Abc	out the A	Author			v
Fore	eword				xxv
Pref	face			XX XX	kvii
Сна	pter 1				
		erview of	Taxation of	f Cross-Border Services	1
					-
1.		Border Se			1
2.				ervices under the Domestic Law	1
3.				ervices under the Tax Treaties	2
	3.1			the Tax Treaties Dealing with Services	2
		3.1.1	~	and Air Transport Services (Article 8)	2
		3.1.2		nal Services and Other Independent Activities	
			(Article 1		3
		3.1.3		rom Employment (Article 15)	3
		3.1.4	Director's	s Fees (Article 16)	3
		3.1.5	Services of	of Artistes and Sportsmen (Article 17)	3
		3.1.6	Pensions	(Article 18)	4
		3.1.7	Governm	ent Services (Article 19)	4
		3.1.8	Students	(Article 20)	4
		3.1.9	General P	Provisions	5
			3.1.9.1	Taxation of Services Income as 'Business	
				Income' under Article 7	5
			3.1.9.2	Taxation of Services Income as 'Other Income'	
				under Article 21	5
		3.1.10	Specific A	article Dealing with Fees for Technical Services	5
	3.2	Influenc	ce on the M	odel Conventions	7

Appe	endix A	List of	f Cross-Border Services	8
Снар				11
FTS Article – Part I				
1.	Paragra	aph 1 of A	Article 12	12
	1.1	Income	'Arising' in a Contracting State	13
	1.2	Implicati	ions of Income 'Deemed to Arise' in a Contracting State	13
	1.3	Implicati	ions of Income Not Falling within Paragraph 1 of	
		Article 1	2	14
	1.4		a Resident'	14
	1.5	'May be		15
	1.6	Variation	ns of Paragraph 1 of Article 12	15
		1.6.1	Derived By	15
		1.6.2	Technical Fees	16
		1.6.3	Payment for Use of Equipment Fees for Included Services	16
		1.6.4	Fees for Included Services	16
		1.6.5	combination of rangeaphs rand 2	16
		1.6.6	'Subject to Tax' Requirement	17
		1.6.7	Requirement of 'Beneficial Ownership' for Taxation	
			in the State of Residence	17
		1.6.8	Taxation in the Country of Residence	17
		1.6.9	Payment to an 'Enterprise'	18
		1.6.10	Miscellaneous	18
2.	Paragra	aph 2 of A		18
	2.1	-	Fees Covered under Paragraph 2: 'Such Fees for	
			al Services'	18
	2.2		ions of Income 'Deemed to Arise' in a Contracting State	19
	2.3		'in Accordance with the Law of the Source State'	20
	2.4		al Cwnership	21
	2.5		ions Where the Recipient and the Beneficial Owner Are	
			t Persons	22
		2.5.1	Implications for the State of Residence	22
		2.5.2	Implications for the State of Source	24
	2.6		m Tax in the State of Source	26
	2.7		ions of Surcharge under the Domestic Law	26
	2.8		ns of Paragraph 2 of Article 12	27
			Beneficial Ownership	27
		2.8.2	Cap on Taxation by the State of Source	27
		2.8.3	'Recipient as Beneficial Owner' versus 'Beneficial	
			Owner Is Resident'	28
		2.8.4	Reference to Competent Authority	28
		2.8.5	Limitations of Benefit (LOB)	28
		2.8.6	Miscellaneous	28

3.	Defini	tion of 'Fe	ees for Technical Services' (Paragraphs 3 and 4 of	
	Article	e 12)	-	29
	3.1	Exclusio	on for Payments to Employees	29
	3.2	Exclusio	on for Services of Independent Personal Services	30
	3.3	Issues A	Arising from the Definition in Tax Treaties	30
	3.4		ns of Paragraph 3 / 4 of Article 12	30
		3.4.1	Managerial, Technical and Consultancy Services	31
		3.4.2	Administrative Services, Scientific Services, Management	
			Fees, Technical Fees	31
		3.4.3	Management and Professional Fees	31
		3.4.4	Provision of Services of Technical or Other Personnel	32
		3.4.5	Payment of Any 'Kind' versus Payment of Any 'Amount'	32
		3.4.6	Reference to 'Lump Sum Consideration'	32
		3.4.7	Exclusion for Certain Projects / After Sales Services	32
		3.4.8	Exclusion for Payments to Employees	33
		3.4.9	Exclusion for Services of Independent Perconal Services	34
		3.4.10	Exclusion for Services Resulting in Service PE or	
			Construction PE	34
		3.4.11	Exclusion from 'Business Profite	35
		3.4.12	Reference to Place of Provision of Services	36
		3.4.13	Miscellaneous	36
		3.4.14	Other Exclusions	37
		3.4.15	Tabular Summary	37
4.	Parag	raph 4 of .	Article 12 (Permanen: Establishment / Fixed Base	
	Situat		A.Y	42
	4.1	Circular	Reference between Paragraph 7 of Article 7 and	
		Paragra	ph 4 of Article 12	43
		4.1.1	Desired Positions	43
		4.1.2	Rationale	44
		4.1.3	Judicial Precedent	44
		4.1.4	Indian Tax Treaties with Tanzania and Zambia	45
	4.2	Implicat	tion of Exclusion of Paragraph 1 of Article 12	45
	4.3	Overlap	between Article 14 and Article 12	47
	4.4	Renditio	on of Services for Period Exceeding Prescribed Threshold	49
	4.5	Professi	onal Fees Paid by a Person Resident in the Source State	50
	4.6	Benefici	al Owner versus Resident	50
	4.7	Effectiv	ely Connected	52
	4.8	Fees for	Technical Services in Respect of Right or Property	52
	4.9	Variatio	ns of Paragraph 4 of Article 12	54
		4.9.1	Recipient versus Beneficial owner	55
		4.9.2	In Respect of Right, Property, Contract or Service	55
		4.9.3	Effectively Connected versus Attributable To	55
		4.9.4	Reference to 'Fixed Base'	56
		4.9.5	Absence of Exclusion of Paragraph 1 of Article 12	56

		4.9.6	Paid or Credited	56
		4.9.7	Taxation as per the Domestic Law of the Source State	
			as against as per Article 7	56
5.	Paragra	aph 5 of A	rticle 12 (Deemed Accrual)	57
	5.1	Deemed	to Arise: Absence of Linkage with Paragraph 2	57
	5.2	Fees Paid	d by a Resident of a Contracting State	57
	5.3		d in Relation to a Permanent Establishment in a	
		Contract	ing State	57
	5.4	Fees Paid	d by a Person Who Is Resident of None of the Contracting	
		States		59
	5.5	Rational	e for the Deeming Provision	60
	5.6	Absence	of Complete Linkage to Independent Personal Services	60
		5.6.1	Rendition of Professional Services for Period Exceeding	
			the Threshold	61
		5.6.2	Absence of Reference to Fixed Base	61
	5.7	Implicati	ons of 'Where, However'	62
	5.8	Referenc	e to Contracting State	64
	5.9	Fees Incu	urred in Connection with the Permanent Establishment	66
	5.10	Borne By		70
		5.10.1	Borne by as 'Financial Burden'	71
		5.10.2	Borne by as 'Deductible	71
		5.10.3	Rationale for the 'Borne By' Condition	72
		5.10.4	Guidance from OECD Commentary	73
		5.10.5	Judicial Precedents	74
		5.10.6	Comparison with the Domestic Law	79
	5.11	Place of	Performance of Services and the Place of Deemed Accrual	79
		5.11.1	Provision of India-Finland Tax Treaty	79
		5.11.2	Provision of Tax Treaties Signed with Iceland,	
			Luxembourg and USA	82
		5.11.3	Meaning of 'One of the Contracting States'	84
	5.12		son with the Deeming Provisions of the Indian Domestic	
		Law		90
		5.12.1	Fees Paid by a Resident Not Deemed to Arise in India	90
		5.12.2	Fees Paid by a Non-resident Deemed to Arise in India	94
	5.13	Variatior	ns of Paragraph 5 of Article 12	96
		5.13.1	Contracting State, Political Sub-division or a Local	
			Authority as a Payer	96
		5.13.2	Statutory Body, Land or Administrative Territorial	
			Unit as a Payer	97
		5.13.3	Permanent Establishment outside Both the Contracting	
			States	97
		5.13.4	Reference to 'Fixed Base' Absent	97
		5.13.5	Place of Performance of Services: Place of Accrual	98

		5.13.6	Conclusion of Contract with the Permanent	
			Establishment	98
		5.13.7	Contract Effectively Connected with the Permanent	
			Establishment	98
		5.13.8	Miscellaneous	99
6.	Paragi	aph 6 of A	Article 12	99
	6.1	Applica	bility of Arm's Length Principle	99
	6.2		le of the Provision	100
	6.3	Special	Relationship	100
	6.4	Paymen	t Less than Arm's Length	101
	6.5	Reclassi	fication of Payment	101
	6.6	Treatme	ent of Payment Exceeding Arm's Length Payment	102
	6.7	Benefici	al Owner versus Recipient	102
	6.8	Variatio	ns of Paragraph 6 of Article 12	103
		6.8.1	'Beneficial Owner' versus 'Recipient'	103
		6.8.2	'For Whatever Reasons'	103
		6.8.3	'Having Regard To'	103
		6.8.4	Missing Reference to Other Provisions of the Tax	
			Treaties	103
		6.8.5	Miscellaneous	103
			N S	
Снаг	PTER 3			
FTS	Article	– Part II	Treaties Miscellaneous	105
1.	Taxah	ility of Fe	es on Accrual Basis	105
2.			esident of a Contracting State	105
2. 3.	-	-	on of Services	107
5.	3.1		ment of Rendition of Services in a Contracting State as	100
	5.1	-	nition of FTS	109
	3.2	-	men of Rendition of Services in a Contracting State as	107
	5.2		Deeming Accrual Provision	112
4.	Consu		vices: Technical versus Non-technical	112
-1. 5.		-	atment and Characterization of Income	113
5. 6.			imp Sum Payments	113
0. 7.			ed by the Parties and Characterization of Income	114
7. 8.			Characterization Adopted by the Other Contracting State	114
0. 9.			n of Certain Specific Items of Income	115
9.			-	116
	9.1 9.2		ating Services ment Charges for Goods	118
	9.2 9.3	Inspecti	8	110
	9.3 9.4	-	ration for Transfer of Documents and Designs	119
	9.4 9.5		tification	119
10.			to Purchase of Machinery	119
10. 11.			er Tax Treaties for the Purpose of Interpretation	120
			s Article 7	
12.	AILICIE	t 12 veisu		121

13.	Specia	l Provisic	on versus General Provision	122	
14.	Taxati	on of Inc	ome from Certain Businesses	122	
15.	Adopti	on of Do	mestic Law Definition in Tax Treaties	125	
	15.1	Term Is	Not Defined in the Tax Treaty	126	
	15.2	Term Is	Defined in the Tax Treaty	126	
	15.3	Argume	ent Based on Section 90	126	
	15.4	Judicial	Precedents	127	
16.	Adopti	on of Tax	x Treaty Definition in the Domestic Law	127	
	16.1	Argume	ent Based on Section 90	127	
	16.2	Judicial	Precedents	128	
17.	Applic	ability of	Other Source Article to Fees for Technical Services	128	
18.	Implic	ations of	Absence of Article Dealing with 'Fees for Technical		
	Service	es'		128	
19.	Implic	ations of	Two Specific Articles Dealing with 'Fees for Technical		
	Service	es'	~	129	
Снар	ter 4		CO.		
Make	e Availa	ıble	0.	131	
1.	Make	Available	Provision m 'Managerial Services' or Incidental Services	131	
2.			m 'Managerial Services'	132	
2. 3.	Consideration for Incidental Services				
5.	3.1		y and Subsidiary	134 135	
	3.2		the Recipient of 'Royalties' and 'Fees for Technical	155	
	5.2		s' Be the Same Person?	135	
	3.3		ayment under Separate Agreement Be Said to Be	100	
	5.5	Ancillar		136	
	3.4		ere Be a Significant Time Gap between the Payment of	150	
	5.1		es' and 'Fees for Technical Services'?	136	
	3.5		ce rom Memorandum of Understanding	136	
	3.6		able Provision in the Domestic Law?	138	
	3.7		Precedents	138	
4.	Make J		Condition	141	
	4.1		ce from the Memorandum of Understanding	142	
	4.2		g of the Term 'Experience'	143	
	4.3		Precedents on 'Make Available'	143	
		4.3.1	Make Available Condition Not Satisfied	143	
		4.3.2	Make Available Condition Satisfied	145	
		4.3.3	Interpretation Based on Distinction from		
			Article 12(3)(a)	146	
		4.3.4	Consideration for Software	147	
		4.3.5	Evidence for Make Available	148	
		4.3.6	Does 'Support Service' Necessary Make Available	110	
		1.010	Technical Knowledge?	149	
			recurrent reno menger	11)	

		4.3.7	Can Technology Be Made Available for Specified Period?	151
		4.3.8	Technology to Be Returned: Termination Clause of	
			the Agreements	151
5.	Develo	opment a	nd Transfer of Technical Plan or Design	152
	5.1	*	er 'Business Strategy' Qualifies as Technical Plan?	153
	5.2		er 'Make Available' Condition Necessary to Satisfy?	153
	5.3		vailable Condition Automatically Met?	153
	5.4		Provision Requiring Application of Technology	154
	5.5	-	te Transfer Necessary?	154
	5.6	Inciden	tal Satisfaction of the Requirements of the Article	154
	5.7	Adoptio	on / Acceptance of Technology by the Person Availing	
		Service	s Necessary for Applicability of the Article?	155
	5.8		vailable: To Whom?	156
	5.9	Transfe	er of Design: Domestic Law More Beneficial? 🔨	156
	5.10		l Precedents	156
6.	Stewar	rdship / S	Shareholders Activities	157
7.	Exclus	ions fron	n the Fees for Included / Technical Services	158
	7.1	Paymei	nts Linked to Sale of Property	158
	7.2	Conside	eration for Services Incidental to International Traffic	159
	7.3	Conside	eration for Teaching	159
	7.4	Service	s for Personal Use of the Individuals	161
	7.5	Conside	eration for Salaries and Professional Fees	162
8.	Overla	p Provisi	ions 🔊	162
	8.1		between Article 12(3)(a) and Article 12(4)(b)	162
	8.2	Overlag	between Article 12(4)(a) and Article 12(4)(b)	162
9.			of Other Tax Treaties Based on the MOU	162
10.	Variati		ake Available' Provision	163
	10.1		s of Technical or Other Personnel	163
	10.2	Applica	tion of Technology Contained in Skill, Know-Processes,	
		Etc.		163
	10.3		tion of Technology Contained in Technical Plan or	
			cal Design	164
	10.4	Manage	erial Services	164
	10.5		e of Exclusions	164
	10.6		on for 'Private Use' of Services by Individuals	164
	10.7	Exclusi	on of Services in Connection with Exploration of Natural	
		Resour		164
	10.8		on for Services Linked to Construction, Installation	
		Project		164
	10.9	Termin	0,	165
	10.10	Miscell	aneous	165

App	endix A	Memorandum of Understanding to India-USA Tax Treaty	166
Снар	PTER 5		
		Connected Fees for Technical Services	173
1.	Ration	ale for Linking the Articles	173
2.		Article 7 or Article 14 Result in Higher Tax Liability?	174
3.		ions Dealing with 'Effectively Connected'	175
4.		ng of 'Effectively Connected With'	177
5.		les Based on Guidance from the Commentary	179
	5.1	Examples as Regards Dividend Income	180
		5.1.1 What Is 'Forming Part of the Assets'?	180
		5.1.2 What Is 'Otherwise Effectively Connected'?	181
	5.2	Examples as Regards Interest Income	182
		5.2.1 Debt Claim Forming Part of the Assets	183
		5.2.2 Otherwise Effectively Connected	186
6.	Examp	les For Fees For Technical Services / Contract / Services Effectively	
	Conne	cted with the Permanent Establishment / Fixed Base	187
7.	Payme	nt by Permanent Establishment: Effective Connected?	191
8.	Criteria	a for 'Effectively Connected'	192
9.	Guidar	nce from Tax Treaties Signed by Countries	193
10.	'Effecti	ively Connected With' versus 'Attrobutable To'	194
	10.1	Are These Different Concepts	194
	10.2	Implications of Difference between 'Effectively Connected	
		With' and 'Attributable to	196
	10.3	Conclusion	197
	10.4	Implications of the Words 'Attributable to' in the US Model	199
11.	-	ay between 'Force of Attraction Rule' and 'Effectively Connected	
	With'		200
12.	-	l Feature of UN Model	201
13.	Variati	ons of Scope of 'Effectively Connected' in the UN Model	202
Снаг	ter 6		
Artic	cle 12 ve	ersus Article 14	205
1			205
1.		p between Article 12 and Article 14	205
2.		ions for Avoiding Overlap	206
	2.1	Variation 1 – Reference to 'Services' Mentioned in Article 14	206
	2.2 2.3	Variation 2 – Reference to 'Payments' Mentioned in Article 14 Other Specific Variations for Avaiding Overlap	207 208
2		Other Specific Variations for Avoiding Overlap ce of Provisions for Avoiding Overlap	
3. 4.		of Article 14 as a Special Provision	209 212
ч.	4.1	Analysis	212
	4.1	4.1.1 Reliance on UN Commentary	214
		4.2.2 Reliance on the OECD Commentary	214
		i.=.= itenance on the ollop commentary	

		4.2.3 Heading of the Article	215
		4.2.4 Judicial Precedents	216
	4.2	Conclusion	218
5.	Specifie	c Recognition of the Legal Status of Person Rendering Services	218
	5.1	Specific Reference in Article 12	218
	5.2	Specific Reference in Article 14	218
6.	Can Fe	ees for Services Escape Article 12 as Well as 14?	219
7.	Implica	ations of Fixed Base	221
	7.1	Fixed Base	221
	7.2	Fixed Base in Paragraph 4 of Article 12	221
		7.2.1 Variation 1 – Specific Exclusion in Paragraph 3 of Article 12	222
		7.2.2 Variation 2 – No Specific Exclusion in Paragraph 3 of Article 12	222
	7.3	Why Is a Reference to Fixed Base in Paragraph 4 of Article 12	
		Required?	223
		7.3.1 Variation 1 – Specific Exclusion in Paragraph 3 of	
		Article 12	223
		7.3.2 Variation 2 – No Specific Exclusion in Paragraph 3	
		of Article 12	223
	7.4	Alternative Interpretation	224
		7.4.1 Broad Scheme of the Tx Treaty: Full Taxing Rights	
		to the Source Country	224
		7.4.2 Analysis – Alternative Interpretation	225
	7.5	Applicability of Article ¼ to Income Other than Consideration	
		for 'Independent Personal Services'	226
Appe	endix A	Article 14	228
11			
Curr			
	TER 7 icability	y of Other Source Article to the Fees for Technical Services	231
лррі	icability	of Other Source Afficie to the rees for Technical Services	251
1.	Article	21 under the Models and Tax Treaties	232
2.	Provisi	ions of Article 21	233
	2.1	Items of Income	233
	2.2	Class of Income	234
	2.3	Source of Income	234
	2.4	Meaning of 'Dealt With', 'Expressly Dealt With', 'Expressly	
		Mentioned'	235
		2.4.1 Dealt With	235
		2.4.2 Expressly Dealt With	235
		2.4.3 'Expressly Mentioned'	236
3.		Are the Items of Income Not Dealt With in Other Articles?	236
	3.1	Class of Income Not Specifically Dealt by Any Article	236
	3.2	Where the Definition of Class of Income Is Not Satisfied	236

	3.3 3.4	Where the Income Arises in a Third Contracting State Where the Income Arises and Is Paid to a Resident of the Same	238
	5.4	Contracting State	238
4.	Applic	ability of Article 7 or Article 21	238
	4.1	Scenario 1 – Absence of Specific Article	239
	4.2	Scenario 2 – Non-applicability of Specific Article	240
	4.3	Indications in Paragraph 2 of Article 21 and the OECD	210
	1.0	Commentary	240
	4.4	Conclusion	241
App	endix A	Relevant Extracts of OECD Commentary Using the Word	
		'Class'	243
_			
	pter 8 vice PE –	Dart I	245
Serv			243
1.	Definit	tion of Service PE	246
2.	Exister	nce of 'Service Provider' and 'Recipient of Services'	247
3.	Can a	Person Acquiring Services Be Said to Have Service PE?	247
4.	Ration	ale of Service PE Clause	249
5.	'Other	Personnel'	249
	5.1	Other Personnel: Whether It Includes Non-individuals?	250
	5.2	Use of the Term 'Personnel' in the Domestic Law	250
	5.3	Dictionary Meaning of the 10m 'Personnel'	251
	5.4	Use of the Term 'Personnel' in Tax Treaties	251
	5.5	Use of the Term 'Persounel' in the Commentary	251
	5.6	Conclusion: 'Personnel' as an Individual	252
	5.7	Comparison with the Proposed Service PE Clause in the OECD	252
	ГO	Commentary	252
	5.8	Other Personnel: Whether It Includes Employees of a Non-individual Contractor?	252
	5.9	Should the 'Personnel' Not Be Resident of the Host Country?	253 254
6.		t of Exception Contained in Article 5(7)	254
0.	6.1	Effect of Deeming Fiction	256
	6.2	Rendering Services versus Carrying on Business	250
	6.3	Can an Independent Agent Render Services on Behalf of an	237
	0.5	Enterprise?	257
	6.4	Domestic Law Meaning of the Term 'Agent'	258
	6.5	Conclusion	259
	6.6	Comparison with the Proposed Service PE Clause in the OECD	
		Commentary	260
7.	Should	d 'Other Personnel' Be Dependent on the Enterprise?	260
8.	Overla	p between Service PE and Agency PE?	262
9.	Benefi	t of Exceptions Contained in Article 5(4)	263

10.	Meaning of 'Furnishing Services Within'				
	10.1	Difference between 'Services Rendered within a Country'			
		and 'Serv	vices Rendered in a Country'	264	
	10.2	Presence	of Person Availing Services	265	
	10.3	Absence	of Person Availing Services in the Country:		
		Direct Ut	ilization / Consumption of Services	266	
	10.4	Absence	of Person Availing Services in the Country – Indirect		
			on of Services	267	
	10.5		on of Services in Another Country	269	
	10.6	Provision	n of Services to the Head office	270	
	10.7	Furnishi	ng Services versus Rendering Services	272	
Appe	endix A	Releva	ant Extracts of the UN Commentary on Article 5(3)	273	
Appe	endix B	Use of	Term 'Personnel' in Tax Treaties	277	
11			in Any Twelve Months Period s a Calendar Month s a Period of 30 Days		
Curr					
Снар	ce PE –	Dart II	CO.	279	
Servi	Ce PE -	Palt II	<u>.</u>	279	
1.	Six Mo	nths with	in Any Twelve Months Period	279	
	1.1	Month as	s a Calendar Month	279	
	1.2	Month as	s a Period of 30 Days	280	
	1.3	'Month'	as per the Domestic Law	280	
	1.4	Should the	he Term 'Month' Be interpreted Differently for 12		
		Months (	Calculation?	281	
	1.5	Should the	he Services Be Rendered for a Continuous Period of Six		
		Months?		282	
	1.6	Man Day	vs versus Solar Days	282	
	1.7	Treatmen	nt of Temporary Gaps	283	
	1.8	Service F	Period Falling in Two Financial Years	284	
	1.9	Compari	with the Suggested Service PE Clause in the OECD		
		Commen	itary	284	
2.	Same o	r Connect	ted Project	285	
3.	Service	PE and R	Requirements of Article 5(1)	285	
4.	Service	PE Articl	e as a 'Special Provision'	287	
5.	Provisi	on of Serv	vices versus Lending / Deputation of Employees	288	
6.	One Da	iy PE		289	
7.	Service	PE versu	s 'Fees for Technical Services'	289	
	7.1	Exclusio	n in Service PE Clause	289	
		7.1.1	Is It Appropriate to Switch between Articles 5 / 7		
			and 13?	292	
		7.1.2	Specific Exclusion from the Article Dealing with		
			Technical Fees	292	

	7.2	Implicati	ions of Non-exclusion	295	
	7.3	Interplay	v between Service PE and Article 13(5)	296	
	7.4	Restricte	ed Article for 'Technical Fees'	299	
8.	Service	PE in Te	rms of the Provisions of the Domestic Law	300	
9.	Renditi	on of Ser	vices to Associated Enterprises	300	
10.	Implica	ations of H	Fulfilment of Service PE Clause	302	
11.	Proof o	of Service	PE Creation	302	
12.	Variations of Service PE Clause				
	12.1	Tax Trea	aties Signed by India	303	
		12.1.1	Placement of Service PE Clause in Article 5	303	
		12.1.2	Inclusion versus Deeming Fiction	303	
		12.1.3	Number of Months / Days	303	
		12.1.4	Reduced Period for Services Rendered to an Associate		
			Enterprise	304	
		12.1.5	Nature of Services – Inclusion	305	
		12.1.6	Nature of Services – Exclusion	305	
		12.1.7	Furnishing Services 'within a Contracting State'	306	
		12.1.8	Same or a Connected Project	306	
	12.2	Tax Trea	aties Signed by UK	306	
		12.2.1	Placement of Service PE Clause in Article 5	306	
		12.2.2	Inclusion versus Deeming Fiction	307	
		12.2.3	Number of Months / Days	307	
		12.2.4	Reduced Period for Services Rendered to an Associate		
			Enterprise	308	
		12.2.5	Nature of Services – Inclusion	308	
		12.2.6	Nature of Services – Exclusion	309	
		12.2.7	Same or a Connected Project	309	
		12.2.8	Period or Periods Aggregating	309	
		12.2.9	Employees or Other Personnel	309	
	12.3	Tax Treaties Signed by USA 310			
		12.3.1	Exemption for Activities for a Period Lesser than		
			30 Days in a Year	310	
		12.3.2	One Day PE	310	
	12.4	DTAAs S	Signed by Netherlands	310	
	12.5	Tax Trea	aties Signed by France	310	
	12.6	Tax Trea	aties Signed by China	311	
		12.6.1	Placement of Service PE Clause in Article 5	311	
		12.6.2	Inclusion versus Deeming Fiction	311	
		12.6.3	Number of Months / Days	311	
		12.6.4	Reduced Period for Services Rendered to an Associate		
			Enterprise	311	
		12.6.5	Nature of Services – Inclusion	311	
		12.6.6	Nature of Services – Exclusion	312	
		12.6.7	Furnishing Services 'within a Contracting State'	312	

		12.6.8 12.6.9 12.6.10	Same or a Connected Project Engaged Personnel Miscellaneous	312 312 313
Арр	endix A	Decisi	ons on Meaning of the Term 'Month'	314
Appendix B		Decisions on Applicability of Requirements of Article 5(1) to Service PE		317
Арр	endix C	Decisi	ons on Rendering Services versus Lending Employees	320
	PTER 10 D Servio	ce PE Prov	rision	325
				225
1.			on Taxation of Services	325 325
2. 3.			oach on Taxation of Services xation of Services without Permanent Establishment,	525
5.		ed Place	xation of services without reminanent Estatusiment,	326
4.			Intention of the Service PE Provision	326
5.			for Service PE Provision	326
6.			e PE Clause	327
7.	Placen	nent of Ser	vice PE Clause	327
	7.1	Placemer	nt between Paragraph 3 and Paragraph 4	327
	7.2		nt between Paragraph + and Paragraph 5	328
	7.3		nt between Paragraph 5 and Paragraph 6	328
	7.4		nt between Paregraph 6 and Paragraph 7	328
	7.5		nt under the UN Model	328
8. Implications of the OECD Commentary on Current and Future Tax			220	
				328
	8.1 8.2		tier Based on OECD Model without Service PE	328
	0.2	Provision		329
9.	Interpl		n the Proposed Service PE Provision and Paragraph 1	527
2.	-	-	of Article 5	329
10.		-	n the Proposed Service PE Provision and Paragraph 3	
	of Arti	-		330
11.	Should	l Not the S	Special Provision Override General Provision?	330
12.	Туре с	of Activity,	Place of Performance and Person Availing Benefit	331
13.		Renderin	0	332
14.	One M	-	rise: Clause (A) of Service PE Provision	332
	14.1		in Other Contracting State	332
	14.2		83 Days Be Continuous?	333
	14.3		Duration of 183 Days to Be Calculated?	333
	14.4	Any 12 N	Aonths Period	334

	14.5	Gross Revenue Related Requirements	334
	14.6	Rationale of the Provision	334
	14.7	Income from Active Business Activities versus Passive	
		Activities	334
	14.8	Revenue for the Relevant Period as against Revenue of the	
		Entire Year: Practical Difficulty	335
	14.9	Gross Revenue Presumption in the Case of Self-Employed?	336
15.	Claus	e (B) of the Service PE Provision	336
	15.1	Rendition of Services through One or More Individuals	337
	15.2	Same or Connected Projects	337
	15.3	How Is Period of 183 Days Calculated?	337
	15.4	Abuse of 183 Days Threshold	338
16.	Exclu	sion for Auxiliary and Ancillary Services	338
17.	Deem	ing Fiction	340
18.	Servic	es Provided through Employees of Other Enterprise	341
	18.1	Rationale of the Provision	341
	18.2	Contractual Obligations	342
	18.3	Are Both the Entities Treated as Rendering Services?	342
	18.4	Can the Employees of on Enterprise Be Dependent on	
		Another Enterprise?	342
19.	Is It N	ecessary to Examine Applicability of Koth Clause (A) and	
	Claus	e (B)?	343
20.	Comp	arison and Interplay between Clause (A) and Clause (B)	343
21.		lay between Agency PE and Proposed Service PE Clause	344
22.	Interp	lay between the Proposed Service PE Provision and	
	Parag	raph 6 of Article 5	344
23.	Comp	arison with UN Model Provision	344
24.	Impro	vement over UN Model	345
	PTER 11	×XX	
Para	graph 2	2 of Article 3	347
1.	Basic	Provision	347
1.	1.1	Meaning of 'Therein'	347
	1.2	Scope of 'Law of the Contracting State'	348
2.		ale of the Provision	348
2. 3.		ing of 'Law'	349
<i>3</i> . 4.		Is Law Concerning Taxes in India?	350
т.	4.1	Meanings Given under Rules, Circulars, Notifications,	550
	7.1	Instructions	351
	4.2	Specific Powers to Define the Terms	351
	4.2	Definitions Adopted from Other Laws	351
	4.5	Definitions under the General Law	351
	4.4	General Meaning Given to Certain Words on the Basis of	551
	4.3	Other Statutes	352
		other statutes	554

	4.6	Implications of Court Rulings	353
	4.7	Provisions of the Tax Treaties	353
	4.8	Conclusion	353
5.		tions of Changes in the Domestic Law	354
	5.1	Static Approach	354
	5.2	Ambulatory Approach	354
6.		ment to Model Convention and OECD Commentary: Build in	
_		atory Approach	355
7.	-	ph 2 of Article 3 under the Model Conventions	355
8.		ons of Paragraph 2 of Article 3	355
	8.1 8.2	Term Defined 'Herein' Term 'Not Otherwise Defined'	355 356
	8.2 8.3		356
9.		Reference to Competent Authority tions of Inadequate Definition in Article 3	350
	-	-	
Appe	endix A	OECD Commentary 2010 on Paragraph 2 of Article 3	359
Appe	endix B	Para 2 of Article 3 in Various Models	360
-	10	n's Work on Taxation Services	
	TER 12	n'a Wark on Tayatian Convision	261
Unite	ed Natio	n's Work on Taxation Services	361
1.	Provisi	ons Relevant for Taxation of Services under the UN Model	361
2.	United	Nation's Work on Taxation Services	362
Appe	endix A	Recommendations as per E/C.18/2010/CRP.7 Dated	
		10 October 2010	363
Appe	endix B	Note on the Taration of Fees for Technical and Other	
		Services under the United Nations Model Convention	
		(27 May 2012)	366
Appe	endix C	Note on Taxation of Services under the United Nations Model	
		Convention	376
Anne	endix D	Follow-Up Note on the Taxation of Fees for Technical and	
лрре		Other Services under the United Nations (Draft 28 August	
		2012)	394
			0,7,1
Снар	ter 13		
		ler the Indian Domestic Law	407
1.	Taxatic	n under the Indian Domestic Law	407
2.	Main Charging Provisions		
	2.1	Accruing	407 408
	2.2	Arising	408
	2.3	Reluctance of the Judiciary	409

	2.4	Reliance	on Deeming Provisions	409
	2.5	Relevan	ce for Tax Treaties	409
3.	Provisions for Certain Specific Types of Services: Presumptive			
	Basis			409
4.	Deeming Provisions: Specific Provisions for 'Fees for Technical			
	Services'			
	4.1	Scope of	Section 9(1)(vii)	410
	4.2	Source c	of Income	411
		4.2.1	What Is a Source of Income?	412
		4.2.2	Different Sources for the Same Income	413
	4.3	Place of Rendition of Services		
		4.3.1	Extra Territorial Provisions: Position in India	414
		4.3.2	Decisions on Extra Territorial Provisions	415
	4.4	Place of Utilization of Services		
		4.4.1	Manners of Rendition of Services	420
		4.4.2	Place Where the Services Are Immediately	
			Implemented / Rendered as a Place of Utilization	
			of Services (Immediate Location)	420
		4.4.3	Ultimate Beneficiary Location as a Place of Utilization	
			of Services (Ultimate Location)	421
		4.4.4	Analysis: Determination of Piace of Utilization	
			Services	422
		4.4.5	Should Services Necessarily Be Utilized in a Particular	
			Country?	422
	4.5	Should Services Necessarily Be Utilized in Respect of Core		
		Functions of the Business?		
	4.6	When Business Can Be Said To Be Carried on outside India?		
		4.6.1	Judicial Precedents	425
	4.7	Implication of Time Gap between Rendition of Services and Its		
		Utilization		
		4.7.1	Services Rendered Prior to Commencement of Business	428
		4.7.2	Used versus Utilized	429
	4.8	Absence of the Words 'Such Person'		
		4.8.1	Intention as Expressed in CBDT Circular	432
		4.8.2	Intention as Expressed in the Memorandum	433
		4.8.3	Judicial Precedent	433
5.	Definit	ion of 'Fe	es for Technical Services'	435
6.	Taxation on FTS: Gross Basis or Net Basis			436
	6.1	Net Basi	s of Taxation	436
	6.2	Gross Ba	asis of Taxation	437
7.	Genera	1		437

Appendix A	Relevant Provisions of the Indian Domestic Law	438
Appendix B	Issues Related to Definition of 'Permanent Establishment'	440

http://www.bookshop.com

http://www.bbookshop.com