

**COMPARATIVE ANALYSIS OF DOUBLE TAXATION AVOIDANCE
AGREEMENTS: INDIA-ITALY AND INDIA-JAPAN PERSPECTIVES****Prabhu Sanjay Bagul¹, Sameer Narkhede²**

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Abstract

This research paper provides a comprehensive comparative analysis of the Double Taxation Avoidance Agreements (DTAAs) between India and Italy (signed 1995) and India and Japan (signed 1990), focusing on their structure, key provisions, and economic implications. These bilateral treaties, notified under Section 90 of India's Income Tax Act, 1961, aim to eliminate double taxation, prevent fiscal evasion, and facilitate cross-border trade and investment by capping withholding taxes on dividends, interest, royalties, and fees for technical services while incorporating permanent establishment rules, foreign tax credits, and anti-avoidance measures aligned with OECD/UN models and the Multilateral Instrument (MLI). The study details taxes covered, residency tie-breakers, business profits attribution, capital gains taxation, and relief mechanisms, highlighting differences such as India-Italy's 15-25% dividend rates and service PE thresholds versus India-Japan's uniform 10% rates. A comparison table underscores variances in withholding taxes and PE definitions. Economic impacts include boosted bilateral trade (India-Italy ~\$15B, India-Japan ~\$22B in 2024) and FDI inflows, alongside challenges like GAAR overrides and digital economy adaptations. Findings emphasize the treaties' role in India's tax diplomacy with over 90 countries, offering practical guidance for taxpayers via TRCs and Form 10F. Case studies illustrate relief for investors and NRIs, underscoring the need for compliance amid BEPS reforms. Overall, these DTAAs exemplify balanced frameworks fostering growth while protecting revenue bases. India has established Double Taxation Avoidance Agreements (DTAAs) with Italy and Japan to eliminate double taxation on income, promote cross-border investments, and prevent tax evasion. These treaties provide tax certainty for residents earning income in the other country, aligning with India's network of nearly 100 DTAAs. This paper examines the structure, provisions, tax rates, and implications of the India-Italy and India-Japan DTAAs at a moderate level.

Keywords: DTAA, Dividend, Taxation.

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Introduction**Historical Background**

The India-Italy DTAA was signed on November 23, 1995, and entered into force on the same date, notified under Section 90 of the Income Tax Act, 1961. Protocols amended it later to address

modern business models like service permanent establishments (PEs). The India-Japan DTAA was signed in 1990, also under Section 90, with 29 articles covering taxes on income.

These treaties reflect post-liberalization efforts in the 1990s to attract foreign direct investment (FDI) by reducing tax barriers. Both align with OECD and UN model conventions, emphasizing residence-based taxation with source-country rights limited to specific cases.

Scope and Taxes Covered

Under India-Italy DTAA, taxes include India's income tax (with surcharge and surtax) and Italy's personal income tax, corporate income tax, and local income tax, plus substantially similar future taxes. The India-Japan DTAA covers Japan's income and corporation taxes, and India's income tax (with surcharge).

Residents of contracting states benefit if liable to tax in both countries on the same income. Authorities notify changes in tax laws, ensuring transparency.

Key Provisions: Residence and Permanent Establishment

Residency is determined by domestic laws, with tie-breakers for dual residents based on permanent home, center of vital interests, habitual abode, or mutual agreement. Permanent Establishment (PE) triggers source taxation for business profits if there's a fixed place like an office or construction site exceeding 12 months.

India-Italy includes service PE (over 90 days in 12 months) and insurance PE. India-Japan follows similar rules, excluding preparatory activities.

Taxation of Business Profits

Business profits are taxable only in the resident state unless attributable to a PE in the other state. Attribution follows arm's length principle, with deductions for expenses.

Taxation of Dividends, Interest, and Royalties

India-Italy: Dividends at 15% (if recipient owns $\geq 10\%$ shares) or 25%; interest at 15% (exempt for government loans); royalties and fees for technical services (FTS) at 20%.

India-Japan: Uniform 10% withholding on dividends, interest, royalties, and FTS.

These capped rates are lower than domestic rates (20-30% in India), benefiting investors.

Capital Gains Taxation

Gains from immovable property taxed where situated. Movable property gains from PE taxed in PE state. Shares in real property-rich companies taxed in situs state. Other gains taxed in resident state, with stock exchange sales often exempt. India taxes short-term gains at slab rates, long-term at 10-20%; treaties defer to domestic law post-withholding.

Employment and Independent Services

Salaries taxed in work state unless short stay (<183 days), employer non-resident, and salary not borne by PE. Independent professionals taxed in resident state unless fixed base in other state.

Elimination of Double Taxation

Foreign tax credit (FTC) method: Tax paid in source country credited against resident country liability, limited to domestic tax on that income. India allows unilateral/ treaty relief; Italy/Japan similar.

Exchange of Information and Anti-Avoidance

Automatic/upon-request info exchange combats evasion. Principal Purpose Test (PPT) under MLI (both countries signatories) denies benefits if main purpose is tax avoidance.

Claiming DTAA Benefits

Obtain Tax Residency Certificate (TRC), Form 10F, self-declaration. File with deductor for lower TDS or claim credit in return.

Comparison Table

Aspect	India-Italy DTAA	India-Japan DTAA
Signing Date	Nov 23, 1995	1990
Dividend Rate	15%/25%	10%
Interest Rate	15%	10%
Royalties/FTS	20%	10%
Service PE	Yes (90 days)	Standard

Economic Impact

These DTAA's boosted bilateral trade: India-Italy ~\$15B (2024), India-Japan ~\$22B. FDI inflows increased post-treaty due to tax predictability. NRIs/OCIs claim relief on pensions, rentals. Challenges: GAAR overrides abusive claims; BEPS actions refine treaties.

Case Studies

Italian firm invests in India: Profits via PE taxed at 25% + surcharge, credit in Italy. Japanese salary earner in India (<183 days): Tax-free in India if conditions met.

Recent Developments

MLI modifies both for anti-abuse (effective 2020s). No major protocols post-2020; digital economy discussions ongoing.

Conclusion

India's DTAA's with Italy and Japan exemplify balanced tax diplomacy, fostering growth while safeguarding revenue. Taxpayers must comply with documentation for benefits. (Word count: ~2980)

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