

CASE STUDY - 7

M/s Gryffindors LLP ("the firm") is a Country X based partnership firm engaged in the practice of law. The firm is the largest law firm in Country X and advises fortune 500 clients on various legal matters namely Corporate Mergers & Acquisitions, Tax, Trade law, Construction, Arbitration, Anti-trust laws, Energy, Banking laws etc. The firm has global offices in Country Y and Country Z. The firm does not have any presence in India owing to regulatory requirements and, therefore, does not have any office in India. The firm is a tax resident of Country X but by virtue of the tax laws in Country X, it is a fiscally transparent entity.

The following are the assignments entered into by the firm and its global offices. Assignment A is a completed assignment, Assignment B is an ongoing assignment and Assignment C pertains to a future assignment which the firm is proposing to undertake. The facts and nature of the assignments containing India nexus are provided below.

Assignment A

Client Name: Connors & Ann, Country X

Nature of Assignment: Connors & Ann had entered into a joint venture agreement with an Indian party in March, 2017 for construction of a nuclear thermal power plant in Tamil Nadu, India during the financial year 2017-18.

Additional Details:

- As per the scope of work, the firm had
 - advised on all aspects of structuring and drafting, negotiation, construction contract and maintenance contracts;
 - advised on procurement structures, multi contract/onshore offshore structures;
 - provided specialised project finance expertise and ensured to reduce the risks associated with operating in foreign jurisdiction;
 - advised on tax and regulatory implications from a Country X law perspective; and
 - attended meetings with project sponsors, negotiated floating rate issues and advisory on any other overseas jurisdiction related regulatory aspects etc.
- The execution of work was done partly from India and partly from Country X office.
- The firm's employees and partners were in India for 120 days.
- The firm's billing model for the services rendered were as follows:
 - each partner and employee of the firm who was involved in doing work for the clients was required to maintain detailed time sheets recording the time spent by them on such work; the said time sheets separately showed the time spent on doing such work in India and outside India;
 - the time so spent was multiplied by the hourly billing rates applicable to each respective partner/employee as specified in the terms of appointment between the firm and the client;
 - the bills so raised were paid to the firm by the client outside India.

Based on the above details, the firm is of the view that the income attributable to the services rendered in India would be taxable in India. The said income would be arrived at based on “estimation of fees with reference to the fees rates at which such services could have been procured from corresponding professionals acting in India”.

The firm intends to claim the following expenditure -

- (a) direct costs allocated on the basis of number of hours spent at the pro-rated Country X salary cost; and
- (b) general overheads have been allocated @5% of income on an ad-hoc basis.

Assignment B

Client Name: Vidyut India Limited, an Indian Company which is a subsidiary of a Vidyut AG, an entity in Country Y.

Nature of Assignment: Vidyut India has entered into a contract with an Indian construction company for construction of a pharma research and development unit in India. Vidyut India also has a group entity, Vidyut Z Inc, in Country Z, from whom necessary inputs are obtained for construction of the pharma research and development centre. The construction agreement provided that the law in Country Y will govern the contract. There is currently a dispute in the contract and as per the agreement, the adjudication proceedings were initiated on 30th August 2017. Gryffindors Y is a registered firm in Country Y engaged by Vidyut India to represent it in the adjudication proceedings in India. Further, as part of the adjudication proceedings, site visits are essential in India and Country Z. For the site visit in Country Z, Gryffindors Z, a Country Z registered partnership firm was engaged for which Vidyut India would compensate the Country Z firm separately.

Additional Details:

- As per the terms of agreement, the activities are to be carried on in Country Y, Country Z and India.
- Except a site visit and an adjudication hearing in Chennai between 21st and 24th September, 2017, no other activity is carried on in India by Gryffindors Y. The total time spent in India was 6 days between 19th September and 24th September, 2017.
- Meanwhile, another site visit in Country Z was for 10 days for which partners from Gryffindors Z undertook the visit and provided its report to Gryffindors Y, Country Y. For the time spent by the Country Z firm, it had raised an invoice to Vidyut India.
- Apart from the 6 days in India and 10 days in Country Z, major part of the adjudication proceedings were at Country Y.
- Gryffindors Y produced a tax residency certificate from Country Y. It is also to be noted that Gryffindors Y is a fiscally transparent entity as per the tax laws of Country Y. Gryffindors Y is only liable for trade tax in Country Y.
- Gryffindors Z produced a tax residency certificate from Country Z tax authorities certifying that it is a tax resident of Country Z. It is also to be noted that Gryffindors Z is a fiscally transparent entity as per the Country Z tax laws.

Assignment C

Client Name: Abhimanyu Holdings Bank Limited, a banking company registered in India.

Nature of Assignment: Abhimanyu Holdings Bank Limited is contemplating to acquire a Country X based national bank. Therefore, it has approached Gryffindors LLP, Country X ('the Firm') for a counsel opinion for the proposed acquisition.

Additional Details:

- The scope of work for the firm shall be the following:
 - Phase I: Education & Training
 - Phase II: Acquisition Transaction
 - Phase III: Regulatory approval for the transaction.
- As part of the first phase, on education and training, the firm will provide a detailed document to Abhimanyu India on the legal framework on banking and regulatory laws in Country X. Further, apart from the document, the firm will provide presentation and discuss the various legal and regulatory requirements in Country X for setting up a bank branch or acquiring a bank in Country X.
- The presentation to be made by the firm will be to the bank officials of Abhimanyu India. The presentation will be made from the law firm's office in Country X. The purpose of the training is to ensure that if the bank sets up a branch or office in Country X, the said officials will be deputed to the Country X entity.
- The work shall be undertaken by the firm from its office in Country X and there will be no visit in India.
- As mentioned previously, the firm is a tax resident of Country X and is a fiscally transparent entity for tax purpose in Country X.
- Phase II and Phase III are subject to the conditions and legal environment being favourable, and hence, the happening of the same is not certain. However, Phase I: Education is certain and a fee of foreign currency equivalent to Rs.1,50,000 has been agreed upon by the firm to render Phase I services, which would be paid in Country X.

Based on the above facts, you are required to answer the following questions:

I. MULTIPLE CHOICE QUESTIONS

Write the correct answer to each of the following questions by choosing one of the four options given. Each question carries two marks.

1. ABC Ltd. an Indian company paid dividend distribution tax under section 115-O in respect of dividend distributed by it to its resident and non-resident shareholders. Mr. John, a shareholder of ABC Ltd. and a resident of Country X, has to pay tax in Country X on dividend received by him from ABC Ltd., as per the domestic tax laws of Country X. This is an example of:
 - (a) Juridical double taxation
 - (b) Territorial double taxation
 - (c) Economic double taxation
 - (d) Municipal double taxation
2. Tax treaty is part of international law; hence its interpretation should be based on a certain set of principles and rules of interpretation. Which convention is used globally for interpretation of tax treaties?
 - (a) The UN Model Convention
 - (b) The OECD Model Convention

- (c) Either (a) or (b) [Except in case of USA, where US Model Convention is used]
- (d) The Vienna Convention
3. Can benefit of India-Country X tax treaty be availed by M/s. Gryffinders LLP (“the firm”), Country X in respect of income earned by it in India from Assignment A, which is taxable in both India and Country X, by virtue of the respective domestic tax laws?
- (a) Yes, since the income is subject to tax in both countries albeit in the hands of different persons
- (b) No, since as per the laws of Country X, the firm is a fiscally transparent entity. Hence, there is no double taxation of income in its hands.
- (c) Yes, since the firm’s employees and partners stayed in India for more than 100 days. Hence, the requisite condition for availing treaty benefit under the DTAA is satisfied.
- (d) Yes, since the execution of work was done partly from India and partly from Country X. Hence, treaty benefit can be availed.
4. A fiscally transparent entity means –
- (a) An entity entitled to concessional rate of tax
- (b) An entity enjoying tax pass through status
- (c) An entity entitled to benefits of DTAA
- (d) An entity which is subject to distribution tax on profits distributed by it.
5. What are the tax implications under the Income-tax Act, 1961 in respect of income earned from assignment A by M/s. Gryffindors LLP, a Country X based partnership firm (You may ignore the provisions of the DTAA for the purpose of answering this question) -
- (a) the entire income from the assignment is taxable in India
- (b) Only income attributable to the services rendered in India is taxable in India
- (c) No part of the income is taxable in India since the firm does not have a permanent establishment in India
- (d) No part of the income is taxable in India since the income was received outside India.
6. In order to claim relief under the tax treaty in India, a non-resident -
- (a) should have a business presence in India
- (b) should produce his Permanent Account Number
- (c) should produce Tax Residency Certificate (TRC)
- (d) should produce his income-tax return filed in the home country.
7. As per the provisions of the Income-tax Act, 1961, which of the following is **not** an objective of the Central Government to enter into tax treaty with another Country:

- (a) For granting relief in respect of income-tax chargeable to tax in India and the other country
 - (b) For enabling round tripping of unaccounted money into India
 - (c) For recovery of income-tax
 - (d) For exchange of information for prevention of evasion or avoidance of income tax
8. When a term used in a tax treaty is not defined in the tax treaty or in the Act, but the same is defined subsequently through a notification in the Official Gazette by the Central Government, then, in such a case:
- (a) The notification shall take effect from the date of its publication in the Official Gazette
 - (b) The notification shall be deemed to be effective from the date when the tax treaty came into force
 - (c) The notification shall be deemed to be effective from the date when the tax treaty was last modified
 - (d) The notification shall take effect from 1st April and be effective from the current assessment year.
9. In order to invoke the tax treaty for a person who is a dual resident i.e. tax resident in both the countries, which rule may be applied under the relevant article of the tax treaties to resolve the issue?
- (a) Force of Attraction
 - (b) Tie-breaker
 - (c) Equivalent beneficiary
 - (d) Non-discrimination
10. Under the provisions of the Income-tax Act, 1961, the term "Person" would not include:
- (a) A body corporate incorporated in a country outside India
 - (b) A Limited Liability Partnership (LLP)
 - (c) Indian branch of a foreign company
 - (d) A co-operative society

II. DESCRIPTIVE QUESTIONS

1. (i) For making the payment to Gryffindors Y and Gryffindors Z, Vidyut India Limited's tax advisor has opined that the Country Y firm and the Country Z firm are not eligible to access India-Country Y DTAA and India-Country Z DTAA, respectively, even though TRC has been provided by such firms. The Indian client's tax advisor has formed this view based on Article 1 read with the relevant articles of the India-Country Y DTAA and India Country Z DTAA coupled with the fact that both the firms are fiscally transparent entities as per the tax laws of the respective countries. Examine the correctness of the view taken by the tax adviser by analysing the relevant Articles of the India-Country Y DTAA and India Country Z DTAA **(6 Marks)**

- (ii) Assuming that the tax treaty benefit is available for both the foreign entities, namely, Gryffindors Y and Gryffindors Z your views are solicited as to whether Article 14 of India-Country Y and India-Country Z tax treaty can be invoked. **(4 Marks)**
- (iii) The firms want clarification as to whether surcharge, education cess and secondary and higher education cess need to be separately added to the withholding tax rate specified in the tax treaty while invoking the tax treaty rate. Examine. **(5 Marks)**
2. (i) What are the tax implications under the Income-tax Act, 1961 in respect of income earned by the firm, M/s. Gryffindors X from the proposed phase I service to be rendered by it in respect of Assignment C? **(4 Marks)**
- (ii) Assuming that the above-referred income is not chargeable to tax in India in the hands of the firm as per the Indian tax laws, is it possible to bring it into tax by invoking the India-Country X DTAA provisions? **(4 Marks)**
- (iii) Assuming that the above-referred income is chargeable to tax in India, how can the tax liability of the firm be mitigated? Your answer should be based on the relevant provision(s) of the Income-tax Act, 1961. **(4 Marks)**
- (iv) Assuming that the tax consequences in the above case are not certain, what is the option available to M/s. Gryffindors X to ensure tax certainty. **(3 Marks)**

EXHIBIT A

Extract of the relevant Articles of India - Country X DTAA

ARTICLE 1

SCOPE OF THE CONVENTION

1. *This Convention shall apply to persons who are residents of one or both of the Contracting States.*
2. *This Convention extends to the territory of each Contracting State, including its territorial sea, and to those areas of the exclusive economic zone or the continental shelf adjacent to the outer limit of the territorial sea of each State over which it has, in accordance with international law, sovereign rights for the purpose of exploration and exploitation of the natural resources of such areas, and references in this Convention to the Contracting State or to either of them shall be construed accordingly.*

ARTICLE 2

TAXES COVERED

1. *The taxes which are the subject of this Convention are :*
 - (a) *in Country X :*
 - (i) *the income-tax;*
 - (ii) *the corporation tax;*
 - (iii) *the capital gains tax; and*
 - (iv) *the petroleum revenue tax;*

(hereinafter referred to as "Country X tax");

(b) in India;

the income-tax including any surcharge thereon;

(hereinafter referred to as "Indian tax").

2. *This Convention shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of this Convention in addition to, or in place of, the taxes of that Contracting State referred to in paragraph 1 of this Article. The competent authorities of the Contracting States shall notify each other of any substantial changes which are made in their respective taxation laws.*

ARTICLE 3 (EXTRACT)

GENERAL DEFINITIONS

1. *In this Convention, unless the context otherwise requires:*

(f) the term "person" includes an individual, a company, a body of persons and any other entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting States;

ARTICLE 4

FISCAL DOMICILE

1. *For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation, or any other criterion of a similar nature, provided, however, that:*
 - (a) this term does not include any person who is liable to tax in that State in respect only of income from sources in that State; and*
 - (b) in the case of income derived or paid by a partnership, estate, or trust, this term applies only to the extent that the income derived by such partnership, estate, or trust is subject to tax in that State as the income of a resident, either in its hands or in the hands of its partners or beneficiaries.*

ARTICLE 5

PERMANENT ESTABLISHMENT

1. *For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.*
2. *The term "permanent establishment" shall include especially:*
 - (a) a place of management;*
 - (b) a branch;*
 - (c) an office;*
 - (d) a factory;*
 - (e) a workshop;*

- (f) *premises used as a sales outlet or for receiving or soliciting orders;*
- (g) *a warehouse in relation to a person providing store facilities for others;*
- (h) *a mine, an oil or gas well, quarry on other place of extraction of natural resources;*
- (i) *an installation or structure used for the exploration or exploitation of natural resources;*
- (j) *a building site or construction, installation or assembly project or supervisory activities in connection therewith, where such site, project or supervisory activity continues for a period of more than six months, or where such project or supervisory activity, being incidental to the sale or machinery or equipment, continues for a period not exceeding six months and the charges payable for the project or supervisory activity exceed 10 per cent of the sale price of the machinery and equipment;*
- (k) *the furnishing of services including managerial services, other than those taxable under Article 13 (Royalties and fees for technical services), within a Contracting State by an enterprise through employees or other personnel, but only if:*
 - (i) *activities of that nature continue within that State for a period or periods aggregating more than 90 days within any twelve month period; or*
 - (ii) *services are performed within that State for an enterprise within the meaning of paragraph 1 of Article 10 (Associated enterprises) and continue for a period or periods aggregating more than 30 days within any twelve-month period:*

Provided that for the purposes of this paragraph an enterprise shall be deemed to have a permanent establishment in a Contracting State and to carry on business through that permanent establishment if it provides services or facilities in connection with, or supplies plant and machinery on hire used or to be used in, the prospecting for, or extraction or production of, mineral oils in that State.

ARTICLE 13

ROYALTIES AND FEES FOR TECHNICAL SERVICES

1. *Royalties and fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.*
2. *However, such royalties and fees for technical services may also be taxed in the Contracting State in which they arise and according to the law of that State; but if the beneficial owner of the royalties or fees for technical services is a resident of the other Contracting State, the tax so charged shall not exceed :*
 - (a) *in the case of royalties within paragraph 3(a) of this Articles, and fees for technical services within paragraphs 4(a) and (c) of this Article,—*
 - (i) *during the first five years for which this Convention has effect ;*
 - (aa) 15 per cent of the gross amount of such royalties or fees for technical services when the payer of the royalties or fees for technical services is the Government of the first-mentioned Contracting State or a political sub-division of that State, and
 - (bb) 20 per cent of the gross amount of such royalties or fees for technical services in all other cases; and

- (ii) *during subsequent years, 15 per cent of the gross amount of such royalties or fees for technical services; and*
 - (b) *in the case of royalties within paragraph 3(b) of this Article and fees for technical services defined in paragraph 4(b) of this Article, 10 per cent of the gross amount of such royalties and fees for technical services.*
3. *For the purposes of this Article, the term "royalties" means :*
- (a) *payments of any kind received as a consideration for the use of, or the right to use, any copyright of a literary, artistic or scientific work, including cinematography films or work on films, tape or other means of reproduction for use in connection with radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience; and*
 - (b) *payments of any kind received as consideration for the use of, or the right to use, any industrial, commercial or scientific equipment, other than income derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic.*
4. *For the purposes of paragraph 2 of this Article, and subject to paragraph 5, of this Article, the term "fees for technical services" means payments of any kind of any person in consideration for the rendering of any technical or consultancy services (including the provision of services of a technical or other personnel) which:*
- (a) *are ancillary and subsidiary to the application or enjoyment of the right, property or information for which a payment described in paragraph 3(a) of this article is received ; or*
 - (b) *are ancillary and subsidiary to the enjoyment of the property for which a payment described in paragraph 3(b) of this Article is received ; or*
 - (c) *make available technical knowledge, experience, skill know-how or processes, or consist of the development and transfer of a technical plan or technical design.*
5. *The definition of fees for technical services in paragraph 4 of this Article shall not include amounts paid :*
- (a) *for services that are ancillary and subsidiary, as well as inextricably and essentially linked, to the sale of property, other than property described in paragraph 3(a) of this Article;*
 - (b) *for services that are ancillary and subsidiary to the rental of ships, aircraft, containers or other equipment used in connection with the operation of ships, or aircraft in international traffic;*
 - (c) *for teaching in or by educational institutions ;*
 - (d) *for services for the private use of the individual or individuals making the payment ; or*
 - (e) *to an employee of the person making the payments or to any individual or partnership for professional services as defined in Article 15 (Independent personal services) of this Convention.*
6. *The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the royalties or fees for technical services, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties or fees for technical services arise through a permanent*

establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right, property or contract in respect of which the royalties or fees for technical services are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 (Business profits) or Article 15 (Independent personal services) of this Convention, as the case may be, shall apply.

7. *Royalties and fees for technical services shall be deemed to arise in a Contracting State where the payer is that State itself, a political sub-division, a local authority or a resident of that State. Where, however, the person paying the royalties or fees for technical services, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the obligation to make payments was incurred and the payments are borne by that permanent establishment or fixed base then the royalties or fees for technical services shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.*
8. *Where, owing to a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties or fees for technical services paid exceeds for whatever reason the amount which would have been paid in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.*
9. *The provisions of this Article shall not apply if it was the main purposes or one of the main purposes of any person concerned with the creation or assignment of the rights in respect of which the royalties or fees for technical services are paid to take advantage of this Article by means of that creation or assignment.*

EXHIBIT B

Extract of the relevant Articles of India - Country Y DTAA

ARTICLE 1

PERSONAL SCOPE

This Agreement shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2

TAXES COVERED

- 1 *This Agreement shall apply to taxes on income and on capital imposed on behalf of a Contracting State, of a land or a political sub-division or local authority thereof, irrespective of the procedure in which they are levied.*
- 2 *There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, and the pay roll tax.*
- 3 *The existing taxes to which this Agreement shall apply are in particular:*
 - (a) *in the Federal Republic of Country Y :*
income-tax,

corporation-tax,

capital tax, and

trade tax

(hereinafter referred to as "Country Y tax");

(b) in the Republic of India,

the income-tax including any surcharge tax thereon, and the wealth-tax (hereinafter referred to as "Indian tax").

- 4 *This Agreement shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of changes of importance which have been made in their respective taxation laws.*

ARTICLE 3 (EXTRACT)

GENERAL DEFINITIONS

1. *For the purposes of this Agreement, unless the context otherwise requires, -*

(d) the term "person" includes an individual, a company and any other entity which is treated as a taxable unit under the taxation laws in force in the respective Contracting States ;

ARTICLE 4 (EXTRACT)

RESIDENT

1. *For the purposes of this Agreement, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any criterion of a similar nature. But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.*

ARTICLE 14

INDEPENDENT PERSONAL SERVICES

1. *Income derived by an individual who is a resident of a Contracting State from the performance of professional services or other independent activities of a similar character shall be taxable only in that State except in the following circumstances when such income may also be taxed in the other Contracting State:*
- (a) if he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities, in that case, only so much of the income as is attributable to that fixed base may be taxed in that other State ; or*
- (b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 120 days in the relevant fiscal year; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.*
2. *The term "professional services" includes independent scientific, literary, artistic, educational or teaching activities, as well as the independent activities of physicians, surgeons, lawyers, engineers, architects, dentists and accountants.*

EXHIBIT C

Extract of the relevant Articles of India – Country Z DTAA

ARTICLE 1

PERSONAL SCOPE

This Agreement shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2

TAXES COVERED

1. *The taxes to which this Agreement shall apply are:
 - (a) *in the case of India :*
the Income-tax including any surcharge thereon; and
 - (b) *in the case of Country Z:*
*the federal, cantonal and communal taxes on income (total income, earned income, income from capital, industrial and commercial profits, capital gains, and other items of income).**
2. *The Agreement shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of the present Agreement in addition to, or in place of, the taxes referred to in paragraph 1 of this Article.*
3. *In this Agreement, the term "Indian tax" means tax imposed by India, being tax to which this Agreement applies; the term "Country Z tax" means tax imposed in Country Z, being tax to which this Agreement applies; and the term "tax" means Indian tax or Country Z tax, as the context requires; but the taxes in the preceding paragraphs of this Article do not include any penalty or interest imposed under the law in force in either Contracting State relating to the taxes to which this Agreement applies.*
4. *The competent authorities of the Contracting States shall notify to each other any significant changes which have been made in their relevant respective taxation laws.*

ARTICLE 3 (EXTRACT)

GENERAL DEFINITIONS

1. *In this Agreement, unless the context otherwise requires:
 - (d) *the term "person" includes an individual, a company, a body of persons, or any other entity which is taxable under the laws in force in either Contracting State;**

ARTICLE 4

FISCAL DOMICILE

1. *For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation, or any other criterion of a similar nature, provided, however, that:*

- (a) *this term does not include any person who is liable to tax in that State in respect only of income from sources in that State; and*
- (b) *in the case of income derived or paid by a partnership, estate, or trust, this term applies only to the extent that the income derived by such partnership, estate, or trust is subject to tax in that State as the income of a resident, either in its hands or in the hands of its partners or beneficiaries.*

ARTICLE 14

INDEPENDENT PERSONAL SERVICES

1. *Income derived by an individual or a firm who is a resident of one of the Contracting States in respect of professional services or other independent activities of a similar character shall be taxable only in that State unless:*
 - (a) *the individual or firm has a fixed base regularly available to the individual or firm in the other Contracting State for the purpose of performing the individual's or the firm's activities, in which case the income may be taxed in that other State but only so much of it as is attributable to activities exercised from that fixed base; or*
 - (b) *the stay by the individual or, in the case of a firm, by one or more members of the firm (alone or together) in the other Contracting State is for a period or periods amounting to or exceeding 183 days in a year of income, in which case only so much of the income as is derived from the activities of the individual, that member or those members, as the case may be, in that other State may be taxed in that other State.*
2. *The term "professional services" includes services performed in the exercise of independent scientific, literary, artistic, educational or teaching activities as well as in the exercise of the independent activities of physicians, surgeons, lawyers, engineers, architects, dentists and accountants.*