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Double Taxation: A Closer Look at the Concept

How the same income can be taxed twice across borders, and the reliefs available to prevent it, covering:

a. Jurisdictional and economic double taxation, explained with examples;

b. Bilateral relief under the erstwhile Section 90 (now Section 159 of the Income-tax Act, 2025) versus unilateral relief under the erstwhile Section 91 (now Section 160), and the TRC/Form 10F (now Form 41) compliance it requires;

c. How Double Taxation Avoidance Agreements (DTAAs) reduce cross-border tax burdens; and

d. The 2023 Supreme Court ruling narrowing the Most Favoured Nation (MFN) clause

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Understanding Double Taxation

Double taxation arises when the same income is taxed more than once, either in the hands of the same taxpayer across two countries, or in the hands of two different taxpayers connected by the same underlying income. It falls into two broad categories — **jurisdictional** and **economic** double taxation.

Jurisdictional Double Taxation

► Income is taxed in both the source country and the residence country.
► Example: an Indian resident receives dividend income from a U.S.-based company — the USA, as the source country, withholds 15% tax on the dividend, while India, as the residence country, taxes the same dividend as part of global income.

Economic Double Taxation

► Two different taxpayers are taxed on the same underlying income.
► Example: Company A in Country X earns a profit of ₹10,00,000 and pays corporate income tax at 30% (₹3,00,000); it then distributes dividends of ₹7,00,000 to shareholder Person B in Country Y, who is taxed again on the dividend at 20% (₹1,40,000).

Eliminating Double Taxation — erstwhile Sections 90 & 91 (now Sections 159 & 160)

Feature	Erstwhile Sec. 90 — Bilateral Relief	Erstwhile Sec. 91 — Unilateral Relief
DTAA required	Yes — a DTAA must exist with the foreign country	No — applies even when no DTAA exists
Form of relief	Tax credit, exemption, or reduced rates as per the DTAA	Tax credit limited to the lower of Indian or foreign tax
Scope	Country-specific, based on the applicable DTAA	Applies globally, irrespective of any DTAA

Note. Treaty relief is not automatic — the erstwhile Section 90(4)/(5), now Section 159(8) of the Income-tax Act, 2025 read with Rule 75 of the Income-tax Rules, 2026, requires a Tax Residency Certificate and Form 10F (e-filed since 16 July 2022), replaced by Form 41 from 1 April 2026, before the treaty rate can be claimed; without these, tax is withheld at the higher domestic rate.

Tax Residency Certificate (TRC)

► Official proof of residence in the treaty country
► Issued by that country's own tax authority
► Indian authorities do not issue it to non-residents
► Must cover the Indian tax year of the income
► Format and process vary from country to country
► Needed before the payer applies the treaty rate
► Keep it filed with the Form 41 acknowledgement

Form 41 in India (erstwhile Form 10F)

► For non-residents claiming a DTAA rate in India
► Basis: Sec. 159(8) with Rule 75 of the 2026 Rules
► Erstwhile Form 10F under Sec. 90(5), Rule 21AB
► Filed only online; the paper route is now closed
► State treaty article, TIN, address and period
► Attach the TRC as the supporting evidence
► No PAN means a DSC is mandatory
► Handover the acknowledgement to the Indian payer
► File afresh for each tax year, before payment

DTAAs: Reducing Cross-Border Tax Burdens

A Double Taxation Avoidance Agreement (DTAA) is a treaty between two or more countries that helps taxpayers avoid paying tax twice on the same income. India has signed DTAAs with over **90 countries** . A few illustrative provisions:

Country	Key feature of the DTAA
USA	Tax credits and reduced rates on interest and royalties — e.g. instead of 30%, the USA withholds 15% on royalty income
UK	Includes specific provisions for dividends, interest, and pensions
Singapore	Capital gains exemption on certain investments
UAE	No tax in the UAE; relief given in India for income already taxed there
Germany	Avoidance of double taxation using the credit method

Objectives of DTAAs

- ► Prevent double taxation
- ► Promote international trade and investment
- ► Clarify taxing rights between countries
- ► Ensure fair tax treatment

Benefits of DTAAs

- ► Tax credit or exemption
- ► Reduced withholding tax
- ► Prevention of fiscal evasion
- ► Legal certainty

Recent Development: The MFN Clause and the Nestlé Ruling

Several Indian DTAAs (e.g. with the Netherlands, France, and Switzerland) carry a Most Favoured Nation (MFN) clause, promising India's treaty partner the same lower rate or narrower scope later given to an OECD-member country. In **AO (International Taxation) v. Nestlé SA** (19 October 2023), the Supreme Court held that an MFN clause takes effect only once India issues a specific notification under the erstwhile Section 90(1), now Section 159(1) of the Income-tax Act, 2025 — not merely because the third country later joined the OECD. Switzerland has since withdrawn its concessional 5% dividend withholding rate for Indian residents with effect from 1 January 2025, reverting to the treaty rate of 10%.

The takeaway. Double taxation can hamper cross-border business activity. DTAAs minimise this burden by providing tax certainty, reducing withholding taxes, and promoting international cooperation — but claiming that relief requires careful compliance, and treaty terms can shift with judicial interpretation.

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