

Tax Treaties - A peep into a New Perspicuous Perspective

By TII News Service

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THE world of International Taxation is as ancient as the history of Independent India. No sooner India was declared Independent as per the [India Independence Act, 1947](#) on August 15, the FIRST Double Taxation Avoidance Agreement (DTAA) was born on December 10, **1947**, with the new [Dominion of Pakistan](#)

. That is another issue that this Tax Treaty is not in force but it does mark the beginning of the DTAA-journey for India. In the '50s India did very little on the DTAA front. Only towards the end of the decade India signed one Agreement with [Sweden in 1959](#), followed by [Japan](#) and [Germany](#)

in 1960. A couple of DTAA's were signed in the '60s but the real spurt was seen only in the late '70s, '80s and '90s. Even with the UK, India signed its first [DTAA in 1981](#)

. The United States of America (USA) which has emerged as one of India's biggest trading partners, entered into an [Agreement](#) only in 1990 - barely days before India's then Prime Minister P V Narasimha Rao embarked on radical era of economic liberalisation in 1991.

Since then the landscape of international taxation has only seen expansion and evolution in India.

Let's now move away from the turf of history and go straight to the Apex Court decision in the case of ***Azadi Bachao Andolan*** ([2003-TII-02-SC-INTL](#)). This case marks a turning point for the rapidly-evolving legal jurisprudence in the world of taxation of cross-border transactions. Although the country involved was Mauritius (culturally speaking, a look-alike for India) but it is common knowledge that Mauritius has been one of the hottest destinations for treaty-shoppers from the Developed World. Anyway, the allegations and the reality apart, our Apex Court laid down vital ***ratios***

for interpreting the deep-seated nuances of various phrases and expressions used in Articles of the DTAA with Mauritius. The law decided in this case became a universally accepted legal tool for other forums of the judiciary in India and elsewhere in the world to decide DTAA-related litigation.

After ***Azadi Bachao***

, one may come across a virtual flood of cases relating to DTAA's with the Netherlands, Singapore, the USA, the UK, France, Belgium and others. The decade of 2000 witnessed a sharp rise in the number of judicial decisions with respect to various Articles of largely similar DTAA's India had signed over the decade. Initially, most of the disputes used to partake the character of an Liaison Office and Permanent Establishment (Article 5); then came a phase of royalty and fees for technical services related disputes (largely Article 12); followed by a colourful basket of disputes relating to Articles 8, 10, 13, 14, 15, 17, 26 & 27. This virtual flood perhaps coaxed the authors of the First Edition of the latest Book - **Mr Rajesh Kadakia and Nilesh Modi**

- in 2008 to design a handy and reliable tool for the legal practitioners of international taxation. A sustained and systemic effort led to the selection of as many as 860 judicial decisions. And this number has now shot up to about 1300. So has zoomed the number of pages from 895 to 1352.

A quick look at both the Editions reveals that what was commenced as an adventure in law has finally culminated into an intellectual venture with insightful commentaries and the elegance of user-friendly references on contentious issues. As the Maxim goes - the taste of the pudding lies in the eating, one needs to go inside this Edition to see how meticulously it has been arranged and the same can be measured from the fact that the author has devoted one chapter to each Article plus one for the introduction to tax treaties - thus, there are **31 Chapters** in this treatise. Leaving no stone unturned the author has accommodated all possible contents available on the subject right from the CAG Report to CBDT Circulars and Instructions to global jurisprudence - a good amount of legal wisdom from the USA and Australia has been provided adequate space in this Edition. The author has painstakingly given pertinent references to both the tax conventions - the UN and the OECD Models.

As regards the growing involvement of India in shaping up the global taxation model through the UN and the OECD, the Author has taken pains to provide adequate coverage to its commentaries. Ever since the financial ***tsunami***

hit the global world and provided a new WINDOW to the G-7 Leadership to see the world of tax havens differently, the world of bilateral tax

treaties started providing space to Tax Information Exchange Agreements (TIEAs). India has also signed a few. Then came the phase of amending DTAA through Protocols to accommodate Article 28 in relation to exchange of information. Picking up threads of new developments worldwide India also decided to frame General Anti-Avoidance Rules (GAAR). For effective sharing of banking information and also to collect vital intelligence, India decided to set up some Overseas Units where taxmen could be posted. All these recent developments have been accommodated in this Edition apart from lucid commentaries on divergent judicial viewpoints on vital issues.

There are certainly many more interesting features of this Edition but it would be wise on my part to leave them for the inquisitiveness of the readers to look for them and earn a **'Vasco da Gamian'** sense of exploration and interpolation. In a nutshell, the Second Edition evidently reflects the sleepless nights of hardwork the author has put in to make it more meaningful and user-friendly. To conclude it, it is a must read treatise on Tax Treaties.