A brief Study on International Taxation

Synopsis:

1. **Indian income tax provisions related to Non-Residents**
2. **NRI Tax Exemption**
3. **TDS provisions**
4. **What is DTAA?**
5. **Why DTAA?**
6. **Objectives of DTAA: NRI's Taxability**
7. **Computation Of Income of NRI's (Section 115D):**
8. **Tax on investment income and long-term capital gains (Section 115E)**
9. **Capital gains on transfer of foreign exchange assets not to be charged in certain case**
10. **Benefit available in certain cases even after the assessee becomes resident (Section 115H)**
11. **International taxation: A different law?**

Conclusion

Basics of International Taxation:

International taxation is the study or determination of tax on a person or business subject to the tax laws of different countries or the international aspects of an individual country's tax laws as the case may be.

For detailed study of this topic, we have to understand the tax provisions already prevailing in India:

1. **Indian income tax provisions related to Non-Residents:**

Residential status of a person describes the taxability of that person in a county but in the case of Non-resident only that Income which is received or deemed to have been received in India by or on his behalf and income that accrues or arises or is deemed to accrue or arising in India is Taxable in India.

Section 9 of the Income Tax Act, 1961 also envisages certain **deeming provisions**.

As per the deeming provisions following Incomes will be deemed to accrue or arise in India, even though they may actually accrue or arise out of India: -

a) Income from Business Connection in India.
b) Income from any Property, Asset or Source of Income in India.
c) Capital Gains from transfer of any Capital Asset situated in India.
d) Income from Salary earned in India – i.e., if Service is rendered in India. Where a rest period which is preceded or succeeded by services rendered in India forms part of the service contract of employment, the same shall be considered to be income earned in India.
e) Income from salary (other than perquisite &/or allowance) paid by Government of India to an Indian Citizen of India even though the service is rendered out of India.
f) Dividend paid by Indian Company outside India.
g) Income by way of Interest in some situations.
h) Income by way of Royalty in some situations.
i) Income by way of Fees for Technical Services in some situations.

2. **NRI Tax Exemption**

NRI's are taxed as per income tax slabs applicable to resident Indians below the age of 60 years irrespective of the age criteria of non-resident Indian. Simply means that if the NRI is above the age of 60 years still he will be taxed a per tax rate applicable to resident indian who is below the age of 60 years.

But, in the following two cases NRIs need not to file tax return:

- If taxable income consists of only investment income or long-term capital gains.
- When the tax has already been deducted at source, on such income.

Besides the above benefits, NRI's are also granted with some tax-free incomes which are notified by Income Tax department as follows:

- Interest earned on Saving Certificates etc.
- Interest earned on Non-Resident (Non Repatriable) [NRNR] Deposit.

  **** Note – w.e.f. 1st April,2002 banks cannot accept fresh nor renew NRNR deposits. Upon maturity Interest on NRNR deposits and principal amount can be transferred to Non-Resident (External) [NRE] account at the option of account holder.**

Interest earned on Foreign Currency Non-Resident (Bank) [FCNR(B)] Deposit which technically is exempt under Section 10(4)(ii) too being covered by the definition of an NRE deposit under the FERA 1973 in case of a "Non-Resident" or "Resident but Not Ordinarily Resident" as per the provisions of Income Tax Act, 1961.

Interest earned on Foreign Currency Non-Resident (Bank) [FCNR(B)] Deposit continued until maturity by a Non-Resident Indian (NRI) who has returned to India for taking up employment, business, vocation i.e., for permanent settlement provided he is a "Non-Resident" or "Resident but Not Ordinarily Resident" as per the provisions of Income Tax Act, 1961. Overseas income of NRIs.

Dividend income from Indian Public/Private Company, Indian Mutual Fund and from Unit Trust of India is exempt from tax in India at par with residents.

Long-term capital gains arising on transfer of equity shares traded on recognized Stock Exchange and units of equity schemes of Mutual Fund is exempt from tax at par with residents, provided Security transaction tax is paid.

Remuneration or fee received by non-resident / non-citizen / citizen but not ordinarily resident 'consultants', for rending technical consultancy in India under approved programme including remuneration of their employees, and income of their family members which accrue or arise outside India.

Interest on notified bonds.

Tax Deducted at Source (TDS) provisions related to NRI's:

3. **TDS provisions**

Finance Act, 2008 inserted a new sub section (6) to section 195 effective from April 1, 2008, which requires the person responsible for making payment to a non-resident to furnish information relating to such payments in forms to be prescribed.

The Central Board of Direct Taxes ("CBDT") has prescribed a new rule 37BB in the Income Tax Rules, 1962 ("the rules") prescribing **Form 15CA and Form 15CB** to be filed in relation to remittances to non-residents under section 195(6) of the Income Tax Act, 1961 ("the Act").

The process that will have to be followed, before any remittance can be made, is as under:

Step 1: Obtain a certificate from a Chartered Accountant in Form No 15CB

Certificate in Form 15CB is not required when remittance does not exceed Rs 5,00,000 in total in a financial year.

Step 2: Furnish the information in Form No15CA

Step 3: Electronically upload Form 15CA on the designated website

Step 4: Take Print out of Form 15CA and file a signed copy

Step 5: Remit money to the Non-Resident

There is a very common doubt which generally strike the minds of students that is Double Taxation of money. Generally, people thinks that if a NRI is paying a tax in the country in which he is a non-resident then the country of his residence will also demand tax from that person for that income. But if this happens this will lead to double taxation. The thinking of students or other people is absolutely right as the law interprets the same but Law is always a step ahead from our minds. Law already found a way so as to avoid double taxation of income in case of NRI's and that amazing thing is **DOUBLE TAXATION AVOIDANCE AGREEMENT (DTAA).**

4. **What is DTAA?**

DOUBLE TAXATION AVOIDANCE AGREEMENT (**DTAA)** is an agreement signed between two countries/nations for resolving the issues of taxability of income and increased transparency to avoid tax evasion.

5. **Why DTAA?**

Every country has its own taxation structure according to which they determine the taxability of people residing there and also taxability of the people who does not belongs to their country but with some means they are related to their nation in their form of assessee or deemed assessee.

So, for recoverability of tax from the income generated in other nations by NRI's DTAA was formed and secondly, to ensure that this taxability of income does not lead to **double taxation** of Same income in both the countries.

6. **Objectives of DTAA:**

- Tax Credit / Relief Avoid Double Taxation Prevent Tax Discrimination
- Certainty of Tax Treatment to Investors
- Exchange of Information
- Ease in Recovery of Tax Dues
- Promote Investment & Mutual Relation
- Prevent Fiscal Evasion

Presently, India has the DTAA with more than 88 countries.

This states that if a NRI is a resident in any of those 88 countries and he/she is paying taxes on income earned then he will be eligible for a tax benefit in either of the following two ways:

Exemption method: under this method, any one country will tax the income of NRI. Means if the income is taxed in India, then the same income will not be taxed in his own country.

Credit method: under this method, both the countries will tax the income of that person but the country where he is a resident will allow him deduction or give credit to the foreign tax.

7) Computation Of Income of NRI's (Section 115D):

Section 115D deals with the Special provision for computation of total income of non-residents, this section states that:

1. No deduction in respect of any expenditure or allowance shall be allowed under any provision of this Act in computing the investment income of a non- resident Indian.

2. Where in the case of an assessee, being a non- resident Indian, -
   (a) the gross total income consists only of investment income or income by way of long-term capital gains or both, no deduction shall be allowed to the assessee under Chapter VIA and nothing contained in the provisions of the second proviso to section 48 shall apply to income chargeable under the head "Capital gains"
   (b) (b) the gross total income includes any income referred to in clause (a), the gross total income shall be reduced by the amount of such income and the deductions under Chapter VIA shall be allowed as if the gross total income as so reduced were the gross total income of the assessee.

8) Tax on investment income and long-term capital gains (Section 115E)

Where the total income of an assessee, being a non-resident Indian, includes—

a) any income from investment or income from long-term capital gains of an asset other than a specified asset;
b) (b) income by way of long-term capital gains,

The tax payable by him shall be the aggregate of—

the amount of income-tax calculated on the income in respect of investment income referred to in clause (a), if any, included in the total income, at the rate of 20%;

the amount of income-tax calculated on the income by way of long-term capital gains referred to in clause (b), if any, included in the total income, at the rate of 10%; and

the amount of income-tax with which he would have been chargeable had his total income been reduced by the amount of income referred to in clauses (a) and (b).

9) Capital gains on transfer of foreign exchange assets not to be charged in certain cases (section 115F):

Where, in the case of an assessee being a non-resident Indian, any long-term capital gains arise from the transfer of a **foreign exchange asset** and the assessee has, within a period of six months after the date of such transfer, invested the whole or any part of the net consideration in any **specified asset**, or in any savings certificates referred to in **clause (4B) of section 10**, the capital gain shall be dealt with in accordance with the following provisions of this section, that is to say:

a) If the cost of the new asset is not less than the net consideration in respect of the original asset, the whole of such capital gain shall not be charged under section 45;
b) If the cost of the new asset is less than the net consideration in respect of the original asset, so much of the capital gain as bears to the whole of the capital gain the same proportion as the cost of acquisition of the new asset bears to the net consideration shall not be charged under section 45.

Foreign Exchange Asset:

Section 115C defined "foreign exchange asset" to be any specified asset, which was acquired by the assessee using convertible foreign exchange and the said specified asset as per sub-section (f) of the same Section included shares with an Indian company.

Specifid assets are:

- Shares of an Indian company
- Debentures or deposits with an Indian company, not being a private company
- Any security of the Central Government.
- Other notified assets (no such asset has yet been notified.)

10) Benefit available in certain cases even after the assessee becomes resident (Section 115H):

Where a person, who is a non-resident Indian in any previous year, becomes assessable as resident in India in respect of the total income of any subsequent year, he may furnish to the Assessing Officer a declaration in writing along with his return of income under section 139 for the assessment year for which he is so assessable. Some conditions are required to be fulfilled for availing this benefit.

11) International taxation: A different law???

This can be a doubt in the mind of anybody who wants to study all aspects of international taxation. So, let me clarify this:

- There is no different law for studying international taxation.
- There is no separate courts for the matters related to international taxation.
- The Income Tax Act, 1961 specifies certain separate provisions for the taxability of foreign transactions.
- The Provisions of Domestic law are applied to handle Cross Border – Direct & Indirect Taxes

Conclusion

The emerging globalisation is proved as a boost to Indian economy and accordingly it puts a challenge against Indian Taxation Authorities so as to ensure the collectability of dues pertaining to international transactions. But while observing the other side of this picture it seems that this is not a difficult task as Indian chartered Accountants are competent enough to deal with critical taxation issues. Here, taxation department should take an initiative to delegate the work to Chartered Accountants so that the correct picture of transactions can be ascertained and the tax evasion can be prevented.