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I am SME of India

E-circular dt 20th July 2015

**Taxability of sending Indian
employees going abroad**

on Job / Deputation

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IamSMEofIndia

*Helping hands are better than
praying lips*



Rajive Chawla Chairman, IamSMEofIndia President, FSIA		Sangeet Kr Gupta Hony. Consultant, IamSMEofIndia & FSIA
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Integrated Association of Micro, Small & Medium Enterprises of India

www.iamsmeofindia.com

and

Faridabad Small Industries Association

C/o. FSIA Park, Opp. Plot No. 23, Sector 24, Faridabad- 121005, Haryana, India

E-mail: fsiindia@gmail.com, info@iamsmeofindia.com, +91-9711123111
(Executive Secretary)

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THE INDIA GLOBAL STORY

India is Growing Indian MSME's are growing

Today, we actually have Indian MSME units with turnovers of 20 Cr to 200 Cr, expanding abroad, setting up offices in Singapore, Thailand, China, France, Germany, US and Hong Kong

Question from a member :

- Dear Sangeet Ji,
- We are planning to send one of our staff to China to handle our shipments. This guy will sit in office of our Vendors and handle our purchasing, Quality, and shipments. He **will be paid remuneration by our vendor to cover his expenses in China** + we will continue to pay his salary in India.
- He will go to China on working VISA and I think my agent will have to show him as their staff on contractual basis for one year or so basis which he will get work permit / VISA.
- Please advice if any tax complication for him since he will be drawing salaries at two ends simultaneously.
- Thanks and Best Regards, ABC , M/s. XYZ, IMT Manesar

The importance of this Question

The discussion of the answer of this question is important for all those who place your employees outside India for short/long term for

1. Projects Supervision and Delivery
2. Purchase and Quality Management
3. Representative from India to control the Indian interests
4. Simply going as a Salaried employee yourself

Attention : Black Money Act

New Black Money Act has tough penalties

- Prosecution + 120% Tax, if evasion found



Don't do anything

- That converts an innocent act done in ignorance into a "Punishable Offence"

BANNED!

And of course, avoid paying “Double Taxes”

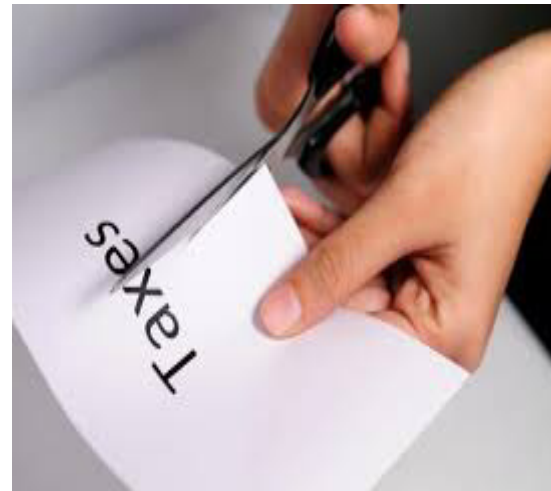
DTAA : Double Tax Avoidance Treaties

- Must Understand them



And remember that, working properly,

- You can manage your taxes properly, and avoid unnecessary penalties



Attention is also attracted towards the new Income Tax Returns ending 31.3.2015

Sheet - Foreign income.pdf - Adobe Reader

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Tools Sign Comment

I Details of Income from outside India and tax relief

Sr No	Country Code	Taxpayer Identification number	Sr No	Head of Income	Income from outside India (included in PART B-TI) (ia)	Tax paid outside India (ib)	Tax payable on such income under normal provisions in India (ic)	Tax relief available in India (id)= (ib) or (ic) whichever is lower
1	(Select)		i	Salary				0
			ii	House Property				0
			iii	Business or Profession				0
			iv	Capital Gains				0
			v	Other Sources				0
			Total				0	0
2	(Select)		i	Salary				0
			ii	House Property				0
			iii	Business or Profession				0
			iv	Capital Gains				0
			v	Other Sources				0
			Total				0	0

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Each person has to declare this foreign income, foreign taxes, and Foreign Assets if any

Source of Guidance

- DTAA between India and USA
- DTAA between India and Australia
- DTAA between India and Thailand
- DTAA between India and China
- DTAA between India and Germany
- <http://www.incometaxindia.gov.in/Pages/international-taxation/dtaa.aspx>

Now, the Answers ...



Will such a person, be a Resident of Two Countries ?

- Answer to this is found in the Article 4(2) of most DTAA's
- “.....Where by reason of the provisions of paragraph 1, an individual is a resident of both Contracting States, then his residential status for the purposes of this Convention shall be determined in accordance with the following rules :.....

Resident of ?

- **Usual Answer India. Reason as shown below**
- Article 4(2)(a) He shall be deemed to be a resident of the Contracting State in which he has a **permanent home available to him.**
- If he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closer (hereinafter referred to as his "centre of vital interests");
- (b) If the Contracting State in which he has his centre of vital interests cannot be determined, or if he does not have a permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;
- (c) If he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;
- (d) If he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

a point of Caution

 **CAUTION**

Regarding PE



- If XYZ India, sends, a person to China and bills the consultancy charges, then, that person shall be considered as the PE of XYZ in China.
- *Evidence : Article 5(2)(j) below*
- *the furnishing of services, including consultancy services, by a resident of one of the Contracting States through employees or other personnel provided activities of that nature continue (for the same or a connected project) within the other Contracting State for a period or periods aggregating to more than 183 days.*

Concept of “Permanent Establishment” (PE)

Permanent
Establishment

Exception to PE

- 5. An enterprise of a Contracting State *shall not be deemed to have* a permanent establishment in the other Contracting State merely because it carries on business in that other State through *a broker, general commission agent* or any other agent of an independent status, where such persons are acting in the ordinary course of their business. This shall not apply if such broker or agent carries on in that other State an activity described in paragraph (4) wholly or almost wholly for the enterprise itself or for the enterprise and other enterprises which are controlled by or have a controlling interest in it.

It will be your PE in that Country, if you have

a place of management;

a branch; an office; a factory ; a workshop ;

a **premises used as a sales outlet** or for receiving or soliciting orders;

a mine, a quarry, an oil or gas well or other place of extraction of natural resources;

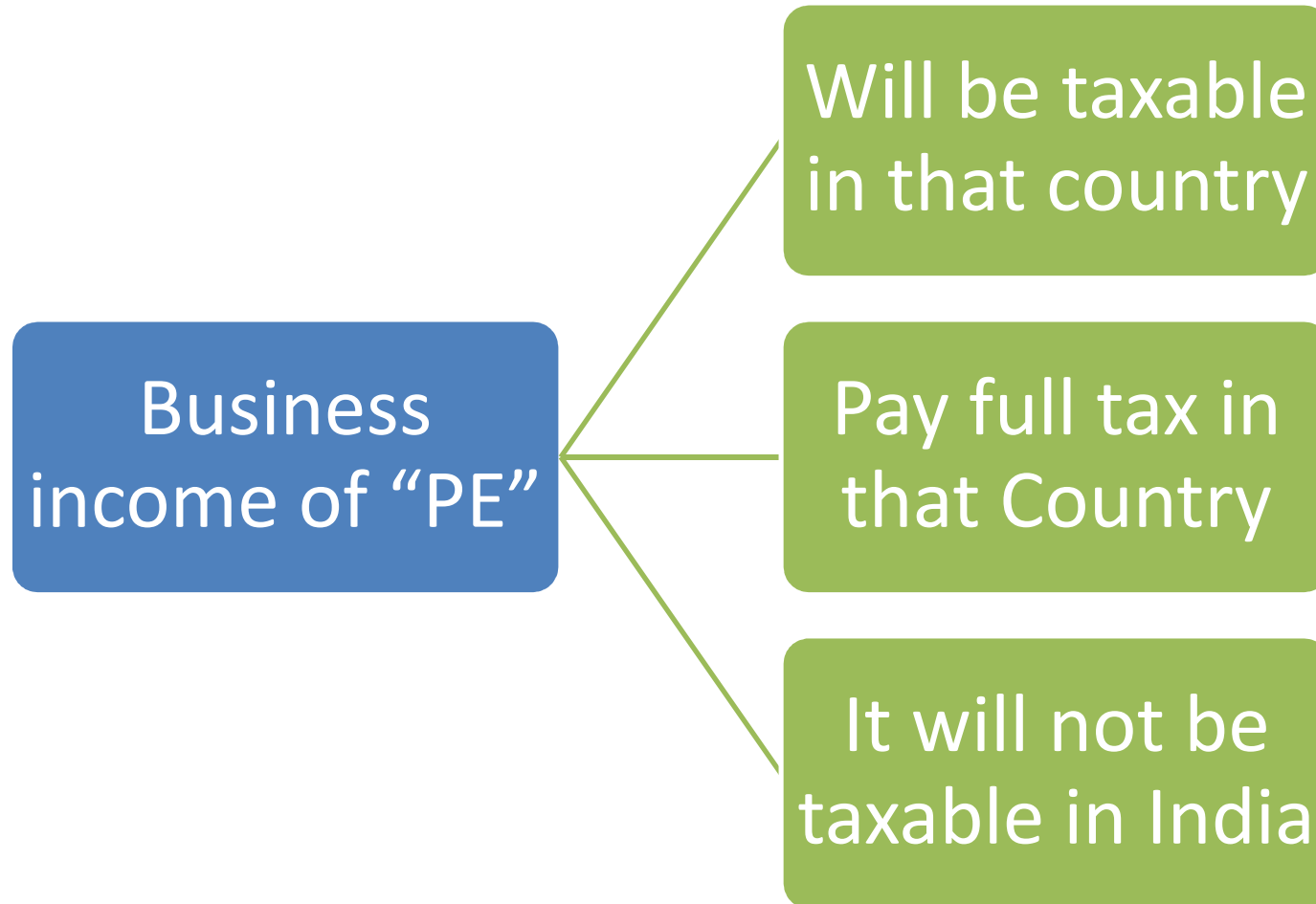
a farm, plantation or other place where agricultural, forestry, plantation or related activities are carried on;

a building site or **construction or assembly project** or **supervisory activities** in connection therewith, where such a site, project or activity continues for the same or a connected project for a period or periods aggregating to **more than 183 days**;

a warehouse, in relation to a person providing storage facilities for others;

the furnishing of services, **including consultancy services**, by a resident of one of the Contracting States through employees or other personnel provided activities of that nature continue (for the same or a connected project) within the other Contracting State for a period or periods aggregating to more than 183 days.

It automatically follows that



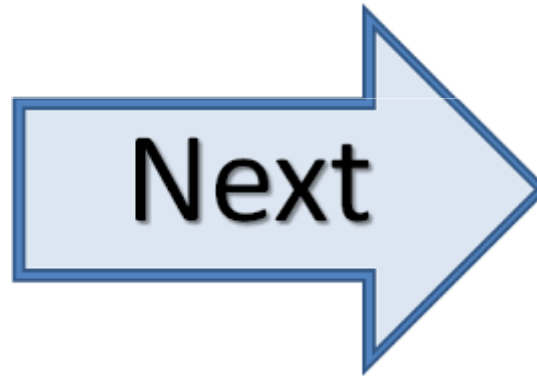
But, it will not be a “PE”

- # the use of facilities **solely for the purpose of storage or display of goods** or merchandise belonging to the enterprise ;
- # the **maintenance of a stock** of goods or merchandise belonging to the enterprise solely for the purpose of storage or display ;
- # the **maintenance of a stock** of goods or merchandise belonging to the enterprise solely for the **purpose of processing by another enterprise**;
- # the maintenance of a fixed place of business solely for the **purpose of purchasing goods** or merchandise, or of collecting information, for the enterprise; or
- # the maintenance of a fixed place of business solely for the **purpose of advertising**, for the supply of information, for scientific research, or for similar activities which have a preparatory or auxiliary character, for the enterprise.

Exception 2 : Even if we are holding company of XYZ-China

- 6. The fact that a company, which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other Contracting State (whether through a permanent establishment or otherwise), shall not, of itself, constitute either company or a permanent establishment of the other.

Now, focus on that employee
as a “professional working there” ?



ARTICLE 14

INDEPENDENT PERSONAL SERVICES

- 1. Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that State unless such activities were performed in the other Contracting State. Income in respect of professional services or independent activities performed within that other State may be taxed by that other State.
- Inference
- *If that Mr X gets professional charges in China, AND, he is physically working in China to earn that income, then it will be taxed in China*
- Obviously so, but, if he is a “professional”

Who is covered ?

- 3. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, surgeons, lawyers, engineers, architects, dentists and accountants.
- So, is our Mr X is covered ?
- Probably no .
- We might have to see next article 15

Yet for understanding , for professionals (Art 14)

However, Time period rules

Such income shall not be taxable in the other State if

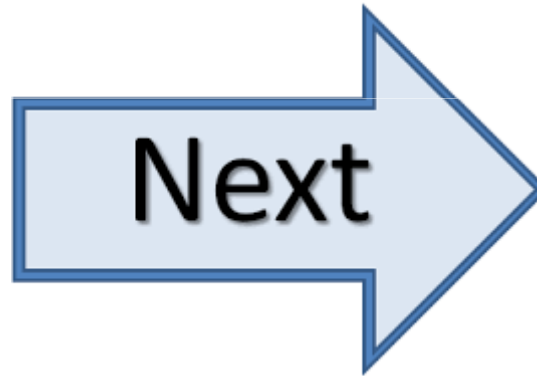
(a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the relevant "previous year" or "tax year" concerned, as the case may be, and
This could be exceeded in FY 15-16 = hence taxable

(b) the recipient does not maintain a fixed base in the other State for a period or periods exceeding in the aggregate 183 days in such year, and
This could be breached in FY 15-16 = hence taxable

(c) the income is not borne by an enterprise or a permanent establishment situated in that other State.
This is 100% covered in FY 15-16, since paid by Thai co. = hence taxable

Conclusion : China Prof Charges will be taxable in China. (next pg)

Now, focus on that employee
as a “employee” ?



ARTICLE 15

DEPENDENT PERSONAL SERVICES

- 1. Subject to the provisions of articles 16, 17, 18, 19, 20 and 21, salaries, wages and other similar remuneration derived by a resident of a Contracting State **in respect of an employment shall be taxable only in that State** unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other Contracting State.
- **Inference**
- *If that Mr X gets Salary in China, AND, he is physically working in China to earn that income, then it will be taxed in China*
- Simple, right !, but, read on...

2. Notwithstanding the provisions of paragraph (1), remuneration derived by a resident (Indian Mr X) of a Contracting State in respect of an employment exercised in the other Contracting State(China) shall be taxable only in the first-mentioned State if —

(a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the relevant "previous year" or "tax year" concerned, as the case may be, and

This could be exceeded in FY 15-16 = hence taxable both in China

(b) the remunerations is paid by, or on behalf of, an employer who is not a resident of the other State, and

Paid by a company out of USA = hence exempt

Paid by China co only = then taxable in China

(c) the remuneration is not deductible in determining taxable profits of a permanent establishment or a fixed base which the employer has in that other State.

Paid by Indian co directly = and if XYZ does not have PE in China, then free

Conclusion : China Salary will be taxable in China. And Amount paid in India Salary might also be taxable

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What is the Conclusion ?

Con**clu**sion

A magnifying glass with a black handle and a silver frame is positioned over the word "Conclusion". The lens of the magnifying glass is centered over the letters "clu" in the word, making them appear larger and more prominent than the other letters.

Model 1



- He gets only one salary,
That is from China
- This is the only salary
he gets (between 1st
September 2015 and 31st March
2016)

Taxability

- For the FY 15-16
 - 1st April to 31st August 2015 = Salary in India, Tax in India
 - 1st Sept to March 2016 = Salary in China, tax in China
- Simple , easy and no controversy in India
- Simple , easy and no controversy in China
- Reason : he becomes Not ordinary Resident

Model 2



- He gets only one salary,
That is from INDIA
- This is the only salary
he gets

Taxability



- For the FY 15-16
 - Full year, salary only in India
 - So, Salary paid in India, tax in India
- Simple , easy and no controversy in India
- But, Controversy in China, since he has work permit in China, he is there for more than 183 days, yet is not paying any tax in China.

Model 3



- He gets Salary at Both locations
 - From India also
 - From China also
- From 1st Sept 2015 to 31st March 2016

Taxability



- For the FY 15-16 upto 31st August 2015
 - Salary only in India upto 31.8.15
 - TDS done,
- And when they file the return after March 31st 2016
 - They will declare Indian income and pay indian taxes for first 5 months
 - But..... For the second 7 months..... Double tax ?

Taxability for Sept to March



- *DTAA says* := “1. Subject to the provisions of articles 16, 17, 18, 19, 20 and 21, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other Contracting State.
- Hence, as per law, This income is taxable only in China, since he has work permit in China, he is there for more than 183 days, and “salary is derived from work in China”

Hence

- There will be problem
 - You will deduct TDS etc here in India
 - But on the same income it will be taxable in China also
- However,
 - He might get rebate of taxes paid here , in the income tax in China

Recommendation

- If this is a LONG Term Deputation
 - Please note this Important point of International Taxation, this is so in almost all countries of the world.
 - Salary income always is taxable in the country in which it is earned / work done.
- Then, it may be recommended that he gets salary from one employer only, for a “particular period”.

Very Important Note



- If salary is continued from the parent company, a service PE will emerge, and this will lead to taxability of Indian company in China in this case.

Important Note

- Each case may be different based on different set of circumstances in that individual case, hence feel free to contact capable professionals to handle your specific case, before you take any decision.



For queries, suggestions and feedback , you can e-mail us

- Sangeet Kumar Gupta, FCA, DISA, ACMA, PGDMM, B.Com(Hons), Honorary Consultant, Integrated Association of Micro Small and Medium Enterprises of India and Faridabad Small Industries Association, 93126-08426, Camp Off : TB-06, 3rd Floor, Crown Plaza, Sector-15A, Faridabad. FSIA Off : FSIA Park, Opp. Plot No.23, Sector- 24, Faridabad-121005.

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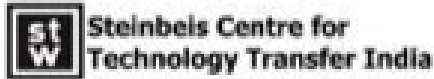
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Thank You!

