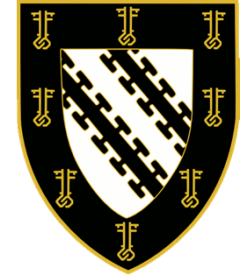




India's Tax Treaty Policy for Taxation of Services and the OECD Principles:



**How and why are the BRICs diverging from
OECD's scheme for allocation of rights to tax
active income**

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The three key areas of divergence

- Service PE provisions
- Provisions for taxation of independent personal services
- Provisions for taxation of fees for technical services (FTS)

Focus

Service PE

Independent
personal services

FTS

Other BRICs

Why

Service PE provisions

- Present in 40% of India's bilateral tax treaties.
- Broadly on the lines of Articles 5(3)(b) of the UN Model. (?)
- In 41% time thresholds lesser than 183 days.
- 22% do not have the 'same or connected project' limitation.
- Paragraphs 35, 36, 39 - Positions of non-member countries on Article 5 of the OECD Model and its Commentary - 'furnishing of services is sufficient for the creation of a service PE'; 'for 'furnishing services in a State', 'physical presence' in that State is not essential '.
- Report of the Eighth session of the UN Committee of Tax Experts, 2012.

Focus

Service PE

Independent
personal services

FTS

Other BRICs

Why

Independent personal services

- 100% of India's tax treaties have a provision for taxation of independent personal services.
- Based on Article 14 of the UN Model.
- Deleted from the OECD Model in 2000 - OECD, *Issues Related to Article 14 of the OECD Model Tax Convention* (Issues in International Taxation No. 7, OECD, 2000)
- Retained in the UN Model – preserving greater source taxing rights.

Focus

Service PE

**Independent
personal services**

FTS

Other BRICs

Why

Provisions for taxation of fees for technical services (FTS)

- Scope of the term 'FTS' – 1) Narrow – Article 12, India-US treaty 1989; 2) Wider definition – payments for 'technical, managerial, and consultancy services', including provision of services of technical or other personnel'.
- 60% of India's tax treaties provide for taxation of FTS (in 96% of treaties with with OECD economies).
- 80% Treaties wider definition.
- Payer based source rules.
- Taxation on gross basis.
- Paragraph 42.19 of the Commentary to Article 5 of the OECD Model, 2010.

Focus Service PE Independent
Personal Services **FTS** Other BRICs Why

Other BRICs

- China – Service PE, provision for taxation of independent personal services – based broadly on respective provisions of the UN Model, very limited use of provision for taxation of FTS (China-India tax treaty).
- Brazil – No service PE (not required in light of position in domestic law and interpretation of ‘technical and technical assistance services not involving transfer of know-how’ as ‘other income’ – payer based source rule – taxation on gross basis; taxation of independent personal services – Payer based source rule; Technical services per se (involving transfer of technical knowledge) treated as royalties under tax treaties.
- Russia – Proximity to the OECD Model, some treaties have service PE provisions, provision for taxation of independent personal services largely based on that contained in the OECD Model prior to 2000, very limited use of provision for taxation of FTS (India-Russia tax treaty).

Focus	Service PE	Independent personal services	FTS	Other BRICs	Why
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Why?

- Response to the scope of taxing rights under the existing source rules?
- Even when gradually changing economic position – strongly visible in the service sector.
- Seeking recognition of factor ‘contributing’ to profit.
- Relevance for other stakeholders and the international taxation framework?