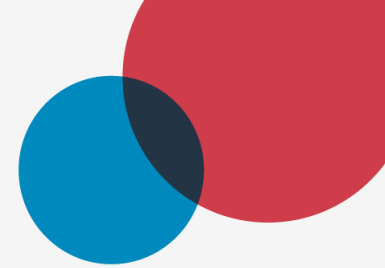
ANNEXURE - 1

MAP ARTICLE UNDER OECD MODEL



1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.
2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.
3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.
4. The competent authorities of the Contracting States may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs.
5. Where,
 - a. *under paragraph 1, a person has presented a case to the competent authority of a Contracting State on the basis that the actions of one or both of the Contracting States have resulted for that person in taxation not in accordance with the provisions of this Convention, and*
 - b. *the competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph 2 within two years from the presentation of the case to the competent authority of the other Contracting State, any unresolved issues arising from the case shall be submitted to arbitration if the person so requests. These unresolved issues shall not, however, be submitted to arbitration if a decision on these issues has already been rendered by a court or administrative tribunal of either State. Unless a person directly affected by the case does not accept the mutual agreement that implements the arbitration decision, that decision shall be binding on both Contracting States and shall be implemented notwithstanding any time limits in the domestic laws of these States. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this paragraph.*

MAP ARTICLE UNDER UN MODEL



1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.
2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.
3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.
4. The competent authorities of the Contracting States may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs. **The competent authorities, through consultations, may develop appropriate bilateral procedures, conditions, methods, and techniques for the implementation of the mutual agreement procedure provided for in this Article.**
5. Where,
 - a. under paragraph 1, a person has presented a case to the competent authority of a Contracting State on the basis that the actions of one or both of the Contracting States have resulted for that person in taxation not in accordance with the provisions of this Convention, and
 - b. the competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph 2 within **three** years from the presentation of the case to the competent authority of the other Contracting State, any unresolved issues arising from the case shall be submitted to arbitration if **either competent authority** so requests. **The person who has presented the case shall be notified of the request.** These unresolved issues shall not, however, be submitted to arbitration if a decision on these issues has already been rendered by a court or administrative tribunal of either State. **The arbitration decision shall be binding on both States and shall be implemented notwithstanding any time limits in the domestic laws of these States unless both competent authorities agree on a different solutions within six months after the decision has been communicated to them or unless a person directly affected by the case does not accept the mutual agreement that implements the arbitration decision.** The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this paragraph

MAP ARTICLE UNDER US MODEL



1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, **it** may, irrespective of the remedies provided by the domestic law of those States, **and the time limits prescribed in such laws for presenting claims for refund**, present his case to the competent authority of **either** Contracting State.
2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits **or other procedural limitations** in the domestic law of the Contracting States. **Assessment and collection procedures shall be suspended during the period that any mutual agreement proceeding is pending.**
3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention. **In particular the competent authorities of the Contracting States may agree:**
 - a) **to the same attribution of income, deductions, credits, or allowances of an enterprise of a Contracting State to its permanent establishment situated in the other Contracting State;**
 - b) **to the same allocation of income, deductions, credits, or allowances between persons;**
 - c) **to the settlement of conflicting application of the Convention, including conflicts regarding:**
 - **The characterization of particular items of income;**
 - **the characterization of persons;**
 - **the application of source rules with respect to particular items of income;**
 - **the meaning of any term used in the Convention;**
 - **The timing of particular items of income; 2006 U.S. Model Income Tax Convention**
 - d) **to advance pricing arrangements; and**
 - e) **to the application of the provisions of domestic law regarding penalties, fines, and interest in a manner consistent with the purposes of the Convention.**
4. **The competent authorities also may agree to increases in any specific dollar amounts referred to in the Convention to reflect economic or monetary developments.**
5. **The competent authorities of the Contracting States may communicate with each other directly, including through a joint commission, for the purpose of reaching an agreement in the sense of the preceding paragraphs.**

THANK YOU



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