Issues relating to taxation of dividend income

Direct Tax Refresher Course – Western India Regional Council of the Institute of Chartered Accountants of India

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Speaker:

CA Anish Thacker

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General Overview

- Up to 1 June 1997, dividends distributed by domestic companies was taxable in the hands of the hands of the shareholders on distribution.
- Subsequently, by way of amendment brought by Finance Act, 1997, the concept of Dividend Distribution Tax [DDT] was introduced which shifted taxability in the hands of the domestic company and consequently, made the dividend exempt in the hands of the shareholder.
- Subsequently, DDT was scrapped by the Finance Act, 2002 w.e.f. 1 April 2002 making dividend again taxable in the hands of the shareholders subject to certain deductions.
- However, DDT was re-introduced by the Finance Act, 2003 w.e.f. AY 2004-05 and continued to apply until Finance Act, 2020 again scrapped the levy.
- Form FY 2020-21 onwards - Dividend income is taxable in the hands of the shareholders. Further, for removal of cascading effect, deduction is allowed in respect of certain intercorporate dividends
- While DDT regime had the advantage of ease of tax collection at time of declaration of dividend by company, it significantly increased the cost of doing business in India; especially for foreign investors, as there were issues on availing credit of DDT in their home jurisdiction (given that DDT was a tax on the company and not on the shareholders) and thereby leading to double taxation in many cases. The effective DDT rate of 20.56% was also significantly higher than the maximum rate at which India would have had the right to collect tax under most of the relevant Double Taxation avoidance agreements.

General Overview

- Income-tax rates on the dividend income for each class of Resident tax-payers is as below

Resident shareholder	Tax Rate
Individual/ HUF	Depending on the slab rate - Maximum Marginal tax of 35.88% (Surcharge on dividend is capped at 15%) [Base tax of 30%+ Surcharge of 15%+ HEC of 4%]
Trust	35.88% (same as above)
LLP/ Partnership firm	Maximum Marginal tax of 34.94% (Surcharge applicable at the rate of 12%) [Base tax of 30%+ Surcharge of 12%+ HEC of 4%]
Indian company from any other Indian Company	**Companies not opted concessional tax regime under section 115BAA and 115BAB (i.e. Tax rate with incentives and exemptions):** Maximum Marginal tax of 34.94% (if total income is above Rs.10 Crore) [Base tax of 30%+ Surcharge of 12%+ HEC of 4%] Maximum Marginal tax of 33.39% (If the total income exceeds Rs. 1 crore but is less than Rs.10 Crore) [Base tax of 30%+ Surcharge of 7%+ HEC of 4%] Maximum Marginal tax of 31.20% (If the total income does not exceed Rs. 1 crore) [Base tax of 30% + HEC of 4%] **Companies opted concessional tax regime under section 115BAA and 115BAB (i.e. Tax rate without incentives and exemptions) – 25.17** **Companies opted concessional tax regime under section 115BA of the Act (i.e. Tax rate without incentives and exemptions):** Maximum Marginal tax of 29.12% (if total income is above Rs.10 Crore) [Base tax of 25%+ Surcharge of 12%+ HEC of 4%] Maximum Marginal tax of 27.82% (If the total income exceeds Rs. 1 crore but is less than Rs.10 Crore) [Base tax of 25%+ Surcharge of 7%+ HEC of 4%] Maximum Marginal tax of 26% (If the total income does not exceed Rs. 1 crore) [Base tax of 25% + HEC of 4%] -The dividend income, however, will also be subjected to Minimum Alternate Tax ('MAT'), at 17.47% only for companies who have not opted for concessional tax regime. -Deduction under section 80M of the Act is also available for companies which have opted for lower corporate tax rate under section 115BAA/ 115BAB of the Act

Section 2(22) – Definition and Deemed Dividend

- Dividend', in its ordinary connotation, means the sum paid to or received by a shareholder proportionate to his shareholding in a company out of the total sum of profit distributed.

- Section 2(22) defines dividend in a inclusive sense while envisaging 5 different deemed situations
  - Objective: To prevent distribution by closely-held companies, of accumulated profits as loans/ advances to shareholders/ concerns instead of dividend to avoid tax.
  - Legal fiction – Strict construction – Logical conclusion – Purpose and object to be seen

- Section 2(22)(a) - *any distribution by a company of accumulated profits, whether capitalised or not, if such distribution entails the release by the company to its shareholders of all or any part of the assets of the company*

- Section 2(22)(b) - *any distribution to its shareholders by a company of debentures, debenture-stock, or deposit certificates in any form, whether with or without interest, and any distribution to its preference shareholders of shares by way of bonus, to the extent to which the company possesses accumulated profits, whether capitalised or not*

- Section 2(22)(c) - *any distribution made to the shareholders of a company on its liquidation, to the extent to which the distribution is attributable to the accumulated profits of the company immediately before its liquidation, whether capitalised or not*

- Section 2(22)(d) - *any distribution to its shareholders by a company on the reduction of its capital, to the extent to which the company possesses accumulated profits which arose after the end of the previous year ending next before the 1st day of April, 1933, whether such accumulated profits have been capitalised or not*

Section 2(22) – Definition and Deemed Dividend (Contd.)

- Section 2(22)(e) - *any payment by a company, not being a company in which the public are substantially interested, of any sum (whether as representing a part of the assets of the company or otherwise) made after the 31st day of May, 1987, by way of advance or loan to a shareholder, being a person who is the beneficial owner of shares (not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits) holding not less than ten per cent of the voting power, or to any concern in which such shareholder is a member or a partner and in which he has a substantial interest (hereafter in this clause referred to as the said concern) or any payment by any such company on behalf, or for the individual benefit, of any such shareholder, to the extent to which the company in either case possesses accumulated profits*

Section 2(22) – Definition and Deemed Dividend (Contd.)

- Accumulated profits:
  - includes all profits of the company up to the date of distribution or payment
  - for 2(22)(c) - includes all profits of the company up to the date of liquidation, but shall not include any profits of the company prior to three successive previous years immediately preceding the previous year in which such acquisition took place where the liquidation is consequent to the compulsory acquisition by the Government/ corporation owned or controlled by the Government under any law,
  - for amalgamated companies - accumulated profits, whether capitalised or not, or loss, as the case may be, and increased by the accumulated profits, whether capitalised or not, of the amalgamating company on the date of amalgamation.

Section 2(22) – Exclusions from the definition

- However, dividend does not include the following:
  - distribution made in accordance with 2(22)(c) or 2(22)(d) in respect of any share issued for full cash consideration, where the holder of the share is not entitled in the event of liquidation to participate in the surplus assets;
  - distribution made in accordance with 2(22)(c) or 2(22)(d) in so far as such distribution is attributable to the capitalised profits of the company representing bonus shares allotted to its equity shareholders after the 31st day of March, 1964 but before 1st day of April, 1965;
  - any advance or loan made to a shareholder or the said concern by a company in the ordinary course of its business, where the lending of money is a substantial part of the business of the company;
    - Substantial means considerable, i.e., not trivial or inconsequential (but does not mean not in majority or > 50%) – Various factors to be looked into - Factors (indicative) - Objects of company, Deployment of funds, capital employed, Pattern of assets/income composition over a period of years, primary activity, quantum of income not relevant, etc.
    - **Mrs Rekha Modi v. ITO [2007] 13 SOT 512 (Delhi)** - held that the ratio of money lending business during the relevant previous year should be 20% or more
    - **CIT v. Parle Plastics Pvt Ltd [2011] 332 ITR 63 (Bombay HC)** - held that substantial part does not necessarily mean major part of business, i.e. more than 50% of the company's business
  - any dividend paid by a company which is set off by the company against the whole or any part of any sum previously paid by it and treated as a dividend within the meaning of 2(22)(e), to the extent to which it is so set off;
  - any payment made pursuant to buy-back of shares; and
  - any distribution of shares pursuant to a demerger by the resulting company to the shareholders of the demerged company (whether or not there is a reduction of capital in the demerged company).

Section 2(22) – Issues

- Distribution vs. Payment:
  - Clause (a) to (d) of section 2(22) take into account ‘distributions’ made by a company for the purpose of dividend
  - However, clause (e) envisages certain types of a ‘payments’ made by a company
  - The term ‘distribution’ connotes two acts, (i) division, and (ii) a delivery. The term ‘payment’ connotes something that is given, and it need not have been first apportioned and then disbursed
  - The two expressions imply different meanings and are not synonymous. A distribution may result in an eventual payment, but payment is not always a result of distribution
  - ‘Distribution’ is a division amongst several persons, while in the case of ‘payment’, the recipient may be a single person

- Shareholder to be registered or beneficial?
  - Both – **Rameshwarlal Sanwarmal v. CIT [1980] 122 ITR 1 (SC) & ACIT v. Bhaumik Colour (P) Ltd [2008] 313 ITR 146 (ITAT Mumbai)**
  - Indirect shareholder?
    - Authority for Advance Rulings in case of Madura Coats Private Limited, In re 274 ITR 609, held that in the absence of any direct share holding by the shareholder of the company giving loan in the share capital of the borrower, the loan could not be treated as deemed dividend

- Who is beneficial owner of shares?
  - ‘Beneficial owner’ can be interpreted as a person
    - entitled to the financial benefits arising from the assets of the company
    - with whom real rights in shares are transferred and does not cover cases where the owners of the real rights/ powers attached to shares remain the same
    - being different from the person holding controlling interest. An ultimate parent company may have controlling interest, but not beneficial ownership
  - Loan granted to a beneficial owner who is not a registered shareholder of the company should not fall within the purview of section 2(22)(e)

Section 2(22) – Issues (Contd.)

- Whether Partnership Firm can be treated as the shareholder - though it is not the registered shareholder?
  - Yes – Held in the case of **CIT v. National Travel Service (347 ITR 305) (Delhi HC) and CIT v. Bharati Overseas Trading Co (349 ITR 52), contrary to Rameshwarlal Sanwarmal v. CIT [1980] 122 ITR 1 (SC)**
    - Held that, the argument that a firm cannot be treated as shareholder only because the shares are held in the names of its partners is not acceptable

- Central Board of Direct Taxes (CBDT) Circular No 495 dated 22 September 1987 explained that the dividend is taxable in the hands of the 'borrower' where certain conditions are satisfied
  - Departmental Circular is not binding on the taxpayer if the same does not state the right proposition of law

- Loan vs. Advance:
  - What is a 'loan' ?
    - Positive act of lending – acceptance by other side of the money as loan – generally carries interest – obligation of repayment **[CIT vs. Raj Kumar [2010] 228 CTR 506 (Del)]**
    - Dictionary meaning - 'Loan' means a lending, delivery by one party to and receipt by another party of sum of money upon agreement, express or implied, to repay it with or without interest
    - Every loan is a debt but every debt may not be a loan **[Bombay Steam Navigation Company P. Ltd v. CIT [1965] 56 ITR 52 (SC)]**

  - What is an 'advance'?
    - Advance wider term than loan and may or may not include lending generally
    - For the purpose of Section 2(22)(e), 'advance' to be read in conjunction with 'loan'
    - *Noscitur a sociis* - Advance which carries with it an obligation of repayment is only covered

Section 2(22) – Issues (Contd.)

- Advance or loan – Business/ commercial transactions:
  - Payment for purchase or services utilized or paying on account of any other ground where such payments made in the ordinary course of business?
    - Business transactions with related concerns not covered – **NH Securities Ltd v. DCIT [2007] 11 SOT 302 (ITAT Mum)**
  - Is trade advance covered?
    - No - **[CIT v. Raj Kumar [2010] 228 CTR 506 (Del)]**
  - Is advance towards purchases/ job-work covered?
    - No – **CIT v. Nagin Das M. Kapadia [1989]177 ITR 393 (Bom)]; CIT v.Raj Kumar [2010] 228 CTR 506 (Del)]; Ambassador Travels Pvt. Ltd. [318 ITR 376 (Del)]**
  - Advance for modernization of plant/machinery which was to be adjusted against future dues/bills of ancillary unit of group company?
    - No - **Creative Dyeing & Printing Pvt. Ltd. [2009-TIOL-532-HC-DEL]**
  - Is loan taxable even if loan carries commercial rate of interest?
    - Yes

Section 2(22) – Issues (Contd.)

- Advance or loan – Other Scenarios:
  - Is payment in kind covered?
    - Yes - Payment representing a part of assets by way of loan/advance covered – **M. D. Jindal vs. CIT [1987] 164 ITR 28 (Cal)**
  - Loan repaid before the end of previous year – Is the loan given during the year taxed?
    - Yes unless it is set off against the advance paid earlier taxed as dividend **Tarulata Shyam [1977]108 ITR 345 (SC)**
  - Should loan taken prior to becoming a shareholder be liable to tax under section 2(22)(e)?
    - No - **Sagar Sahil Investment (37 SOT 1) (Mum)**
  - Whether share application can be treated as deemed dividend in the hands of shareholder?
    - No - So long as the intention of payment is towards the allotment of shares, the same cannot be deemed as 'loan or advance' unless the mala fide intentions are exposed - **DCIT v. Vikas Oberoi [ITA 4362 to 4365/MUM/2011 dated 20 March 2013]**
    - Yes – Where transaction was treated as sham - **CIT v. Sunil Chopra [2011] 242 CTR 498 (Del)**

Section 2(22) – Issues (Contd.)

- Intercompany Deposits:
  - Factors relevant to determine whether the payment made advance / deposit
  - Nomenclature not important – ICD not a legal term, it is commercial word. It can be loan or deposit. It is a fine line of distinctions and depends on facts and circumstances
  - Taxability of ICD for the purpose of deemed dividend
    - Deposit cannot be considered as a loan or an advance - **Seamist Properties (P) Ltd (1 SOT 142) (Mum)**
    - ICD's are considered to be different from loans and advances and hence no deemed dividend implication - **Bombay Oil Industries Ltd [(2009) 28 SOT 383 (Mum)**
    - In rendering the above decision, reliance placed on the decision of the **Special Bench in the case of Gujarat Gas Financial Services Ltd. v. Asst. CIT 115 ITD 218 (Ahd.) (SB)** where in the context of Interest-tax Act it was held that deposits cannot be equated with loans or advances but now has been set aside by Gujarat HC
    - Further ,based on rule of noscitur a sociis, ICD may qualify as an 'advance' since it carries obligation of repayment
    - Issue is prone to litigation

- Any payment on behalf of or for individual benefit of such shareholder:
  - A company obtains a loan from an unrelated company in which assessee has substantial interest and thereafter the former company provides loan to the shareholder of later Company. Is deemed dividend applicable?
    - Yes - If there is correlation between the loan received by the former company and provided to the shareholder of the later company - **Nandlal Kanoria v. CIT [1980] 122 ITR 405 (Cal.)**

  - Whether a loan obtained by an employee of the company as per the instruction of the managing director who is also a shareholder and in turn passes on the loan to the same managing director attracts deemed dividend?
    - Yes – Managing director who is also a shareholder has received benefit
      CIT Madras-I v. L. Alagusundaram Chettiar [1976] 109 ITR 508 (Chennai)

Section 2(22) – Issues (Contd.)

- Accumulated Profits:
  - Do accounts need to be closed every time?
    - Uniform accrual of profits?
    - Fiction to be carried to logical conclusion – Fair to assume that profits accrued on day-to-day basis – Yearly profit to be apportioned
    - Not applicable if demonstrated that profit did not arise evenly
  - Adjustments to be made?
    - Business profits do not accrue from day to day or month to month and are ascertained by comparing assets at two stated points
    - Adjustment for all other profits accrued upto relevant date
    - Thus, current year's business profits not included but adjustments to be made
  - If shareholding is 30%, can deemed dividend be restricted to 30% of accumulated profits?
    - No - Held in the case of **CIT v. Arati Debi and others [1977] 111 ITR 277 (Cal)**
  - Loan repaid cannot be credited to accumulated profits
    - Held in the case of **CIT v. PK Badiani [1970] 76 ITR 369 (Bom)**

Section 2(22) – Issues – Deemed Dividend – Taxability under tax treaties

- 2(22)(e) - Taxability – in the hands of the shareholder or the concern:
  - Statute ambiguous
  - **National Travel Services [2018] 89 taxmann.com 332 (SC):**
    - issue of whether shareholder must be a 'registered shareholder' and also a 'beneficial shareholder' to trigger deemed dividend taxability us. 2(22)(e) referred to larger bench
    - 'prima facie' opines that the co-ordinate bench ruling in **Ankitech Pvt. Ltd. (Civil Appeal No. 3961 of 2013 dated 5 October 2017)** where it confirmed non taxability for loan recipient requires reconsideration
    - firstly, SC examines the legislative history of 'deemed dividend' provisions including provisions under 1922 Act, perusing 1988 amendment to Sec. 2(22)(e), observes that under amended provisions, a 'shareholder' is a person who is the beneficial owner of shares and a new category was added to the definition by introducing concerns in which such shareholder is a member or partner;
    - then takes note of Delhi HC rulings in Ankitech Pvt. Ltd. (approved by co-ordinate bench) and Madhur Housing and Development Company wherein it was held that the expression 'shareholder' would continue to mean a registered shareholder even after the amendment;
    - further, notes that HC in present assessee's case had held that the expression 'being a person who is a beneficial owner of shares' would be in addition to the shareholder first being a registered shareholder of the Company, but it had ruled that a partnership firm can be treated as a shareholder even if its not a registered shareholder
    - observes that 'it is very difficult to accept the reasoning of the Division Bench'
    - remarks that the whole object of the amended provision would be stultified if the Division Bench judgment were to be followed. Ankitech's case, in stating that no change was made by introducing the deeming fiction insofar as the expression 'shareholder' is concerned is, according to us, wrongly decided."
    - explains that one cannot be a registered owner and beneficial owner in the sense of a beneficiary of a trust or otherwise at the same time
    - further, referring to additional condition of beneficial owner holding not less than 10% of voting power, remarks that this is another indicator that the amendment speaks only of a beneficial shareholder who can compel the registered owner to vote in a particular way"
    - Observing that 'To state, therefore, that two conditions have to be satisfied, namely, that the shareholder must first be a registered shareholder and thereafter, also be a beneficial owner is not only mutually contradictory but is plainly incorrect', places the matter before the Chief Justice to constitute an appropriate Bench of three Judges in order to have a relook at the entire question.

Section 2(22) – Issues – Deemed Dividend – Taxability under tax treaties (Contd.)

- 2(22)(e) - Taxability – in the hands of the shareholder or the concern:
  - **Gopal & Sons (HUF) [391 ITR 1 (SC)]:**
    - Payment received by the HUF from ICo, in which HUF's Karta was a registered shareholder and held substantial interest in the HUF, is deemed dividend under the provisions of the Act and is rightly assessed in the hands of the HUF on account of following reasons:
      - Deeming provisions are required to be strictly interpreted and unless all conditions therein are satisfied, the receipt cannot be deemed as dividend. Further, in case of doubt or two views, benefit shall be given in the favour of taxpayer.
      - Even if it is presumed that Karta is not a registered shareholder, as per the provisions of section 2(22)(e) of the Act read with Explanation 3 to section 2(22)(e) of the Act, once the payment is received by the taxpayer HUF and the shareholder (i.e. Karta) is a member of the said HUF and he has a substantial interest in the HUF, the payment made to the HUF shall constitute deemed dividend within the meaning of section 2(22)(e) of the Act.
  - Preposition of taxing the deemed dividend in the hands of shareholder is altered post SC Ruling?
    - **View 1:** The SC decision does not dilute the existing legal position. The issue was neither raised before SC nor has been decided by SC and hence the present position of taxing the deemed dividend in the hands of shareholders (even when the loan is given to concern) continues to hold (i.e. the limited question issue before SC was trigger of section 2(22)(e) of the Act rather than on the aspect of the entity in whose hand the amount is to be assessed as income)
    - **View 2:** The SC decision concludes that assessment in the hands of concern is required once the conditions of second limb of section 2(22)(e) of the Act are fulfilled. Assessment in the hands of concern is the principle emerging from the ruling. Accordingly, the concern may not be able to resist taxability in the hands by relying on earlier High Court rulings.
    - View 2 is supported by CBDT Circular No. 495 dated 22 September 1987. Accordingly, in a scenario where taxpayer, as a shareholder, is desirous of taxability in the hands of concern, he can rely on the same Circular.
    - However, the view that SC decision does not directly deal with the issue and accordingly does not foreclose arguments under view 1 (i.e. assessment can be in the hands of shareholders).

Section 2(22) – Issues – Deemed Dividend – Taxability under tax treaties (Contd.)

India-USA DTAA

" Article 10 - Dividends –

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed :
(i) 15 per cent of the gross amount of the dividends if the beneficial owner is a company which owns at least 10 per cent of the voting stock of the company paying the dividends.
(ii) 25 per cent of the gross amount of the dividends in all other cases.

……This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, income from other corporate rights which are subjected to the same taxation treatment as income from shares by the taxation laws of the State of which the company making the distribution is a resident ; and income from arrangements, including debt obligations, carrying the right to participate in profits, to the extent so characterized under the laws of the Contracting State in which the income arises"

Section 2(22) – Issues – Deemed Dividend – Taxability under tax treaties (Contd.)

View 1 - Arguments in favour of the view payment do not qualify as dividend as per Article 10(3)

- Income from shares: No
  - Not income from shares but arises from grant of loan or advance - Not ‘distribution’ based on ratio of shareholding. (As per OECD Comm., dividend basically concerns distribution on basis of shareholding; Only clause (e) refers to payment as against distribution in other clauses; difference judicially noted)

- Income from other rights: No (As per OECD Comm., this refers to all other securities, assimilated to shares (e.g. founders shares), which carry a right to participate in profits)

- Income from other corporate rights: No
  - Not income from corporate right.
  - Even if income from corporate right, it is not subjected to same treatment as normal dividend (taxed in the hands of shareholders, no DDT, no exemption).
  - Payment not ‘distribution’ – rather a payment that too to a non-shareholder.

- Income from arrangements: No – Loan arrangement between company and concern does not grant shareholder the right to participate in profits.

Section 2(22) – Issues – Deemed Dividend – Taxability under tax treaties (Contd.)

View 2 - Arguments in favor of the view payment qualify as dividend as per Article 10(3)

- Income from shares or income from other corporate rights:
  - 'Income' not defined in Treaty – Domestic law referable
  - Section 2(24) included 'Dividend'. Hence dividend would be income for the purpose of the Act and further for Section 2(24) dividend means as defined under Section 2(22)
  - Since payment of loan / advance is income under Act, it would be income for Article 10(3)
  - Since the income is because of the shareholding in the company (by shareholder in lending company), it could be well said that the loan/ advance payment is 'income from shares' and hence 'dividend' for the purpose of the India-US DTAA
  - Based on Para 23 of the OECD Commentary that causes one to refer to domestic law of the Source State (in this case, Indian law), one may argue that the definition of 'dividend', has to be interpreted in the light of domestic tax law and, reference to domestic laws should be made to understand the meaning of dividend. Since under the Indian tax laws, loan / advance made to concern is treated as 'dividend', such loan / advance should constitute 'dividend income' under the India-US DTAA.

View 1 is preferable as 'payment' cannot be considered as 'distribution' and is not arising on account of right to participate in profits

Section 2(22) – Issues – Deemed Dividend – Taxability under tax treaties (Contd.)

- Whether dividend ‘paid’ (if payment qualifies as dividend)

  “10(1). Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

  2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the laws of that State…”

  - Payment not made to non-resident shareholder.
  - OECD Comm. – However ‘Paid’ has wide meaning – Fulfilment of obligation to put funds at the disposal of shareholder in the manner required by contract or by custom.
  - Klaus Vogel – Payment is the provision of any advantage qualifying as dividend

- Rate under DTAA (if payment qualifies as dividend paid)
  - Favorable rate of 15% if ‘beneficial owner’ of dividends is resident of USA.
  - Klaus Vogel: ‘Beneficial owner’ is one who is free to decide (1) whether or not the capital or other assets should be used or made available for use by others or (2) on how the yields therefrom should be used or (3) both.

Section 2(22) – Issues – Deemed Dividend – Taxability under tax treaties (Contd.)

- If not 'dividend' whether 'other income'?

"23(1). Subject to the provisions of paragraph 2, items of income of a resident of a Contracting State, wherever arising, which are not expressly dealt with in the foregoing Articles of this Convention shall be taxable only in that Contracting State.

23(3). Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing articles of this Convention and arising in the other Contracting State may also be taxed in that other State."

  - Literal interpretation:
    - OECD Comm.: Scope of 'Other Income' Article not only limited to class of income not expressly dealt with but also income from sources not expressly mentioned.
    - Deemed dividend not 'dividend' - Dividend dealt with – But deemed dividend not expressly dealt with – Covered under Art. 23 - India's right to tax deemed dividend arising in India under Article 23(3).

  - Contextual interpretation:
    - If item of income is classified as dividends under domestic tax law of source state, but does not fall within the scope of Article10 under India-USA DTAA, it should be considered as being dealt with in Article 10
    - Technical Expln. to India USA DTAA – Item of income is 'dealt with' when items in same category are addressed or defined in the Article, whether or not treaty benefit is granted to that item. Deemed dividend dealt with in the Article on Dividends – Art. 23 not applicable.
    - Deemed dividend dealt with in the Article on Dividends – Art. 23 not applicable.
    - However, In **DLJMB Mauritius Investment Co Ltd v CIT [1997] 228 ITR 268**, the AAR ruled that dividends from a mutual fund, not being dividends paid by a company, would not fall within Article 10 of the Mauritius DTAA but would fall within the Other Income Article. In these circumstances, as deemed dividend is "income" that is not dealt with in other articles of the DTAA, it may fall under Article 22 and be taxable in India

Section 8 - Year of Taxability of dividend

- Section 8 states that dividend declared or distributed or paid by a company within the five clauses of section 2(22) of the Act shall be deemed to be income of the previous year in which it is declared, distributed or paid.
  - The words ‘declared’, ‘distributed’ and ‘paid’ should be understood as each having an independent operation.
  - A declaration of dividend refers to the declaration by the annual general meeting of the company and should not be confused with a proposal made by the directors recommending a dividend which may or may not be accepted by the shareholders.
  - Distribution is not merely an act of dividing or appropriating but also involves dispensing or dealing out.
  - Payment of dividend is made when the company discharges its liability and makes the amount of dividend unconditionally available to the members.

- Further, it provides that any interim dividend shall be deemed to be the income of the previous year in which amount of such dividend is unconditionally made available by the company to its members.

Section 80M - Overview

- Rollover benefits available only for **domestic companies,** whose gross total income includes dividend from another domestic company, foreign company or business trust.

- The amount of **dividend received** shall be allowed as deduction, if such amount is **distributed** as dividend on a before the due date.
  - Due date means the date **one month prior** to the date for furnishing the return of income under section 139(1) of the Act
  - No condition of maintaining or fulfilling the sequence of receipt on onward distribution
  - The Act requires amount to be distributed to the shareholders, before the due date, mere declaration on a before the due date may not make company eligible to claim 80M deduction. Reliance could be placed on the Hon'ble Supreme Court's decision in the case of ***Punjab Distilling Industries Limited (57 ITR 1)***, wherein the term 'distribution' is explained as Actual/ constructive payment by way of journal entries, in which liability is acknowledged towards shareholders.

- Eligibility of deduction under section 80M of the Act may be seen vis-à-vis dividend income accrual under section 8 such that it forms part of Gross Total Income. ***Actual receipt*** may not be necessary.
  - Dividend income shall be deemed to be the income of the financial year in which it is declared/ distributed/ paid;
  - Interim dividend shall be deemed to be the income of the financial year in which the amount of such dividend is unconditionally made available by the company to the member.

Section 80M – Select Issues

Issue 1 –Deduction under setion 80M of the Act on Net Dividend income/ Gross Dividend income

Particulars	Scenario 1 – Only dividend income	Scenario 2 – Dividend income + Other income
Business Income	-	200
Dividend income	100	100
(less) Interest expense	(20)	(20)
Gross Total income (GTI)	80	280
Dividend up streamed	100	100
Less: 80M deduction	**80***	**80 or 100?****

*Section 80A(2) of the Act states that deduction under chapter VIA of the Act, may not exceed GTI of the taxpayer

** Alternate views possible. Deduction under section 80M of the Act may be restricted to **INR 80** only as section 80M of the Act says that GTI of any domestic company in any previous year ***includes any income by way of dividend***.

- This would imply that income which is included in GTI is net dividend, after considering claim of expenditure under the head of Income from other sources

It can also be argued that the intention of legislature to provide deduction to specific nature of income has always been to restrict the deduction to such net taxable income included in GTI. Analogy can be drawn from the provision of section 80T (capital gains), 80RRA (Remuneration by Indian Citizen), 80QQA, etc all such section provides deduction from the specific nature of income included in GTI.

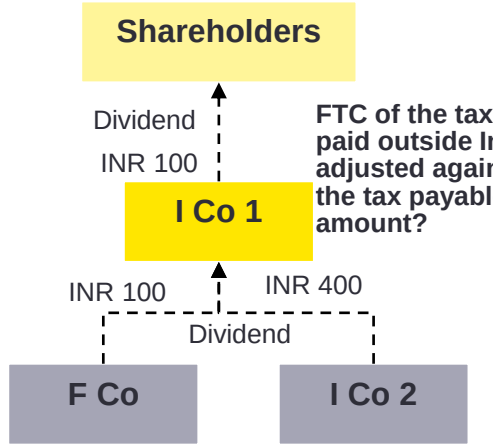
Section 80M – Select Issues (Contd.)

Issue 2 – Interplay of dividend income from a foreign company taxable at the concessional tax rate under section 115BBD, deduction under section 80M of the Act and Foreign tax credit

- Per section 80M of the Act, that the deduction will be available to the extent, the dividend amount received which is included in gross total income. Section does not distinguish/ prioritize distribution of dividend from Foreign Company/ Indian Company
  - It may be possible to take Beneficial allocation by the I Co 1 which has dividend income from specified foreign company (which is taxable at concessional rate of 15%) and another Indian company.
  - Amount distributed can first be set off against, the Indian dividend income and the balance can be subjected to tax as per the beneficial provisions of section 115BBD of the Act.

- I CO 1 may not claim FTC of taxes paid outside India, when the entire dividend income included in GTI is claimed as deduction under section 80M of the Act. Such income may not be considered as a doubly taxed income.

- In case where the entire amount of dividend income is not upstreamed/ onward paid, then FTC can be claimed against the balance taxable income.



***F CO** is a **specified foreign company** (in which I Co's shareholding is more or equal to 26%), Dividend income of I Co 1 from F Co will be taxable as per the beneficial provisions of section 115BBD of the Act.*

Section 80M – Select Issues (Contd.)

Issue 3 – Dividend income taxable as IFOS and allowance of interest expense

- Since section 56 of the Act, specifically covers section 56, within its ambit, dividend income will be taxable under the head Income from other sources (IFOS), irrespective of the fact whether the investment in shares in classified under stock in trade or treated as capital asset.

- Per section 57 of the Act, deduction shall not be allowed of any expense (other than interest expense), exceeding 20% of dividend income
  - Arguably, interest expense will not be allowable as deduction in the absence of dividend income.

- Though the dividend income is taxable as IFOS, where investment is made in an Investee company to acquire the controlling interest, the **deductibility of the interest expenditure** may be looked into citing specific facts of the case.

- It may be noted that if dividend taxation takes place under the scheme of MAT, then the expense deduction would be governed by the provisions of section 115JB and any restrictions under the head PGBP/ section 57 (including proviso) may not apply.

Withholding Tax

Withholding tax rates

Shareholder	Withholding as per the Income-tax Act, 1961 (Act)	Withholding tax rate as per tax treaty
Resident shareholder	10%* (Section 194 of the Act)	N.A.
FPIs	20% (++applicable surcharge and cess)	N.A. - Currently the Act does not take cognizance of tax treaty rates for withholding purposes (Refer discussion in the ensuing slide)
Non-resident shareholders - Non FPIs	20% (++applicable surcharge and cess)	Reduced rate i.e. 5%, 10%, 15%, 20% as applicable may be considered (subject to availability of tax treaty benefits)

Points for consideration

- If the resident shareholder fails to submit his Permanent Account Number, the TDS would be deducted at a higher rate of 20%.
- Surcharge rate to be applied at the time of tax withholding to a non-resident (specifically in case of non-corporate FPIs)
- In cases where tax treaty benefits are available, excess taxes deducted can be claimed as refund in tax return or utilised towards payment of any other tax liability during the relevant tax year
- Documentation requirements for tax treaty claim at the time of withholding

** In case where the amount of dividend paid/ likely to be paid to a shareholder exceeds INR 5,000 during a financial year. Further, pertinent to note that Press Release issued by Central Board of Direct Taxes (CBDT) dated 13 May 2020, provides for the lower withholding rate of **7.5%** from 14 May 2020 to 31 March 2021.*

Withholding Tax (Contd.)

- The dividend income, in the hands of a non-resident person [including FPIs and non-resident Indian citizens (NRIs)], is taxable at the rate of 20% without providing for deduction under any provisions of the Income-tax Act. However, dividend income of an investment division of an offshore banking unit shall be taxable at the rate of 10%.

- Further, where the dividend is received in respect of GDRs of an Indian Company or Public Sector Company (PSU) purchased in foreign currency, the tax shall be charged at the rate of 10% without providing for any deductions. The rates of tax applicable to non-residents is tabulated below:

Section (Chargeability of income)	Assessee	Particulars	Tax Rate
Section 115AC	Non-resident	Dividend on GDRs of an Indian Company or PSU purchased in foreign currency	10%
Section 115AD	FPIs	Dividend income from securities (other than units referred to in section 115AB)	20%
	Investment division of an offshore banking unit	Dividend income from securities (other than units referred to in section 115AB)	10%
Section 115E	Non-Resident Indian	Dividend income from shares of an Indian company purchased in foreign currency.	20%
Section 115A	Non-resident Foreign Company	Dividend income in any other case	20%

Withholding Tax (Contd.)

- Where the dividend is distributed to a non-resident shareholder, the tax shall be required to be deducted as per section 195 of the Income-tax Act. As per section 195, the withholding tax rate on dividend shall be as specified in the Finance Act of the relevant year or under DTAA, whichever is applicable in case of an assessee.

- However, where the dividend is distributed or paid in respect of GDRs of an Indian Company or Public Sector Company (PSU) purchased in foreign currency or to FPIs, the tax shall be required to deducted as per section 196C and section 196D at 10% and 20%, respectively.

- The tax rates and TDS rates on dividend distributed or paid to a non-resident shareholder can be explained with the help of following table (subject to treaty rates):

Section (Chargeability of income)	TDS Provision	Particulars	TDS rates (payee is any other non-resident)	TDS rates (payee is non-resident company)
Section 115AC	196C	Dividend on GDRs of an Indian Company or PSU purchased in foreign currency	10%	10%
Section 115AD	196D	Dividend income of FPI from Securities	20%	20%
		Dividend income of Investment division of offshore banking unit	10%	10%
Section 115E	195	Dividend income from shares of an Indian company purchased in foreign currency.	20%	-
Section 115A	195	Dividend income in any other case	30%*	40%*

Withholding Tax (Contd.)

- The Hon'ble SC in a recent ruling in case of PILCOM v CIT [2020] 116 Taxmann.com 394 (SC), in the context of section 194E of the Act (withholding on payments to a non resident sports person, which is similar to section 196D of the Act) dealt with respect to applicability of the tax treaty provisions at the time of tax withholding, the Hon'ble SC held that the obligation of a person to withhold tax at source under the provisions of the domestic law i.e. the Act, is not affected by the provisions of a DTAA.

- Further, the Hon'ble SC stated that mere fact that the taxpayer is entitled to benefits under a DTAA, by itself, cannot absolve the withholding tax obligation of the payer under the domestic law. Where, the taxpayer is entitled to the benefits of a DTAA, the same is to be claimed by the taxpayer (in the return of income so filed by it) and where it is correctly claimed, the taxpayer would be refunded the excess tax so withheld along with the interest, if any.

- In light of the above judgement, with respect to withholding tax on dividend income, the following merits consideration

Relevant sections	Tax Rate
194LBA(2)	Payment of Interest and Dividend income by Business Trust – Withholding to be at a flat rate of 10% (without recourse of any treaty benefits)
196D	Income of FPIs from Securities – Withholding to be at a flat rate of 20% (without recourse of any treaty benefits)

Treaty Perspective

- Dividend income is generally chargeable to tax in the source country as well as the country of residence of the assessee and, consequently, country of residence provides a credit of taxes paid by the assessee in the source country. Thus, the dividend income shall be taxable in India as per provisions of the Act or as per relevant DTAA, whichever is more beneficial.
- As per most of the DTAAs India has entered into with foreign countries, the dividend is taxable in the source country in the hands of the beneficial owner of shares at the rate ranging from 5% to 15% of the gross amount of the dividends.
- In DTAA with countries like Canada, Denmark, Singapore, the dividend tax rate is further reduced where the dividend is payable to a company which holds specific percentage (generally 25%) of shares of the company paying the dividend. However, no minimum time limit has been prescribed in these DTAAs for which such shareholding should be maintained by the recipient company. An illustrative list of jurisdictions where the dividend is taxable at a lower rate than the DDT rate as per the provisions of the Act is provided as under:

Country	Rate of tax of dividend as per the DTAA
Mauritius, Slovenia, Lithuania	5% (recipient is company holding 10% stake)
Saudi Arabia, Myanmar, Malaysia, Hongkong	5%
Qatar	5% (if at least 10% stake held)
Zambia	5% (recipient is company holding 25% stake during preceding six months)
Sri Lanka	7.5%
United Arab Emirates	10%
Hungary	10%*/**
Netherlands, Switzerland, Sweden, France	10%**
Oman	10% (recipient is company holding 10% stake)

* Protocol to the India-Hungary DTAA states that “when the company paying the dividends is a resident of India, the tax on distributed profits shall be deemed to be taxed in the hands of the shareholders and it shall not exceed 10 per cent of the gross amount of dividend”

** Countries with MFN clause – Benefit of MFN clause in the DTAA may be referred to adopt a lower tax rate than the treaty rate prescribed (For instance, MFN clause in India-Netherlands DTAA can be referred to import the beneficial rate of 5% from the India Slovenia/ India Lithuania DTAA)

Treaty Perspective (Contd.)

- List of jurisdictions (out of the above table) having MFN clause in the treaty and respective beneficial rate of tax for dividend that may be available:

Country	Rate of tax as per treaty	Beneficial rate of tax (considering MFN clause)
France	10%	5%
Hungary	10%	5%
Switzerland	10%	5%
Sweden	10%	5%
Netherlands	10%	5%

- However, the availability of DTAA benefits to shareholders is subject to the satisfaction of several anti-abuse provisions. The key aspects to be kept in mind are as under:
  - The recipient must be a 'beneficial owner' of the dividends in order to be eligible to claim benefit of DTAA;
  - Also, the Principal Purpose Test ('PPT') pursuant to MLI (wherever applicable) would need to be satisfied;
  - In addition to the above, MLI also provides for a provides for a minimum shareholding period of 365 days, in order to avail DTAA benefits; and
  - The transaction is not hit by the provisions of General Anti-avoidance Rule ('GAAR') provisions.

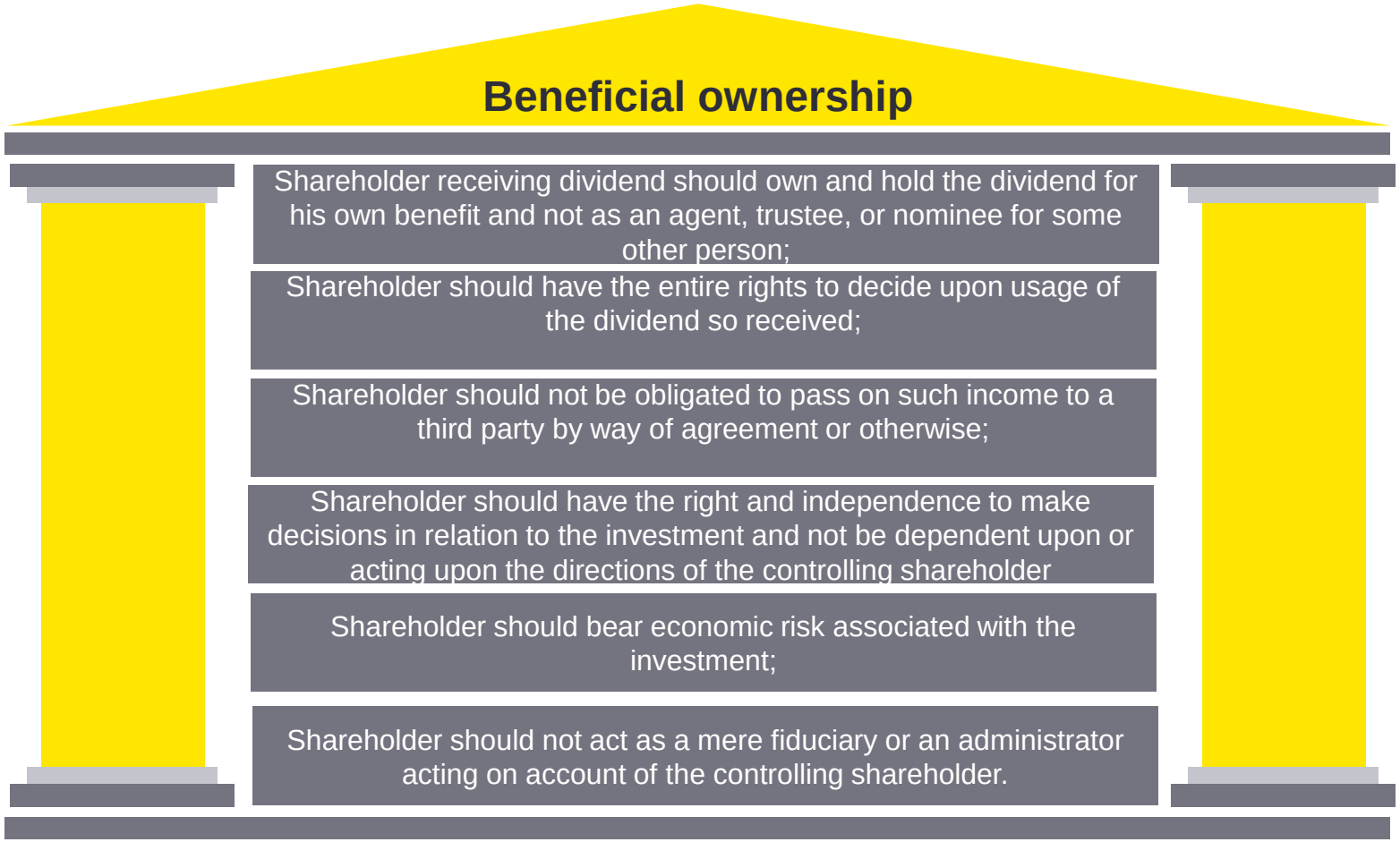
- It is to be noted that Hon'ble Delhi High Court in case of Concentrix Services Netherlands BV (434 ITR 0516 (Delhi)) dated 22 April 2021 and in case Nestle SA [WP(C) 3243/2021), has upheld the applicability of MFN clause while applying DTAA rates for purposes of withholding taxes at lower rates on Dividend income received by Foreign Companies from Indian Companies.

Treaty Perspective (Contd.)

- Income recipient must be a ‘beneficial owner’ of the dividend income – the term not defined in the Act and tax treaties
- Guidance may be taken from the OECD commentary, **when recipient's right to use and enjoy the income is constrained by a contractual or legal obligation to pass on the payment received to another person;**

Country Name	Tax Rate as per Tax treaty
Singapore	10%*/ 15%
Mauritius	5%#/ 15%
Hong Kong	5%$
USA	15%@/ 25%
Netherlands	10%$

** if the recipient beneficial owner of the dividend income is a company that owns at least 25% of the shares of the company paying the dividend.*
 # if the beneficial owner of the dividend income is a company that owns at least 10% of the shares of the company paying the dividend.
$ if the recipient is the beneficial owner of the dividend income is a company.
@ if the recipient being beneficial owner of the dividend income is a company that owns at least 10% of the voting stock of the company paying the dividend.



Treaty Perspective (Contd.)

Most Favoured Nation Clause (MFN Clause)

- In a tax treaty, MFN clause is incorporated where one contracting country grants MFN status to the other contracting jurisdiction, in relation to specified income stream.
- In such circumstances, residents of MFN country are accorded the same **beneficial treatment** it has extended or it may extend (in a future) to a resident of any third jurisdiction
- MFN Clauses with the 6 specified countries provides that if rate/ scope of article is restricted with any other treaty with a OECD member which India has, effective after a specified date, then the favourable treatment shall be granted.
- India-Slovenia and India-Lithuania tax treaties also provides that dividend income is taxable at the rate 5%, where the shareholder (being a beneficial owner) owns at least 10% of the capital of the company paying dividends.
  - *Slovenia and Lithaunia were not OECD members when the respective treaties were entered and became OECD members on a later date*
- Recently, Columbia has become an OECD member on 28 April 2020. As per India-Columbia tax treaty, dividend is taxable at the rate 5%, not subject to condition of any minimum shareholding in the company declaring dividend.

Countries having MFN clause in treaty with India

- Switzerland
- Finland
- France
- Sweden
- Netherlands
- Hungary

Beneficial Treatment

- Lower tax rate for source country taxation; or
- Limited scope of definition of a particular income stream.

Whether favourable benefits of India-Slovenia/ Lithuania/ Columbia tax treaty be availed, even when such countries were not OECD member countries at the time of signing the tax treaty?

Treaty Perspective (Contd.)

Most Favoured Nation Clause (MFN Clause) (Contd.)

Recent Development:

- Refer **Circular 3 of 2022 dated 3 February 2022 providing clarification regarding the MFN clause in the Protocol to India's DTAAs with certain countries**
  - The Circular provides that benefit of lower rate and restricted scope under MFN clause will be extended only when all the below conditions are satisfied cumulatively:
    - India’s DTAA with the country which has beneficial lower rate or restricted scope (referred as the third State) is entered into after the signature/entry into force, depending on language of MFN Clause, of India’s DTAA.
    - The third State has to be an OECD member at the time of signing its treaty with India.
    - India limits its taxing rights in relation to rate or scope of taxation in its treaty with the third State.
    - India issues a separate notification under the Income Tax Laws (ITL) for importing the favorable benefits of third State treaty into the original treaty.
  - Further, the Circular will not be applicable in case of taxpayers who have received a favorable decision by any court on the applicability of MFN clause.

Treaty Perspective (Contd.)

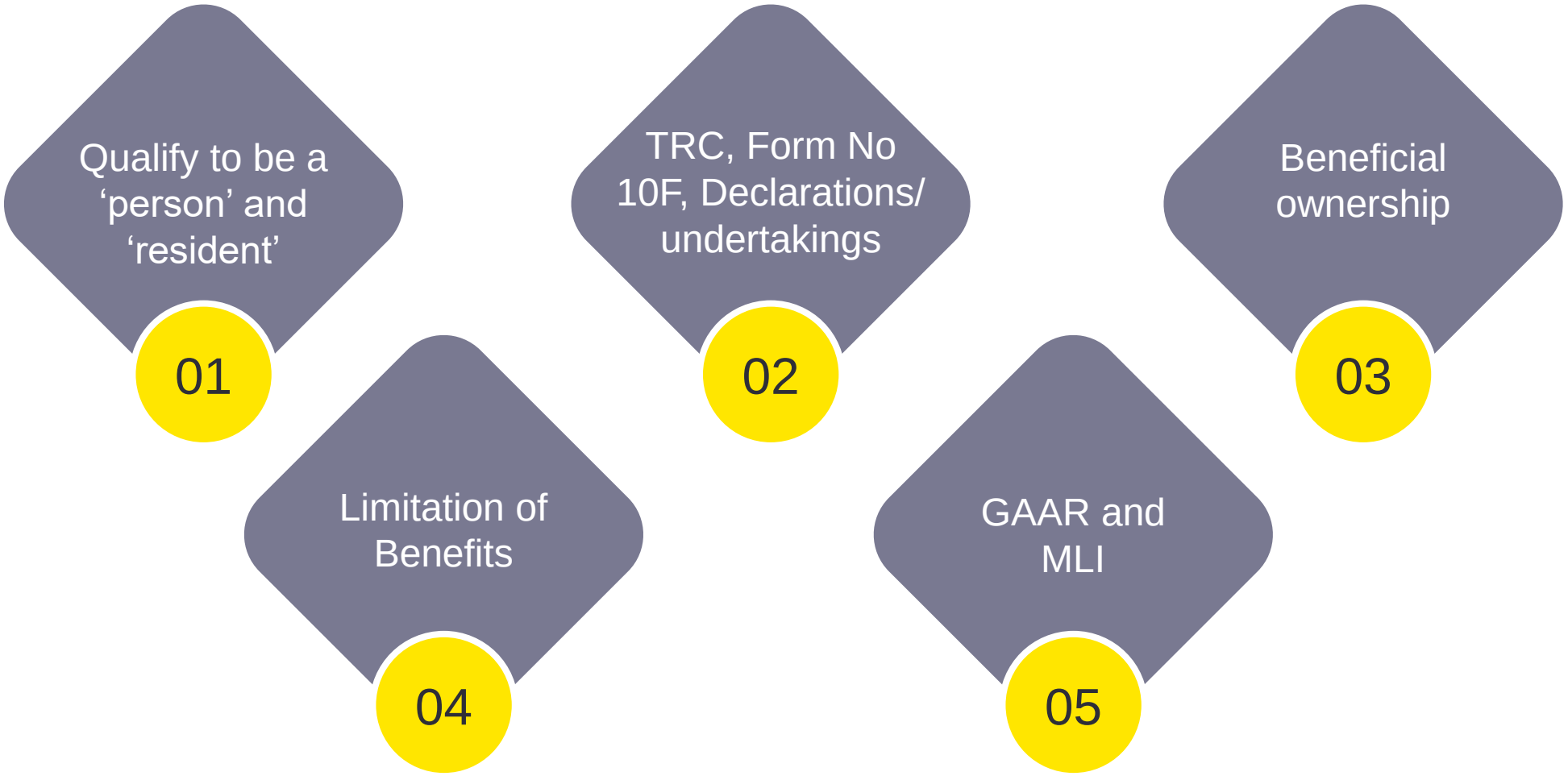
Most Favoured Nation Clause (MFN Clause) (Contd.)

Recent Development (contd.):

- Also refer the decision of the **Hon'ble Pune Tribunal in case of GRI Renewable Industries S.L. (ITA No.202/PUN/2021)** wherein it was held that the authorities were not justified in denying the benefit of lower tax rate as per India-Spain DTAA r.w. India-Portugal DTAA for the following reasons:
  - Opening part of the Protocol to India-Spain DTAA, which is duly signed by the competent authorities of both the countries, states that it shall be an integral part of the India-Spain Convention. On notifying the DTAA or Convention, all its integral parts get automatically notified. There remains no need to again notify the individual limbs of the DTAA so as to make them operational one by one.
  - Circular 3/2022 dated 3 February 2022 issued by Central Board of Direct Taxes (CBDT), requiring issuance of separate notification overlooks the plain language of the section 90(1) of the Income Tax Act as seen in juxtaposition to the language of the Protocol, which treats the MFN clause an integral part of the DTAA.
  - Circular issued by the CBDT is binding on the tax authority and not on the assessee or the tribunal or other appellate authorities.
  - Further, notwithstanding above, the Circular cannot be applied to the period prior to the date of its issuance (i.e., tax year 2015-16 in the present case) as it is detrimental to the taxpayer for taking benefit conferred by the DTAA

Treaty Perspective (Contd.)

Considerations for tax treaty eligibility



Treaty Perspective (Contd.)

- For years prior to 1 April 2020, some Indian Companies wherein there were non-resident shareholder(s) have contended before the Tax authorities that in view of the fact that “DDT” is a “Tax of dividend” (in view of decision of **Tata Tea Co Ltd (85 taxmann 346)** and hence, the DDT should be restricted to beneficial DTAA rates.
- In this regard, **Hon’ble Delhi Tribunal in the case of Giesecke & Devrient (India) Pvt Ltd (120 taxmann.com 338) and Hon’ble Kolkata Tribunal in case of Indian Oil Petronas Pvt Ltd (127 Taxmann.com 389)** have in principle accepted this contention and have restricted the DDT rate to beneficial rates as per DTAA. Accordingly, the excess DDT paid (over and above the lower DTAA rate) will now be refunded to the Indian companies.
- Adverse view has been adopted by the **Hon’ble Bangalore ITAT in the case of TexasInstruments (India) (P.) Ltd. [2022] 139 taxmann.com 153 (Bangalore - Trib.)]** though subsequenty the Tribunal deviated from its view in the case of **GE BE Private Limited [IT(TP)A No.2615/Bang/2019 dated 23 May 2022]** holding that additional ground for lower DDT rate admissible since raised first time and distinguished the facts from those of TexasInstruments (supra) as under:
  - first appeal lies before ITAT unlike in Texas Instruments where the first appellate authority was CIT(A)
  - the ruling is per incuriam as it does not take into account ruling of Total Oil wherein assessee's cross-objections were considered and a reference to special bench was made on similar issue and
  - the ruling misinterprets SC ruling in Genpact India to hold that additional ground cannot be raised before ITAT
- However, recently, **Hon’ble Mumbai Tribunal in case of Total Oil India Pvt Ltd (ITA 6997/M/2019) dated 23 June 2021** has doubted the correctness of applicability of DTAA rates to DDT and referred the matter to Special Bench, however, no update is there on the constitution of the same till date.
- The Hon'ble High Court of Delhi, in its recent ruling in **Concentrix Services Netherlands B.V. and Optum Global Solutions International B.V. [W.P.(C) 9051/2020 dated 22 April 2021]** has invoked the MFN clause under the protocol to India-Netherla4nds DTAA and directed the application of a dividend WHT rate lower than that in the DTAA. Also followed in case by the Hon’ble HC in case of **Nestle SA [W.P.(C) 3243/2021 dated 15 June 2021]**

Recent HC & SC Judicial Pronouncements

- **Jayesh T Kotak [2021] 130 taxmann.com 170 (SC):**
  SLP dismissed against High Court ruling that where assessee neither received loan from company in which he had more than 10 per cent shareholding nor did amount advanced by said loan giver company to concerns in which assessee had substantial interest was out of accumulated profits of loan giver company, reassessment after 4 years was without authority of law and, hence, same was to be quashed.

- **Anumod Sharma [2021] 132 taxmann.com 70 (Delhi HC):**
  Where assessee had not received any advance in nature of loan or advances as contemplated in section 2(22)(e) but received advance against sale of commercial space developed by assessee, Commissioner (Appeals) had rightly deleted addition made by Assessing Officer under section 2(22)(e).

- **N.S. Narendra [2021] 129 taxmann.com 335 (Karnataka HC):**
  Loan or advance given by company to a shareholder in return of an advantage conferred upon company by such shareholder would not come within purview of section 2(22)

- **Smt. Jamuna Vernekar [2021] 129 taxmann.com 380 (Karnataka HC):**
- Where assessee, director of company, received advance from company for construction of building on plot owned by him and such advance was later adjusted towards security deposit and rent payable to assessee, it would be a commercial transaction and would be outside purview of section 2(22)(e)

Recent HC & SC Judicial Pronouncements (Contd.)

- **Sumir J. Hinduja [2021] 130 taxmann.com 464 (Karnataka HC):**
  Where Tribunal held that monies advanced by company 'GIPL' to company 'PL' under an agreement was deemed dividend in hands of assessee who was shareholder in both of these companies and assessee contended that said loan was given by 'GIPL' for discharging of its bank loan by 'PL' so as to free GIPL from its bank guarantee obligation for said loan and that such amount was not given by 'GIPL' to 'PL' for personal benefit of directors and shareholders, since Tribunal had not taken into account ledger report, book entries and provisions of agreement entered into between said companies and this issue with regard to applicability of section 2(22)(e) require factual adjudication, impugned order passed by Tribunal was to be quashed and matter was to be remanded

- **T.Abdul Wahid & Co. [2020] 119 taxmann.com 497 (Madras HC):**
  Where payment had been made to by a company assessee, a partnership firm, and assessee was not a shareholder in company, it was neither a loan nor an advance, but a deferred liability and, thus, section 2(22) would not apply; fact that one of assessee's partner was shareholder in company was irrelevant.

- **Accel Limited [2020] 118 taxmann.com 103 (Madras HC):**
  Where assessee received certain amount from subsidiary company as advance towards security for providing corporate guarantee, it could not be brought to tax as deemed dividend under section 2(22)(e).

Recent HC & SC Judicial Pronouncements (Contd.)

- **Madhur Housing & Development Co. [2018] 93 taxmann.com 502 (SC):**
  Where loans and advances are given in normal course of business and transaction in question benefits both payer and payee companies, same cannot be treated as deemed dividend.

- **Namdhari Seeds [2017] 79 taxmann.com 124 (SC):**
  SLP granted against High Court Ruling that it is only when payments are made by a company by way of advance or loan to a shareholder or payment to a concern in which shareholder is a member or partner and in which he has substantial interest, said amount of loan would be regarded as deemed dividend within meaning of section 2(22)(e).

- **Rajeev Chandrashekar [2016] 74 taxmann.com 194 (SC):**
  SLP granted against High Court's ruling that where assessee owned 95 per cent shares in 'V' Ltd. which in turn owned 99 per cent shares of 'J' Ltd. from whom assessee-company received certain advance, since assessee itself was not a shareholder in lender company, loan amount in question could not be added to assessee's income as deemed dividend under section 2(22)(e)

- **Suprabha Industries Ltd. [2022] 136 taxmann.com 259 (Calcutta HC):**
  Section 2(22)(e) would not be applicable where assessee availed unsecured loan from its group company which was paid back with interest in same year

- **Sunjewels International Ltd. [2020] 116 taxmann.com 160 (Bombay HC):**
  Where assessee company was not beneficial owner of any shares in creditor companies, and neither has any loan been given by creditor companies to any concern in which assessee company has a substantial interest, provisions of section 2(22)(e) were not applicable

Questions

Thank You!!

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