**Introduction**

Taxation is an obligatory payment borne by both individuals and corporations, which cannot be evaded within legal boundaries. Every taxpayer must adhere to the tax policies of their country of residence. However, instances of double taxation may arise when the same income is subjected to taxation by either the same government or multiple governments.

When a business earns profits, it initially faces corporate tax as paid by the company. Later, when the after-tax profits are distributed to employees, they are subjected to income tax at the individual level. This situation, where the same income is taxed twice by the same government but by different taxpayers, is known as Economic Double Taxation. Similarly, if a taxpayer resides in one country but earns income in another, they become liable for tax obligations in both countries. When the same taxpayer is required to pay taxes twice to different governments, it is referred to as **Juridical Double Taxation**.

Juridical double taxation can be further categorized into two principles:

Expansion and growth are primary objectives for any sustainable business today. Operating as an international company or forming associations with others has become a common step for businesses. "Being Global" is frequently mentioned by residents in this era of competition and development. However, when operating globally, the issue of juridical double taxation arises.

To avoid this issue of double taxation, governments sign an agreement with each other known as a Double Taxation Avoidance Agreement (DTAA) to ensure that tax is notpaidtwice on the same income. Both governments agree to provide exemptions, tax credits, and lower withholding taxes on different types of income earned by taxpayers whenever any business is conducted between them. The primary idea behind a DTAA agreement is to boost economic growth and minimize the opportunity for tax evasion for taxpayers, as taxpayers try to escape the burden of tax payments obligated to make in both countries.

**Background of DTAA in Nepal**

Nepal signed its first Double Taxation Avoidance Agreement with the neighbouring country India way back on January 18, 1987. Prior to that, the provision of giving deduction in foreign tax already existed through the Income Tax Act of 1974, but the provision of foreign tax credit has been introduced through tax treaties with various countries thereafter.

After India, the second tax treaty was signed with Norway in 1996. Further, bilateral tax treaties have already been signed with nine other countries to date, which are:

**Incomes Covered under DTAA**

The DTAA agreements cover various types of income or capital gains earned by individuals or corporations, including:

* Direct use/ letting the immovable property, livestock & equipment.
* Business profits derived by enterprise.
* Operation of ships/aircraft or use, maintenance, rental of containers used for transport of goods, in international traffic.
* Associated enterprises.
* Dividend.
* Interest income from debt claims of every kind, whether secured or not.
* Royalties from copyright, patent, trade mark, design, plan, secret formula, etc.
* Capital gain from alienation of immovable/ movable property, ships/ containers, shares of capital stock of company.
* Independent and Dependent Personal services which includes any scientific, literary, artistic, educational, or teaching activities.
* Physicians, lawyers, engineers, architects, surgeons, dentists and accountants.
* Director’s fee.
* Artistes/ entertainer or sportsperson.
* Pensions and other similar remuneration.
* Government service rendered to the state/ subdivision/ authority.
* Professors, teachers and research scholars.
* Payments/ Income received by students for purpose of maintenance, education, training and any study related employment.
* Other Income in form of lotteries, crossword puzzles, races, card games, gambling/ betting.

**Dividends**

If taxed at source country it should not exceed:

* **5% of gross dividend** if beneficial owner owns at least 10% shares of dividend paying company.
* **10% of gross dividend** in all other cases.

**Interest**

If taxed at source country it should not exceed:

* 10% of gross interest.
* Exempted at source country, if interest arising in source country paid to government of other state.

**Royalties**

If taxed at source country it should not exceed 15% of gross royalties.

**Capital Gains -**

Taxed at other state: If gains derived by resident of contracting state from alienation of immovable property situated in other state or is part of permanent establishment in other state.

**Double Taxation Relief / Tax Credit**

Under the DTAA agreements, the following provisions are made to provide relief from double taxation:

An amount equal to income tax/capital tax already paid in a foreign country is allowed as a tax credit against any income/capital tax payable by a resident in their home country.

If a resident is exempt from tax in their home country, then when calculating tax on the remaining income/capital, the exempted income/capital can be considered and the tax rate applicable as if such income was not exempted can be applied.

**Other Taxation Procedures Covered**

The DTAA agreements also cover various other taxation procedures to facilitate effective tax administration and cooperation between countries, including:

* **Non-Discrimination**: Ensuring that taxpayers are not discriminated against based on their nationality or residency.
* **Mutual Agreement Procedure**: Providing a mechanism for resolving disputes or reaching mutual agreements between the tax authorities of the two countries.
* **Exchange of Information**: Facilitating the exchange of tax-related information between the tax authorities of the two countries to prevent tax evasion and ensure compliance.
* **Assistance in the Collection of Taxes**: Assisting each other in the collection of taxes, including the recovery of tax claims.
* **Limitation of Benefits**: Establishing limitations on the benefits granted under the DTAA agreements to prevent abuse or misuse.
* **Diplomatic and Consular Officers**: Determining the tax treatment of diplomatic and consular officers.
* **Entry into Force**: Outlining the conditions and procedures for the entry into force of the DTAA agreements.
* **Termination**: Specifying the conditions under which the DTAA agreements can be terminated.

**Avoidance of Double Residency**

The issue of double residency, where a person may be considered a resident for tax purposes in more than one country, is addressed in the DTAA agreements. The agreements contain a tie-breaker clause (usually found in Article 4) that determines the residency of a person in cases of dual residency. The tie-breaker clause typically considers factors such as domicile, the place of effective management for entities, the centre of vital interest, habitual abode, and mutual agreement procedures to resolve any conflicts.

**Avoidance of Double Definitions**

Cross-border activities often involve different jurisdictions and local customs, leading to the same words having different meanings in different countries. To avoid confusion, tax treaties clarify and harmonize the definitions of terms to ensure consistent interpretation and application of tax provisions. For example, if an Austrian company invests in profit-sharing bonds with interest, the tax on such interest is levied at the rate applicable for dividends, as specified in Article 10 of the DTAA with Austria.

**Elimination of Double Taxation**

There are three methods for the elimination of double taxation, both in legal dialect and in accounting for taxation**:**

Accounting methods for the elimination of double taxation are based on model tax treaties and include: