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INTERNATIONAL TAX AGREEMENTS AS A MECHANISM TO CURB TAX EVASION: A LEGAL AND POLICY PERSPECTIVE

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ABSTRACT

The globalization of economies has considerably broadened the range of cross-border financial activities, introducing distinct issues to tax administration and compliance. Tax evasion, enabled by tax havens, profit shifting, and insufficient information flow among jurisdictions, compromises the integrity of global tax systems. International tax agreements have become essential instruments for addressing these difficulties by enhancing cooperation, boosting transparency, and assuring fair allocation of tax revenues across countries.

This manuscript examines the efficacy of international tax agreements in curbing tax evasion, concentrating on their structures, execution, and consequences. The study commences with an exhaustive examination of fundamental ideas within the international tax framework, encompassing double taxation, the function of tax havens, and the differentiation between substance and form in financial agreements. “It analyses the hierarchical hierarchy of tax administrations, highlighting the authorities' capabilities and obligations in India to combat tax evasion via discovery, evidence collecting, and reassessment processes.

The research subsequently examines the development and importance of international tax treaties, focusing on key frameworks such as the OECD Model Tax Convention, the UN Model, and regional accords. The research assesses India's strategy regarding tax treaties by juxtaposing its model conventions with global benchmarks. Essential provisions, such as those concerning permanent installations, the eradication of double taxes, and information exchange, are analysed comprehensively.

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The function of international organizations, like the OECD and UN, together with initiatives like the Base Erosion and Profit Shifting (BEPS) project and Tax Inspectors Without Borders, is examined to assess their impact on establishing worldwide standards for tax transparency and enforcement. The dissertation also emphasizes peer review systems and the application of international standards to evaluate compliance and responsibility across states.

The conducts a critical examination of the current landscape, identifies deficiencies in existing frameworks, and offers ideas to enhance international tax agreements and collaborative initiatives. The study seeks to enhance the worldwide dialogue on combating tax evasion by promoting openness, improving information exchange, and rectifying deficiencies in tax treaties." This research highlights the essential function of international tax agreements in harmonizing national interests with global collaboration, facilitating fair tax collection, and preserving economic stability in a progressively interconnected world.

Introduction

The phrase 'International Taxation' is an oxymoron.[2] Various interpretations of this term include 'International Tax,' 'International Tax Law,' and 'International Tax Regime,' among others. There is no entity known as 'International Tax' since no international organization possesses the authority to impose taxes. "This word denotes the complex interaction of national tax regulations, multinational taxpayers, and cross-border transactions. This interface, occasionally derived from national statutory law and at other times from bilateral or multilateral treaties, seeks to address two critical questions in this domain: the total tax liability on income generated from transnational transactions and the appropriate government(s) to which this payment should be remitted. The responses provided by the government to these inquiries influence not only the money generated by the impacted nations but also frequently determine the extent and trajectory of multinational investment endeavors.

[2] Julie A. Roin, "The Economic Underpinning of International Taxation," in Andrew T. Guzman and Alan O. Sykes (eds.), Research Handbook in International Economic Law, Edward Elgar Publishing Limited, Northampton, 2007, pp. 305-360, p. 305.

In a strict sense, the term 'International Tax Law' may be considered a misnomer.[3] There exists no codified legislation pertaining to the imposition and collection of income tax across all countries or specific countries of the globe. Nonetheless, the term 'International Tax Law' has gained prominence and is extensively utilized in tax literature to denote the components of a nation's tax system that are activated when an individual under its jurisdiction engages in 'international' relations, specifically when a 'foreign' individual earns income subject to taxation in that nation due to its tax statutes, or when a 'domestic' (or resident) individual derives income from sources in another country." Consequently, international tax law fundamentally comprises two components:

i. The provisions of the fundamental national tax legislation that pertain to the 'foreign' income of domestic taxpayers and the 'domestic' income of foreign entities;
ii. The tax treaties, if any, established by that country with other nations and endowed with legal authority.

The combination of these two parts forms the 'International Tax Regime.' This regime is occasionally termed 'International Taxation' and at other times 'International Tax Law.'

INTERNATIONAL TAX AGREEMENTS AND COOPERATION

The 'International Tax Regime' fundamentally has two key components: 'International Tax Agreements' and 'International Aspects of Domestic Tax Statutes.' "This chapter focuses on the primary element, namely, 'International Tax Agreements.' International Tax Agreements are treaties between two or more nations that prevent double taxation by allocating taxing rights over income and/or mitigate fiscal evasion through provisions for information exchange and tax collection assistance. The dual objectives of such agreements are the elimination of double taxation and the deterrence of tax evasion.

International law places certain constraints on the tax sovereignty of various nations. Consequently, income derived from cross-border investments and activities is typically subject to taxation in both the source country, where the investment or activity occurs, and the residence country, where the investor or trader resides, in accordance with their respective

[3] I.P. Gupta, "Nature and Sources of International Law," in International Law in Relation to Double Taxation of Income, Lexis Nexis Butterworths, New Delhi, 2007, p. 5.

domestic tax statutes.[4] Double taxation is prevalent today, as most states impose taxes on domestic assets and local economic transactions, as well as on assets located and transactions conducted in foreign nations, provided they benefit resident taxpayers. Double taxation can occur when an individual is classified as a resident by multiple jurisdictions concurrently, or when source rules intersect, leading two or more states to consider the same economic transaction or item as falling within their jurisdiction.[5]

This double taxation can be circumvented unilaterally or bilaterally. Under the unilateral approach, either the source nation or the country of residence of the taxpayer unilaterally relinquishes the primary taxation authority to the other state. The bilateral method encompasses the 'proportionate division' approach, which allocates taxes between two states based on a predetermined formula, and the 'classification and assignment' approach, which categorizes income by type and designates primary taxation rights for specific income types to one state and others to a different state.[6]

The expansion of multinational corporations and the easing of regulations governing capital mobility have significantly exacerbated the issue of tax avoidance. Such firms exploit legal loopholes, resulting in their income being untaxed in any jurisdiction or the relocation of profits to areas with lower tax rates. This issue is exacerbated by the presence of tax havens and detrimental tax competitiveness. Mitigating such threats consistently aligns with the nation's economic interests.

The mitigation of international double taxation and the prevention of tax evasion are crucial elements of a nation's investment environment, vital for facilitating investment flows, the interchange of goods and services, the movement of money and individuals, and the transfer of technology." Consequently, the necessity for international tax agreements emerges primarily to prevent double taxation and to combat tax evasion. In addition to these primary purposes, the subsequent section elucidates the additional reasons necessitating such agreements.

[4] United Nations Model Double Taxation Convention Between Developed and Developing Countries: 2011 Update, Department of Economic and Social Affairs, United Nations, March 2012, p. 1.
[5] Klaus Vogel, "Double Tax Treaties and Their Interpretation," International Tax and Business Lawyer, Vol. 4, 1986, pages. 1-85, p. 6.
[6] Report on Double Taxation, League of Nations, Document 59. E.F.S. 73 F 19, page 42.

Types of International Tax Agreements

To achieve the dual objectives of preventing double taxation and curbing tax evasion, nations engage in numerous tax agreements, which can be categorized into the following subheadings:

i. **Double Tax Conventions:** These agreements address the goals of mitigating double taxation and curbing tax evasion. They are often derived from the model conventions established by the OECD and the UN, with slight modifications. India has executed 90 double tax treaties to date.

ii. The primary distinction between a double tax convention and a **tax information sharing** agreement is that the former addresses both the avoidance of double taxation and the prevention of tax evasion, whilst the latter solely focuses on the prevention of tax evasion. India has entered into 14 bilateral agreements with various countries.

iii. **The Convention on Mutual Administrative Assistance in Tax Matters** is a multinational agreement developed by the Organisation for Economic Cooperation and Development that primarily addresses the prevention of tax evasion. Following a modification in 2009, over fifty nations have either signed or shown their intention to sign. India became a signatory to this treaty on 26 January 2012.

Key Provisions in India's Tax Treaties

Considering the standard models created by the Organisation for Economic Co-operation and Development and the United Nations, which are employed in all bilateral tax agreements, a new phase of authentic 'International Tax Regime' is currently under development. Researchers in this domain can attain comprehensive understanding of the model tax conventions that underpin all such treaties, with any deviations examined in reference to specific countries.

India's bilateral tax treaty framework comprises Double Tax Conventions, including both complete and restricted arrangements, as well as tax information exchange agreements. While the Model Conventions issued by the Organisation for Economic Co-operation and Development and the United Nations serve as the foundation for such treaties, variances still exist. This section will conduct a comparative analysis of the Double Tax Conventions to

which India is a signatory, while the subsequent section will elucidate the factors contributing to the creation of international tax agreements aimed at preventing tax evasion.

Taxability of Income Categories

The prevailing principle in tax treaties is that business profits generated by an enterprise are subject to taxation in the contracting state of which it is a resident. "However, if an enterprise conducts business activities through a permanent establishment located in another state, the profits attributable to that permanent establishment may be taxed in that state.[7] The United Nations Model Convention[8] has broadened the scope of taxability to include other states in the following circumstances:

i. If sales in that other state involve items or merchandise of the same or comparable nature as those sold through a permanent institution.
ii. If additional business activities of the same or similar nature are conducted in that other state through the permanent establishment.

In certain circumstances, the United Nations Model Convention has invoked the 'Principle of Attraction,' permitting the other state to impose taxation regardless of the involvement of a permanent establishment in the underlying business transaction. This article outlines the fundamental concepts for ascertaining the earnings attributable to such permanent establishments. The precise regulations for ascertaining taxable revenue related to such permanent establishments must be established by the domestic legislation of various countries.

In numerous double tax conventions of India, Paragraph 4 concerning the apportionment technique and Paragraph 6 on the annual attribution of identical earnings have been excluded. The revenues generated from the insurance sector have been excluded from treaty coverage for Australia and New Zealand. Nearly all treaties to which India is a signatory adhere to either OECD or UN conventions in essence", with some incorporating clarifications in some areas and making slight deviations from the model treaties.

[7] Article 7 of the OECD Model Convention, 2010.
[8] Article 7 of the UN Model Convention, 2011.

Key International Organizations and Their Initiatives

4.2.1 The United Nations

The United Nations is an intergovernmental organization that aims to promote and facilitate cooperation in international law, security, economic development, social progress, human rights, civil rights, civil liberties, political freedoms, democracy, and the attainment of enduring world peace. The organization comprises six primary organs: the General Assembly, the Security Council, the Economic and Social Council, the Secretariat, the International Court of Justice, and the United Nations Trusteeship Council.[9] Several subsidiary organs report directly to these primary organs and are regarded as integral components of the United Nations.[10] From a tax's perspective, the primary body of the Economic and Social Council and its subsidiaries hold considerable significance.

Organization for Economic Cooperation and Development

The Organization for Economic Cooperation and Development (OECD) is an intergovernmental entity including three principal components: the Council, Committees, and Secretariat. Three hundred fifty-five The Council serves as the decision-making entity of the OECD, with one delegate from each member country and a representative from the European Commission. The Council convenes routinely at the level of permanent representatives to the OECD, and decisions are made by agreement. The Council convenes annually at the ministerial level to deliberate on critical topics and establish objectives for OECD activities. The Secretary General presides over these sessions, and the tasks assigned by the Council are executed by the OECD Secretariat.

The OECD Secretariat is led by a Secretary-General, who is supported by one or more Deputy Secretaries-General. The Secretariat has around two thousand five hundred personnel, including economists, attorneys, scientists, and various other specialists. The majority of staff personnel are located in Paris, while others are employed at OECD centers in several countries. It executes tasks based on priorities established by the OECD council. It additionally offers ancillary operations to the committees of the OECD.

International Taxpayer and Administration Organizations

[9] Charter of The United Nations, 1945, Article 7(1)
[10] id., Article 7(2).

Tax Inspectors Without Borders

The OECD will soon start the 'Tax Inspectors Without Borders' project. This would facilitate the transmission of tax audit expertise and competencies to tax administrations in developing nations using a real-time, experiential learning methodology. The OECD intends to assign experts to collaborate with local tax officials on audits and related issues pertaining to international tax matters, as well as to disseminate general audit practices.

Conclusion

The preceding explanation indicates that organizations addressing international tax evasion and avoidance function at both national and international levels. At the national level, the tax authorities of each country assume a prominent role. These departments are established and function in accordance with the statutes enacted by the respective legislatures of those countries. At the international level, many organizations such as the United Nations, the OECD, taxpayer organizations, and tax administrators' associations are addressing different facets of the international taxation framework.

The Income Tax Department in India was established and functions under the Income Tax Act of 1961. This Act confers administrative authority to 10 entities, with the Central Board of Direct Taxes at the apex. All these bodies possess extensive authority under various parts of the Income Tax Act, 1961, which serve as formidable instruments against tax evasion. These abilities encompass authority over the discovery and production of evidence; the ability to request information; conduct searches and seizures; do surveys; and the capacity to execute reassessments. These rights apply to all assessees without limitation regarding residential status, with the sole condition being that the individual must be assessable in India. Consequently, non-residents engaging in foreign transactions with tax implications in India may be liable to such authorities within the country. The international tax organizations are not established under any legislation and hence lack administrative authority operating inside them. They are often non-profit intergovernmental organizations that analyze and research various areas of the international tax regime. The remedies suggested in their studies and publications are effective in mitigating international tax evasion and avoidance, provided they are implemented by the relevant nations. A comparative analysis of contributions from organizations operating at these two levels reveals that while international organizations

contribute to the theoretical framework of the international tax regime, national organizations implement the provisions enacted by the national legislature of their respective countries.

Recommendations

The findings of the current study indicate the necessity for prompt remedial action by the relevant parties. Such actions are necessary to mitigate international tax evasion, enhance international cooperation, refine the legal framework, and increase the human resources of administrative authorities. To enhance this procedure, the researcher has emphasized certain recommendations in this section of the study. These approaches have been suggested to resolve international tax evasion conflicts amicably, promptly, and efficiently. The recommendations are as follows.

Recommendation No. 1: "Incorporate a Provision for an Arbitration Mechanism within the Mutual Agreement Procedure."

It is advisable for tax treaties to include an arbitration mechanism for issues that remain unresolved under the mutual agreement method. “This can be accomplished by incorporating the following paragraph into the article concerning the mutual agreement procedure: “When a person has submitted a case to the competent authority of a Contracting State, asserting that the actions of one or both Contracting States have led to taxation inconsistent with the provisions of this Convention, and the competent authorities fail to reach an agreement to resolve the case within one year from its presentation to the competent authority of the other Contracting State, any outstanding issues shall be referred to arbitration upon the request of the individual.” Unresolved issues should not be subject to arbitration if a ruling has previously been issued by a court or administrative body of either State. Unless an individual directly impacted by the case rejects the mutual agreement that enforces the arbitration judgment, such decision shall be obligatory for both Contracting States and shall be executed regardless of any time constraints imposed by the domestic legislation of these States. The competent authorities of the Contracting States shall mutually agree on the method of implementing this paragraph. The competent body may also establish a mutual agreement in such instances when India has not incorporated this provision in existing tax treaties. The countries involved in binding arbitration must first commit to its successful implementation. The nations must guarantee the absence of constitutional impediments to the implementation of such agreements and the referral of disputes to international arbitration.”

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