



## PREFACE

---

International Taxation involves determination of tax liability of a person, natural or juridical, on income generated in different countries due to cross-border transactions. Difficulties arise in tax assessment of such cases because of varying system of taxation in different countries and application of different practices, sometimes not quite legal or ethical, adopted by tax paying entities to reduce their tax liabilities to the minimum. Shifting of income through such practices to foreign territories for low or nil tax liability, considerably reduces tax realization of Source Countries. Therefore, in the context of India, which in the present scenario, is becoming a hub of International Trade, a defined focus is required to check such practices by which due taxes to the country is realised. This requires an understanding and application of law and practices relating to Double Taxation Avoidance Agreements, as well as of domestic law to the International Trade and transactions. It is apparent that complexities are faced by tax payers, tax administrators and tax professionals in this field. These complexities arise not only from simultaneous application of provisions of domestic law as well as of DTAA's to the same set of cross border transactions but also from large number of judgments rendered by Indian and Foreign Courts on the subject.

Often many questions in the mind of a reader crop in, as to why various DTAA's are different from each other, how they are different from Income Tax Law, and which of them is to be applied and when; whether excess tax paid in a foreign country can be refunded in India, or why not the credit for entire taxes paid in a foreign country is given in India; if the same item of income is mentioned in DTAA and also in Income Tax Act, then how the tax would be levied, how the conflict between

the provisions of IT Act and DTAA can be resolved; if there is no Double Taxation Avoidance Agreement with a country but income is earned by an Indian Resident in that country then, how the taxes would be levied in India; what would happen if an item of income is not covered in the DTAA; whether a DTAA only helps the Government in recovering the taxes, or it also helps the taxpayer; whether DTAA's are only tool of tax planning and are instrument of tax avoidance, or do they help in avoidance of double taxation or double non taxation etc. etc.

All these questions and often confusing one, can always bother a mind. There was a deficiency of a literature which would not only answer to these questions but also bridge a gap between conceptual aspect of an issue and practical side of it. Practical aspects generally give low importance to conceptual requirements whereas purely academic approach makes it rather difficult to apply in actual case situation. Therefore, there was a vacuum which I have attempted to fill by combining both conceptual as well as practical aspects of the issues arising in the field of International Taxation.

To make the work comprehensive, all the Articles in OECD Model Convention have been described in individual chapters as per understanding reached on the basis of commentary on the OECD Model Convention and decisions of Income Tax Appellate Tribunal, High Courts and Supreme Court. Certain specific topics requiring detailed analysis, have been given in separate chapters. Such topics are Transfer Pricing, POEM, Tax Heaven, Tax Sparing, Thin Capitalisation, Force of Attraction, Make Available, Treaty Shopping, Treaty Override, and LOB Rules which are also covered for discussion.

The object of the book is (i) to provide a general idea about various Articles in the OECD MC, based on OECD commentary on MC and the Courts/Tribunal decisions (ii) to explain in detail, various concepts commonly used in the OECD MC and (iii) to provide a comprehensive material on these subjects for reference and guidance. In any case no originality is claimed in respect of material or concepts. Material available in public domain has been compiled, analysed and presented in a logical sequence from utility point of view.

I, therefore, most sincerely hope that this book will not only act as a reference book and a digest to the reader but also provide assistance to the reader in—

1. Appreciating and understanding various Articles provided in the OECD MC.

2. Enabling to understand various concepts used in International Taxation and apply them with greater comfort and ease.
3. Knowing various judgments, including latest one, rendered by ITAT & Courts, on the topics covered in the book.
4. Equipping him in a better and effective tax planning, tax assessment and defence before judicial authorities.

Even though all the efforts have been taken to make the work error free, it is still possible that some inadvertent errors might have crept in. It is sincerely hoped that the readers will forgive me for these errors. As and when they come into my notice, necessary corrections will be done.

With these words, I dedicate this book to my esteemed readers, with the hope that it will render maximum assistance to them in the field of International Taxation.

**D.C. AGRAWAL, Advocate**

M.Sc., LL.B., ICWAI,

IRS [Commissioner of Income Tax (Retd.)] &

Accountant Member ITAT (Retd.)