



## **MARS & Partners**

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### **DOUBLE TAXATION AVOIDANCE AGREEMENT (DTAA)**

Every country has the sovereign right to tax income accruing, arising or received in it, on account of the activity carried on in its territory. If every nation resorts to tax and if the activities are carried on in two or more than two countries, the same income gets taxed in all the countries and it results into double taxation. A mixture of the residence and source principles of taxation may also result in double taxation by two countries of the same income. Further, an export of one country is by its very nature, an import of another country. Thus the possibility of double taxation is very real. Double taxation has a cascading effect on the cost of operations and effectively acts as a hindrance to cross border investments, trade, commerce and services. Hence it's necessary to avoid double taxation.

Double taxation is frequently avoided through a Double Taxation Avoidance Agreement (DTAA) entered into by two countries for the avoidance of double taxation on the same income. DTAA generally allocates taxing jurisdiction of the relevant item of income on the source or resident country or both, stipulates the maximum (ceiling) rate of tax on the income and thereby provides relief from double taxation.

#### **Provision of Advance Ruling**

Advance Ruling, means written opinion or authoritative decision by an Authority empowered to render it with regard to the tax consequences of a transaction or proposed transaction or an assessment in regard thereto. Under section 245N, a ruling can be obtained by an applicant (who may be either a non-resident or a resident having a transaction with a non-resident) in respect of any question of law or fact in relation to the tax liability of the non-resident arising out of a transaction undertaken or proposed to be undertaken.

**Procedure for Application:** - An applicant desirous of obtaining an advance ruling should apply to the Authority in the prescribed form stating the question on which the ruling is sought. The application has to be made in quadruplicate in Form No.:—

34C - applicable for a non-resident applicant

34D - applicable for a resident having transactions with a non-resident

The application is to be accompanied by an account payee demand draft for 2,500 Indian rupees drawn in favour of the Authority for Advance Rulings and made payable at New Delhi

#### **Transfer Pricing**

Transfer pricing is the process of valuing the goods and services traded by multinational Enterprises with their Subsidiaries or Associate Companies abroad so as to lower taxes and to maximize profits. The yardstick for acceptance of such



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transfer pricing is the "Arms Length Price" which should represent the price charged in comparable transactions between independent parties, where price is not influenced by the relationship or business interest between the parties in the transaction.

### **Methods of Computation of Arm's Length Price**

The arm's length price shall be determined by any of the following methods, being the most appropriate method, having regard to the nature of transaction or class of transaction, namely :-

- (1) Comparable Uncontrolled Price Method
- (2) Resale Price Method
- (3) Cost Plus Method
- (4) Profit Split Method
- (5) Transactional Net Margin Method
- (6) Any other basis approved by the Central Government, which has the effect of valuing such transaction at arm's length price