



*APPLICABILITY OF 206AA FOR  
FOREIGN RESIDENT AND DTA*

*Compiled by:*

*CA. MUKESH KUMAR BANSAL*

*+91-9540022533*

*E-mail Id :- mukbansal80@gmail.com*

# APPLICABILITY OF 206AA FOR FOREIGN RESIDENT AND DTAA

**Relevant Provisions of Section 195, Section 206AA and Section 90 (2)**

**Issues Identified**

**206AA override DTAA**

**DTAA overrides 206AA**

**Availability of Tax Credit**

**Examples**

## Section 195

### **Other Sums**

#### **Sec. 195(1)**

Any person responsible for paying to a non-resident, not being a company, or to a foreign company, any interest or any other sum chargeable under the provisions of this Act (not being income chargeable under the head “Salaries” shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rates in force.

## Section 206AA

### Requirement to furnish Permanent Account Number.



#### 206AA. (1)

Notwithstanding anything contained in any other provisions of this Act, any person entitled to receive any sum or income or amount, on which tax is deductible under Chapter XVIIIB (hereafter referred to as deductee) shall furnish his Permanent Account Number to the person responsible for deducting such tax (hereafter referred to as deductor), failing which tax shall be deducted at the higher of the following rates, namely:—

(i) at the rate specified in the relevant provision of this Act; or

(ii) at the rate or rates in force; or

(iii) at the rate of twenty per cent.

# SECTION-90

Agreement with foreign countries or specified territories.

(1) The Central Government may enter into an agreement with the Government of any country outside India or specified territory outside India—

(2) Where the Central Government has entered into an agreement with the Government of any country outside India or specified territory outside India, as the case may be, under sub-section (1) for granting relief of tax, or as the case may be, avoidance of double taxation, then, in relation to the assessee to whom such agreement applies, the provisions of this Act shall apply to the extent they are more beneficial to that assessee.

# ISSUES: 206AA OVERRIDE DTAA



206AA override all the provisions of the Income Tax Act, 1961. Words, “.....anything contained in any other provisions of this Act” also cover section 90(2).



206AA does not have any exclusion for Non Resident or for Section 90(2)



206AA is not a taxing provision overriding taxability's/ rates of DTAA; it is only procedure taxability's for not having PAN.

# SECTION 206AA

206AA operate as “retain and refund “system. Recipient of income can claim refund later on after filling return of income.

(Para 26.2 on the Article 1 of OECD Model Commentary)

..... A State can therefore automatically limit the tax that it levies in accordance with the relevant provisions of the Convention, subject to possible prior verification of treaty entitlement, or it can impose the tax provided for under its domestic law and subsequently refund the part of that tax that exceeds the amount that it can levy under the provisions of the Convention.

## *Text form 1998 IFA report*

“There is a clear trend toward the national adoption of taxpayer identification number (TINs) and the reliance by the tax authorities on those numbers.

.....

.....

Other countries have specific tax file numbers, and some on claiming resident status will be required to register for a number. In some cases non residents must also register if they wish to make a DTC claim.



## *Issue: DTAA overrides 206AA*

Object of 206AA (Explanatory Memorandum )

“Non quoting of PANs by deductees is creating problems in the processing of returns of income and in granting credit for tax deducted at source leading to delays in issues of refunds.”

Thus above object not cover the facilitation of verification of treaty residency

*Tax treaty is self contained code and is a mini legislation as accepted by the Hon'ble Supreme Court (UOI vs. Azadi Bachh Andolan)*

Thus the procedure of tax collection and recovery, therefore has to be aligned to such treaty provisions.

- UN Model of tax treaty and our existing treaties with some countries (Article 10–12)
  - “Competent Authorities of the contracting States shall settle and mutually agree to the mode of tax collection for these articles.”
  - 20% clause can be viewed as unilateral act of India in absence of mutual agreement.

## *Availability of Excess Tax Credit:*

Tax treaties contain provision for tax credit of other country to avoid double taxation. Such tax credit is allowed as per provisions of respective tax treaties.

Generally all tax treaty specifies the taxes in respect of which tax credit are available and scheme of such tax credit.

Some specific treaties like DTAA with USA and DTAA with Cyprus allow input for Indian taxes as per India Laws.

However some treaties like DTAA with UK and DTAA with Australia allows tax credit as per tax laws of India and accordance with specific treaties.

## Examples:

RELEVANT CLAUSES :-

India -US DTAA

Article 25 - *Relief from double taxation -*

7. In accordance with the provisions and subject to the limitations of the law of the United States (as it may be amended from time to time without changing the general principle hereof), the United States shall allow to a resident or citizen of the United States as a credit against the United States tax on income—

the income-tax paid to India by or on behalf of such citizen or resident ;

# Examples:

RELEVANT CLAUSES :-

India Cyprus DTAA:

Article 25(3)

In the case of Cyprus, double taxation shall be avoided, subject to the provisions of the law of Cyprus regarding the allowance as a credit against Cyprus tax of tax payable in a territory outside Cyprus. Indian tax payable under the laws of India whether directly or by deduction in respect of profits, income or gains from sources within India shall be allowed as a credit against any Cyprus tax payable in respect of that profit, income or gains. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is appropriate to such income derived in India.

# Examples:

India Australia DTAA

ARTICLE XXIV –

*Methods of elimination of double taxation - 1. (a) Subject to the provisions of the law of Australia from time to time in force which relate to the allowance of a credit against Australian tax or tax paid in a country outside Australia (which shall not affect the general principle hereof), Indian tax paid under the law of India and in accordance with this Agreement, whether directly or by deduction, in respect of income derived by a person who is a resident of Australia from sources in India shall be allowed as a credit against Australian tax payable in respect of that income*

## Examples:

INDIA- UK  
DTAA:

ARTICLE 24 –  
*Elimination of double taxation – 1.* Subject to the provisions of the law of the United Kingdom regarding the allowance as a credit against United Kingdom tax of tax payable in a territory outside the United Kingdom (which shall not affect the general principle hereof):

Indian tax payable under the laws of India and in accordance with the provisions of this Convention, whether directly or by deduction, on profits, income or chargeable gains from sources within India (excluding, in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) shall be allowed as a credit against any United Kingdom tax computed by reference to the same profits, income or chargeable gains by reference to which the Indian tax is computed.

# CONCLUSION

Provisions of 206AA may hit the resident of countries wherein tax credit allowance is subject matter of India tax laws and as per specific agreements.

As such where specific treaties specify lower rate, and TDS has been deducted at higher rates, tax authorities of foreign state may not allow higher tax deductions which are not accordance with specific tax treaties . (in above case, in UK and Australia)





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