CHAPTER SIX
CONCLUSION AND RECOMMENDATIONS

This chapter being the last chapter of the study deals with conclusion and suggestions of the present study. The chapter has broadly been divided into two parts. The first part deals with the conclusions and observations which can be made on the basis of what has been done in the previous chapters. The second part of the chapter deals with recommendations which can be made to improve the current situation in relation to the International Tax Regime.

6.1 Conclusion

The researcher has observed that international community has been successful in establishing a global order in taxation law called ‘International Tax Regime’, where in some countries sacrifice their taxing rights in favor of their contracting states so as to avoid double taxation on international transactions. In addition, this global order has also developed various tools and practices which prevent tax evasion or avoidance on international transactions. However, it can be concluded that the numerous flaws in this regime have resulted in unintended absurd outcomes and rampant tax evasion and avoidance at international level.

Apart from these observations, that is, the establishment of an international tax regime and factum of tax evasion, the other conclusions of this study have been dealt hereafter chapter wise. The first chapter of this study merely introduces the subject and highlights five research objectives. Each research
objective is reflected, studied and analyzed in subsequent chapters. The only conclusion which can be drawn from this chapter after reviewing of literature is that there exists a research gap in this field which gives impetus for further research.

The second chapter titled ‘International Tax Agreements as Tool to Prevent International Tax Evasion Disputes’ deals with the international tax agreements which are an integral part of international tax regime. The international tax agreements are of various kinds like double tax conventions, tax information exchange agreements and convention on mutual administrative assistance in tax matters. This chapter makes an analysis of double tax conventions as they are most comprehensive and self executory in nature. These conventions have been analyzed from three perspectives namely, historical, comparative and content analysis. The observations from these three types of analysis are discussed hereunder.

(i) The double tax conventions have shown a steady growth in number after the First World War. Prior to this, there were very few double tax conventions. This growth has been witnessed mainly because of the development of model tax conventions by League of Nations, then by United Nations and Organization for Economic Co-operation and Development. Presently, the international community is witnessing the development of multilateral conventions on tax matters and regional conventions.

(ii) The double tax conventions which are considered to be the comprehensive tax treaties deals with avoidance of double taxation more comprehensively than prevention of international tax evasion and avoidance. There are two main articles which specifically deal with prevention of tax evasion, that are, article on exchange of information and article on assistance in collection of taxes. There is only one article on mutual agreement procedure which specifically deals with resolution of disputes
relating to international tax regime. All remaining articles deal with the concept of avoidance on double taxation. There is no provision for arbitration in case a matter remains unresolved under mutual agreement procedure and the exchange of information is request based.

(iii) All the Indian treaties are based on the model conventions promulgated by United Nations and Organization for Economic Co-operation and Development. Still there are many variations which have been noted in double tax conventions with different countries. These variations are mainly due to the negotiations which take place between the representatives of two countries and when they try to synchronize the model conventions to their ground realities, balance of trade and socio-political factors.

The third chapter titled ‘Domestic Tax Laws as a Tool to Prevent International Tax Evasion’ deals with another integral part of international tax regime namely, Income Tax Act, 1961. The Income Tax Act, 1961 provides for basis of charge, computation of income, assessment and collection of tax. It is applicable for all kinds of assesses, may be, non resident or resident or foreign companies. Section 90 of this Act empowers the Central Government to enter into international tax agreements for avoidance of double taxation and prevention of tax evasion. These international tax agreements provide for the substantive rules relating to classification and assignment of taxability rights in relation to different incomes. The applicability of such rules like computation of taxable income, computation of tax, filing of returns, framing of assessment and collection of tax is made through the provisions in domestic law only. However, there is no separate chapter or comprehensive code dealing with cases involving non residents or international transactions. This chapter, therefore, makes an analysis of the provisions contained in domestic law in light of provisions in international tax agreements and compiles all scattered provisions under Income Tax Act, 1961 which are applicable to either non residents or international transactions. Lastly, it tries
to analyze the tools for prevention of tax evasion available under *Income Tax Act*, 1961. The various observations which can be made from this chapter are mentioned here under.

(i) **The Income Tax Act, 1961** classifies assesses as residents and non residents on basis of residential status however, it deals with the various aspects relating to non residents ambiguously. A non resident has to ‘fish out’ the provisions applicable to them.

(ii) The time limit for filing or returns and framing of assessment by the income tax department are same in case of both residents and non resident assesses. The same time period is available to income tax department for framing assessment in case of income escaping assessment in case of non residents as in case of residents.

(iii) There is no separate return form prescribed for the non resident assesses. They are expected to fill the same return forms as applicable to residents on basis of the classification of income as covered under *Income Tax Act*, 1961 whereas the international tax agreements adopt a different classification of income.

(iv) The Permanent Account Number is similarly codified for all residents and non residents assesses. There is no other separate demarcation of non residents and persons entering into international transactions.

(v) **The Income Tax Act, 1961** does not provide for priority to international tax agreements. Rather assesses are at liberty to apply any provision whichever is more beneficial to him.

(vi) There are many provisions dealing with tax evasion and avoidance which are equally applicable to both residents and non residents like transfer
pricing, search, seizure, survey etc. etc. However, a newly added concept called General Anti Avoidance Rules (GAAR) has been deferred till 1 April 2014. There are rampant powers given to assessing officer under the provisions relating to GAAR.

The fourth chapter titled ‘The Organisational Mechanisms as Tool to Prevent International Tax Evasion’ deals with the administrative and other organizations which are dealing with the subject of international tax evasion at both national and international level. At national level, there exists an income tax department which has clearly defined structural hierarchy created through the provision of two statutes, namely, *Income Tax Act*, 1961 and the *Central Board of Revenue Act*, 1963. At international level, there exist various organizations like United Nations; Organisation for Economic Cooperation and Development; taxpayer’s organizations; and organizations of tax administrators. The researcher has analyzed the powers and role played by such organizations, be it, national or international and come out with the following conclusions.

(i) The income tax department lacks formal training in field of international taxation. Even the department’s training institute does not provide for any separate module on training of departmental officials in field of international taxation and specialized fields like transfer pricing and exchange of information.

(ii) There is lack of administrative manuals for providing guidance to non-resident assesses. There is no online support which has been specifically dedicated to the needs of non residents.

(iii) The departmental officials have wide powers for calling information, taking evidence, framing assessment and conducting operations relating to search and seizure. These powers are quite helpful in curbing the
malpractices relating to tax evasion and avoidance.

(iv) There are some special powers available to tax officials for curbing tax evasion or avoidance in cases involving international transactions like computation of arm’s length under transfer pricing, advance pricing agreement etc. etc. The provisions relating to General Anti Avoidance Rules (GAAR) gives wide powers to tax officials for discarding any international arrangement so as to bring the underlying transaction to be taxed in India. However, the provisions relating to GAAR have been deferred till 1 April 2016.

The fifth chapter titled ‘Concept, Nature and Types of International Tax Evasion Disputes’ deals with reported cases relating to international tax regime where conflicting claims of tax department and assesses have been settled. The chapter highlights various causes of international tax evasion disputes and groups all the tax disputes under various causes of international tax evasion. The conclusions and observations which can be made from this analysis are mentioned here under.

(i) All the reported international tax disputes have been settled through the machinery of local courts dealing with tax matters, namely, Income Tax Appellate Tribunal, High Courts and Supreme Court where as the international tax disputes also effect the other contracting state which have no say in local court.

(ii) None of the matter has been settled through the mutual agreement procedure available under international tax agreements.

(iii) No arbitration mechanism is available to assesses which can settle international tax disputes under the international tax agreements where the representatives of both the contracting states can have a say.
6.2 Recommendations

The conclusions which have been arrived at in the present study point towards the need of an immediate remedial intervention by the concerned stakeholders. Such interventions are required for curbing the problem of international tax evasion, strengthening international co-operation, improving regulatory framework and developing the human resource of administrative bodies. To facilitate this process, the researcher has highlighted certain recommendations in this part of the study. Such recommendations have been proposed with a view to settle the international tax evasion disputes in an amicable, timely and effective manner. The recommendations are as under.

Recommendation No. 1:

“There should be Insertion of Provision for Arbitration Mechanism under Mutual Agreement Procedure”

It is recommended that the tax treaties should prescribe arbitration mechanism in matters remaining unresolved under mutual agreement procedure. This can be done by inserting the following paragraph in article relating to mutual agreement procedure:

“Where under this article, a person has presented a case to the competent authority of a Contracting State on the basis that the actions of one or both of the Contracting States have resulted for that person in taxation not in accordance with the provisions of this Convention, and the competent authorities are unable to reach an agreement to resolve that case pursuant to such person within one year from the presentation of the case to the competent authority of the other Contracting State,

Then in that case, any unresolved issues shall be submitted to arbitration if the
person so requests. These unresolved issues shall not, however, be submitted to arbitration if a decision on these issues has already been rendered by a court or administrative tribunal of either State. Unless a person directly affected by the case does not accept the mutual agreement that implements the arbitration decision, that decision shall be binding on both Contracting States and shall be implemented notwithstanding any time limits in the domestic laws of these States. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this paragraph."

The competent authority can also conclude a mutual agreement along these lines in cases where India has not included such paragraph in already existing tax treaties. The countries with which such binding arbitration is added must first commit for its effective implementation. The countries must ensure that there should be no constitutional barriers in execution of such agreement and submission of dispute to an international arbitration. However, the use of such arbitration may be restricted to cases of factual nature where the issues involved are existence of permanent establishment*, issue of transfer pricing, deciding arm’s length etc.

This paragraph shall reduce the time consuming, costly and sometimes conflicting judicial proceedings. It shall make the article relating to Mutual Agreement Procedure more effective as the tax payer and government shall know at the very onset that such procedure is going to produce final results. Presently, the contracting states to a treaty merely endeavor to agree under the mutual agreement procedure and they are not bound to come to a common understanding. Thus, the result may be unrelieved double taxation due to which the taxpayer may adopt the arbitration mechanism under bilateral investment treaties.

Recommendation No. 2:
“There should be Prescription of Limitation Period for Initiating Mutual Agreement Procedure”

It is recommended that an explanation may be added to the first paragraph of article relating to mutual agreement procedure to clarify the time from where the limitation begins. Presently, the tax treaties enable a taxpayer to present his case under mutual agreement procedure within three years from the date of first notification of the action resulting in taxation not in accordance with the provisions of the treaty. This explanation shall clarify the meaning of first notification.

“Explanation: The term ‘First Notification’ shall hereby mean as follows-
(1) In case of withholding tax - The date when the deduction is first made or the date when income is received by the person, whichever is later;
(2) In self assessment cases - The date when person receives intimidation / order under section 143(1) or refund is credited to the designated bank account, whichever is earlier;
(3) In assessment framed by assessing officer - The date when notice for demand of tax is served on the person;
(4) In cases where the matter is adjudicated before any court in the contracting state or both of the contracting state - The date when the order of last court is served on the person.”

It may be observed that all these incidents may happen in a single case. For example, a person may choose to file the income tax return to claim credit of taxes paid in foreign country after the withholding tax deduction has been made. Similarly, a scrutiny assessment may be made where self assessment has already been made and the same matter may be taken before any of the local courts in contracting states. In such cases, the person is free to take up his case before mutual agreement procedure from any point of time. However, to avoid any duality of matter, one before administrative
authorities or appellate hierarchy and one before mutual agreement procedure, it is further recommended that following proviso to the article relating to mutual agreement procedure may be added.

Provided that where the person chooses to take his case before mutual agreement procedure then such person shall bring this fact to the notice of concerned authority or court where the matter is pending and such authority or court shall keep the matter in abeyance till a decision is arrived at by the competent authorities under mutual agreement procedure or under arbitration

This proviso shall prevent the wastage of resources which are utilized under the mutual agreement procedure. Keeping of matter in abeyance shall also ensure staying of matter and suspension of tax collection in case of such person.

Recommendation No. 3:
“Manual on Mutual Agreement Procedure should be Developed and Published”

It is recommended that a manual on mutual agreement procedure may be developed by the Ministry of Finance, Government of India in consonance with treaty partners which shall act as a guide to increase awareness of the mutual agreement procedure. It shall provide tax administrators and taxpayers with basic information of mutual agreement procedure and identify best practices. It is further recommended that the manual must contain following points:

3.1 Title: The manual may have the title as ‘Manual on Mutual Agreement Procedure for Tax Administrators and Taxpayers’.
3.2 Recitals: This portion of the manual shall disclose the factual position due to which this manual has been drafted. This may also include the purpose of such manual.

3.3 Definitions: The most important definitions to be included in manual are definition of Act; Competent Authority; Department; Double Taxation; Double Taxation Avoidance Agreements; Mutual Agreement Procedure; Mutual Agreement Procedure Request; Taxation Not in Accordance With Convention; Taxes; and Taxpayer.

3.4 Procedure: This part of the manual may guide the taxpayer for different steps involved in deciding a matter under the mutual agreement procedure. It shall start with initiating the mutual agreement procedure request with the competent authority and shall conclude with guidance to the taxpayer on what is going to happen when agreement is reached upon by the competent authorities.

3.5 Effect on Domestic Proceedings: This part of manual shall guide the taxpayers about the effect of mutual agreement procedure on domestic proceedings, their obligation to bring initiation of such procedure to the knowledge of appropriate authority or tribunal or court where the matter is pending; and other matters like staying of local proceedings etc. etc.

3.6 Best Practices for Tax Administration: This part of the manual shall prescribe the recommended timelines for mutual agreement procedure; the course of action to be adopted by the tax administration; administrative hierarchies; and performance indicators.

3.7 Miscellaneous Matters: This part of the manual shall prescribe the matters relating to forms in which request can be made under mutual agreement procedure, fee for such procedure and addresses or other details of the
competent authorities.

Recommendation No. 4:
“The Time Limit for Filing Income Tax Return by Non Residents should be Extended”

It is recommended that an extended time period may be provided to those non-residents assesses who have received a refund in their country of residence with an intimation to pay taxes in India. This can be done by inserting a new clause (c) in Explanation 2 to section 139(1) of the Income Tax Act, 1961 and renumbering present clause (c) as clause (d). The amended Explanation 2 shall read as follows:

“Explanation 2 - In this subsection, “due date” means, -
(a) where the assessee other than an assessee referred to in clause (aa)] is—

(i) a company; or
(ii) a person (other than a company) whose accounts are required to be audited under this Act or under any other law for the time being in force; or
(iii) a working partner of a firm whose accounts are required to be audited under this Act or under any other law for the time being in force, the 30th day of September of the assessment year;

(aa) in the case of an assessee who is required to furnish a report referred to in section 92E, the 30th day of November of the assessment year;

(b) in the case of a person other than a company, referred to in the first proviso to this sub-section, the 31st day of October of the assessment year;

(c) in case of any non-resident assessee, who has bonafidely paid his tax on entire income in his country of residence and that state has refunded such tax on a portion of income as is liable to taxed in India, within six months from receipt of such intimation or refund whichever is earlier;

(d) in the case of any other assessee, the 31st day of July of the assessment
Recommendation No. 5:

“There should be Provision for Providing Priority to International Tax Agreements”

It is recommended that the sub section (2) of section 90 of the Income Tax Act, 1961 may be amended to give priority to the application of international tax agreements in comparison to the provisions of the Act. The amended provision shall be as follows:

“Where the Central Government has entered into an agreement with the Government of any country outside India or specified territory outside India, as the case may be, under sub-section (1) for granting relief of tax, or as the case may be, avoidance of double taxation, then, in relation to the assessee to whom such agreement applies, the provisions of such agreement shall apply in priority to the provisions of this Act.”

This amendment shall provide consistency, clarity and stability in taxation of international transactions and act as a shield against any unilateral attempt
by one country to amend international tax agreements. It shall also provide uniformity in taxation of similar incomes in hands of different assesses. Further, it shall curb the malpractice of choosing the law which is more beneficial to the assessee. Such amendment shall be consonance with the principles enshrined under Article 51 of the Constitution of India that is, fostering international relations. Presently, neither Constitution of India nor any other statutory law gives priority to the international tax agreements in application over provisions of Income Tax Act, 1961.

Recommendation No. 6:

“There should be Prioritization of International Tax Agreements over Bilateral Investment Treaties in Relation to Tax Disputes”

It is recommended that a separate article on taxation may be included in the bilateral investment treaties to give priority to international tax agreements over bilateral investment treaties in relation to tax disputes arising under international tax regime. The proposed provisions for such article are as follows.

“1. Except as provided in this Article, nothing in this Treaty shall apply to taxation measures.
2. Treaty protection relating to Expropriation shall apply to all taxation measures, except that a claimant that asserts that a taxation measure involves an expropriation may submit a claim to arbitration under bilateral investment treaty only if:

(a) The claimant has first referred to the competent tax authorities of both parties in writing the issue of whether that taxation measure involves an expropriation; and
(b) Within one year after the date of such referral, the competent tax authorities of both parties fail to agree that the taxation measure is not an
expropriation.

3. Nothing in this treaty shall affect the rights and obligations of either Party under any tax convention. In the event of any inconsistency between this treaty and any such convention, that convention shall prevail to the extent of the inconsistency. In the case of a tax convention between the Parties, the competent authorities under that convention shall have sole responsibility for determining whether any inconsistency exists between this treaty and that convention."

This article shall restrict the scope of arbitration under bilateral investment treaties and avoid any ugly interface between international tax agreements and investment treaties.

Recommendation No. 7:
"There should be Applicability of General Anti Avoidance Rules"

It is recommended that the provisions relating to General Anti Avoidance Rules should be made applicable with proper checks and balances on exercise of such powers by the assessing officers. It is further recommended that sections 90 (2A) and 90A (2A) should be abolished and it should be provided that substantive provisions of tax treaties shall override domestic provisions.

Recommendation No. 8:
"There should be Execution of Special Agreements on Automatic Exchange of Information"

It is recommended that the Central Government should enter into special working agreements or memorandum of understanding with its treaty partners to shift the standard in exchange of information from ‘upon request’
to ‘automatic’. Such working agreements are required to settle down the modalities, steps and procedures through which information exchanged automatically shall pass.

The two perspectives which must be worked upon for successful automatic exchange are: (1) Receiving country’s perspective and (2) Paying country’s perspective. From the receiving country’s perspective, the working agreement needs to work upon defining the scope of transactions to be covered; defining the information to be captured; ensuring data quality; timing for information exchange; method of communication; and risk assessment. From the sending country’s perspective, the working agreement needs to work upon confidentiality, reciprocity, acknowledgment and feedback.

Recommendation No. 9:
“**There should be Prescription of Separate Return for Non Resident Assesses**”

It is recommended that a new clause (h) may be inserted in Rule 12(1) of the *Income Tax Rules, 1962* to prescribe separate return form for non-resident assessee. The proposed clause (h) is mentioned here under.

**(h) In case of a person being a non-resident, be in form no. ITR 8;**

This clause shall separate the category of non-resident assessees, be it company, individual, firm, association of persons, body of individuals etc. etc. from the category of residents who are obliged to file their returns in prescribed form ITR 1- ITR 7. A proposed format for ITR-8 which may be prescribed after insertion of clause (h) under Rule 12(1) is mentioned here under.

<table>
<thead>
<tr>
<th>Form No. ITR 8</th>
<th>Income Tax Return [For Non-Resident Assessee]</th>
<th>Assessment Year</th>
</tr>
</thead>
</table>
## Part A: General

### (Personal Information)

<table>
<thead>
<tr>
<th>First Name</th>
<th>Middle Name</th>
<th>Last Name</th>
<th>PAN / Other ID</th>
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<tbody>
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<thead>
<tr>
<th>Flat / Block / Door No.</th>
<th>Name of Premises / Building / Village</th>
<th>Road / Street</th>
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<table>
<thead>
<tr>
<th>Post Office</th>
<th>Area / Locality</th>
<th>Date Of Birth (Individual)</th>
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<table>
<thead>
<tr>
<th>Town / City / District</th>
<th>State</th>
<th>Country</th>
<th>Pin / Zip Code</th>
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<tr>
<th>Telephone / Mobile</th>
<th>Employer Category</th>
<th>Email ID:</th>
<th>Ward / Circle</th>
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</tbody>
</table>

### (Filing Status)

Return Filed: s. 139 before due date [ ]; After due date [ ]; s. 139(5) [ ]; s. 139(9) [ ]; s. 142(1) [ ]; s. 148 [ ]; s. 153A/153C [ ]; 92CD [ ]

If revised/defective, then enter receipt no. of original return with date:

If filed, in response to a notice u/s 139(9)/142(1)/148/153A/153C enter date of such notice, or u/s 92CD enter date of advance pricing agreement:

Citizenship Status: Indian [ ] Foreigner [ ]

Whether return is being filed by a representative assessee? Yes [ ] No [ ] If yes, please furnish following information –

(a) Name of the representative
(b) Address of the representative
(c) Permanent Account Number (PAN) of the representative

### (Audit Information)

Are you liable to audit under section 44AB? Yes [ ] No [ ]

If yes, whether the accounts have been audited by an accountant? Yes [ ] No [ ]

If yes, furnish the following information:

(a) Date of furnishing audit report
(b) Name of the auditor signing tax audit report
(c) Membership number of auditor
(d) Name of the auditor (proprietor/firm)
(e) Permanent Account Number of the Proprietorship/firm
(f) Date of report of audit
If liable to furnish other audit report, mention the date of furnishing the audit report
92E [ / / ] 115JC [ / / ]

**Part B**

*(Computation of Total Income)*

| (i) | Income from immovable property | 1 |
| (ii) | Income from business profits | 2 |
| (iii) | Income from international traffic: shipping, inland, waterways and air transport | 3 |
| (iv) | Dividend income | 4 |
| (v) | Interest income | 5 |
| (vi) | Income from royalty and fee for technical services | 6 |
| (vii) | Capital gains | |
| | (a) Long term capital gain | |
| | (b) Short term capital gain | |
| | Total 7(a) and 7(b) | 7 |
| (viii) | Income from employment | 8 |
| (ix) | Fee for directorship | 9 |
| (x) | Income of artistes, sportsperson and other entertainers | 10 |
| (xi) | Pension income | 11 |
| (xii) | Income from government service | 12 |
| (xiii) | Income received by students or other trainee | 13 |
| (xiv) | Other incomes | 14 |
| | Total (1 to 14) | 15 |
| (xv) | Losses of current year to be set off against | 16 |
| | Balance after set off current year losses (15-16) | 17 |
| (xvi) | Brought forward losses to be set off against | 18 |
| | Gross total income (17-18) | 19 |
| (xvii) | Deductions under chapter VI-A | 21 |
| | Total income (19-21) | 22 |
| (xviii) | Income chargeable at special rates | 23 |
| (xix) | Income chargeable at normal rates | 24 |
| (xx) | Losses of current year to be carried forward | 25 |
| (xxi) | Net agricultural income (for rate purposes) | 26 |
### (Computation of Tax Liability on Total Income)

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
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<tbody>
<tr>
<td>(i)</td>
<td>Tax payable on total income</td>
</tr>
<tr>
<td>(a)</td>
<td>Tax at normal rates</td>
</tr>
<tr>
<td>(b)</td>
<td>Tax at special rates</td>
</tr>
<tr>
<td>(c)</td>
<td>Rebate on agricultural income</td>
</tr>
<tr>
<td>(d)</td>
<td>Tax payable on total income</td>
</tr>
<tr>
<td>(ii)</td>
<td>Rebate under section 87A</td>
</tr>
<tr>
<td>(iii)</td>
<td>Surcharge on 3</td>
</tr>
<tr>
<td>(iv)</td>
<td>Education cess, including secondary and higher education cess (on 3+4)</td>
</tr>
<tr>
<td></td>
<td>Gross tax liability</td>
</tr>
<tr>
<td>(v)</td>
<td>Tax relief</td>
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<tr>
<td>(a)</td>
<td>Section 89</td>
</tr>
<tr>
<td>(b)</td>
<td>Section 90/90A</td>
</tr>
<tr>
<td>(c)</td>
<td>Section 91</td>
</tr>
<tr>
<td></td>
<td>Total (a) + (b) + (c)</td>
</tr>
<tr>
<td></td>
<td>Net Tax Liability (6-7)</td>
</tr>
<tr>
<td>(vii)</td>
<td>Interest payable under section 234A/234B/234C</td>
</tr>
<tr>
<td></td>
<td>Aggregate liability</td>
</tr>
<tr>
<td>(viii)</td>
<td>Taxes paid</td>
</tr>
<tr>
<td>(a)</td>
<td>Advance tax</td>
</tr>
<tr>
<td>(b)</td>
<td>TDS</td>
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<tr>
<td>(c)</td>
<td>TCS</td>
</tr>
<tr>
<td>(d)</td>
<td>Self Assessment Tax</td>
</tr>
<tr>
<td></td>
<td>Total taxes paid</td>
</tr>
<tr>
<td></td>
<td>Amount payable (10-11)</td>
</tr>
<tr>
<td></td>
<td>Refund (if 11 is greater than 10)</td>
</tr>
</tbody>
</table>

### Verification

I, ____________________________ son/ daughter of ____________________________
________________________, holding permanent account number ____________
solemnly declare that to the best of my knowledge and belief, the
information given in the return and schedules thereto is correct and
complete and that the amount of total income and other particulars shown
therein are truly stated and are in accordance with the provisions of the
Income-tax Act, 1961, in respect of income chargeable to Income-tax for the
previous year relevant to the Assessment Year 2015-16.

Place:
Date:
Sign here

The above mentioned form shall be accompanied by various schedules
where the non-resident shall be required to furnish details relating to different
kinds of income sourced from India. Some of the schedules are highlighted
hereunder.

9.1 Schedule on Permanent Establishment: This schedule may apply in cases
where the non-resident has earned income from any business or profession or
independent personal services. The non-resident may be required to furnish
details regarding computation of profits attributable to such permanent
establishment.

9.2 Schedule on Passive Income: This schedule may apply in cases where the
non-resident has earned income from passive sources like dividend, interest
and royalty. The non-resident may be required to furnish details regarding the
specific treaty under which he is claiming lesser rate of tax.

9.3 Schedule on Immovable Property and Capital Gains: This schedule apply
in cases where income is earned on an immovable property or income is
earned from transfer of immovable property. The non-resident may be
required to furnish the particulars of immovable property, PAN number of the
person paying rent or in case of transfer, PAN number of the purchaser of
such property.
9.4 Schedule on International Traffic: This schedule may apply in cases where the non-resident has earned income from plying of international traffic through shipping, airways or waterways. The non-resident may be required to furnish the details of income earned from international traffic vis-à-vis national traffic and the place of effective management of the company owning such vehicles.

9.5 Schedule on Other Incomes: This schedule may apply in cases where the non-resident has earned income from sources other than covered by specific schedules mentioned above. The non-resident may be required to furnish the details of such income, identity of the person paying such income and particulars about the tax treaty under which reduced rate of taxation or exemption is claimed.

In addition to the above mentioned schedules, the proposed income tax return form shall also contain instructions which may guide the non-residents for filling this form. The non-residents may also be given an opportunity to upload or furnish any other document in support of their claim under this return form.

Recommendation No. 10:
"There should be Separate Identification of Persons Claiming Relief under Tax Treaties"

It is recommended that separate identification parameter may be developed for persons, both residents and non residents, claiming relief / exemption / reduced rate of taxation under any of the double taxation avoidance agreement. In case of non-residents, this can be done by prescribing separate return form i.e. ITR 8 as proposed above. In case of residents, this can be done by either issuing fresh permanent account number (PAN) to such persons or adding an additional clause in the return
form.

10.1 Alternative I (Fresh PAN Number): PAN number consists of alpha numeric series of ten digits out of which first five numbers are English alphabets followed by four numerical digits and one last English alphabet. The fourth and fifth English alphabets are codes used by the department to identify the structure of taxable person e.g. individual, company, trust etc. etc. The income tax department can reissue PAN numbers to persons claiming benefit under tax treaties by replacing these two alphabets by ‘TT’.

10.2 Alternative II (Clause in Return Form): One additional clause in Part A: General (Filing Status) may be added where by the person filing such return is specifically asked that whether he is claiming any relief under tax treaty or not. If the person answers in affirmative, then further details relating to the specific tax treaty and articles may be asked.

These steps shall help the income tax department in selecting such cases and making close scrutiny to check the claims made on strength of double taxation avoidance agreements. A separate clause may also be included in instruction issued by Central Board of Direct Taxes for compulsory manual selection of cases for scrutiny in a particular assessment year.

Recommendation No. 11:
“There should be Training of Department Officials in International Tax Regime”

It is recommended that a specific training programme may be developed for the departmental officials who are working in the field of international taxation and deal directly with cases involving international transactions. The training programme may be divided into three levels, namely, foundation course; intermediate course; and professional course. The different topics which may be included in these three levels are mentioned below.
14.1 Foundation Course: This course may include modules on basic concepts in international taxation like source rule, residence rule, residential status, taxation and sovereignty etc.; synchronization of domestic law with international taxation; and applicability of international tax agreements.

14.2 Intermediate Course: This course may include modules on rights of taxation in relation to different kinds of income covered under double taxation avoidance agreements; elimination of double taxation; and prevention of tax evasion.

14.3 Professional Course: This course shall be of an expert stage which shall include modules on structuring of inbound investment; structuring of outbound investment; law relating to money laundering; foreign exchange laws; and law relating to foreign contribution.

These courses may be provided through the Nagpur Tax Academy, which is a premiere institute, providing training to departmental officials. Each module may be divided into a time period of thirty hours and experts from the field of law and economics may be invited to deliver lectures on various aspects of these modules.

In additions to these three levels of training, some add on courses may be adopted by the Nagpur Tax Academy in relation to transfer pricing and exchange of information. These add on courses may provide a hand on experience to the officials handling confidential information under exchange of information and computation of arm’s length pricing under transfer pricing.

Recommendation No. 12:
“Other General Recommendations”
12.1 There should be Provision for Adequate Manpower in International Tax Division of Income Tax Department: It is recommended that the international tax division of the tax department which is responsible for investigation the cases relating to international tax evasion and avoidance should have adequate manpower. Any vacancy arising in such division should be filled at the earliest.

12.2 There should be Provision for Special Incentives for Tax Officials Detecting international Tax Evasion Cases: It is recommended that the tax officials detecting cases of international tax evasion must be paid special incentives in form of allowances or perquisites. Such incentive must be paid only in cases where substantive addition is made and only after the final outcome of the case.

12.3 There should be Provision for Suitable Disciplinary Action against Erring Tax Officials Who Lack Necessary Coordination with Standing Counsels: It is recommended that the tax officials who are in charge of a particular case must take proper steps to brief their standing counsel in a timely and efficient manner. Any strictures passed by the High Court due to lack of coordination must be strictly viewed and disciplinary actions may be initiated.

12.4 Principle of Clarity, Certainty and Co-operation should be Effectively Implemented: It is recommended that there must be effective implementation of principle of clarity, certainty and co-operation in letter and spirit. The goal relating to ‘Clarity’ can be achieved by drafting of administrative rules and regulations in respect of non-residents in simple manner so that they can be understood and comprehended easily. The non-residents should not be expected to understand and interpret the complex laws and administrative guidelines relation to income tax laws. The income tax department can publish an administrative handbook for non-residents
which can act as one-stop guidance for such persons.

The goal relating to ‘Certainty’ can be achieved by stabilizing the taxation provisions for a particular period of time, say for at least five years. The frequent amendments which are brought by the Central Government for overruling judgments pronounced by different courts with retrospective effect causes deterrent effect to foreign investment inflows in India. Thus, it results in disturbing the global order achieved by international tax regime.

The goal relating to ‘Co-operation’ can be achieved by changing the mindset of tax department from mere curative to co-operative. The income tax department may come out with an online portal specifically dedicated to the non-residents where they can satisfy their queries relating to income tax law as applicable to them in relation to international tax agreements. The IRS officers may also guide such persons in relation to their rights and obligations and procedures for complying with taxation laws.

**Concluding Remarks**

Law is never static. Same is true for international tax regime as well. It can neither be static nor achieve the state of perfection. The establishment of such tax regime may be termed as a remarkable achievement by the international community. This beginning is quite appreciable. However, it is still in its infancy and full of various defects and loopholes. There are as many international tax evasion and avoidance practices as there are tax laws and regulations. The types and varieties of these practices keep on increasing with intensification of international economic relations. Due to this, there is an equal rise in extensive and varied body of tax laws designed to prevent international tax evasion and avoidance. Hence, one major conclusion which can be drawn from this study is that the international tax regime is infant, imperfect and inconsistent.
On a positive note, it can be concluded that the international tax regime is an evolving field and it shall remain growing in coming time. There shall be no dearth of scope of research in this area. The only problem which may be faced while conducting research in the field of international tax regime is the secrecy surrounding the actual details of international tax practice affecting each individual tax payer. Most of the details are restricted to tax officials and tax advisers. This may limit the scope of scientific treatment of the subject, which otherwise might make larger contribution to more rational legislation.