Module 12 · Double Taxation Avoidance Agreements P15 · topics 12.1–12.4

SM pp. 452–506 (exercise 507–508). **7–22 marks a paper; 18 in D25 and J26** (expected 17). **Q6(b) relief u/s 91 sum in all 6 papers since Dec'23**, Q6(a) DTAA theory, and MCQs (xiii) / (xiv).

Paper	Q6(a) / theory	Q6(b) and others	MCQs
Jun'23	Q2(b) exemption-with-progression, full vs ordinary credit (6) · Q5(c) PE cases (6)	Q7(b) **s.91**: senior with business abroad	economic double taxation · force of attraction
Dec'23	**PE**; storage / display / delivery under OECD vs UN	**s.91**: income + loss in two non-DTAA countries	India follows the UN Model
Jun'24	**Methods of relief** + unilateral relief u/s 91	**s.91**: online trainer · Q8(b) foreign tax not credited — business expense?	which activity creates a PE
Dec'24	(APA)	**s.91**: resident cricketer	India follows the UN Model
Jun'25	(APA)	**s.91**: professional with foreign agriculture, royalty (80QQB), loss	–
Dec'25	**Exemption, credit, tax sparing**	**s.91**: CEO with business, royalty, LTCG abroad	s.91 without DTAA · Article 12A only in UN
Jun'26	**DTAA objectives, types, models**	**s.91**: senior (68) with dividend, royalty, rent abroad, default regime	juridical double taxation · OECD = developed countries

HOW IT IS EXAMINED · DEC'26 PREDICTION

- **Q6(b) 7 marks, near-certain**: s.91 relief — total income, tax under the regime asked, average Indian rate vs foreign rate, country by country.
- **Q6(a) 7 marks, likely**: relief methods (23A / 23B, underlying credit, tax sparing), PE (Article 5), or OECD vs UN on royalties / FTS (MQP Q6(a), unused).
- **MCQ (xiii)** s.91 / juridical vs economic · **(xiv)** OECD vs UN.

MAP OF THIS MODULE

1. Double taxation, DTAA types, objectives ★★
2. OECD vs UN Model; list of Articles ★★★
3. s.90 / 90A bilateral relief, TRC, Rule 128 FTC ★★
4. s.91 unilateral relief (problems box) ★★★
5. Article 4 tie-breaker, Article 5 PE, Article 7 ★★★
6. Royalties / FTS (Articles 12, 12A) ★★
7. Relief methods (Articles 23A, 23B) ★★★
8. Revision sheet · mind map

A DTAA: objectives, types, models (12.1, 12.2) · J26 Q6(a)

- **Objectives** (s.90(1)): (a) **relief** on income taxed in both countries, to promote economic relations, trade and investment; (b) **avoidance of double taxation** without creating non-taxation or treaty shopping; (c) **exchange of information** to prevent evasion; (d) **recovery** of tax. [SM 456]
- **Types**: **limited** DTAA — certain incomes only (India–Pakistan: shipping and aircraft profits); **comprehensive** — almost all incomes. India has DTAAs with more than **90** countries. Relief is **bilateral** (s.90 / 90A) or **unilateral** (s.91). [SM 452, SM 455, SM 461]
- ⚠ **Juridical** double taxation = the **same income taxed in the hands of the same person** by more than one country; **economic** = the same income taxed in the hands of **two different persons** (company and shareholder on dividends). Not in the SM text; asked in J26 MCQ (xiii) and ICMAI MQP MCQ (xiv) (key: dividend of a foreign shareholder taxed in both countries = juridical).

- **OECD Model**: since 1927 (League of Nations draft), latest 2017; a treaty between **two developed** nations; favours the **residence** principle. [SM 453]
- **UN Model**: Ad hoc Group of Experts set up 1968, finalised 1980, revised 2021; between **developed and developing** countries; favours the **source** principle; encourages investment flows. **Most of India's treaties follow the UN Model** (SM MCQ 1; D23, D24 MCQs). [SM 453, SM 507]
- US Model: 1976. Models are not binding; their language is copied into treaties. UN: 31 Articles; OECD: 32 (both 7 chapters). [SM 453–454]
- **Only in the UN Model**: Article 12A FTS (D25 MCQ), 12B automated digital services, 14 independent personal services; OECD Article 14 deleted. [SM 454, SM 484]

⚠ The SM's Article list (SM 454) prints "12A Fee for Technical Services" in the OECD column too; the Article text (SM 484) shows 12A only in the UN Model — use the text (and the D25 MCQ).

B Bilateral relief · s.90 / 90A · foreign tax credit (Rule 128)

- Where a DTAA applies, the Act applies only so far as it is **more beneficial**; **GAAR applies anyway**. SM: FTS at 25% under a DTAA vs 20% u/s 115A → use 115A. [SM 456]
- Treaty overrides the Act on conflict (**Kulandagan Chettiar**, SC); a DTAA rate applies without surcharge / cess (**BOC Group**, Trib); TDS at the Finance Act rate or the DTAA rate, whichever benefits; no Indian tax → no relief (**Azadi Bachao Andolan**, SC — residence certificate binds). [SM 457]
- **TRC**: a non-resident needs a tax residency certificate (+ Form **10F**); a resident applies in Form **10FA**, AO issues **10FB**. s.90A: agreements between specified associations (specified territories). [SM 457–460]
- **SM Illustration 2** (exemption-with-progression treaty): total income ₹25,40,000 (Indian + Country Z) → tax + cess ₹3,55,680; relief u/s 90 at the average rate **14.00%** on ₹12,00,000 = ₹1,68,000 → payable **₹1,87,680**. [SM 458–459]
- **Rule 128 FTC**: credit in the year the income is taxed in India; against tax, surcharge and cess (not interest, fee, penalty); disputed tax — credit once settled, evidence within **6 months**. [SM 463–464]
- Credit = lower of Indian tax on that income and foreign tax, **source-wise and country-wise**; foreign tax above the DTAA rate ignored; TT buying rate of the month before payment. Against MAT / AMT too (excess ignored for MAT credit). [SM 464]
- Claim by **Form No.67** by the return due date + certificate of tax deducted / paid. [SM 465]
- **SM Illustration 1** (credit treaty): tax + cess ₹1,44,352 – relief 5% on ₹4,50,000 (₹22,500) = **₹1,21,850**. [SM 458]

C Unilateral relief · s.91 (no DTAA)

WHAT IT IS A **resident** who proves that the income **accrued outside India** (not deemed to accrue in India), that he **paid tax** on it in that country, and that India has **no s.90 agreement** with that country, deducts from Indian tax: doubly taxed income × the **lower** of the Indian average rate and the foreign average rate (Indian rate if equal). [SM 461]

- Relief only on income **actually taxed in India** after allowances, set-offs and VI-A (**Arunachalam Chettiar**). [SM 461]
- **Country by country**, not on the aggregate of foreign income (**Bombay Burmah Trading Corpn.**). [SM 461]
- No relief on income **deemed to accrue in India**. [SM 461]
- **SM Illustration 3** (old regime): royalty ₹5,00,000 less 80QQB ₹3,00,000 → relief on ₹2,00,000 at 4.95% (lower than 20%) = **₹9,900**. [SM 461–462]
- **SM Illustration 4** (default regime): Country A income ₹15,00,000 (tax ₹5,00,000 = 33.33%), Country B loss ₹4,00,000 → total income ₹38,00,000; tax + cess ₹7,48,800; average **19.71%** → relief ₹2,95,650; payable **₹4,53,150**. [SM 462–463]

PROBLEMS BOX · Q6(b) RELIEF u/s 91 · 7 MARKS · ALL 6 PAPERS SINCE DEC'23

1 · WHEN IT COMES

- J23 Q7(b) · D23 Q6(b) (two countries, a loss) · J24 Q6(b) · D24 Q6(b) · J25 Q6(b) (foreign agriculture, 80QQB, loss) · D25 Q6(b) (LTCG abroad) · J26 Q6(b) (senior, default regime) · MQP Q6(b) · PTP Q6(b) · postal Q3(b) · MCQ D25 (xiii).

2 · STEPS

1. Residential status: **resident** (else no s.91); no DTAA with the country.
2. Total income: Indian + foreign incomes (foreign agricultural income is **taxable**); set off foreign losses as the Act allows; VI-A only if the regime allows (80QQB for books, not school text-books).
3. Tax on total income (regime asked; senior slabs only in the old regime) + cess = Indian tax.
4. Indian average rate = tax + cess ÷ total income (2 decimals).
5. For **each** country: doubly taxed income (net of its expenses / losses, after deductions) × lower of Indian and foreign average rates.
6. Tax payable = Indian tax − total relief (round u/s 288B).

5 · TRAPS

- Foreign rate = tax paid abroad ÷ income taxed abroad (e.g. 5,00,000 ÷ 15,00,000 = 33.33%).
- A loss in another country does not reduce the doubly taxed income of the first country, unless the same country (SM case: Country Y loss set off against Country Y royalty).
- ⚠ SM Illustration 5 prints the foreign rate as 16.67%; on its own figures it is 80,000 ÷ 12,00,000 = 6.67% (then relief = lower rate). Do not copy it.

3 · WORKED PATTERN · SM SOLVED CASE 1 (MR. AMIN, OLD REGIME) — RE-WORKED BY SCRIPT

Business income in India	11,00,000
Dividend from Country X (tax 10%)	2,00,000
Royalty Country Y 6,00,000 − expenses 50,000 − business loss in Y 2,50,000 (tax 25%)	3,00,000
Gross total income	**16,00,000**
− 80D father (senior) 30,000 · 80QQB nil (school text-books)	30,000
Total income	**15,70,000**
Tax 2,83,500 + cess 11,340	2,94,840
Average Indian rate 2,94,840 ÷ 15,70,000	18.78%
Relief X: lower of 18.78% and 10% on 2,00,000	20,000
Relief Y: lower of 18.78% and 25% on 3,00,000	56,339
Tax after relief u/s 91 (76,339)	**2,18,500**

4 · PRACTISE THESE

J26 Q6(b) · D25 Q6(b) · J25 Q6(b) · D24 Q6(b) · J24 Q6(b) · D23 Q6(b) · J23 Q7(b) · MQP Q6(b) · PTP Q6(b) · postal Q3(b) · SM Illustrations 1–4 (SM 458–463) · SM numerical problem (Anupam Gulati, SM 507, answer ₹3,50,000) · SM case 1 (Suresh, SM 508; hint total income ₹21,50,000, tax ₹3,03,245) · MCQ bank Q61, Q120, Q169 · **ICMAI workbook Ch 6 illustrations 1–6**.

D Articles: residence, PE, business profits (12.4) · D23 Q6(a), J23 Q5(c)

- **Article 4 tie-breaker** (individual resident in both): **permanent home** → **centre of vital interests** → **habitual abode** → **nationality** → mutual agreement. Non-individuals: competent authorities decide (POEM, place of incorporation); else no treaty relief. [SM 471–472]
- SM WORDS **PE** = a **fixed place of business through which the business of an enterprise is wholly or partly carried on**; includes a place of management, branch, office, factory, workshop, mine / oil or gas well / quarry. Not defined in the Act; the PE is taxed as a distinct enterprise. [SM 465, SM 472]
- **Construction / installation**: OECD — PE only if it lasts more than **12 months**; UN — more than **6 months**, and **service PE** for services through employees for more than **183 days** in any 12-month period. [SM 472]
- **Not a PE** (preparatory / auxiliary): facilities or stock solely for storage, display (OECD also **delivery** — UN omits "delivery"), processing by another, purchasing / collecting information. [SM 473]
- **Agency PE**: a person habitually concluding contracts (or playing the principal role) for the enterprise; UN adds an **insurance** PE (premiums collected through a person, except reinsurance). **Independent agent** in the ordinary course is not a PE — unless acting exclusively for closely related enterprises (more than **50 per cent** control). [SM 474–475]
- A **subsidiary is not by itself a PE** of its parent (and vice versa). [SM 475]
- **Article 7 business profits**: taxable in the other State only through a PE and only profits **attributable** to it (separate enterprise / arm's length); UN adds **force of attraction** — sales of similar goods and similar activities in that State are also taxed (J23 MCQ). PTP MCQ: business profits = Article 7. [SM 476–477]
- BPO in India is a PE only if there is a business connection and the conditions of Article 5 are met (Circular 5/2004). [SM 466–467]

E Royalties and FTS (Articles 12, 12A) · relief methods (23A, 23B)

Point	OECD Model	UN Model
Who taxes royalties	**Only** the State of the beneficial owner's residence	Residence State **and** source State (rate capped at a % agreed bilaterally) [SM 483]
Definition of royalties	copyright, films, patent, trade mark, design, secret formula, know-how	also films / tapes for radio or TV, and **equipment rentals** (industrial, commercial or scientific) [SM 483]
Royalty effectively connected with a PE	Article 7 applies	Article 7 or 14 (fixed base) [SM 483–484]
Source rule	–	arises where the payer resides (or where the PE that bears it is) [SM 484]
FTS (Article 12A)	no Article	managerial, technical or consultancy services; source State may tax at a negotiated cap [SM 484]

- **Article 23A exemption method**: residence State **exempts** income that the other State may tax; for dividends / interest (UN also royalties, FTS) it gives a **deduction** of the foreign tax limited to its own tax on that income; exempt income may still be counted for the **rate** (exemption with progression). [SM 496–497]
- **Article 23B credit method**: residence State taxes the income and allows a **deduction** of the foreign tax, **limited** to the part of its own tax attributable to that income (ordinary credit). [SM 497]

- ⚠ **Not in the SM** but asked (J23 Q2(b), J24 / D25 Q6(a)): **full credit** (whole foreign tax credited) vs **ordinary credit** (capped at home tax on that income); **underlying tax credit** (credit also for the foreign company's tax on the profits behind a dividend); **tax sparing** (residence State gives credit for foreign tax that was spared under incentives). Write them as defined here; ICMAI's suggested answers will confirm the wording.
- Other Articles: **Article 24** non-discrimination (a foreign company taxed at a higher rate is not "less favourable" under the Act, SM 457); **Article 25** MAP; **26** exchange of information; **27** assistance in collection. [SM 454, SM 455, SM 457, SM 497]

SM M12 EXERCISE MCQs · MCQ FACTS

- India generally follows the **UN Model**. [SM 507]
- s.91 = **unilateral** relief; s.90 = bilateral. [SM 507]
- D25: relief u/s 91 is available although no DTAA exists (if tax was paid abroad).
- J26: OECD Model = treaties between developed countries · J23: force of attraction = UN Model Article 7.

Revision sheet · Module 12 (glance page)

Item	Rule / number	Item	Rule / number
s.90 objectives	relief, avoidance (no treaty shopping), exchange of information, recovery	Types	limited (India–Pakistan) / comprehensive; > 90 countries
OECD	developed–developed; residence principle; 2017; 32 Articles	UN	developed–developing; source principle; 1980 / 2021; 31 Articles; India follows
UN only	12A FTS, 12B digital services, 14 independent services, insurance PE, force of attraction, service PE 183 days	Construction PE	OECD > 12 months · UN > 6 months
s.90 rule	Act or DTAA, whichever is beneficial; GAAR always; TRC + Form 10F	Resident's TRC	Form 10FA → 10FB
s.91	resident; foreign income; tax paid; no DTAA; lower of average rates	s.91 cases	income actually taxed in India; country-wise; not on deemed-Indian income
FTC Rule 128	Form 67 by the due date; not against interest / fee / penalty	Disputed foreign tax	credit after settlement; evidence in 6 months
Tie-breaker	home → vital interests → habitual abode → nationality → MAP	Not a PE	storage, display (OECD: delivery), processing by another, purchasing, auxiliary
Article 7	only profits attributable to the PE	23A / 23B	exemption (with progression) / credit capped at own tax

Module 12 mind map

Why + what
- juridical vs economic ⚠
- limited / comprehensive
- OECD residence · UN source

Article 4, 5
- tie-breaker order
- PE: fixed place
- 12 / 6 months; 183 days

s.90 / 90A
- beneficial; GAAR
- TRC, Form 10F
- Rule 128, Form 67

MODULE 12
~17 marks
Q6(a), Q6(b), MCQ xiii–xiv

Article 7, 12, 12A
- attributable profits; FOA (UN)
- royalties: OECD residence only
- FTS only in UN

s.91 (Q6(b))
- lower average rate
- country-wise
- after set-offs

23A / 23B
- exemption, progression
- ordinary credit
- full · underlying · sparing ⚠