Interpretation and Application of Tax Treaties

by CA. Karnik Gulati

Structural framework of this article:

- What is a tax treaty?
- Treaty negotiation process
- Need for interpretation of tax treaties
- Various approaches to interpretation
- Aids to Treaty Interpretation
- Practical aspects in interpretation of tax treaties
- Dispute resolution in case of issue of treaty interpretation
- Conclusion

What is a tax treaty?

A tax treaty is a contract between two or more sovereign governments. Tax treaties are **international agreements under public international law**. The main objective of tax treaties is avoidance of double taxation and prevention of fiscal evasion.

Private international law: This refers to the law that is administered between private citizens of different countries.

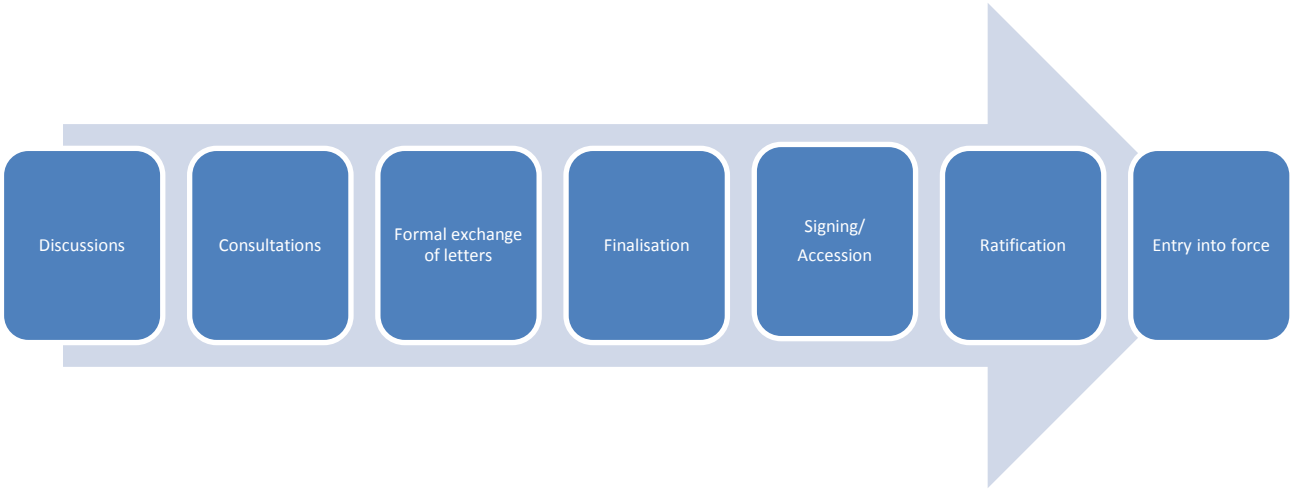
Public international law: This is concerned with the structure and conduct of sovereign countries; analogous entities, and intergovernmental organizations.

Customary international law: This means those aspects of international law that are derived from customary practices.

Treaty negotiation process

It may take several years from the initiation of negotiations between respective countries to the date when a tax treaty actually enters into force. Many a times treaties progress to the final stages, but never comes into force. This is perhaps because, meanwhile the treaty is negotiated, the domestic tax laws of those countries have changed significantly and the countries are forced to 'go back to the drawing board'.

To show you the glimpse of the key stages involved in process of treaty negotiation, we have fleetingly presented the same below:



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Need for interpretation of tax treaties

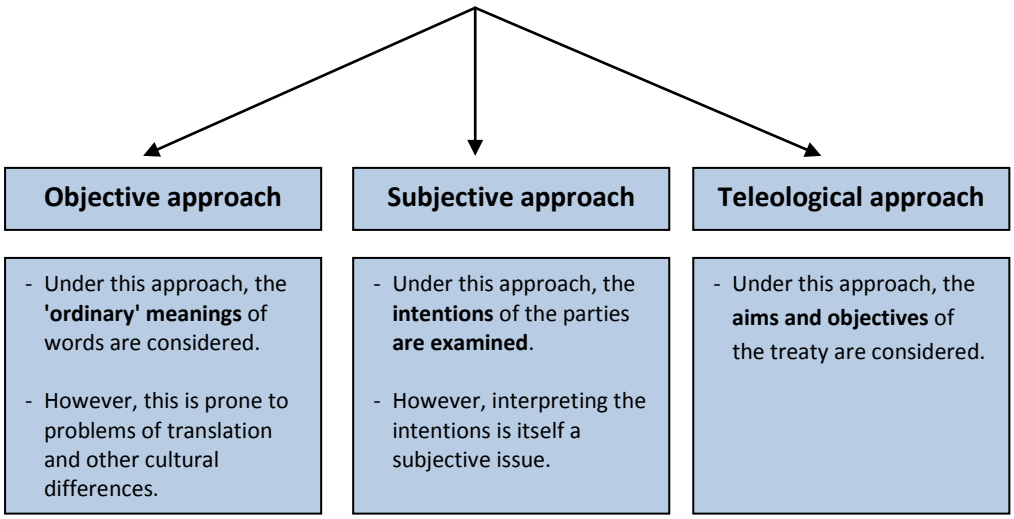
A **common mistake** is to **try to interpret treaties using** the same **principles** of statutory interpretation as are **applied to domestic law**. **Unlike** the extremely detailed provisions of most **domestic tax laws**, **treaties are 'purposive'** and their interpretation must be agreed between the contracting countries.

Words are imperfect symbols to communicate intent. Moreover, words are ambiguous and often their meanings get changed over time. It is also a well known fact that the english language is not an instrument of mathematical precision. Therefore, **no treaty can expressly resolve all issues** that may arise in the course of its application. Thus, like any other legal text, tax treaties **require and leave room for interpretation**. Treaties are more to be interpreted keeping in mind the intentions of the parties involved, which cannot be described in words.

Also, it is not within human powers to foresee the manifold set of facts which may arise in the future, and even if it were so, it is not possible to provide for all of them with absolute precision. All these aspects add to give great prominence to the subject of interpretation in the practical application of treaties.

Various approaches to interpretation

The approach towards interpretation varies across the world. However, there are **three main approaches** which are **practised around the world**:



In practice, most **countries** will **construe** a **tax treaty liberally** – **where** an **interpretation based on** the **narrow meaning** of certain words would **give a result at odds with** the **intention** of the treaty (which is to relieve double taxation). Therefore, **in such cases** a **broader interpretation** will usually be **allowed**. **This is consistent with Article 31 of the Vienna Convention** (discussed below) which provides that treaties must be interpreted by the parties 'in good faith', so that a broad interpretation is to be favoured over a narrow interpretation.

Generally, **while interpreting the domestic** tax laws, a **literal approach** is **employed**.

In case of Gladden Estate vs. the Queen (1985) DTC 5188, the **Canadian Federal Court** said "Contrary to an ordinary taxing statute a **tax treaty must be given a *liberal interpretation*** with a **view of implementing** *the* ***true intentions of the parties***. A ***literal*** *or legalistic* ***interpretation must be avoided*** **when** the **basic object** of the treaty might be **defeated** or frustrated insofar as the particular item under consideration is concerned."

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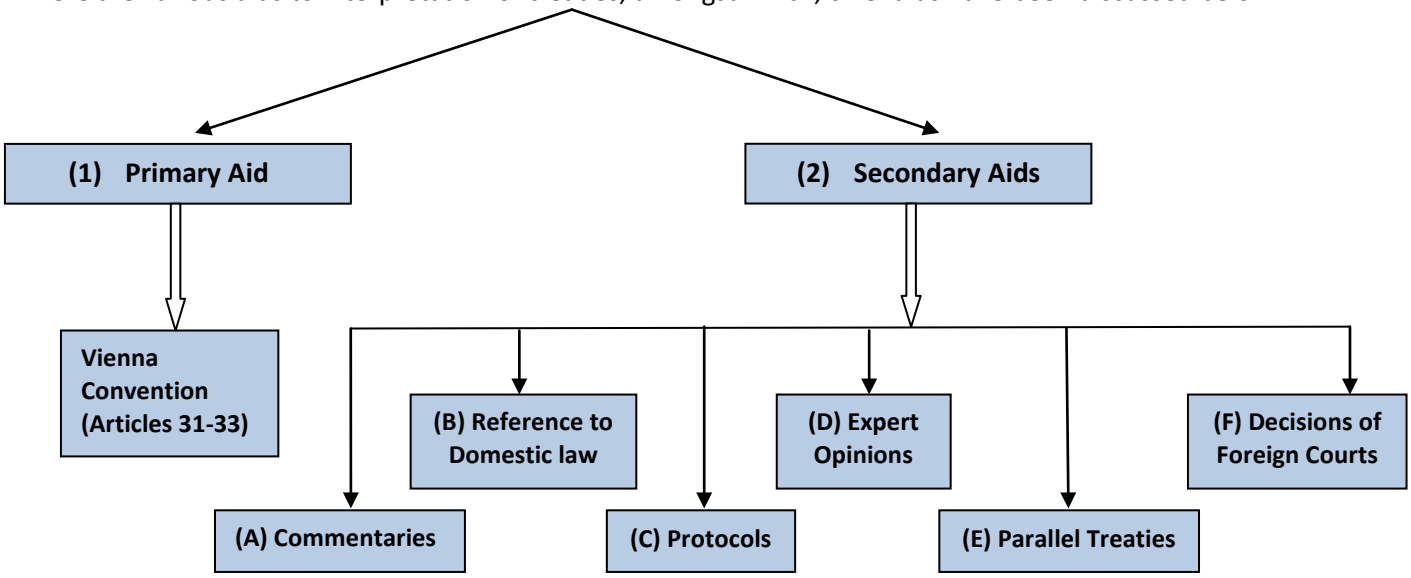
Aids to Treaty Interpretation

There are various aids to interpretation of treaties, amongst which, chief aids have been discussed below:



(1) Primary Aid

Vienna Convention

As mentioned above, tax treaties are part of public international law, and are thus **subject to interpretation according to principles of international law**. The **rules for the interpretation of international agreements** are **laid down in** the **Vienna Convention** on the Law of Treaties (VCLT).

It is generally recognized that the rules on interpretation contained in the **Vienna Convention codify existing international customary law**.

Vienna Conventions, which are relevant for taxation purposes, are of three kinds namely:

- Vienna Convention on Diplomatic Relations - 1961
- Vienna Convention on Consular Relations - 1963
- Vienna Convention on the Law of Treaties (VCLT) - 1969

Amongst them, the **VCLT** of 23rd May, 1969 is **particularly related to** the **interpretation** of tax and other treaties.

This convention mainly deals with:

- generally accepted rules applying to tax treaties,
- conclusion and entry into force of treaties,
- their observance, application and interpretation,
- amendment and modification of treaties, etc.

According to tax authorities worldwide, VCLT has become international customary law binding even on those countries which have not yet ratified it (including India).

Facts about VCLT:

- It was **signed on 23rd May, 1969**
- **Entered into force** from 27th **January, 1980.**
- It **comprises of 85 articles**.
- **Condition is** that, it is **to be ratified by at least 35 countries**.
- As on January, 2013, **113 countries are parties** (i.e. signed and ratified) to VCLT.
- **15 states** have **signed but not yet ratified** including Nepal, Pakistan and USA.
- It is **available in 5 official languages** namely: Chinese, English, French, Russian and Spanish.
- **India** is **not a party** to VCLT.

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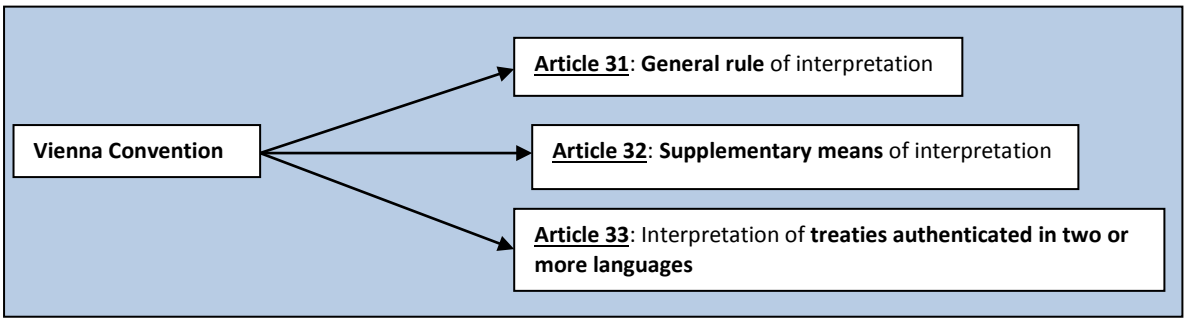
As discussed above, the treaties are governed by VCLT, Articles 31-33 specifically dealing with the issue of interpretation of treaties.

Articles 31-33 of the Vienna Convention, being the key to treaty interpretation, are discussed below:



"**Article 31: General rule of interpretation**

1. A treaty shall be **interpreted in good faith** in accordance with the **ordinary meaning** to be given to the terms of the treaty **in their context** and in the **light of its object and purpose**.

2. The **context** for the purpose of the interpretation of a treaty **shall comprise**, in addition to the text, **including** its **preamble and annexes**:

   (a) **any agreement** relating to the treaty which was made between all the parties **in connection with the conclusion** of the treaty;

   (b) **any instrument** which was made by one or more parties **in connection with the conclusion** of the treaty and **accepted by the other** parties as an instrument related to the treaty.

3. There shall be taken into account, together with the context:

   (a) any **subsequent agreement** between the parties **regarding the interpretation** of the treaty or the application of its provisions;

   (b) any **subsequent practice in the application** of the treaty **which establishes** the **agreement** of the parties regarding its interpretation;

   (c) any **relevant rules of international law** applicable in the relations between the parties.

4. A **special meaning** shall be **given** to a term **if it is established that** the **parties so intended**. "

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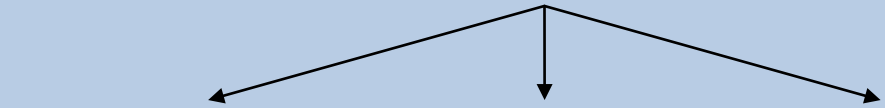
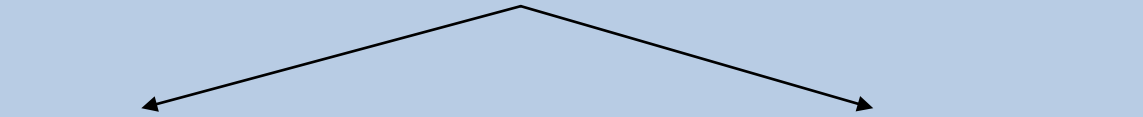
Author's Analysis of Article 31:

- This article provides the **general rule of interpretation** for treaties.
- Article 31(1) contains **three separate principles** namely:



Paramount Principle	**Secondary** Principle	**Tertiary** Principle
This is a radical idea that a **treaty** must **always** be **interpreted in good faith.**	It states that the words used in a treaty should be **given** their **ordinary meaning**. This principle is based on the view that the **ordinary meaning** of the words of the treaty must be **presumed to be** the authentic expression of the **intention of the parties**. This **presumption is rebuttable**.	It states that the **ordinary meaning** to be given to the words of the treaty be **determined**, **not in isolation**, **but** - "**in the context of the treaty** and - in the light of its **object and purpose**."

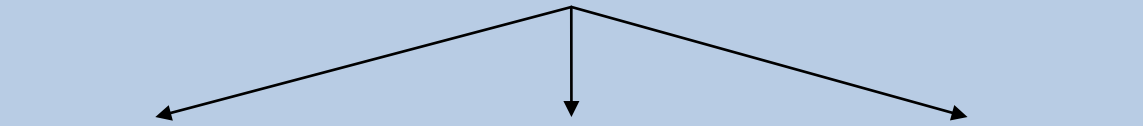
- **With respect to** the **tertiary principle above**, article **31(2) states** that, for the purposes of the interpretation of a treaty, **"context" comprises**, in addition to the **text of the treaty**, including its **preamble and annexes**, **two additional elements**:



(1) **any agreement** relating to the treaty that was made between all parties **in connection with the conclusion of the treaty**. Example- Protocols, etc.	(2) **any instrument** that was made by one or more parties **in connection with the conclusion of the treaty** and **accepted by the other parties** as an instrument related to the treaty.

Thus, **"context"** for the purposes of the VCLT **includes the overall scheme** of the treaty.

- Article **31(3) further lists three more elements** of interpretation that must be taken into account:



(1) **any subsequent agreement** between the parties regarding the interpretation of the treaty or the application of its provisions. Example- Amending agreements	(2) **any subsequent practice** in the application of the treaty that establishes the agreement of the parties regarding its interpretation. It should be done systematically or repeatedly.	(3) **any relevant rules of international law** applicable in the relations between parties. Example- United Nations Charter, etc.

- Article **31(4) provides** that a **special meaning** shall be **given** to a term **if it is established** that the **parties so intended**. In other words, this paragraph overrules the above mentioned provisions of this article.

"**Article 32: Supplementary means of interpretation**

Recourse may be had to supplementary means of interpretation, **including**

- the **preparatory work** of the treaty and
- the **circumstances of its conclusion**,

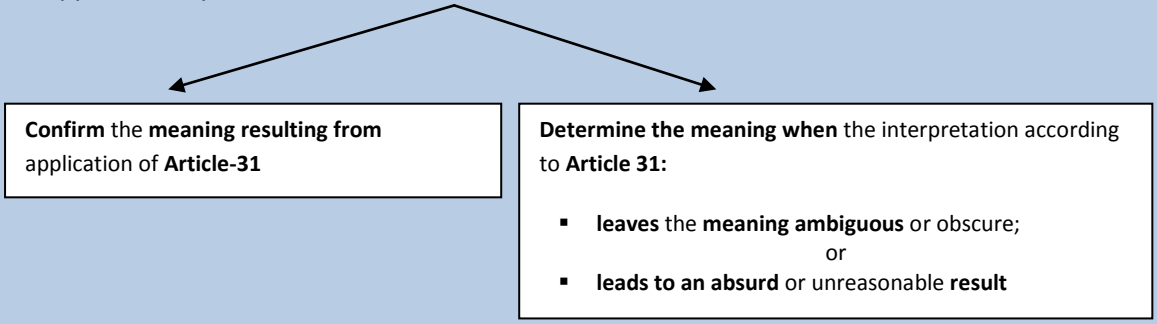
in order **to**

- **confirm** the **meaning resulting from** the **application of Article 31**, or
- to **determine the meaning when** the interpretation according to **Article 31**:

  (a) **leaves** the **meaning ambiguous** or obscure; or
  (b) **leads to a result** which is manifestly **absurd** or unreasonable"

Author's Analysis of Article 32:

- **Besides** the **general rule** of interpretation in article 31, **VCLT article 32 provides** for recourse to "**supplementary means** of interpretation," **such as**:
  - **preparatory work** (travaux preparatories) of the treaty and
  - the **circumstances of its conclusion**.
- Supplementary means are **used either to**:



Note: It would be **pertinent to note** that the use of **supplementary means** of interpretation is **not limited to what is expressly mentioned** in Article 32 of VCLT, **and therefore includes**; **commentaries**, parallel treaties, decisions of foreign courts, **etc.** which have been discussed in detail as secondary aids of interpretation later in this article.

"**Article 33: Interpretation of treaties authenticated in two or more languages**

1. **When** a treaty has been **authenticated in two or more** languages, the text is **equally authoritative** in each language, **unless** the **treaty provides** or the parties agree that, in the case of divergence, a **particular text shall prevail**.

2. A **version** of the treaty **in a language other than** one of **those in which** the text was **authenticated** shall be **considered** an **authentic** text **only if** the **treaty so provides** or the **parties so agree**.

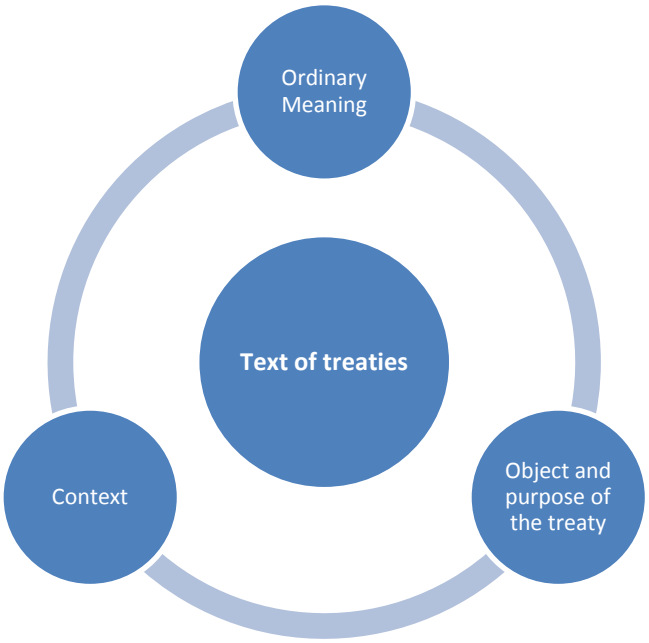
3. The **terms** of the treaty are **presumed to have** the **same meaning** in **each authentic text**.

4. **Except where** a **particular text prevails** in accordance with paragraph 1, **when** a **comparison** of the **authentic texts discloses** a **difference of meaning which** the application of **Articles 31 and 32** does **not remove**, the **meaning which best reconciles** the texts, having regard to the **object and purpose** of the treaty, shall be **adopted**."

Author's Analysis of Article 33:

Normally, a treaty is authenticated in two or more languages, thus giving rise to the issue that which of them shall prevail. In order to avoid such disputes, VCLT states that **all languages** shall be **equally authoritative**, **unless** the **treaty itself provides or parties** involved **agree that a particular** language **shall prevail**.

Summary of VCLT



Note: **Rules** of interpretation contained **in the Vienna Convention** are **not** designed to establish a **rigid hierarchy** between various interpretative elements. **Consequently**, **each case calls for careful consideration** of all relevant aspects.

Illustrative list of case laws supporting Vienna Convention for interpretation of treaties:

- James Mackintosh & Co. Pvt. Ltd. vs. ACIT [2005] 93 ITD 466 (Mumbai Tax Tribunal)
- Crown Forest Industries Ltd. vs. the Queen [1992] 95 DTC (Canada Federal Court)
- Thiel vs. FCT [1990] ATC 4717 (Australia)
- FCT vs. Lamesa Holdings BV [1997] ATC 4752 (Australia)
- Chong vs. FCT [2000] ATC 4315 (Australia)

International Court of Justice (ICJ), which is the principal judicial organ of United Nations, **has pronounced that** the **Vienna rules** are in principal **applicable to interpretation of all treaties – whether** the **countries are parties to VCLT or not**.

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(2) Secondary Aids

(A) Commentaries

Commentary reflects the current views on existing provisions and on their application to specific situations. **Commentary is a key source of interpretation**. Role of OECD/UN commentaries is a matter of dispute especially due to the fact that they are updated regularly, so as to keep up the pace with the fast-changing laws and practices around the world, thereby igniting a debate on its sanctity.

However, it is **generally accepted that** the **commentaries** of the respective committee of OECD and UN may be **used to help interpret treaties** and are sometimes expressly referred to within tax treaties. The commentary to be used may depend on the model tax convention on which the treaty is based which could be OECD or UN model, etc.

It may be used to interpret not only the OECD model based treaties, but also those treaties which follow the UN or US models. This is because the US and UN Models are essentially adaptations of the OECD Model.

The OECD Commentary is **widely used** in the process of treaty interpretation **by courts around the world** and its existence has proved to be a principal benefit in making a treaty based on OECD model.

The Australian Tax Office (ATO) takes a position that "the **commentaries** […] **provide guidance on interpretation** and application of the tax conventions and as a matter of practice will often need to be considered in interpretation of DTAs, at least where the wording is ambiguous which […] is inherently more likely in treaties than in general domestic legislation"

Illustrative list of case laws supporting the use of commentaries for interpretation of treaties:

- Sun Life Assurance of Canada vs. Pearson [1984] STC 461 (UK)
- Crown Forest Industries Ltd. vs. the Queen [1992] 95 DTC (Canada Federal Court)
- Cudd Pressure Control Inc. vs. the Queen [1999] CTC (Canada)
- Thiel vs. FCT [1990] ATC 4717 (Australia)

Relationship of Commentaries with VCLT:

It is startling to note that there is **no direct reference** to the Commentaries **in the Vienna Convention** which leaves open the debate whether they fall within Article 32 only, and thus has less influence than if they were included under Article 31. However, their widespread acceptance by the Courts renders this debate to be a point of academic interest only. The Commentaries are now updated from time to time separately from the Model Convention itself.

Despite the overwhelming acceptance of the Commentaries as a valid means of interpretation by the courts in many countries, their legal status remains unclear.

Note: It is apposite to note that a country may have its reservations and/or observations to the provisions of the article and its commentary respectively; therefore, a model tax convention may be applied considering such reservations and observations.

In case of treaties entered by USA, **there are technical explanations prepared** by the US treasury department, which would not be acceptable as means of interpretation as they are prepared **unilaterally by the US treasury department**, thus representing only USA's interpretation (unilateral view) of the treaty. However, where the treaty partner itself agrees to recognize the same, the situation shall be different, and shall therefore be considered as one of the source of interpretation.

(B) Reference to Domestic law

Treaties usually define important terms such as 'person', 'enterprise' and 'permanent establishment', etc. within the text, but the Model Tax Convention also provides, in Article 3(2), some general rules of definition.

Article 3(2), as mentioned above, **of model tax conventions** including OECD and UN model **contains a special rule of treaty interpretation**. This is because a treaty cannot define each and every term used therein, and therefore it is important to specify a rule which may be used in case of terms undefined in a treaty.

Article 3(2) of the OECD/UN Model deals with terms not defined in the treaty itself:

> "As regards the application of the Convention at any time by a Contracting State, any **term not defined therein** shall, **unless the context otherwise requires**, have the **meaning** that it has at that time **under the law of that State** for the purposes of the taxes **to which** the **Convention applies**, any **meaning under** the **applicable tax laws** of that State **prevailing over** a meaning given to the **term under other laws** of that State."

The logical structure of Article 3(2) is the following:

- **if a term** is **not defined** in a tax treaty;
- **and** the **context does not otherwise require a different meaning**;
- the **meaning of that term** will consequently be **provided by the domestic law** of the contracting countries, and **domestic tax law** shall be **given preference** over any other law of such country.

The caveat "unless the context requires otherwise" is one of the recurring questions in the debate surrounding article 3(2). Whether and when the context requires otherwise, however, is a precarious matter i.e. not every apparently convincing interpretation from the context should give rise to a divergence from the rule of Article 3(2), but only those based on strong arguments. Thus, **whether** the **context suggests** an **alternative interpretation** that is **sufficiently persuasive to overthrow** the **domestic meaning** of the treaty term at issue, **is a matter that can be decided based on the facts of each case.**

Article 3(2) is **drafted in mandatory language** as it states that any undefined term **"shall" have** the **meaning that it has under the domestic law** of the state applying the treaty, **unless the context otherwise requires**. Thus, prima facie, the domestic legal meaning of the treaty term must always be used. The only specific exception to this rule is that the context may require the application of different meaning. Whether and when the context may so require, in principle is a matter of debate.

The **context** in which a term is defined **is to be determined by** the **intention** of the contracting countries **when signing the Convention**, **as well as** the **meaning given** to the term **in the legislation of the other country**. The Commentary does not help when it comes to deciding what alternative meaning to that used in domestic tax law ought to be used, given that the context requires a different meaning. There is no general answer to this question: it is a matter of negotiation between the two countries. The mutual agreement procedure (MAP) provided for in Article 25 of model tax convention (OECD/UN/US) will often be used to agree upon a common definition of a term. Generally, the rule is that the term be given the meaning which it has in the domestic tax law of the countries.

Rule of interpretation set out **in Article 3(2) reflects** a **special relationship between** a **tax treaty and domestic laws** of contracting countries. It **shows a desire to preserve** the **tax sovereignty** of the contracting country **and acknowledges** that a **treaty** does **not exist in a legal vaccum**, but necessarily operates on the basis of tax laws of the contracting countries to which it applies.

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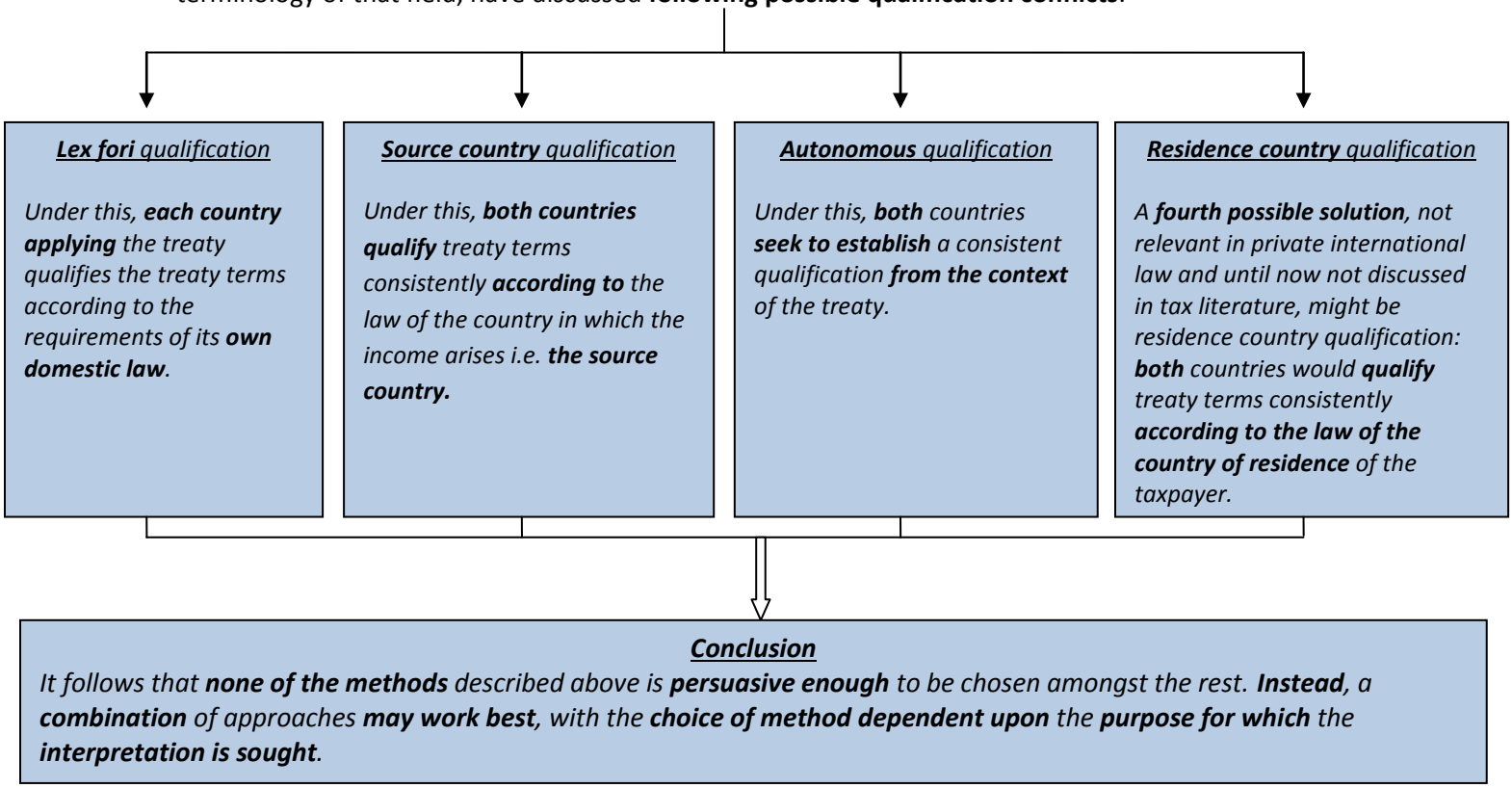
Moreover, **Article 3(2) serves to prevent overloading of tax treaty with definitions**.

Of course, **one potentially negative consequence** of reference to the domestic law is that, in many instances, the **two** contracting **countries attach different meanings to terms** in applying the treaty. This begets a problem **known as the "issue of qualification"** which has been discussed in detail below.

Issue of qualification – arises when any term used is not defined in the treaty:

When a **treaty term** is **not defined** in the treaty itself, **or when** it is **inadequately defined**, an **issue of qualification** often **arises**. Qualification refers to a situation in which the contracting countries impute different interpretations to the term under their respective domestic laws.

Commentators, in strong reliance on the theories developed in private international law, and adopting the terminology of that field, have discussed **following possible qualification conflicts**:



Relationship between Article 3(2) and VCLT Articles 31 and 32

This has been a **subject of fanatical debate** in the international tax literature. **Some** commentators **are of the view** that **article 3(2) is a special rule** in relation to VCLT Articles 31 and 32, and **thus takes precedence** over the general rules. **Alternatively,** it has been **argued** by some commentators **that** the domestic law reference in **article 3(2) is** essentially **a rule of last resort** with respect to the other general rules of interpretation. However, the **former view** has **got the majority of the support**.

(C) Protocols

It is an additional legal instrument that complements any treaty. A protocol may be on any topic relevant to the original treaty and is either used to further address something in the original treaty, address a new or emerging concern or to add a procedure for the operation and enforcement of the treaty. A protocol is 'optional' because it is not automatically binding on countries that have already ratified the original treaty;

countries must independently ratify or accede to a protocol. The protocol may be signed simultaneously with the tax treaty or later, and it clarifies, implements or modifies treaty provisions. Therefore, protocols are also usually referred for interpretation of treaties.

(D) Expert Opinion

Often, the views of eminent jurists are also considered while interpreting the treaties, though the same have persuasive value only.

(E) Parallel Treaties

Parallel treaties **mean referring** the **meaning in question in other treaties** entered by the concerned country.

Each treaty must be **construed individually**. Having said that, it is highly likely that a state will strive for a certain amount of consistency in the interpretation of its treaties, as one of the key benefits of tax treaties is the degree of certainty which they provide for international business in cross-border tax matters.

Example: Country A and Country B have a treaty between them and there is an interpretation issue over a certain term, and to resolve the same, Country A refers to the meaning of the same term in its treaty with Country C.

Often the questions are raised on the sanctity of referring the parallel treaties as each may have been entered at different times and with different perspectives.

Philip Baker in his treatise 'Double Taxation Convention' comments as follows:

*"There is **no reason why parallel treaties** should **not be referred to, but their value** as aids to interpretation will **generally be low**".*

Indian judgments where reliance was placed on definition in a parallel treaty or its protocol:

- Raymond Ltd. vs. DCIT 80 TTJ 120 (Income tax Tribunal-Mumbai)
- C.E.S.C. vs. DCIT 80 TTJ 806 (Income tax Tribunal-Kolkata)

(F) Decisions of Foreign Courts

Interpretation of tax treaties was **summed up in** the case of **IRC vs. *Commerz Bank AG [1990] STC 285 (UK),* which states** that **a judge ought to**:

- Use a **purposive approach**
- bear in mind that the **language of a treaty differs from** the **legal language** found **in domestic law** and not necessarily use domestic legal precedent or technical rules;
- bear in mind the **'good faith' principle**;
- where appropriate, **use supplementary means** and **travaux préparatoires (preparatory work)**;

Court cases are a **useful aid to treaty interpretation**, particularly if a case is recognised as having international fiscal significance. **Good examples** are the cases on the **meaning of the term 'beneficial ownership'**, where the ***Indofood* case** has been accepted as providing an international fiscal meaning of the term which is widely used in tax treaties but rarely specifically defined in them.

- bear in mind the **reputation of foreign courts** when relying on their judgments.

Judicial Precedents:

- "**If the literal rules result in ambiguity** or absurdity, the **court should try to interpret in another manner**" *[River wear Commissioners vs. Adamson 1877 HL]*
- "Office of the **judge is not to legislate**, **but to express** the **intention of the legislature**" [*Stock vs. Frank Jones (Tipton) Ltd 1978 HL]*
- "**Rules of interpretation in respect of international treaties** are **different to those applicable in respect of domestic laws**" *[Azadi Bachao Andolan 2003 263 ITR 706 Supreme Court of India]*
- "The **language of an international convention** has **not** been **chosen by an English parliamentary draftsman**. It is neither couched in the conventional English legislative idiom nor designed to be construed exclusively by English judges. It is **addressed to a much wider** and more varied **judicial audience than** is an Act of Parliament which deals with purely **domestic law**. It **should be interpreted** … **unconstrained by technical rules** of English law, or by English legal precedent, **but on broad principles of general acceptation**" [*Fothergill v Monarch Airlines Ltd. [1981] AC 251 (UK)*]

Practical aspects in interpretation of tax treaties

1) What renders commentaries such important status?

   - The **Model itself and the Commentary are the work of** the respective committees of the OECD and UN, which comprise of **senior government officials** drawn from their respective member countries.
   - There is **frequent consultation** with business and with other international and regional tax organisations and therefore, **keeps up the pace with the current trends**.
   - The Commentary thus **sets out the informed intentions** of the OECD and UN **while formulating the articles** of their respective models.

2) **Should** the **treaty be interpreted by reference to** the relevant **commentary**:

   - as it read **at the date** the **treaty was concluded** – also called **static approach** or
   - at the **date when** the **need for interpretation arises** – also called **ambulatory approach**

   This **issue arises because** once a treaty has been concluded, the respective **committees** of the OECD and UN **regularly update their commentary** relating to particular provisions.

   In case of IRC vs. *CommerzBank AG [1990] STC 285 (UK)*, the **question of interpretation** of double tax treaties **was considered in depth**. The guidance regarding use of OECD Commentary material written subsequent to the signing of the treaty is that **subsequent commentaries have persuasive value only**.

   The **use of subsequent amendments** or additions **to the commentaries** as an interpretation of previously concluded tax treaties **is not universally accepted**.

   According to Vogel, "**changes** in the commentaries **after the conclusion** of a treaty **can neither amend** the treaty, **nor retroactively determine its interpretation**"

3) **Should** the **application of domestic laws**, as dictated by Article 3(2) of model tax conventions (OECD/UN) should **be based on a static approach or** on **ambulatory approach**?

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One school of thought endorses the **ambulatory approach**, which has an advantage that it allows a treaty to accommodate changes made in a country's domestic law without warranting a need to re-negotiate the tax treaty. However, the downside to this is that it effectively permits one country to unilaterally amend the tax treaties which may not coincide with the intentions of the other country. Further, ambulatory approach cannot be applied where there is a radical amendment in the domestic law thereby changing the sum and substance of the term. **Another school of thought endorses the static approach**, which however is not feasible practically, especially in today's fast paced world where the domestic laws change frequently and therefore, applying the domestic law which existed at the date of signing of treaty, may result in absurd results.

Dispute resolution in case of issue of treaty interpretation

Before delving into the dispute resolutions, it is imperative to note that disputes can arise between a taxpayer and tax authorities, and also between the tax authorities of two or more countries. The dispute resolution mechanism shall be different in both cases.

Dispute resolution remedies:

Dispute between taxpayer and tax authorities

- **Domestic remedies** – Normal litigation route, settlement commission, dispute resolution panel (DRP), advance pricing agreements (APA), writ, special leave petition (SLP)
- Mutual agreement procedure (**MAP**) under Article 25 of the model tax conventions(OECD/UN)

Dispute between tax authorities of two or more countries

- Mutual agreement procedure (**MAP**) under Article 25 of the model tax conventions(OECD/UN)
- **Arbitration**
- International Court of Justice(**ICJ**)
- Bilateral Investment Promotion and Protection Agreement (**BIPA**)

Paragraph (3) of Article 25 specifically addresses the matter of treaty interpretation. The same has been reproduced below.

Article 25(3) of the OECD Model reads:

"The **competent authorities** of the contracting countries **shall endeavour to resolve** by mutual agreement any **difficulties or doubts** arising as **to the interpretation or application** of the Convention. They **may also consult** together **for** the elimination of double taxation in **cases not provided for in the Convention**."

This article has its own flaws including the time involved in settling through MAP, non-involvement of the tax payer, etc.

Conclusion

The bottom line is that the treaties are international agreements which are entered in good faith, as endorsed by Article 26 (Pacta sunt servanda) of VCLT and, unlike the domestic law, does not warrant a literal interpretation. Therefore, while interpreting a treaty, a broader interpretation should be applied.

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