Triangular Cases
in application of Tax Treaties

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Permanent Establishment Cases
Case Study 1

- In which country is interest taxable?

State R
GE Income: 300

Permanent Establishment
PE Income: 200
State P

Interest: 100
State S

General Enterprise

General Enterprise
Case Study 1

- Triple Taxation
  - State S: Source
  - State P: PE Income
  - State R: Residence

Whether any Double Tax relief available in each of the State?
Case Study 1

- Relief Granted by
  - State S: R – S Treaty
  - State P: R – P Treaty
  - State R: R – P Treaty & R – S Treaty

- Withholding Tax Rates
  - R – S Treaty: 20%
  - P – S Treaty: 10%

- Corporate Tax Rate
  - State S: 25%
  - State P: 30%
  - State R: 40%

- Calculation of Double Tax Relief?
Case Study 1

<table>
<thead>
<tr>
<th>State R</th>
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**Taxation in State S**
- Income 100
- Withholding 20
- Restriction under R – S Treaty

**Taxation in State P**
- Income 200
- CIT @ 30% 60
- FTC 10
- Net Tax Payable 50
- FTC under R – P Treaty
- Application of ND Clause

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Case Study 1

State R
- GE Income: 300

State P
- PE Income: 200
- Interest: 100

State S

General Enterprise

Permanent Establishment

- Taxation in State R
  - Income: 300
  - CIT @ 40%: 120
  - FTC (State S): 20
  - FTC (State P): 60
  - Net Tax Payable: 40

FTC under R – P Treaty & R – S Treaty
Case Study 2

- In which country is interest taxable?

State R

General Enterprise

Permanent Establishment

State P

Interest: 100

State L

General Enterprise
Article 11(5) of OECD Model

Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment is situated.
**Case Study 2**

- **Triple Taxation**
  - State L: Residence
  - State P: Source based on PE
  - State R: Source based on GE

- Whether any Double Tax relief available in each of the State?
Case Study 2

- Relief Granted by
  - State R: R – L Treaty
  - State P: L – P Treaty

State L is bound to provide relief under L – R & L – P Treaty

- General Enterprise
  - GE Income: 300
  - PE Income: 200

- Permanent Establishment
  - Interest: 100

- General Enterprise
  - State R
  - State P
  - State L

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Typical Clause under Australian Treaties

Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in one of the Contracting State or outside both Contracting States a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment is situated.

See India – Australia DTAA
Source Rule similar to Section 9
OECD also suggests Australian clause
Alternatively, Multilateral Treaties may resolve this
In which country is interest taxable?
Dual Residence Cases
In which country is interest taxable?
Case Study 4

Potential Solution

- Source country will have to apply two treaties simultaneously
  - W – L Treaty
    - Applying Tie Breaker, it will be treated as Resident of State W as it holds place of effective management.
    - Recipient is resident of State W only as for State L it is not considered as ‘liable to tax’ on its global income
      - Para 8.2 of OECD Commentary
  - Hence, S – W Treaty to be applied.

State W

Effective Management

Incorporation

State L

Interest

General Enterprise

State S
Case Study 5

- Mr. A
  - US Citizen
  - ROR as per India
  - Resident of US under Tie Breaker Rule
- Examine taxability of following income
  - Interest income from Bank Deposit in India, US, Hongkong & Singapore
  - Capital Gains on shares of company situated in India, US, Hongkong, Singapore
Thank You

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