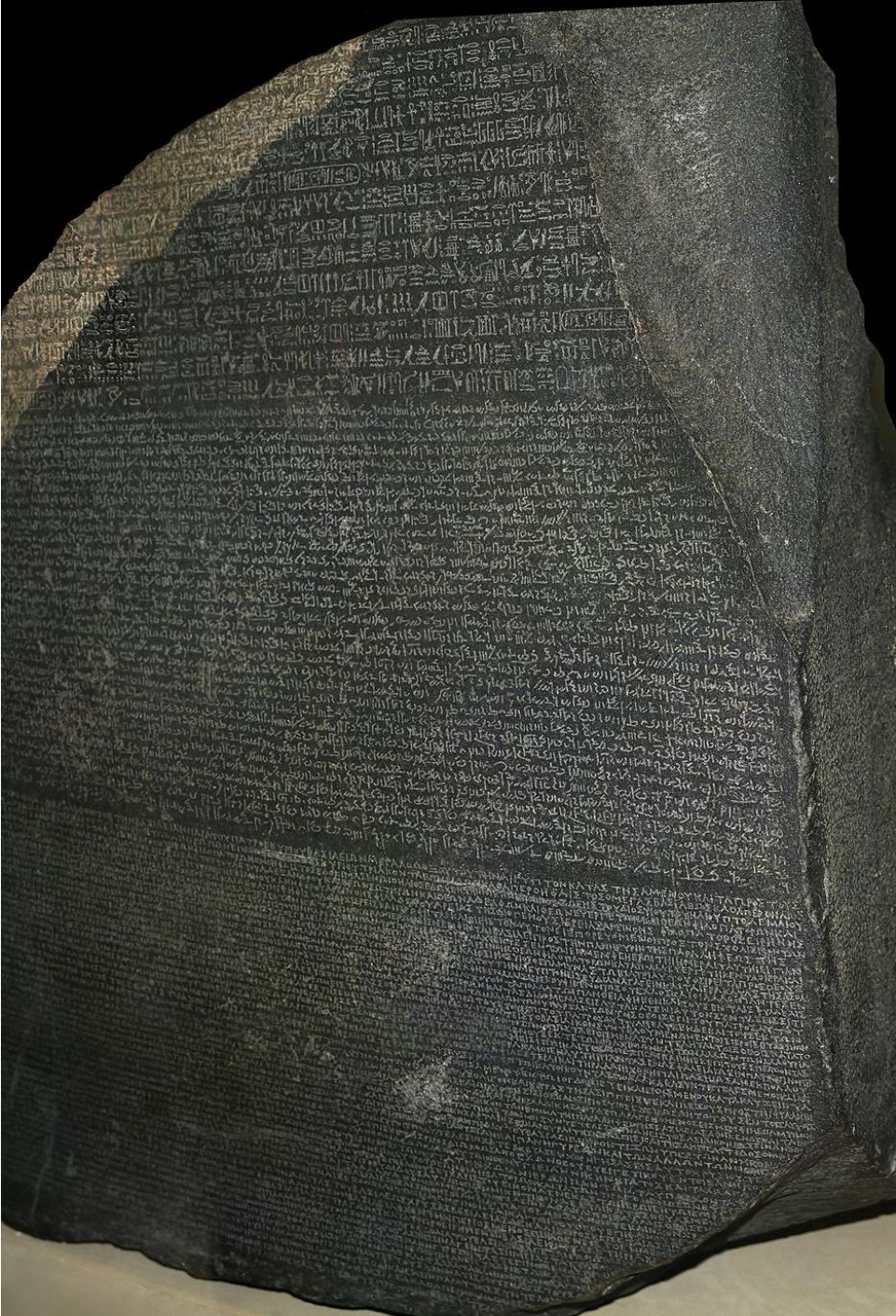


# Jurisdiction to tax





# Jurisdiction to tax

## The Rosetta stone

records a decree of Ptolemy V given between 197 – 196 BC. It depicts the reigning monarch granting a tax exemption to the resident priesthood. In return, the priesthood pledged that the king's birthday and coronation days would be celebrated annually, and that all the priests of Egypt would serve him alongside the other gods. Securing the favour of the priesthood was essential for the Ptolemaic kings to retain effective rule over the populace.





12. No scutage nor aid shall be imposed on our kingdom, unless by common counsel of our kingdom, except for ransoming our person, for making our eldest son a knight, and for once marrying our eldest daughter; and for these there shall not be levied more than a reasonable aid. In like manner it shall be done concerning aids from the city of London.

13. And the city of London shall have all its ancient liberties and free customs, as well by land as by water; furthermore, we decree and grant that all other cities, boroughs, towns, and ports shall have all their liberties and free customs.

23. No village or individual shall be compelled to make bridges at river banks, except those who from of old were legally bound to do so.

25. All counties, hundreds, wapentakes, and tithings (except our demesne manors) shall remain at the old rents, and without any additional payment.

31. Neither we nor our bailiffs shall take, for our castles or for any other work of ours, wood which is not ours, against the will of the owner of that wood.

Magna Carta 1215





Article 1: The state as a person of international law should possess the following qualifications: a ) a permanent population; b ) a defined territory; c ) government; and d) capacity to enter into relations with the other states.

Article 2: The federal state shall constitute a sole person in the eyes of international law.

Article 3: The political existence of the state is independent of recognition by the other states.

Article 4: States are juridically equal, enjoy the same rights, and have equal capacity in their exercise. The rights of each one do not depend upon the power which it possesses to assure its exercise, but upon the simple fact of its existence as a person under international law.

Article 8: No state has the right to intervene in the internal or external affairs of another.

Article 9: The jurisdiction of states within the limits of national territory applies to all the inhabitants. ...

Article 11: The contracting states definitely establish as the rule of their conduct ... not to recognize territorial acquisitions ... which have been obtained by force ... The territory of a state is inviolable ...



## **Article 38:**

1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:
  - a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
  - b. international custom, as evidence of a general practice accepted as law;
  - c. the general principles of law recognized by civilized nations;
  - d. subject to the provisions of Article 59, judicial decisions and teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

# UNITED NATIONS CONFERENCE ON THE LAW OF TREATIES

First and second sessions  
Vienna, 26 March – 24 May 1968 and 9 April – 22 May 1969

OFFICIAL RECORDS

*Documents of the Conference*



UNITED NATIONS



## **OECD MC, Commentary to article 1**

6.38 Different states have different opinions.

All variations are fine, provided resulting taxation is in conformity with the relevant bilateral tax treaty.

6.39 Various factors taken into consideration:

1. Is exemption reciprocal;
2. Is income generated from government or from business activities;
3. Are assets and income used for public purposes;
4. Can assets and income inure to a non-governmental person; and
5. Is the income derived from a portfolio or from direct investments.





## **§11. Tax imposed**

### **(a) Corporations in general**

A tax is hereby imposed for each taxable year on the taxable income of every corporation.

### **(d) Foreign corporations**

In the case of a foreign corporation, the taxes imposed by subsect.(a) and sect. 55 shall apply only as provided by sect. 882.

## **§881. Income not connected with US business**

### **(a) Imposition of tax**

... there is hereby imposed for each taxable year a tax of 30 % of the amount received from sources within the US by a foreign corporation as— ... but only to the extent the amount so received is not effectively connected with the conduct of a trade or business within the US.

## **§882. Income connected with US business**

### **(a) Imposition of tax**

#### **(1) In general**

A foreign corporation engaged in trade or business within the US during the taxable year shall be taxable as provided in section 11, 55, or 1201(a) on its taxable income which is effectively connected with the conduct of a trade or business within the US.

# U.S. Federal tax jurisdiction

"ARTICLE XVI. The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration."



# Indian tax jurisdiction

## Article 1 (Territorial limits):

1. India, that is Bharat, shall be a Union of States.

...

3. The territory of India shall comprise  
(a) the territories of the States;  
(b) the Union territories specified in the First Schedule; and  
(c) such other territories as may be acquired.

## Article 265 (Taxing jurisdiction):

No tax shall be levied or collected except by authority of law.



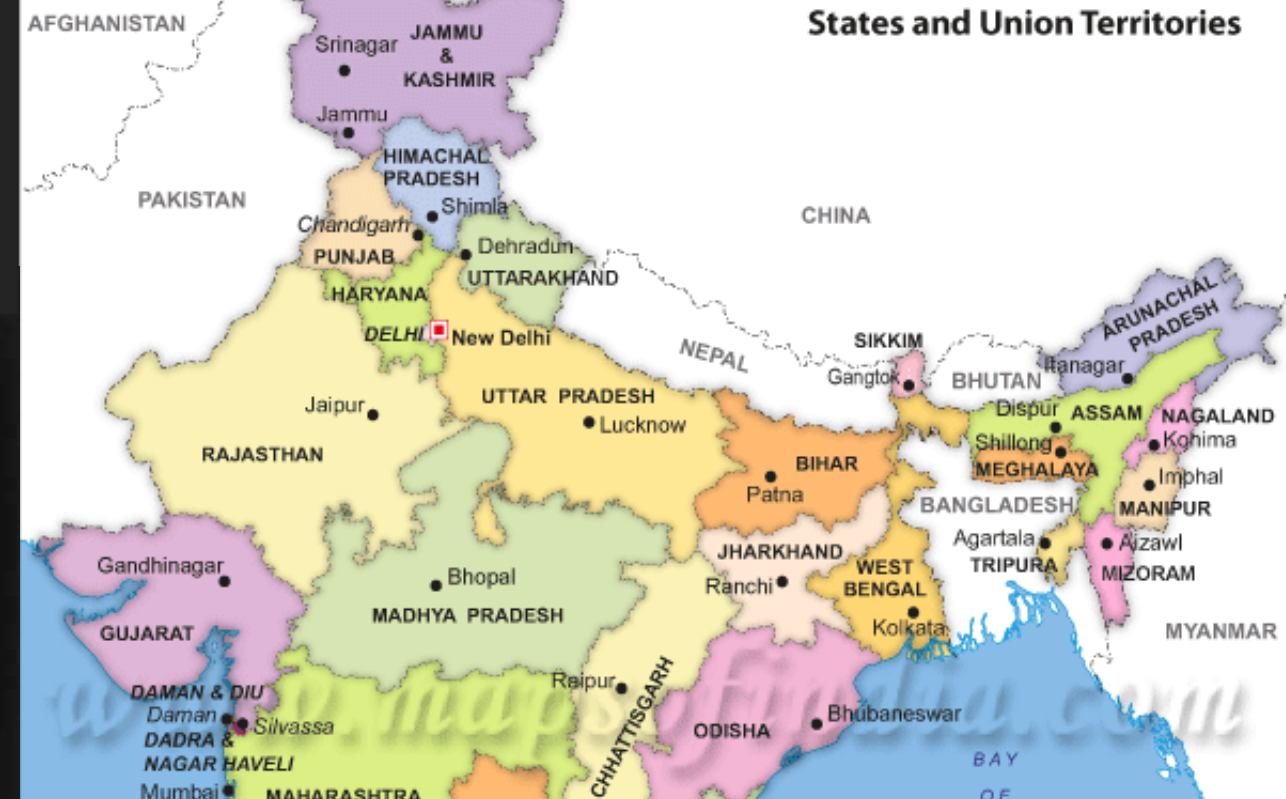


# Indian tax jurisdiction

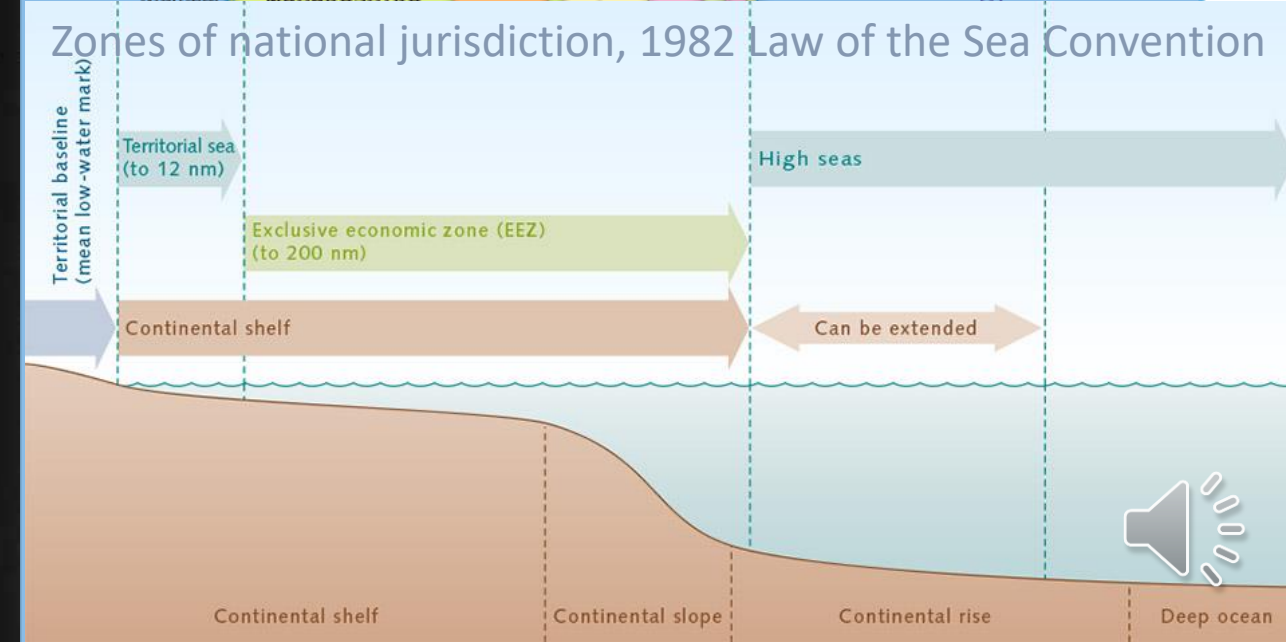
## Article 297 (Ownership of resources):

1. All lands, minerals and other things of value underlying the ocean within the territorial waters, or the continental shelf, or the exclusive economic zone, of India shall vest in the Union and be held for the purposes of the Union. (a) the territories of the States;
2. All other resources of the exclusive economic zone of India shall also vest in the Union and be held for the purposes of the Union. (b) the Union territories specified in the First Schedule; and (c) such other territories as may be acquired.
3. The limits of the territorial waters, the continental shelf, the exclusive economic zone, and other maritime zones, of India shall be such as may be specified, from time to time, by or under any law made by Parliament.

Parliament.



## Zones of national jurisdiction, 1982 Law of the Sea Convention



# Indian tax jurisdiction

## Indian income tax act 1961, amended by Finance act 2017

### Article 1

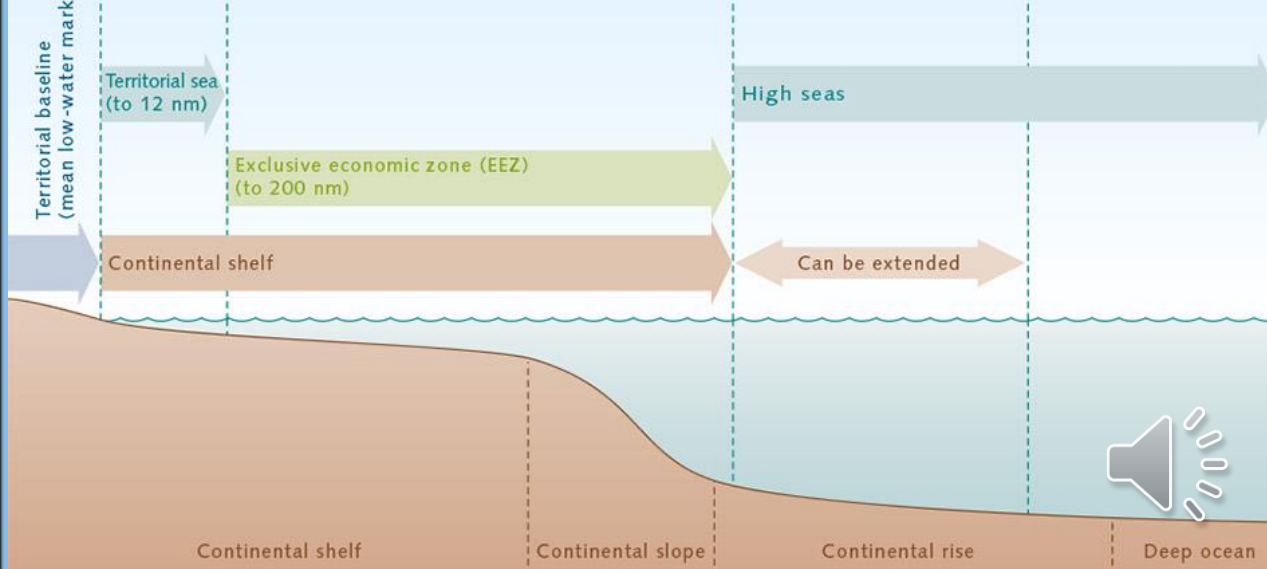
1. This Act may be called the Income-tax Act, 1961.
2. It extends to the whole of India.

### Article 2

In this Act, unless the context otherwise requires, ...

25A. "India" means the territory of India as referred to in article 1 of the Constitution, its territorial waters, seabed and subsoil underlying such waters, continental shelf, exclusive economic zone or any other maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, and the air space above its territory and territorial waters;

### Zones of national jurisdiction, 1982 Law of the Sea Convention





## ARTICLE 7 BUSINESS PROFITS

1. Profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein.

# Model Tax Convention

## II. Commentary on the provisions of the Article

### Paragraph 1

10. Paragraph 1 incorporates the rules for the allocation of taxing rights on the business profits of enterprises of each Contracting State. First, it states that unless an enterprise of a Contracting State has a permanent establishment situated in the other State, the business profits of that enterprise may not be taxed by that other State. Second, ...

11. The first principle underlying paragraph 1, i.e. that the profits of an enterprise of one Contracting State shall not be taxed in the other State unless the enterprise carries on business in that other State through a permanent establishment situated therein, has a long history and reflects the international consensus that, as a general rule, until an enterprise of one State has a permanent establishment in another State, it should not properly be regarded as participating in the economic life of that other State to such an extent that the other State should have taxing rights on its profits.

Article 26'1: The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind ... imposed on behalf of the Contracting States

.... The exchange of information is not restricted by Articles 1 and 2.

Article 27'1: 1. The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2. ...





## Multilateral

Many in 1 go

# The Multilateral Convention on Mutual Administrative Assistance in Tax Matters

## Uniform

1'1. The Parties shall ... provide administrative assistance to each other in tax matters.

1'2. Such administrative assistance shall comprise:

- a. exchange of information, including simultaneous tax examinations and participation in tax examinations abroad;
- b. assistance in recovery, including ... conservancy; and
- c. service of documents.

1'3. A Party shall provide administrative assistance whether the person affected is a resident ... of a Party or of any other State.

## Wide scope

Covers all taxes

## Flexible

Reservations possible

Cross border enforcement of taxes



## EU Council Directive 2011/16/EU on admin. Coop

### Article 1: Subject matter

1. This Directive lays down the rules and procedures ... with a view to exchanging information that is foreseeably relevant to the administration and enforcement of ... domestic laws ... concerning ... taxes ...

3. This Directive shall not affect the application in the Member States of the rules on mutual assistance in criminal matters. It shall also be without prejudice to ... any obligations ... ensuing from other legal instruments, including bilateral or multilateral agreements.

Cross border enforcement of taxes





## EU Council Directive 2010/24/EU on tax recovery

### Article 1: Subject matter

This Directive lays down the rules under which the Member States ... provide assistance for the recovery ... of any claims referred to in Article 2 which arise in another Member State.

### Article 2: Scope

1. This Directive shall apply to claims relating to the following:
  - (a) all taxes and duties of any kind ...;
  - (b) refunds, interventions and other measures ... of the European Agricultural Guarantee Fund (EAGF) and the European Agricultural Fund for Rural Development (EAFRD), ...;
  - (c) levies and other duties provided for under the common organisation of the market for the sugar sector.

