



Article 4 of the Double Taxation Avoidance Agreement: Determination of Residential Status and Analysis of Judicial Precedents.

The determination of residential status is a cornerstone of international tax law, particularly in cases where individuals have economic and personal ties in multiple jurisdictions. Article 4 of the Double Taxation Avoidance Agreement (DTAA) provides tie-breaker rules to resolve situations of dual residency. This article offers an in-depth analysis of these rules and judicial precedents that have shaped their application in India. The article concludes with key insights on the judicial approach toward identifying the centre of vital interests and the broader implications for taxpayers.

Introduction

The globalization of economies has led to an increase in cross-border movement, resulting in individuals being deemed residents in multiple jurisdictions under their respective domestic tax laws. Dual residency often leads to complications in tax liability, with both jurisdictions claiming the right to tax the individual's global income. Article 4 of the DTAA provides a structured framework to resolve such conflicts by applying a series of tie-breaker rules to determine the state of primary residency for tax purposes. These rules are critical for ensuring fairness and preventing double taxation. This article explores these rules in detail, accompanied by an analysis of significant judicial decisions.

Article 4 of the DTAA: Legal Framework

Determination of Residency under Domestic Laws

The first step in determining an individual's residency status is to refer to the domestic laws of the respective jurisdictions. In India, residential status is determined under Section 6 of the Income-tax Act, 1961. If an individual satisfies the conditions of Section 6(1) or 6(1A), they are deemed a resident for Indian tax purposes. However, where the individual is simultaneously considered a resident of another contracting state, the provisions of Article 4(2) of the DTAA become applicable.

Tie-Breaker Rules under Article 4(2)

To resolve dual residency, Article 4(2) lays down a sequential set of tests

1. Permanent Home

The availability of a permanent home in one contracting state is the primary test. Permanent home refers to a dwelling available at all times, including rented properties for extended periods.

- If a permanent home is available only in one state, the individual is deemed a resident of that state.
- If a permanent home exists in both states, the next test, determining the **centre of vital interests**, becomes relevant.

2. Centre of Vital Interests

The centre of vital interests test is fact-specific and considers personal and economic relations, such as family ties, business interests, and location of assets. This test aims to establish where the individual's life is more closely connected.

3. Habitual Abode

If the centre of vital interests cannot be determined, the state where the individual habitually resides will be the determining factor.

4. Nationality

In cases where habitual abode is indeterminate, the individual's nationality is considered.

5. Competent Authority Resolution

If none of the above tests resolve the issue, the competent authorities of both contracting states must reach a mutual agreement to determine residency.

Judicial Precedents on Article 4 of the DTAA

- **Dy. CIT v. Kumar Sanjeev Ranjana (2019) 177 DTR 17 (Bangalore Tribunal)**

Here, the assessee, a US citizen on deputation in India, was found to have his habitual abode and centre of vital interests in the USA, despite being physically present in India for part of the year. His family and primary economic ties remained in the USA, leading the Tribunal to conclude that his residency status should be determined in favor of the USA under the India-USA DTAA.

- **Sameer Malhotra v. ACIT (ITA No. 4040/Del./2019)**

The Tribunal ruled that the taxpayer's centre of vital interests was in Singapore, where he had relocated with his family. The availability of a permanent home and substantial personal and economic ties in Singapore outweighed his connections with India. His income from employment in Singapore was thus held to be exempt from Indian taxation under the India-Singapore DTAA.

- **Ashok Kumar Pandey v. ACIT (ITA No. 3876/Mum/2023)**

This case involved a taxpayer with investments and personal ties in both India and the USA. The Tribunal emphasized the importance of analyzing both personal and economic relationships holistically. Despite the taxpayer's substantial investments in the USA, the Tribunal concluded that his active business involvement and closer family ties in India established his centre of vital interests in India.



- **Amit Kumar Chakraborty v. ACIT (2021) 124 taxmann.com 456 (Kolkata Tribunal)**

This case reaffirmed the significance of the habitual abode test when the centre of vital interests is unclear. The Tribunal considered the frequency and duration of the taxpayer's stay in both jurisdictions before determining his residency status.

- **Ravindra Patel v. ITO (2018) 93 taxmann.com 145 (Ahmedabad Tribunal)**

The Tribunal in this case highlighted that the determination of centre of vital interests is a highly fact-specific exercise. It requires a comprehensive examination of all relevant personal and economic circumstances, rather than a narrow focus on any single factor.

Analysis and Practical Implications

The determination of an individual's residential status under Article 4 of the DTAA is a complex process requiring a detailed factual inquiry. Judicial precedents indicate that no single factor is decisive. Instead, courts adopt a balanced approach, considering:

- **Family and Social Relations** – Greater weight is given to nuclear family connections.
- **Economic Interests** – Active business operations are prioritized over passive investments.
- **Place of Business and Property Administration** – The location of substantial assets and income-generating activities is critical.
- **Cultural, Social, and Political Ties** – Factors such as voting rights and participation in local activities may also influence the decision.

Conclusion

The tie-breaker rules under Article 4 of the DTAA serve as an essential mechanism for resolving conflicts arising from dual residency. Judicial decisions underscore the importance of a holistic assessment of personal and economic circumstances in determining an individual's centre of vital interests. While the tests are structured sequentially, their application is fact-intensive, requiring a nuanced approach. Taxpayers should ensure proper documentation of their personal and economic ties to support their residency claims, especially in cross-border situations.