

International Double Tax Avoidance Agreement: Its Implementation and Judicial Perspective in India

Hema Singh

Assistant Professor, Khalsa College of Law, Amritsar, 143001

ABSTRACT

International Double Taxation specifies to levy identical tax by two or more jurisdiction on the same income, asset or any cross-border financial transactions. The individuals, businessmen or international investors are subject to tax both in their native country and the foreign country where the income is generated. To prevent this unjust taxing on the same income twice, double taxation avoidance agreements are signed between the countries. A double tax avoidance agreement is an international agreement signed between two or more countries to obviate international investors from being subject to double taxation on their same income. This agreement not only lessen the tax burden on the taxpayer but also provide legal certainty that encourages cross-border trade, capital investments etc. In India, the Income Tax Act,1961 is the main statute that deals with the levying, collection, administration, recovery of tax levied on the income of person. The Act also states the provisions relating to double tax relief under section 90, 90A, 91 for the avoidance of double taxation of income. The major issue of double tax avoidance agreement is its diverse interpretation and implementation across several countries, because each country has their own laws, rules and regulations relating to income tax which results in discrepancies in tax treatment during cross- border transactions. Hence, taxpayers often face challenges in navigating the intricacies of international tax laws, which often results in uncertainties, compliance burden and risk of double taxation. India's accede to international double taxation avoidance treaties reflects its adherence to fostering international cooperation in tax matters while safeguarding its fiscal interests. The interpretation of the various provisions of such agreement in the Indian context and its implementation in India is affected by various factors such as legal principles, treaty provisions and judicial perspectives relating to tax. These complexities underline the challenges faced by the taxpayers and tax authorities in tracking cross border transactions and highlights the significance of clarity and consistency in the provisions of tax treaties.

Keywords: Double Taxation Avoidance Agreement, Intricacies, Challenges, Implementation, Judicial Perspective.

INTRODUCTION

Globalization has led to a significant increase in cross-border trade, investment, and employment. However, one of the major challenges faced by taxpayers and governments alike is **double taxation**. International Double Taxation has grown more significant in today's globalized world, presenting complex issues for governments, companies, and individuals. Essentially, it involves the levying of the same type of tax on the same income or asset by more than one country. This situation commonly arises in cross-border activities, where businesses or individuals may be taxed both in their country of residence and in the foreign country where the income or capital gains are earned. To control this hardship of double taxation, countries enter into **Double Tax Avoidance Agreements (DTAAs)**, which are bilateral treaties that aim to eliminate or mitigate the effects of double taxation. Reducing or eliminating double taxation is essential for the continued growth of international business. Double Taxation Avoidance Treaties (DTATs) offer effective mechanisms to prevent double taxation, ensuring that taxpayers contribute a fair share of taxes both to their country of residence and the countries where they conduct business activities.

India has signed **over 90 DTAAs** with various countries to attract foreign investment, prevent fiscal evasion, and ensure fair tax treatment for residents engaged in international business. In India, the Income Tax Act,1961 is the main statute that deals with the levying, collection, administration, recovery of tax levied on the income of person. The Act also states the provisions relating to double tax relief under section 90, 90A, 91 for the avoidance of double taxation of income. The implementation and interpretation of these treaties, however, have been subject to evolving **judicial**

scrutiny, reflecting the complex interplay between domestic tax laws and international treaty obligations. Where the income accrues or arises in a country with which no agreement exist, unilateral tax relief is provided on the double taxed income under the provisions of Section 91.¹ In the Indian context, international double taxation holds particular importance given the country's increasing integration into the global economy and its wide network of Double Taxation Avoidance Agreements (DTAAs) with many nations. As a fast-growing economy with a rising number of multinational corporations (MNCs) and cross-border investments, India faces the challenge of aligning its domestic tax regulations with international tax standards and treaty commitments. The interpretation of the various provisions of such agreement in the Indian context and its implementation in India is affected by various factors such as legal principles, treaty provisions and judicial perspectives relating to tax. These complexities underline the challenges faced by the taxpayers and tax authorities in tracking cross border transactions and highlights the significance of clarity and consistency in the provisions of tax treaties.

MEANING OF INTERNATIONAL DOUBLE TAXATION

International double taxation, narrowly defined, occurs when two States impose a comparable income tax with respect to the same item of income on the same taxable person. The concept has been defined more broadly, but with less precision, as the result of overlapping tax claims of two or more States.² The idea of international double taxation that bilateral tax treaties aim to eliminate goes beyond its strict, narrow definition. It also covers certain forms of **economic double taxation**; situations where multiple tax burdens are placed on the same income, even if that income isn't technically taxed more than once. For instance, some tax treaties offer relief when one country taxes the profits of a subsidiary company, and another country would also tax those same profits when they are paid out as dividends to the parent company. Overall, these treaties seek to remove not only narrowly defined cases of international double taxation but also broader instances; especially when failing to do so would significantly harm global trade and investment.

Although a State can try to deal with double taxation on its own through domestic tax laws, it is usually unable to accomplish many of the objectives that a bilateral tax treaty can achieve. Domestic tax legislation is a unilateral measure, and it can relieve double taxation only if the State is willing to absorb the entire financial burden of providing that relief. By contrast, a bilateral tax treaty is a mutual arrangement between two Contracting States, typically reached through negotiation, allowing the cost of double taxation relief to be shared in a way that is acceptable to both parties. Moreover, domestic tax laws generally address tax matters without considering the specific relationship between two States. A bilateral tax treaty, however, can explicitly reflect that relationship. For instance, a State may design a specific approach to relieving double taxation when trade and investment flows between the two States are balanced, and adopt a different approach when those flows predominantly benefit one State over the other.

INTERNATIONAL DOUBLE TAX AVOIDANCE AGREEMENT

Double Tax Avoidance Agreement (DTAA) is a bilateral agreement that has been signed between India and other countries. According to the agreement, an individual earning an income in another country while being a resident of another country does not have to pay two (double) taxes on the same income.³ While a country can take steps on its own to reduce double taxation through its national tax laws, it usually cannot fully achieve the broader objectives of a bilateral tax treaty by acting alone. Domestic tax measures are unilateral, meaning the country must shoulder the entire financial burden of offering tax relief. In contrast, a bilateral tax treaty is a mutual agreement between two countries, typically reached through negotiation. This cooperative approach allows both countries to share the financial responsibility of reducing double taxation in a way that is mutually acceptable.

An example of double tax avoidance agreement, if you're a resident of India but earn income from a business operating in the United States, you'd normally be required to pay tax on that income both in the U.S., where it was earned, and in India, where you file your tax return. However, if a Double Tax Avoidance Agreement (DTAA) is in place, you won't have to pay tax in both countries. Instead, you may either be taxed only in one of them, or if tax is levied in both, the amount paid in one country can be claimed as a credit against the tax payable in the other, as per the DTAA rules.

OBJECTIVES OF DOUBLE TAX AVOIDANCE AGREEMENT

1. Eliminate Double Taxation

¹ Dr. S.R. Myneni, "Law of Taxation", Allahabad Law Agency, Faridabad, 4th ed. 2018, p. 182

² International Fiscal Association: The Revised OECD Model Double Taxation Convention on Income and Capital: Proceedings of a Seminar held in Vienna in 1977 during the Thirty-first Congress of the International Fiscal Association, Introduction by Dr. M. Widmer, page 9.

³ CA Abhishek Soni, "Double Tax Avoidance Agreement (DTAA): Meaning, Benefits & Rules", retrieved from <https://tax2win.in/guide/double-tax-avoidance-agreement-dtaa>, visited on September 15, 2025 at 3:15 p.m.

Double Tax Avoidance agreement (DTAAs) ensures that the same income is not taxed twice in two different countries; one in the source country i.e. where the income is earned and again in the residence country i.e. where the taxpayer resides.

2. Promote Cross-Border Trade and Investment

DTAAs not only reduce the tax burden on the person but also encourage international business activities, foreign direct investment (FDI), and economic collaborations between countries by promoting cross-border trade. DTAAs provide for tax credits to be given to businesses for taxes paid in the other country. This helps to reduce the tax burden on businesses and encourages them to invest in each other's markets.⁴

3. Provide Tax Certainty and Fairness

DTAAs offer clear rules about how income will be taxed across borders, reducing ambiguity, relieving financial restraint and potential disputes between taxpayers and tax authorities, therefore promoting fairness and enhancing transparency.

4. Prevent Tax Evasion and Avoidance

Most modern DTAAs include anti-abuse provisions and financial and tax-related information exchange mechanisms between the tax authorities of participating countries that help governments to detect and prevent tax evasion and money laundering.

5. Allocate Taxing Rights Between Countries

DTAAs allocate taxation rights between the country from which the income is sourced i.e. source country and the country of which the taxpayer is a resident i.e. resident country so as to avoid double taxation of income. It defines which country has the right to tax specific types of income for instance, business profits, dividends, royalties, capital gains, ensuring a fair division of taxing rights.

6. Avoid Tax Discrimination

DTAAs include non-discrimination clauses to ensure that nationals or residents of one country are not unfairly taxed in the other country. For instance, a new **Article 25A (Non-Discrimination)** is inserted under India-Oman DTAA. It prohibits discriminatory taxation based on nationality, the status of a permanent establishment, or foreign ownership or control. It also ensures the deductibility of cross-border payments, such as interest, royalties, and technical fees, under the same conditions as domestic payments.⁵

7. Provide Mechanisms for Dispute Resolution

DTAA provides procedure like the Mutual Agreement Procedure (MAP) for resolving the disputes of tax payers under Double Taxation Avoidance Agreements (DTAAs). It serves as a complement to domestic legal remedies and is used to address issues related to double taxation or taxation that does not align with the provisions of the relevant DTAA. Typically, MAP is used in cases involving cross-border double taxation, which can include both juridical and economic forms of double taxation.

CONSTITUTIONAL PROVISIONS IN INDIA

The authority to enter into treaties, agreements, and conventions is a fundamental aspect of a sovereign state's powers. Under **Entry 14 of the Union List in the Seventh Schedule** of the Indian Constitution, Parliament has exclusive authority to make laws relating to such treaties and agreements.⁶ Additionally, foreign affairs and relations with other nations fall under Entry 10 of the same list. This framework was absent in the Government of India Act, 1935, which did not include such entries, as India was not a sovereign nation prior to 1947 and thus lacked the independent power to engage in international treaties. **Article 253** of the Indian Constitution grants Parliament the power to enact laws for the whole or part of the territory of India necessary to implement any treaty, international agreement, or decision made at global conferences or organizations.⁷ However, the laws enacted for the implementation of the international treaties will be subject to the constitutional limits.⁸ This Article should be interpreted alongside **Articles 51(c) and 73**. **Article 51**, found in the Directive Principles of State Policy, specifically clause (c), encourages the State to foster respect for international law and treaty obligations in dealings of organised peoples with one another.⁹ However, international law

⁴ Siddhi Jain, "How DTAA and Cross-Border Investment Minimize the Tax Burden?" retrieved from <https://ebizfiling.com/blog/dtaa-and-cross-border-investments/>, visited on September 15, 2025 at 8:30 p.m.

⁵ IBDO India "India-Oman DTAA Amended", retrieved from <https://www.bdo.in/en-gb/insights/alerts-updates/direct-tax-alert-india-oman-dtaa-amended#:~:text=7.,or%20foreign%20ownership%20or%20control.>, visited on September 16, 2025 at 12:12 p.m.

⁶ The Constitution of India, Schedule VII, Union List (Entry 14).

⁷ The Constitution of India, Article 253

⁸ Dr. Narender Kumar, "Constitutional Law of India", Allahabad Law Agency, Faridabad, 12 ed., 2025, p. 882.

⁹ Supra Note 7, Article 51 (c).

has no supremacy over Municipal Law under the Indian Constitution. A 3- Judge Bench of the Supreme Court, in **X. Principal Secretary Health & Family Welfare Dept. (Delhi)**¹⁰, said that the Medical Termination of Pregnancy Act, 1971 be brought in conformity with the India's obligations under International Law and the State must act proactively in order to ensure that women in India were able to actualise their right to reproductive health and healthcare in line with the obligations assumed by the country under International Law. Meanwhile, **Article 73** of Indian Constitution defines the scope of the Union's executive power, outlining the areas in which the central government can operate.

- (1) Subject to the provisions of this Constitution, the executive power of the Union shall extend—
- (a) to the matters with respect to which Parliament has power to make laws; and
 - (b) to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement.

Provided that the executive power referred to in sub clause (a) shall not, save as expressly provided in this constitution or in any law made by Parliament, extend in any State to matters with respect in which the Legislature of the State has also power to make laws.¹¹

PROVISIONS UNDER INCOME TAX ACT, 1961

The Income Tax Act, 1961 contains the provisions for determination of taxable income, determination of tax liability, procedure for assessment, appeals, penalties and prosecutions. It also lays down the powers and duties of various income- tax authorities.¹² This Act has undergone innumerable changes from time to time since it was originally enacted as it is a revenue law and it needs to be amended from time to time. Tax is a mandatory fee or charge levied by the Government of India on the persons to collect revenue for public works such as providing the best facilities and infrastructure. There are two types of taxes namely; direct tax and indirect tax. The term direct tax implies that this tax is directly paid to the Government of India by the tax payer such as Income Tax whereas, the term indirect tax implies that this tax is indirectly paid to the Government of India through the seller of goods or services such as Goods and Service Tax. In the case of **Commissioner, Hindu Religious Endowments, Madras v. Lakshmindra Thirtha Swamiar Mutt**¹³, a seven-judge bench referred to a definition of tax from a ruling by the Australian High Court (which is the top judicial body in Australia). The definition stated that a tax is “a compulsory extraction of money by a public authority for public purposes, enforceable by law, and not a payment for services rendered.”

The key features of a tax include:

- (a) It is mandatory, meaning it is imposed under legal authority without the taxpayer's agreement, and the payment is legally enforceable.
- (b) Taxes are collected for public purposes and are not tied to any specific benefit to the individual taxpayer. Therefore, there is no direct exchange (quid pro quo) between the taxpayer and the government.
- (c) Tax is part of the shared financial responsibility of the public. The amount imposed generally depends on the individual's ability to pay.

In Indian Constitution, Article 256 clearly provides that no tax shall be levied or collected except by authority of law.¹⁴ The legislature's power to levy or recover taxes- streaming from articles 245, 246, 246A and 248 read with Schedule VII lists, is a constitutional power and accordingly, subject to constitutional limitations.¹⁵

Section 90 of Income Tax Act, 1961 provides the provisions relating to double tax relief. The section states that-¹⁶

- (1) The Central Government may enter into an agreement with the Government of any country outside India or specified territory outside India-
 - (a) for the granting of relief in respect of—
 - (i) income on which have been paid both income-tax under this Act and income-tax in that country or specified territory, as the case may be, or

¹⁰ X. Principal Secretary Health & Family Welfare Dept. (Delhi) AIR 2022 SC 4917.

¹¹ Supra Note 7, Article 73.

¹² Dr. Girish Ahuja, Dr. Ravi Gupta, “Systematic Approach to Taxation Containing Income tax & GST”, Commercial Law Publishers (India) Pvt. Ltd., 45th ed., 2021, p. 3.

¹³ Commissioner, Hindu Religious Endowments, Madras v. Lakshmindra Thirtha Swamiar Mutt AIR 1954, SC 282.

¹⁴ Supra Note 7, Article 256.

¹⁵ Kailash Rai, “Taxation Laws”, Allahabad Law Agency, Faridabad, 10th ed., 2022, p. 2.

¹⁶ The Income Tax Act, 1961, Section 90.

(ii) income-tax chargeable under this Act and under the corresponding law in force in that country or specified territory, as the case may be, to promote mutual economic relations, trade and investment, or

(b) for the avoidance of double taxation of income under this Act and under the corresponding law in force in that country or specified territory, as the case may be, or

(c) for exchange of information for the prevention of evasion or avoidance of income-tax chargeable under this Act or under the corresponding law in force in that country or specified territory, as the case may be, or investigation of cases of such evasion or avoidance, or

(d) for recovery of income-tax under this Act and under the corresponding law in force in that country or specified territory, as the case may be, and may, by notification in the Official Gazette, make such provisions as may be necessary for implementing the agreement.

(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.

Scope of Section 90 of Income Tax Act, 1961

The scope of power under s 90 was examined in detail in the **UOI v Azadi Bachao Andolan**¹⁷. The following principles can be summarized from this decision:

(1) Every country seeks to tax the income generated within its territory on the basis of one or more connecting factors such as the source of the income, residence of the taxable entity, maintenance of a permanent establishment and so on. Depending on the connecting factor, the same income of the same entity might become liable to tax in different countries leading to harsh consequences. To avoid such anomalies and incongruous situations, the Governments of different countries enter into bilateral treaties, conventions or agreements. These are called Double Taxation Avoidance Treaties, Conventions or Agreements.

(2) The power to enter into a treaty is an inherent part of the sovereign power of the State. Entries 10 and 14 of List-I of Schedule-VII of Indian Constitution enable Parliament to legislate in respect of treaties.

(3) Parliament has to make a note when the treaty or agreement operates to restrict the rights of citizens or others or modifies the law of the State. If these rights are not affected, no legislative measure is needed to give effect to the agreement or treaty.

(4) Under Article 73 of the Constitution, the executive power of the Union extends to matters with respect to which Parliament has the power to make laws. The executive can, by agreement, conventions or treaties incur obligations, which, in international law, are binding upon the State. Ordinarily, a mere agreement by the Union is not, by its own course, binding upon Indian nationals.

(5) The judicial consensus is that section 90 of the Act was specifically intended to enable and empower the Central Government to issue a notification to implement the terms of a DTAA. Once the notification is issued, the provisions of the agreement apply even if they are inconsistent with the provisions of the Income Tax Act. Once the requisite notification is issued, section 90 of the Act springs into operation and the assessee is entitled to claim the benefit of DTAT.

(6) It is not correct to say that if no specific exemption has been granted by Parliament, the Central Government cannot grant exemption from tax payable under the Income-tax Act.

Section 90A of Income Tax Act, 1961 is applicable if the DTAA agreement has been signed between specified associations of two countries. When a specific organisation or association in India has signed the DTAA with an organisation in a foreign country, tax relief can be claimed under Section 90A. This section follows a process similar to Section 90; the only difference is that the agreement is between two institutional bodies instead of two countries. Since section 90A applies to two organisations who have signed DTAA, tax relief is offered as a tax credit on the tax paid in a foreign country if it exceeds the minimum tax payable in India. The process is similar to Section 90 of the Income Tax Act.

¹⁷ UOI v Azadi Bachao Andolan (2003) 263 ITR 706.

Section 91 of Income Tax Act, 1961 states that where a resident person pays taxes in respect of the income accrued or arisen outside India, in any country with which no DTAA exists, unilateral relief on such doubly taxed income shall be allowed against income tax payable in India.¹⁸

Relief under this provision shall be allowed, by way of deduction from the income-tax, at the following rates:

1. Where rates are different in both countries – the Indian rate of tax or the rate of tax of the respective country, whichever is the lower.
2. Where rates are the same in both countries – the Indian rate of tax.

JUDICIAL INTERPRETATION

Indian courts have played a crucial role in interpreting Double Tax Avoidance Agreement provisions and resolving conflicts between domestic law and treaty obligations.

The Supreme Court of India in **Ram Jethmalani v. Union of India**¹⁹, observed that: The broad principle of interpretation, with respect to treaties, and provisions therein, would be that the ordinary meanings of words be given effect to, unless the context requires or otherwise. However, the fact that such treaties are drafted by diplomats, and not lawyers, leading to sloppiness in drafting also implies that care has to be taken to not render any word, phrase, or sentence redundant, especially where rendering of such word, phrase or sentence redundant would lead to a manifestly absurd situation, particularly from a constitutional perspective. The Government cannot bind India in a manner that derogates from Constitutional provisions, values and imperatives.

In the case of **Laxmipat Singhania v. CIT**²⁰, the Supreme Court of India set forth the principle that income should not be subject to double taxation unless specifically stated. This principle is also reflected in the Income Tax Act through Explanation 2 to Section 5. Ultimately, DTAAs are essential in ensuring that double taxation is avoided and that fair taxation is upheld in transactions that span across borders. They offer a framework for distributing taxing rights among nations, guaranteeing that individuals and businesses are not burdened with excessive taxes.

The Supreme Court of India, in cases such as **CIT v. Kulandagan Chettiar and others**²¹, has provided clarification regarding the taxation of income for Indian residents who have a permanent establishment or own immovable property in another country. According to the court, the responsibility to tax such income primarily falls upon the country where the establishment or property is located. The OECD Model Tax Convention offers two alternative articles 23A or 23B that allow for the granting of benefits through the exemption/credit method for income such as dividends, interest, and royalties, which are typically subject to taxation by both the source and residence states. The OECD Model Tax Convention serves as a widely recognized point of reference for interpreting agreements between countries that are not members of the OECD. While its primary focus is on OECD member countries, it is also utilized by non-member nations. Ultimately, the assessment of taxing rights under DTAAs is a multifaceted matter that necessitates meticulous examination of the particular provisions within each agreement. The objective is to avoid duplicate taxation and promote equitable taxation of income earned across borders.

In the case of **CIT v. P.V.A.L. Kulandagan Chettiar (2004)**, the assessee was a resident of India who earned income from rubber estates situated in Malaysia. Both India and Malaysia had the right to tax such income under their respective domestic tax laws. However, the income was also covered under the India–Malaysia Double Taxation Avoidance Agreement (DTAA). The main issue raised was whether the income earned by the assessee from Malaysia could be taxed in India despite the provisions of the DTAA allocating taxing rights to Malaysia. The Supreme Court held that the provisions of the DTAA prevail over the domestic Income Tax Act where there is a conflict between the two. Since the DTAA provided that such income could be taxed only in Malaysia, India could not levy tax on that income. The court also observed that DTAA is a special law negotiated between two sovereign states and must be given effect over general domestic tax laws. When a treaty allocates exclusive taxing rights to one contracting state, the other state must refrain from taxing that income. In case of inconsistency between domestic law and a DTAA, the treaty provisions override, provided they are more beneficial to the taxpayer.

In the case of **CIT vs. Laxmi Textile Exporters Ltd.**²², the Madras High Court ruled that the income generated from a business in Sri Lanka, which was not subject to taxation in Sri Lanka, could not be taxed by India, the country of residence.

¹⁸ Mayashree Acharya, Section 90, 90A, and 91 of Income Tax Act, retrieved from <https://cleartax.in/s/section-90-90a-91-of-income-tax-act>, visited on September 20, 2025 at 11:55 p.m.

¹⁹ Ram Jethmalani v. Union of India (2011) 339 ITR 107.

²⁰ Laxmipat Singhania v. CIT [1969] 1SCR904.

²¹ CIT v. Kulandagan Chettiar and others [2004] AIR SCW 3302.

²² CIT vs. Laxmi Textile Exporters Ltd. [2000] 245ITR521(MAD).

In the case of **Director of Income Tax v. New Skies Satellite BV (2016)**, the Delhi High Court held that India's interpretation of a DTAA must align with international standards and the intention of the treaty. It emphasized the role of OECD commentaries in interpreting treaty provisions.

CHALLENGES IN IMPLEMENTING THE DTAA

- 1. Treaty shopping and Abuse:** Treaty abuse refers to situations where individuals or entities misuse the provisions of a tax treaty to gain unintended tax benefits, often by setting up structures or entities in treaty countries without genuine economic activity (commonly called "treaty shopping"). Many investors route investments through countries with favourable DTAA's (e.g., Mauritius, Singapore), leading to revenue losses. Countries lose significant tax revenue when companies exploit treaties to shift profits without real economic presence.
- 2. Ambiguities in Interpretation:** Ambiguities in interpretation are a major challenge in implementing Double Taxation Avoidance Agreements (DTAA's) because they create uncertainty, disputes, and inconsistent application of tax provisions between countries. Countries may interpret the same treaty clause differently based on their domestic laws. Some terms in DTAA's are not precisely defined or left open to interpretation. Differences between Indian law and treaty terms often result in litigation.
- 3. Conflict between GAAR and Treaty Provisions:** Application of GAAR (General Anti-Avoidance Rule) can override treaty benefits, leading to uncertainty. General anti-avoidance rule (GAAR) is an anti-tax avoidance law under Chapter X-A of the Income Tax Act, 1961 of India. The General Anti Avoidance Rule (GAAR) in India aims to stop businesses and individuals from finding ways to pay less tax by exploiting loopholes or using aggressive tax avoidance strategies. The primary objective of GAAR provisions is to ensure that all taxpayers are treated fairly when it comes to transactions aimed at reducing their tax obligations. The rule prevents people from using complex strategies to avoid paying taxes they owe.²³
- 4. Evolving Nature of Digital Economy:** The digital economy has rapidly transformed global business models—enabling companies to operate across borders without a physical presence. This fundamentally challenges the traditional framework of Double Taxation Avoidance Agreements (DTAA's), which were originally designed for brick-and-mortar businesses. Traditional DTAA's are inadequate to deal with taxation of digital transactions and e-commerce.
- 5. Exchange of information issues:** The Exchange of Information (EOI) clause in Double Taxation Avoidance Agreements (DTAA's) is intended to help tax authorities share relevant information to prevent tax evasion and ensure correct application of treaty benefits. However, several issues make EOI a major challenge in effective DTAA implementation such as countries have different domestic laws on confidentiality, data protection, and privacy. These differences may restrict the type and extent of information that can be shared, limiting the effectiveness of EOI provisions. Also, not all countries have the same level of technological infrastructure or trained personnel to collect, process, and transmit tax information efficiently. This can cause delays or incomplete exchanges of information.

CONCLUSION

With technological advancements and the evolution of business models driven by globalization, sovereign states increasingly face challenges related to cross-border transactions and their tax implications. Economic globalization and various global crises have heightened the importance of international treaties, especially during the 20th century. This led to the creation of numerous international institutions and the development of modern international law to foster cooperation and harmony among nations. Tax treaties have become a crucial component of international law, helping to shape tax regulations during intergovernmental negotiations. Double Taxation Avoidance Agreements (DTAA's) are crucial in the field of international taxation. They provide a framework for fair taxation and help resolve tax disputes between countries. India has proactively sought to establish an extensive network of tax treaties with different countries in order to promote the unrestricted movement of capital into the country. The implementation of DTAA's in India reflects a careful balance between promoting foreign investment and protecting the domestic tax base. To prevent double taxation, Sections 90, 90A and 91 of Income Tax Act, 1961 establish some clauses allowing taxpayers to claim benefits and pay tax only once on their foreign tax earnings. Both tax credit and relief are applicable depending on the presence or absence of DTAA or the type of applicant. Indian courts have consistently emphasized that treaty provisions must be interpreted in line with international principles, yet not at the cost of facilitating tax abuse.

²³ Annapoorna, General Anti-Avoidance Rules (GAAR): Provisions, Applicability in India, retrieved from <https://cleartax.in/s/gaar-general-anti-avoidance-rules>, visited on September 23, 2025 at 5:25 p.m.