Taxation of US rental income in the hands of an Indian tax resident.

The following note explains the tax implication for a taxpayer resident in India and deriving rental income from a US situated property

- India follows residence-based taxation under which a resident taxpayer is taxed in respect of his global income.

- The Indian Income Tax Act does not make any distinction between house (including commercial) property situated in India or abroad for the purpose of computing income from house property.

- Where an Indian resident taxpayer derives rental income from a property situated in US he would be required to pay tax on such income in US and also in India. Benefit of concessional provisions under the Indo-US tax treaty will, however, be available.

- Article 6 of the Indo US tax treaty deals with taxation of income from immovable property. It reads as under:

  Quote

  1. *Income derived by a resident of a Contracting State from immovable property (real property), including income from agriculture or forestry, situated in the other Contracting State may be taxed in that other State.*
  2. *The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated.*
  3. *The provisions of paragraph 1 shall also apply to income derived from the direct use, letting, or use in any form of immovable property.*
  4. *The provisions of paragraph 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.*

  Unquote

- The term *'maybe'* as used in the Article implies that both countries will have the right to tax the rental income. However, the country in which the property is situated i.e. the US in present case has the first right. So tax will first be paid in the US on rental income and the said income will have to be declared as rental income in India and tax will be payable in India as well.

- As regards the deduction against rental income, in the US only actual expenses (ordinary and necessary expenses) are allowed to be deducted against the rental income while computing the US tax liability. Instances of deductible expenses in US include mortgage interest, property tax, operating expenses, *depreciation,* and repairs.

- However, in India 30% standard deduction is allowed (for repairs and maintenance etc.) against the rental income irrespective of the actual expenses incurred.

- In respect of the federal income tax imposed by the IRC and paid in US in respect of such rental income, the taxpayer can claim tax credit against the Indian tax liability. Article 25 of the Indo-US tax treaty would come into play. Credit shall be available irrespective of the fact whether the US tax has been paid directly or by way of deduction. Such deduction is limited to the Indian tax attributable to the income so taxed in the US.