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years

an overview of the

Maldives-Bangladesh DTA

This overview provides a brief analysis of the Maldives-Bangladesh DTA. The key provisions of the DTA will be looked at, including the implications it has on enterprises attempting to make use of the treaty.

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Introduction

Taxation in cross-border scenarios is a complex interplay of various factors, often causing challenges for individuals and corporations conducting business outside their resident state. These challenges stem from the differing scopes of domestic laws, leading to overlaps or gaps in tax liabilities across borders.

The primary goal of establishing a Double Tax Avoidance Agreement (“DTA”) is to address these gaps and overlaps, ultimately aiding states in eliminating instances of double taxation. DTA provisions not only alleviate double taxation but also serve to attract foreign investments by offering reduced tax rates on specific types of income.

The DTA between the Maldives and Bangladesh (“Maldives-Bangladesh DTA”) is the second agreement of its kind between the Maldives and its bilateral trade partner.

The Maldives-Bangladesh DTA was signed on 23 December 2021. The treaty entered into force on 11th January 2024. The DTA’s withholding tax provisions are set come into effect from 1 July 2024, while other tax provisions apply from 1 January 2025.

This overview will cover the key provisions of the DTA and their impact on enterprises aiming to utilise the treaty.

The following key areas are covered:

1. Scope of the DTA
2. Double taxation relief
3. Business Profits and Permanent Establishments
4. Taxation of different types of income, including
 - a. Dividends
 - b. Interest
 - c. Royalties
 - d. Income from immovable properties
 - e. Shipping and air transport
 - f. Students and trainees
5. Taxation of capital gains
6. Employment income and directors' fee

1. Scope of the DTA

The general position is that the DTA applies to a **person** who is resident of either states, meaning that if a person does not satisfy the criteria of residence of one or both contracting states, they cannot access the benefits afforded under the DTA.

“Person” includes an individual, a company and any other body of persons.

Since countries have its own distinctive definition of residency, a person may qualify as a resident in more than one country. As the framework of the DTA only functions if a person is resident in one of the states, the DTA provides a mechanism (often referred to as **tiebreaker rules**) to ensure a person is only treated as a resident of one of the two states.

The following tiebreaker rules for individuals are prescribed to determine residency in one of the states:

1. Permanent home available to the resident
2. Personal and economic relations
3. Habitual abode
4. Nationality
5. Mutual agreement

Where an individual is considered as tax resident of both contracting states, for treaty purposes, the individual is deemed to be resident of the state in which he or she maintains his permanent home. Where permanent home test does not suffice, i.e., if he or she has a permanent home in both states or in neither, the residency status will be determined taking into account the individuals personal and economic relations (centre of vital interests). In case, the centre of vital interests cannot be determined, the next test is to examine the habitual abode. In case where the habitual abode cannot be determined, the next test is to examine the state of which the person is a national. Where all of these tests fail to break the tie, the countries are required to determine the residency via **mutual agreement**.

If a company or any other person other than an individual is considered as tax residents of both Maldives and Bangladesh by application of the residency definitions of the respective states, for treaty purposes, the person is deemed to be a resident only of the state in which it has its place of effective management.

2. Relief from double taxation

Article 23 provides the mechanism for granting relief from double taxation where a resident of a contracting state is required to pay taxes in the other contracting state. The Article follows **ordinary credit method** whereby the resident state allows as a deduction from its own tax on the income of its resident, an amount equal to the tax paid in the source state on the income derived from the source state. This deduction is restricted to the appropriate proportion of its own tax.

For example: A Maldives tax resident may derive income from Bangladesh according to the provisions of the Maldives-Bangladesh DTA and pay taxes in Bangladesh. If that is the case, Maldives will allow a deduction on taxes of an amount equal to the taxes paid in Bangladesh or the taxes that income must have suffered in the Maldives, whichever is lower.

As Maldives also provides unilateral foreign tax credit under the Income Tax Act, generally, there is no difference between the relief that a taxpayer could claim under domestic law and the relief that could be claimed under a DTA. However, the existence of the treaty provision guarantees that the relief continues to be available even if the residence state repeals the relief in its domestic law.

3. Business Profits & Permanent Establishments

The business profits of a resident of one contracting state are exempt from taxation by the other contracting state unless those profits are attributable to a Permanent Establishment (“PE”) located within that state. Meaning, the business profits of a Bangladesh resident cannot be taxed in the Maldives, unless the Bangladesh resident has a PE in the Maldives, and the business profits are attributable to the PE and vice versa.

In addition to the above, the DTA also includes a limited force of attraction rule that specifies that if an enterprise has a PE in the other contracting state for the purpose of selling goods or merchandise, sales of the same or a similar kind of goods or merchandised in that state may be taxed in that state even if they are not conducted through the PE. Similar rule applies if the PE is used for other business activities and the same or similar activities are performed without any connection with the PE.

This means that for instance if an enterprise has a PE in Maldives for the purpose of selling goods or merchandise, sales of same or similar kind of goods or merchandise in the Maldives may be taxed in Maldives even if they are not conducted through the PE or even if the PE is not involved in that transaction at all.

Article 5 of the DTA defines a PE as a fixed place of business through which the business of an enterprise is wholly or partly carried on.

This includes the following:

1. a place of management;
2. a branch;
3. an office;
4. a factory;
5. a workshop;
6. a warehouse, in relation to a person providing storage facilities for others;
7. a mine, an oil or gas well, a quarry, or other place of extraction of natural resources;
8. a sales outlet; and
9. a farm, plantation or other place where agriculture, forestry, plantation, or related activities are carried on

In addition to the above, a building site or construction or installation project is deemed to constitute a PE if it lasts more than 183 days within any 12-month period. Similarly, furnishing of services including consultancy services through employee or other personnel are considered to establish a deemed PE, if such activities continue for a period aggregating more than 6 months in any 12-month period.

Furthermore, under the DTA an enterprise is deemed to have a PE in the other contracting state to the extent that an agent in that state conducts activities on behalf of the enterprise. An agent in one state may be considered a PE of an enterprise if:

1. The agent is a dependent agent.
2. The agent has and continues to habitually exercise an authority to conclude contracts in the other contracting state that are binding to the enterprise.

Article 5(4) lists a number of business activities, that if carried out by an enterprise resident in the other contracting state will not constitute a PE in that other state. The excluded activities will not constitute a PE even where they are carried out through a fixed place of business, and they can be described as being 'preparatory or auxiliary' in nature. These include storage facilities held for certain purposes, such as storage of goods for the purpose of display or delivery, maintenance of a fixed place solely for the purpose of carrying on activities that are of a preparatory or auxiliary character, etc.

4. Taxation of different types of income

Income from immovable properties

Article 6 of the DTA allocates the primary right to tax income derived from immovable property including income from agriculture, forestry, or fishing to situs state (that is the state in which the immovable property is situated).

What constitutes an immovable property is contingent upon the domestic law of the country in which the property is situated. Regardless, it includes property accessory to immovable property, livestock and equipment used in agriculture, forestry or fishing and rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to explore for or exploit natural resources or standing timber and rights to variable or fixed payments as consideration for working of, or the right of work, mineral deposits, quarries, sources and other natural resources – ships boats and aircrafts are not included.

Interest, Royalties and Fees for Technical Services (FTS)

Interest, royalties and FTS arising in a contracting state and paid to a resident of the other contracting state may be subject to taxation in that other state. The Articles then consider the nature of the income and provides for some level of source state taxation. However, this level of source based taxation is capped (at a rate not exceeding 10% of the gross amount) if the beneficial owner of such income is a resident of the other contracting state.

This may result in a full levy of tax in the residence state plus a partial levy in the source state. Residence states in this situation will have to provide a credit to ensure double taxation is not caused by the operation of these Articles.

For example ...

Where a Maldives resident company pays royalty to a Bangladesh-resident, the royalty being sourced from the Maldives, will be subject to tax in the Maldives at the rate of 10%. However, this does not take away the right to tax royalty from Bangladesh.

Resident State: Bangladesh

Source State: Maldives



Bangladesh may tax the royalty income

Domestic Law: Withholding tax at 10%

Double taxation relief (credit will be applicable)

Treaty: May tax at 10%.

Typically, treaty rates are lower compared to the tax rates applied in the absence of a DTA. However, it is notable that a withholding tax rate of 10% applies both under Maldives domestic law and the Maldives-Bangladesh DTA for the above specified types of income.

Dividend

Similar to interest, royalties and FTS, dividends paid by a company that is a resident of one contracting state to a resident of the other contracting state may be subject to taxation in the recipient state.

The Article then considers the nature of dividends and provides for some level of source state taxation, but this level of source state taxation is capped at 15% where the beneficial owner of the dividend is a resident of the other contracting state. However, this source based taxation can be reduced to 10% where:

1. Taxpayer is the beneficial owner of the dividend
2. Taxpayer is a company
3. The company holds directly at least 10 percent of the capital of the company paying dividends throughout a 365-day period (including the day of the dividend)

For example, where a Maldives-resident shareholder is the beneficial owner of the dividends paid from a Bangladesh-resident company, the dividends will be taxable in Bangladesh at the reduced rate of 10% only if the shareholder directly held 10% of the capital of the Bangladesh-resident company throughout a 365-day period. If not, Bangladesh can tax such dividends at the rate of 15%.

Shipping and Air Transport

Profits derived by an enterprise of a contracting state from the operation of aircraft in international traffic will be taxable only in that contracting state. Meaning, these profits are wholly exempt from tax at source and are taxed exclusively in the contracting state of the enterprise engaged in international traffic.

In contrast, profits derived by an enterprise of a contracting state from the operation of ship in international traffic may be taxable in the source state. However, the tax imposed in that other contracting state shall be reduced by 50%.

The provision applies to the share of the income from the operation of ships or aircraft derived by an enterprise of a contracting state through participation in a pool, a joint business or an international operating agency and selling of tickets on behalf of another enterprises.

Independent Personal Services

Article 14 of the Maldives-Bangladesh DTA provides the rule that an individual who is a resident of a contracting state that derives income from performing professional services or other services in an independent capacity may be taxed in its state of residence.

However, such income may also be taxed in the other contracting state under two conditions: either the income is linked to a fixed base in that

state, regularly available for conducting their activities, or the individual spends at least 183 days in that state within a twelve-month period during the fiscal year, regardless of having a fixed base.

Professional services include especially independent scientific, literary, artistic, educational or any other similar activities of an independent nature but does not include technical services.

Professors, Teacher, and Research Scholars

If a professor, teacher, or research scholar who is resident or was resident in the other contracting state visits the contracting state under the invitation of its government, an approved institution, or an official cultural exchange program, for teaching, lecturing, or research purposes, remuneration earned from these activities will be **exempt from tax** in the visiting state if they were resident in the other contracting state immediately before visiting, and their stay does not exceed two consecutive years.

Students and Trainees

If an individual resident in one contracting state immediately before visiting the other contracting state, stays in the other contracting state temporarily and solely as:

1. A student at a recognised educational institution in the other state,
2. Working as a business or technical apprentice, or
3. As a recipient of a grant, allowance, or award for studying, researching, or training from either government, a scientific, educational,

religious or charitable organisation, or under an approved technical assistance program.

Such individuals will be **tax exempt** in the other contracting state on any payments they receive for living expenses, education, study, research, or training and the grants, allowance or awards received under the respective programme and income up to USD5,000 per year from personal services in the other contracting state.

If an individual who is a resident of a contracting state immediately before making a visit to the other contracting state is temporarily present in the other contracting state solely as a:

1. A student at a recognised university, college, school, or similar educational institution in the other state country
2. Working as a business or technical apprentice
3. Recipient of a grant, allowance, or award for studying, researching, or training from either government, or from a scientific, educational, religious, or charitable organization, or under a technical assistance program approved by either government.

This means, a Maldivian student, business apprentice or trainee is exempt from tax (for such period of time as is reasonably necessary to complete the education or training) in Bangladesh on:

1. Payments received from abroad for the purpose of his maintenance, education, study, research or training.
2. Grants or awards from the government or the scientific, educational, religious or charitable organisation, or the relevant technical assistance program.
3. Income (not in excess of USD5,000 per year) from personal services performed in Bangladesh.

Snapshot

Type of Income	Treaty Provision
Income from immovable property	Taxed in the state in which the immovable property is situated.
Interest, Royalties, FTS	Taxed at a rate of 10% in the state in which the specific income arises (i.e., source state). May be taxed in recipient state as well.
Dividend	Taxed at a rate of 10% or 15% in the source state. May be taxed in recipient state as well.
Shipping and Air Transport	For air transportation, only taxable in the state of residence. For shipping, may be taxed by the source state. If taxed by source state, the tax must be reduced by 50%.
Independent Personal Services	Taxed in the residence state. Source state may only tax if the services are related to fixed based or the persons presence in the source state exceeds 183 days.
Professors, Teacher, and Research Scholars	Exempt from tax in the visiting state if the visit does not exceed two consecutive years.
Students and Trainees	Exempt from tax in the visiting state.

Note that the above provisions relating to dividend, interest, royalty and FTS do not apply if the recipient of the specified types of income has a PE in the state in which the income arises and, (1) in case of dividends; the holding in respect of which the dividends are paid, (2) in case of interest; the debt claim in respect of which the interest is paid, (3) in case of royalty and FTS; the right or property in respect of which the royalties and FTS are paid, are effectively connected with the PE of fixed base. In such case, Article 7 of the Maldives-Bangladesh DTA will be applicable, and the specific type of income will be treated as business profits of the PE and will be taxed accordingly.

5. Taxation of Capital Gains

Article 13 of the DTA covers the taxation of capital gains. The key rules prescribed in relation to disposal of different types of properties are as follows:

Immovable property

Gains derived by a resident of one contracting state from the disposal of immovable property that is situated in the other contracting state may be taxed in that other state. Meaning, gains arising from the alienation of an immovable property can be taxed in the state where the respective immovable property that is being disposed of is **situated**.

Movable property of a PE

Article 13(2) deals with movable property that forms part of the business property of a PE or movable property that forms part of a fixed base available for the purpose of providing independent services. Under the Article, capital gains on property falling within the definition of movable property that forms part of the property of a PE or such a fixed base may be taxed in the **source state**.

Ships and aircrafts and boats

Gains from the alienation of ships or aircraft operated by an enterprise in international traffic or movable property pertaining to the operation of such ships or aircraft are taxable in the **state of residence** of the enterprise.

Shares

Article 13(4) applies to gains realised from the sale of shares or comparable interests in a company, partnership or trust deriving more than **50% of their value** directly or indirectly from immovable property.

Gains realised from the sale of such shares or interest deriving more than 50% of their value directly or indirectly from immovable property may be taxed in the state in which the property is located..

For example ...

if more than 50% of the value of a Bangladesh holding company is directly or indirectly related to the property situated in the Maldives, then the disposal of the shares of the Bangladesh holding company would be subject to capital gains tax in the Maldives and would be captured through domestic **'offshore-indirect transfer'** withholding tax rules as well as general capital gains tax rules.

Gains arising from the alienation of any other property other than those explained above will be taxable only in the recipient's state of residence.

6. Employment Income

Remuneration

The general rule under Article 15 of the DTA with respect to salaries, wages, and other similar remuneration in respect of employment is that it will be subject to tax in the state in which the employment is exercised. In other words, in the contracting state where the employee is physically present when performing the activities for which the employment income is earned.

Article 15 also prevents the remuneration from short term assignments being taxed in the state in which the assignment is carried out. To qualify for this exemption, the following three conditions must all be met.

- The recipient is present in the other state for a period of not exceeding in the aggregate 183 days in a 12-month period commencing or ending in the fiscal year concerned.
- The remuneration is paid by, or on behalf of, an employer who is not a resident of the country in which the employment is exercised.
- The remuneration is not borne by a PE that the employer has in the state in which the employment is exercised.

The purpose of the above exception is to facilitate the international movement of personnel and the operations of enterprises engaged in international trade. It ensures that employee is not subject to withholding tax where neither the employee nor the employer has a sufficient nexus with the source state.

Director's Fees and Remuneration of Top-level Managerial Official

Under the Maldives-Bangladesh DTA, directors' fees or other similar payments received by the resident of one contracting state in his or her capacity as a member of the board of directors of a company or a similar organ of a company that is resident in the other contracting state may be taxed in the other contracting state.

This means, if a Bangladesh resident director is paid a directors' fee from a Maldives-resident company, the same can be taxed in the Maldives.

Same rule applies to salary, wages or other similar remuneration derived by a resident of a contracting state working in the capacity of an official or in a top-level managerial position in a company which is resident of the other contracting state.

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