

## CHAPTER 6: OVERVIEW OF MODEL TAX CONVENTIONS

In order to enable various countries to enter into treaties, which are standardised to some extent, the Organisation for Economic Cooperation and Development (OECD) and the United Nations (UN) have developed certain Model Tax Conventions. These Conventions can be used by various countries as a starting point in their negotiations with other countries. While these Models are not legally binding, they have been extensively used by various countries as a reference point while entering into Tax Treaties.

**Fig 6.1**

**Overview of Significant Articles of OECD and UN Model Conventions, 2017**

Article	OECD MC <i>vis-à-vis</i> UN MC Common paras & Significant differences				
<b>Chapter I : Scope of the Convention</b>					
1	<p><b>Persons covered</b></p> <p><b>Resident of CS</b> - For application of treaty, a person has to be a resident of one or both of the Contracting States (CSs).  <b>Fiscally transparent entity</b> - Income derived by or through a fiscally transparent entity under the tax law of either CS to be considered to be income of a resident of a CS, to the extent such income is treated, for purposes of taxation by that State, as the income of a resident of that State.</p>				
2	<p><b>Taxes covered</b></p> <p><b>Taxes on income and capital</b> - The MCs apply to taxes on income and on capital imposed on behalf of a CS or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.  <b>Coverage of taxes</b> - Taxes on income and on capital covers:</p> <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 5px;"> <thead> <tr style="background-color: #ffcc00;"> <th style="width: 50%;">Taxes imposed</th> <th style="width: 50%;">Taxes included</th> </tr> </thead> <tbody> <tr> <td style="vertical-align: top;"> <ul style="list-style-type: none"> <li>On total <b>income</b></li> <li>On total <b>capital</b></li> <li>On <b>elements</b> of income or of capital</li> </ul> </td> <td style="vertical-align: top;"> <ul style="list-style-type: none"> <li>taxes on <b>gains from alienation</b> of movable or immovable property</li> <li>taxes on total amts of <b>wages or salaries</b> paid by enterprises</li> <li>taxes on <b>capital appreciation</b></li> </ul> </td> </tr> </tbody> </table>	Taxes imposed	Taxes included	<ul style="list-style-type: none"> <li>On total <b>income</b></li> <li>On total <b>capital</b></li> <li>On <b>elements</b> of income or of capital</li> </ul>	<ul style="list-style-type: none"> <li>taxes on <b>gains from alienation</b> of movable or immovable property</li> <li>taxes on total amts of <b>wages or salaries</b> paid by enterprises</li> <li>taxes on <b>capital appreciation</b></li> </ul>
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<b>Chapter II : Definitions</b>					
4	<p><b>Resident</b></p> <p><b>Resident of either CS</b> - A taxpayer has to demonstrate that he is a resident of one or both CSs to be able to gain access to a tax treaty and avail benefits thereunder.  <b>Meaning of "Resident of a Contracting State"</b>- Any person who, under the laws of that State, is liable to tax therein by reason of his:</p> <div style="text-align: center; margin: 10px 0;"> <pre> graph TD     Domicile --- Residence     Residence --- AnyOther[Any other similar criterion]     AnyOther --- PlaceMgmt[Place of Mgmt]     PlaceMgmt --- POI[Place of incorporation (POI)]     POI --- Domicile             </pre> </div> <p>This term, however, does not include any person who is liable to tax in that State in respect of only income from sources in that State or capital situated therein.  <b>Note</b> - <i>OECD MC does not contain reference to place of incorporation.</i></p> <p><b>Tie-breaker Rule</b>  <b>In case of individuals</b>  Where an individual is a resident of both CSs as per domestic tax laws of that CS, then, his residential status shall be determined by applying the tie-breaker rule in the foll sequence:</p> <div style="text-align: center; margin: 10px 0;"> <pre> graph LR     A[Permanent Home] --&gt; B[Centre of vital interests]     B --&gt; C[Habitual abode]     C --&gt; D[Nationality]     D --&gt; E[Mutual agrmt bet Competent Authorities of the CSs]             </pre> </div> <p><b>In case of companies</b></p> <ul style="list-style-type: none"> <li>Dual residence arises where one CS attaches importance to POI and the other CS to the POEM.</li> <li>The tie-breaker test involves a case by case approach considering the no. of tax avoidance cases involving dual resident Cos.</li> <li>Request has to be made by the tax payer through Article 25 (MAP).</li> <li>Competent Authorities will rely on range of factors to resolve the question of dual residency.</li> </ul>				

# INTERNATIONAL TAXATION ||

5	<p><b>Permanent establishment (PE)</b></p>	<p><b>Meaning of PE [Article 5(1)]</b></p> <ul style="list-style-type: none"> <li>• There should be an “<b>enterprise</b>” (Entr).</li> <li>• Such Entr should be carrying on a “<b>business</b>”;</li> <li>• There should be a “<b>place of business (POB)</b>”;</li> <li>• Such place of business (POB) should be at the <b>disposal of the Entr</b> (may be owned / rented but must be one which the Entr has the effective power to use);</li> <li>• The POB should be “fixed”, i.e., it must be established at a distinct place with a certain <b>degree of permanence</b></li> <li>• The business of the enterprise is carried on wholly or partially through this fixed POB.</li> </ul> <p>A PE does not exist unless all the aforesaid conditions are satisfied.</p> <p><b>Specific inclusions in the meaning of PE [Article 5(2)]</b></p> <div style="text-align: center;"> </div> <p><b>Expansion of scope of Agency PE</b></p> <ul style="list-style-type: none"> <li>• Agency PE targets activities done by a dependent agent (DA) of the Entr in the Source State (SS).</li> <li>• DAPE now includes instances when an agent habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts routinely concluded without material modification by the enterprise.</li> </ul> <p><b>PE of an Insurance Enterprise</b></p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr style="background-color: #FFD700;"> <th style="width: 50%;">UN MC</th> <th style="width: 50%;">OECD MC</th> </tr> </thead> <tbody> <tr> <td>UN MC has an additional Article 5(6) relating to insurance. An insurance Entr of a CS is deemed to have a PE in the other CS if it collects premiums in the territory of that other CS or insures risks situated therein through a person.</td> <td>In the absence of similar Article in the OECD MC, a PE of an insurance Entr is to be determined in accord with Article 5(1) or 5(2).</td> </tr> </tbody> </table>	UN MC	OECD MC	UN MC has an additional Article 5(6) relating to insurance. An insurance Entr of a CS is deemed to have a PE in the other CS if it collects premiums in the territory of that other CS or insures risks situated therein through a person.	In the absence of similar Article in the OECD MC, a PE of an insurance Entr is to be determined in accord with Article 5(1) or 5(2).		
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<b>Chapter III: Taxation of Income</b>								
7	<p><b>Business profits</b></p>	<p><b>Right of CS to tax business profits (BPs)</b></p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr style="background-color: #FFD700;"> <th style="width: 30%;">OECD MC</th> <th style="width: 70%;">UN MC</th> </tr> </thead> <tbody> <tr> <td colspan="2">BPs of an Entr can only be taxed by the Residence State (RS). Right of Source State (SS) to tax BPs of an enterprise only exists if a PE exists in its jurisdiction.</td> </tr> <tr> <td>Once a PE is proven, the SS can tax only such profits as are attributable to the PE</td> <td> <ul style="list-style-type: none"> <li>• The attribution principle is amplified by a <b>limited</b> Force of Attraction rule (FOA).</li> <li>• The FOA rule implies that when a foreign enterprise sets up a PE in SS, it brings itself within the fiscal jurisdiction of that State to such a degree that profits that the Entr derives therefrom, whether through the PE or not, can be taxed by it (i.e., the SS).</li> <li>• Accordingly, if the Entr carries on business in the other CS through a PE, the profits of the Entr may be taxed in the other CS but only so much of them as is attributable to:                             <ol style="list-style-type: none"> <li>(a) that PE;</li> <li>(b) sales in that other CS of goods or merchandise of the same or similar kind as those sold through that PE; or</li> <li>(c) other business activities carried on in that other State of the same or similar kind as those effected through that PE.</li> </ol> </li> </ul> </td> </tr> </tbody> </table>	OECD MC	UN MC	BPs of an Entr can only be taxed by the Residence State (RS). Right of Source State (SS) to tax BPs of an enterprise only exists if a PE exists in its jurisdiction.		Once a PE is proven, the SS can tax only such profits as are attributable to the PE	<ul style="list-style-type: none"> <li>• The attribution principle is amplified by a <b>limited</b> Force of Attraction rule (FOA).</li> <li>• The FOA rule implies that when a foreign enterprise sets up a PE in SS, it brings itself within the fiscal jurisdiction of that State to such a degree that profits that the Entr derives therefrom, whether through the PE or not, can be taxed by it (i.e., the SS).</li> <li>• Accordingly, if the Entr carries on business in the other CS through a PE, the profits of the Entr may be taxed in the other CS but only so much of them as is attributable to:                             <ol style="list-style-type: none"> <li>(a) that PE;</li> <li>(b) sales in that other CS of goods or merchandise of the same or similar kind as those sold through that PE; or</li> <li>(c) other business activities carried on in that other State of the same or similar kind as those effected through that PE.</li> </ol> </li> </ul>
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# INTERNATIONAL TAXATION

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12	<b>Royalties (Roy)</b>	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr style="background-color: #FFD700;"> <th style="width: 10%;"></th> <th style="width: 40%;">OECD MC</th> <th style="width: 50%;">UN MC</th> </tr> </thead> <tbody> <tr> <td style="vertical-align: top;">Right of CS to tax Roy. income</td> <td>Roy. arising in SS and beneficially owned by resident of the RS is taxable only in RS. Thus, <b>RS has exclusive right to tax royalty income.</b></td> <td>Roy may also be taxed in the SS. However, if the beneficial owner is a resident of the RS, the tax charged by SS <math>\leq</math> the specified %, (to be established thro bilateral negotiations) of gross royalty.</td> </tr> <tr> <td style="vertical-align: top;">Defn of Roy</td> <td>Defn of Royalty does <b>not</b> incl: (a) rentals for films/tapes used for radio/ TV broadcasting; and (b) rentals for industrial, commercial or scientific equipment.</td> <td>Royalty includes: (a) rentals for films or tapes used for radio or TV broadcasting and (b) equipment rentals like rentals for industrial, commercial or scientific equipment.</td> </tr> </tbody> </table>		OECD MC	UN MC	Right of CS to tax Roy. income	Roy. arising in SS and beneficially owned by resident of the RS is taxable only in RS. Thus, <b>RS has exclusive right to tax royalty income.</b>	Roy may also be taxed in the SS. However, if the beneficial owner is a resident of the RS, the tax charged by SS $\leq$ the specified %, (to be established thro bilateral negotiations) of gross royalty.	Defn of Roy	Defn of Royalty does <b>not</b> incl: (a) rentals for films/tapes used for radio/ TV broadcasting; and (b) rentals for industrial, commercial or scientific equipment.	Royalty includes: (a) rentals for films or tapes used for radio or TV broadcasting and (b) equipment rentals like rentals for industrial, commercial or scientific equipment.	
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12A	<b>FTS</b>	<p>In its 2017 update, the UN MC has inserted a specific article pertaining to Fees for Technical Services (FTS). There is no specific reference to FTS in OECD MC.</p> <p><b>Right of CS to tax FTS [UN Model]</b></p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr style="background-color: #FFD700;"> <th style="width: 10%;">Para of Article</th> <th style="width: 90%;">Right of CS to tax FTS</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">1</td> <td>Confers right to the RS to tax FTS. However, does not state that FTS is exclusively taxable in the RS.</td> </tr> <tr> <td style="text-align: center;">2</td> <td>Establishes the right of the SS to tax FTS in accordance with its domestic law, subject to limitation on the max. rate of tax, to be established thro bilateral negotiations, if the beneficial owner is a resident of the other CS.</td> </tr> </tbody> </table> <p><b>Meaning of FTS [UN Model]</b></p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 5px;">                     FTS means payts for managerial, technical or consultancy services  <b>Exclusions from the meaning of FTS:</b>                      i payt to an employee                      ii payt for teaching in an or by an educational institution                      iii payt by an individual for services for personal use                 </td> </tr> </table>		Para of Article	Right of CS to tax FTS	1	Confers right to the RS to tax FTS. However, does not state that FTS is exclusively taxable in the RS.	2	Establishes the right of the SS to tax FTS in accordance with its domestic law, subject to limitation on the max. rate of tax, to be established thro bilateral negotiations, if the beneficial owner is a resident of the other CS.	FTS means payts for managerial, technical or consultancy services <b>Exclusions from the meaning of FTS:</b> i payt to an employee ii payt for teaching in an or by an educational institution iii payt by an individual for services for personal use		
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13	<b>Capital gains</b>	<p>This Article provides for the taxation of income arising from transfer of a capital asset, including transfer of shares.</p> <p><b>Right of CS to tax income from Cap Gains</b></p> <ul style="list-style-type: none"> <li>• The right to tax cap gains may be exclusively with the RS, or shared between the RS and SS.</li> <li>• The Article does not specify what is a cap gain and how it is to be computed, this being left to the applicable domestic law.</li> <li>• The Article contains rules for taxation of gains from alienation of dif. assets such as immovable prop., immovable prop. forming part of a PE, ships &amp; aircrafts, etc.</li> <li>• In respect of shares, the 2017 OECD and UN MCs are identical. Rights are conferred to the SS if more than 50% of the value of shares during the preceding 365 days is derived from immovable property in such SS.</li> </ul>										

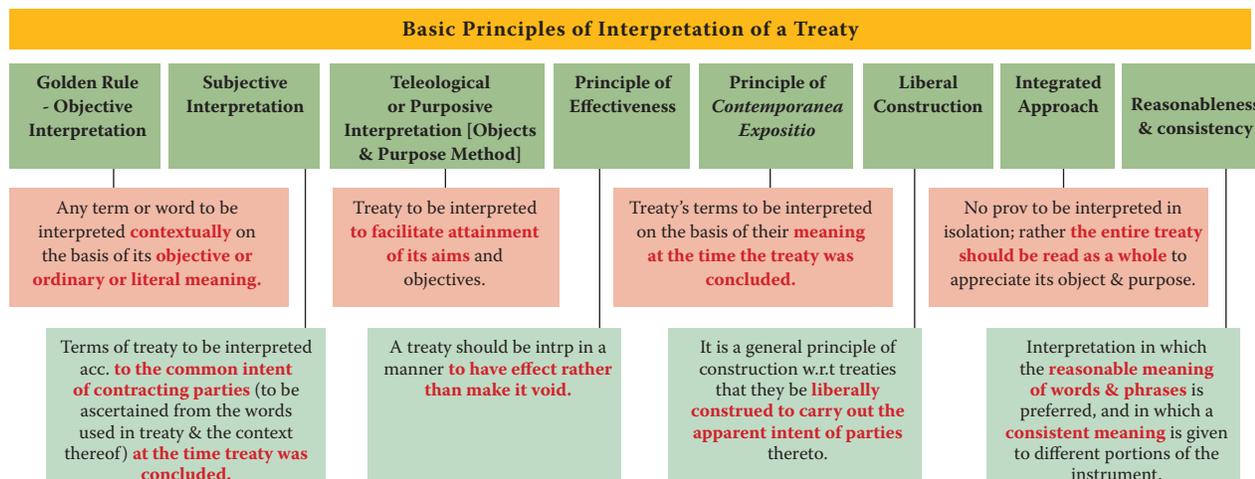
# INTERNATIONAL TAXATION ||

14	<b>Independent personal services (IPS)</b>	<p>This Article present only in the UN MC deals with the taxation of income derived by a person for professional or specified services which are offered in the SS through some presence.</p> <p><b>Right of CS to tax income from professional services [UN MC]</b></p> <table border="1" data-bbox="516 306 1453 642"> <tr> <td data-bbox="516 306 630 369"><b>Right of RS</b></td> <td colspan="2" data-bbox="630 306 1453 369">Income derived by a resident of a CS in respect of prof. services or other activities of an independent character is taxable only in the RS.</td> </tr> <tr> <td data-bbox="516 369 630 401"><b>Right of SS</b></td> <td colspan="2" data-bbox="630 369 1453 401">In the foll circumstances, however, IPS may also be taxed in the other CS (i.e., the SS):</td> </tr> <tr> <td data-bbox="516 401 630 432"></td> <td data-bbox="630 401 1040 432" style="text-align: center;"><b>Circumstance</b></td> <td data-bbox="1040 401 1453 432" style="text-align: center;"><b>Extent of income taxable in SS</b></td> </tr> <tr> <td data-bbox="516 432 630 537"></td> <td data-bbox="630 432 1040 537">If he has a fixed base regularly available to him in the SS for the purpose of performing his activities.</td> <td data-bbox="1040 432 1453 537">Only so much of the income as is attributable to that fixed base may be taxed in the SS.</td> </tr> <tr> <td data-bbox="516 537 630 642"></td> <td data-bbox="630 537 1040 642">If his stay in the SS is for a prd <math>\geq</math> 183 days in any 12 month prd commencing or ending in the fiscal year concerned.</td> <td data-bbox="1040 537 1453 642">Only so much of the income as is derived from his activities performed in the SS may be taxed in that State.</td> </tr> </table> <p><b>Definition of “Professional Services” [UN MC]</b> The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.</p> <p><b>Note</b> – OECD MC does not contain a separate article on IPS. The same is dealt with as “Business Profits (Article 7)” under the OECD MC.</p>	<b>Right of RS</b>	Income derived by a resident of a CS in respect of prof. services or other activities of an independent character is taxable only in the RS.		<b>Right of SS</b>	In the foll circumstances, however, IPS may also be taxed in the other CS (i.e., the SS):			<b>Circumstance</b>	<b>Extent of income taxable in SS</b>		If he has a fixed base regularly available to him in the SS for the purpose of performing his activities.	Only so much of the income as is attributable to that fixed base may be taxed in the SS.		If his stay in the SS is for a prd $\geq$ 183 days in any 12 month prd commencing or ending in the fiscal year concerned.	Only so much of the income as is derived from his activities performed in the SS may be taxed in that State.	
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21	<b>Other income (OI)</b>	<p>This Article deals with taxation of items of income which are not specifically taxable under any other specific Article [i.e., upto Article 20].</p> <table border="1" data-bbox="516 884 1453 1157"> <thead> <tr> <th data-bbox="516 884 699 905"></th> <th data-bbox="699 884 935 905">OECD MC</th> <th data-bbox="935 884 1453 905">UN MC</th> </tr> </thead> <tbody> <tr> <td data-bbox="516 905 699 957"><b>Right to tax OI</b></td> <td data-bbox="699 905 935 957">Right to tax is ordinarily with the RS.</td> <td data-bbox="935 905 1453 957">Contains an additional para, Article 21(3), which provides that SS may also tax other income</td> </tr> <tr> <td data-bbox="516 957 699 1157"><b>Right to tax income [other than income from immovable property] effectively conn. with PE</b></td> <td data-bbox="699 957 935 1157">Article 21(2) of both OECD and UN MC provides that for income effectively connected with a PE maintained in a CS by a resident of the other CS, taxation is governed by the provns of Art 7 (Business Profits).</td> <td data-bbox="935 957 1453 1157">Additionally, UN Model provides that if the aforesaid income is effectively connected with a fixed base situated in a CS by a resident of the other CS, taxation would be governed by the provns of Article 14 (IPS).</td> </tr> </tbody> </table>		OECD MC	UN MC	<b>Right to tax OI</b>	Right to tax is ordinarily with the RS.	Contains an additional para, Article 21(3), which provides that SS may also tax other income	<b>Right to tax income [other than income from immovable property] effectively conn. with PE</b>	Article 21(2) of both OECD and UN MC provides that for income effectively connected with a PE maintained in a CS by a resident of the other CS, taxation is governed by the provns of Art 7 (Business Profits).	Additionally, UN Model provides that if the aforesaid income is effectively connected with a fixed base situated in a CS by a resident of the other CS, taxation would be governed by the provns of Article 14 (IPS).							
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<b>Right to tax income [other than income from immovable property] effectively conn. with PE</b>	Article 21(2) of both OECD and UN MC provides that for income effectively connected with a PE maintained in a CS by a resident of the other CS, taxation is governed by the provns of Art 7 (Business Profits).	Additionally, UN Model provides that if the aforesaid income is effectively connected with a fixed base situated in a CS by a resident of the other CS, taxation would be governed by the provns of Article 14 (IPS).																
<b>Chapter V : Methods for the Elimination of Double Taxation</b>																		
23A/ 23B	<b>Exemption method/ Credit method</b>	<p>In many cases, the application of tax treaty may result into double taxation (DT) for tax payers. In such a case, Articles 23A and 23B provide for the mechanism through which tax credit/exemption may be available in the RS for taxes deducted in the SS.</p> <p><b>Two approaches for elimination of DT under MCs:</b></p> <table border="1" data-bbox="516 1314 1453 1409"> <thead> <tr> <th data-bbox="516 1314 1000 1346">Exemption method (Article 23A)</th> <th data-bbox="1000 1314 1453 1346">Credit method (Article 23B)</th> </tr> </thead> <tbody> <tr> <td data-bbox="516 1346 1000 1409">Tax <b>exemption</b> may be available in the RS for taxes deducted in the SS.</td> <td data-bbox="1000 1346 1453 1409">Tax <b>credit</b> may be available in the RS for taxes deducted in the SS.</td> </tr> </tbody> </table> <p>These methods are not mutually exclusive and there may be cases where a treaty may adopt exemption method for certain types of income and credit method for other incomes.</p> <p><b>Juridical DT and Economic DT:</b></p> <table border="1" data-bbox="516 1524 1453 1881"> <thead> <tr> <th data-bbox="516 1524 699 1545"></th> <th data-bbox="699 1524 1032 1545">Juridical DT</th> <th data-bbox="1032 1524 1453 1545">Economic DT</th> </tr> </thead> <tbody> <tr> <td data-bbox="516 1545 699 1629"><b>Meaning</b></td> <td data-bbox="699 1545 1032 1629">The same income or capital is taxable in the hands of the same person by more than one State</td> <td data-bbox="1032 1545 1453 1629">Two different persons are taxable in respect of the same income or capital</td> </tr> <tr> <td data-bbox="516 1629 699 1766"><b>Example</b></td> <td data-bbox="699 1629 1032 1766">FTS may be taxable in the hands of the recipient both in the RS as well as in SS, based on the domestic laws of the CSs.</td> <td data-bbox="1032 1629 1453 1766">In respect of dividend distributed by a Co., DDT may be payable by the Co. in SS, whereas the dividend may be taxable in the hands of the shareholder of the other CS, on the basis of his residence.</td> </tr> <tr> <td data-bbox="516 1766 699 1881"><b>Type of DT addressed by Art 23A &amp; 23B</b></td> <td data-bbox="699 1766 1032 1881">Articles 23A &amp; 23B address Juridical DT.</td> <td data-bbox="1032 1766 1453 1881">The Articles do not address Economic DT. If two States wish to solve problems of economic DT, they must do so in bilateral negotiations.</td> </tr> </tbody> </table>	Exemption method (Article 23A)	Credit method (Article 23B)	Tax <b>exemption</b> may be available in the RS for taxes deducted in the SS.	Tax <b>credit</b> may be available in the RS for taxes deducted in the SS.		Juridical DT	Economic DT	<b>Meaning</b>	The same income or capital is taxable in the hands of the same person by more than one State	Two different persons are taxable in respect of the same income or capital	<b>Example</b>	FTS may be taxable in the hands of the recipient both in the RS as well as in SS, based on the domestic laws of the CSs.	In respect of dividend distributed by a Co., DDT may be payable by the Co. in SS, whereas the dividend may be taxable in the hands of the shareholder of the other CS, on the basis of his residence.	<b>Type of DT addressed by Art 23A &amp; 23B</b>	Articles 23A & 23B address Juridical DT.	The Articles do not address Economic DT. If two States wish to solve problems of economic DT, they must do so in bilateral negotiations.
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Chapter VI : Special Provisions																	
25	<b>Mutual agreement procedure (MAP)</b>	<p>Where a tax payer believes that the treatment accorded by either or both CSs is not in accord with the provns of the tax treaty, this Article provides for dispute resolution through bilateral negotiations between competent authorities (CAS) of both CSs.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 20%;"></th> <th style="width: 40%; text-align: center;">OECD MC</th> <th style="width: 40%; text-align: center;">UN MC</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">Request for MAP</td> <td>The taxpayer may make a request to either CS</td> <td><b>Alt A</b> - Taxpayer has to approach RS or the country of his nationality <b>Alt B</b> - Reference to an arbitration process as part of MAP. The decision arrived at through the process is binding unless a person directly affected does not accept it.</td> </tr> <tr> <td style="text-align: center;">Time limit</td> <td>Stipulates a time limit of 2 years from the date when all the info reqd by the CAS in order to address the case need to be provided to both CAS.</td> <td>An arbitration may be initiated if the competent authorities (CAS) are unable to reach an agrmt on a case within 3 years from presentation of that case [Alt B]</td> </tr> <tr> <td style="text-align: center;">Who can request for Arbitration?</td> <td>Arbitration must be requested in writing by the person who initiated the case</td> <td>Arbitration must be requested by the CAS of one of the CS. Once such a request is made, the taxpayer will be notified [Alt B]</td> </tr> <tr> <td style="text-align: center;">Departure from arbitration by CAS</td> <td>No specific provision for departure from arbitration.</td> <td>The CAS may depart from the arbitration decision if they agree to do so within 6 months after the decision has been communicated to them [Alt B]</td> </tr> </tbody> </table>		OECD MC	UN MC	Request for MAP	The taxpayer may make a request to either CS	<b>Alt A</b> - Taxpayer has to approach RS or the country of his nationality <b>Alt B</b> - Reference to an arbitration process as part of MAP. The decision arrived at through the process is binding unless a person directly affected does not accept it.	Time limit	Stipulates a time limit of 2 years from the date when all the info reqd by the CAS in order to address the case need to be provided to both CAS.	An arbitration may be initiated if the competent authorities (CAS) are unable to reach an agrmt on a case within 3 years from presentation of that case [Alt B]	Who can request for Arbitration?	Arbitration must be requested in writing by the person who initiated the case	Arbitration must be requested by the CAS of one of the CS. Once such a request is made, the taxpayer will be notified [Alt B]	Departure from arbitration by CAS	No specific provision for departure from arbitration.	The CAS may depart from the arbitration decision if they agree to do so within 6 months after the decision has been communicated to them [Alt B]
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26	<b>Exchange of information (EOI)</b>	<p><b>Purpose of Article 26</b> In order to complete tax cases, a country may require certain info which may be available with the treaty partner. Article 26 provides for:</p> <ul style="list-style-type: none"> <li>• the info which may be exchanged</li> <li>• the manner in which such a request has to be made.</li> </ul> <p><b>Importance of Article 26:</b></p> <ul style="list-style-type: none"> <li>• facilitates effective exchange of information between CSs.</li> <li>• curtails cross-border tax evasion and avoidance,</li> <li>• curtails the capital flight that is often accomplished thro tax evasion &amp; avoidance. This is particularly relevant in the perspective of developing countries.</li> </ul> <p><b>Similar provisions contained in OECD and UN MCs</b></p> <ul style="list-style-type: none"> <li>• A CS cannot be expected to provide confidential financial info to another CS unless it has confidence that the info will not be disclosed to unauthorised persons.</li> <li>• A CS can avoid the EOI obligations by showing that the info pertains to communication between an attorney and his client which is protected from disclosure under domestic law.</li> <li>• Lack of interest or use in such info cannot, however, form the basis for a CS to not co-operate with the EOI obligations.</li> </ul>															

## CHAPTER 7: APPLICATION AND INTERPRETATION OF TAX TREATIES

Fig 7.1



# INTERNATIONAL TAXATION ||

Fig 7.2



Fig 7.3

Principles enunciated in the Vienna Convention on Law of Treaties		
Article No.	Article Heading	Principle enunciated
26	<i>Pacta Sunt Servanda</i> (in good faith)	Every treaty in force is <b>binding</b> upon the parties and must be followed by them in <b>good faith</b> .
28	Non-retroactivity of treaties	Unless otherwise provided, <b>treaties cannot have retrospective application</b> .
29	Territorial Scope of Treaties	Unless a different intention appears from the treaty, a treaty is <b>binding upon each party in respect of its entire territory</b> .
31	General Rule of Interpretation (intrptn)	<ul style="list-style-type: none"> <li>A treaty shall be intrptd in good faith in accordance with the <b>ordinary meaning</b> to be given to the terms in the <b>light of its object and purpose</b>.</li> <li>A special meaning shall be given to a term if the parties so intended.</li> </ul>
32	Supplementary means of intrp	Recourse may be had to <b>supplementary means of intrptn</b> incl. the <b>preparatory work</b> of the treaty and the circum. of its conclusion, in order to confirm the meaning resulting from the application of Article 31, or to determine the meaning when the intrp according to Article 31: <ul style="list-style-type: none"> <li>(a) leaves the meaning <b>ambiguous or obscure</b>; or</li> <li>(b) leads to a result which is <b>manifestly absurd or unreasonable</b>.</li> </ul>
33	Intrp of Treaties Authenticated in two or more languages	When a treaty has been authn. in two or more languages, the text is <b>equally authoritative</b> in each language, unless the treaty provides or the parties agree that, in case of divergence, a particular text shall prevail.
34	General Rule reg. third states	A treaty does not create either obligations or rights for a third State without its consent.
60	Termination or Suspension of operatn of treaty as conseq. of breach	A <b>material breach of a bilateral treaty by one of the parties</b> entitles the other to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part.
61	Supervening impossibility of performance	<div style="text-align: center; border: 1px solid black; padding: 5px;"> <b>Impossibility of performance</b> </div> <div style="display: flex; justify-content: space-around; margin-top: 5px;"> <div style="border: 1px solid black; padding: 5px; width: 45%;">May be invoked</div> <div style="border: 1px solid black; padding: 5px; width: 45%;">May not be invoked</div> </div> <div style="text-align: center; margin-top: 5px; background-color: #fff9c4; padding: 5px;">           as a ground terminating, withdrawing from or suspending the operation of a treaty         </div> <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div style="border: 1px solid black; padding: 5px; width: 45%;">           if impossibility results from <b>permanent disappearance or destruction of an object</b> indispensable for execution of the treaty. If impossibility is temporary, it may be invoked only as a ground for suspending its operation.         </div> <div style="border: 1px solid black; padding: 5px; width: 45%;">           if impossibility is the result of a breach by that party either of <b>an obligation</b> under the treaty or of any other <b>international obligation</b> owed to any other party thereto         </div> </div>
62	Fundamental change (Fund. chg) of circumstances (circum.)	<div style="text-align: center; border: 1px solid black; padding: 5px;">           A fund.chg of circum. which has occurred with regard to those existing at the time of the concl. of a treaty, and which was not foreseen by the parties         </div> <div style="display: flex; justify-content: space-around; margin-top: 5px;"> <div style="border: 1px solid black; padding: 5px; width: 45%;">May be invoked</div> <div style="border: 1px solid black; padding: 5px; width: 45%;">May not be invoked</div> </div> <div style="text-align: center; margin-top: 5px; background-color: #fff9c4; padding: 5px;">           as a ground terminating, withdrawing of a treaty         </div> <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div style="border: 1px solid black; padding: 5px; width: 45%;"> <ul style="list-style-type: none"> <li>If existence of those circum constituted <b>an essential basis of the consent</b> of the parties to be bound by the treaty; and</li> <li>the effect of the change is radically to transform the extent of obligations still to be performed under the treaty</li> </ul> </div> <div style="border: 1px solid black; padding: 5px; width: 45%;"> <ul style="list-style-type: none"> <li>if the treaty establishes <b>a boundary</b>; or</li> <li>if fund. chg is the result of a breach by the party invoking it either of <b>an obligation</b> under the treaty or of any other <b>international obligation</b> owed to any other party to the treaty</li> </ul> </div> </div>
64	Emergence of new peremptory norm of general international law	If a new peremptory norm of general international law emerges, any existing treaty which is in conflict with that norm becomes <b>void and stands terminated</b>

## CHAPTER 8 : FUNDAMENTALS OF BEPS

Base Erosion and Profit Shifting (BEPS) refers to tax planning strategies that exploit gaps and mismatches in tax rules to make profits ‘disappear’ for tax purposes or to shift profits to locations where there is little or no real activity but the taxes are low, resulting in little or no overall corporate tax being paid. This has become a critical issue since governments have to cope with less revenue and a higher cost to ensure compliance. In February 2013, the OECD published a report on “Addressing BEPS” iterating the need for analysing the issue of tax base erosion and profit shifting by global corporation, followed by a draft BEPS Action Plan in July 2013 which came to final fruition in October 2015. The BEPS action plan identifies fifteen actions to address BEPS in a comprehensive manner. Provisions have been incorporated in Indian Tax Laws in line with many of the action plans of BEPS.

Fig 8.1

BEPS Action Plan 1 : Addressing the challenges of the digital economy			
OECD Recommendation	Provision incorporated in Indian Tax Laws		
i	Modifying existing PE rule to provide whether an enterprise engaged in fully de-materialised digital activities would constitute a PE if it maintained significant digital presence in another country's economy	<b>“Significant economic presence” (SEP) to constitute “business connection”</b>	
		<b>Upto A.Y.2018-19</b>	<b>From A.Y.2019-20</b>
		As per sec 9(1)(i) of the IT Act, 1961, as it stood prior to amendment by the FA, 2018, physical presence in India was necessary to fall within the scope of “business connection” to attract deemed accrual provisions for income of NR to be subject to tax in India.	The FA, 2018 has amended section 9(1)(i) to provide that <b>significant economic presence of NR in India</b> would also constitute <b>business connection</b> from A.Y.2019-20.
ii	A virtual fixed place of business PE when the enterprise maintains a website on a server of another enterprise located in a jurisdiction & carries on business thro that website.	<b>Equalisation Levy [Ref. Fig. 5.1]</b>	
iii	Imposition of a final withholding tax on certain payts for digital goods or services provided by a foreign e-commerce provider	Chapter VIII of the Finance Act, 2016 provides for Equalisation levy@6% of the amt of consdn for specified services recd or receivable by a NR not having PE in India or providing services not effectively connected with PE in India, from: <ul style="list-style-type: none"> <li>• a resident in India who carries on business or profn or</li> <li>• from a NR having PE in India.</li> </ul> The Resident or NR having PE in India has to deduct EL@6% from consdn for specified services paid to NR and remit the same to the Central Govt. within the prescribed time.	
iv	Imposition of a EL on consideration for certain digital transactions received by a NR from a resident or NR having PE in the other CS		

Fig 8.2

BEPS Action Plan 3: Strengthen CFC rules	
OECD Recommendation	Provisions incorporated in the Income-tax Act, 1961
<p>CFCs are foreign subsidiaries in tax havens in which the taxpayer has controlling interest. Since tax is generally levied on distributed dividend, tax in parent country could be avoided until the tax haven country actually paid dividend to the shareholders. The OECD regards CFC Rules as important in tackling BEPS and has made a series of best practice recommendations in relation to the building blocks of an effective CFC regime.</p> <div style="text-align: center;"> </div>	<p>There are no CFC Rules in the IT Act, 1961. However, Sec 115BBD has been inserted in IT Act, 1961 to encourage repatriation of profits by IndCos which have significant voting power in foreign Cos.</p> <div style="text-align: center;"> </div>

# INTERNATIONAL TAXATION

Fig 8.3

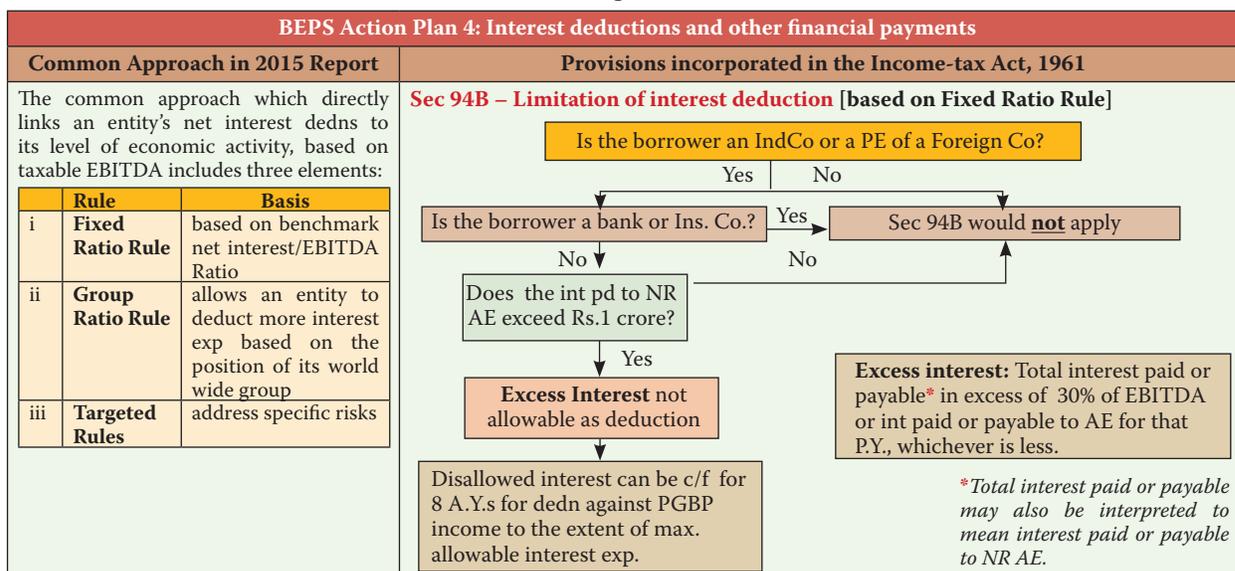


Fig 8.4

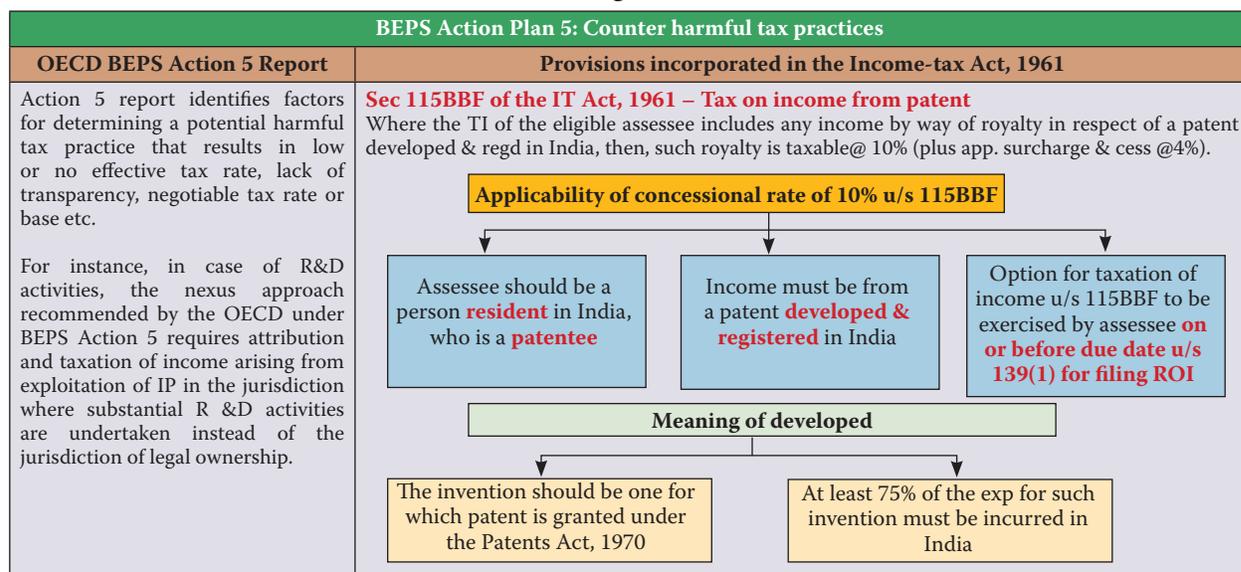


Fig 8.5

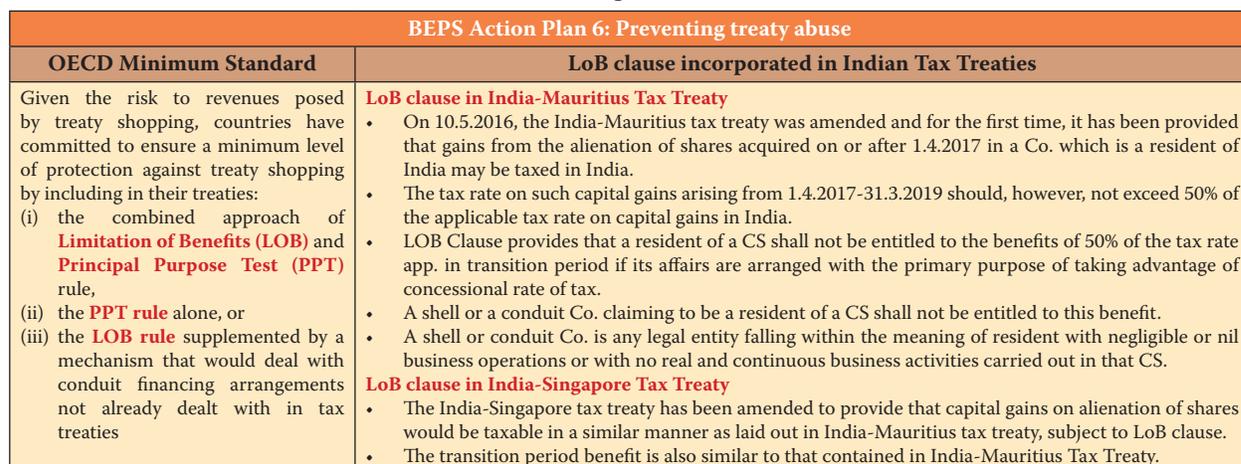


Fig 8.6

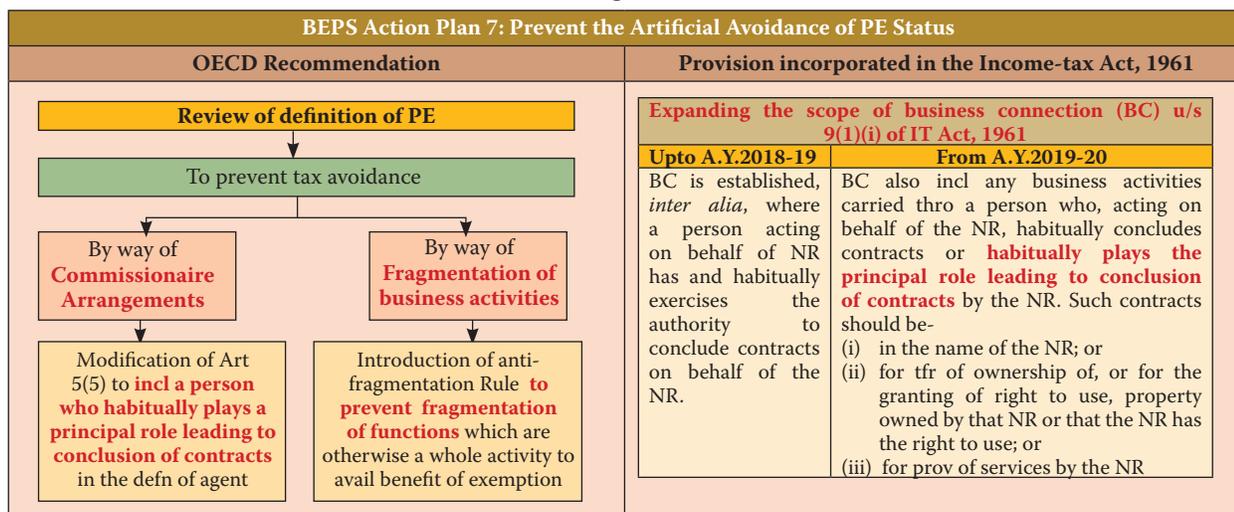


Fig 8.7

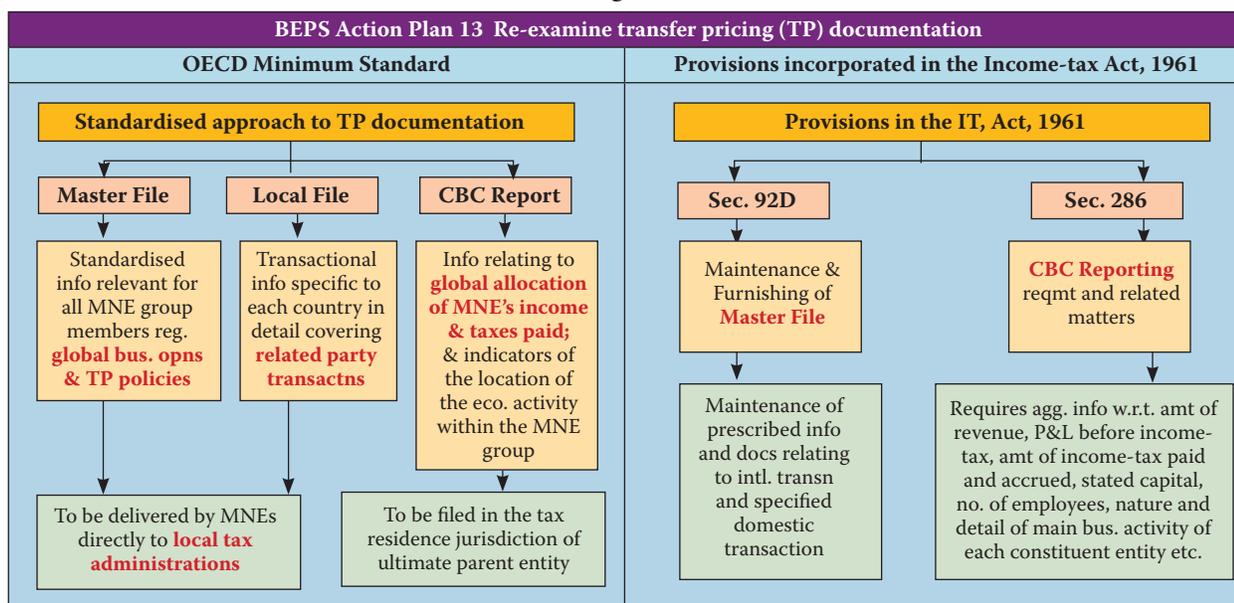


Fig 8.8

