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ARTICLE 25-MUTUAL AGREEMENT PROCEDURE



MAP is a special facilitative procedure set out in various tax treaties that allows designated Government representatives of Treaty partners ("referred to as Competent Authorities") to work together, and resolve International tax disputes, including cases of double taxation arising out of the application of the Convention

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All Articles of the Convention, including specifically

Business Profits
and PE – Article 7 &
5

Associated
Enterprises – Article
9

Dividends – Article
10

Interest – Article 11

Royalties and Fee
for technical
Services – Article 12

Elimination of
Double taxation –
Article 23

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Implementation of MAP is vested with Competent authorities of Treaty countries.

ARTICLE 25(1)- APPLICABILITY OF MAP

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Where a person considers that the actions of one or both of the Contracting **States** result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of either Contracting State.

The case must be presented

within three years from the first notification of the action

resulting in taxation not in accordance with the provisions of the Convention.



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QUESTIONS RELATING TO

Attribution of profits to a permanent establishment

AE cases / Excess payment cases due to special relation between payor and Payee

Thin capitalization – Interest treated as dividend by Debtor's country

Elimination of Double Taxation

Misapplication of the Convention due to lack of information of taxpayer's actual situation

Double Taxation contrary to Treaty provisions can also be resolved through MAP

Who is covered as “Person” ?

Reference may be made to Article 3

Whose Action can result in MAP ?

Actions of one or both of the Contracting States

Which Actions are covered ?

Past Action or Expected Future Actions

When can MAP be triggered ?

Taxation is not in accordance with the provisions of Treaty.

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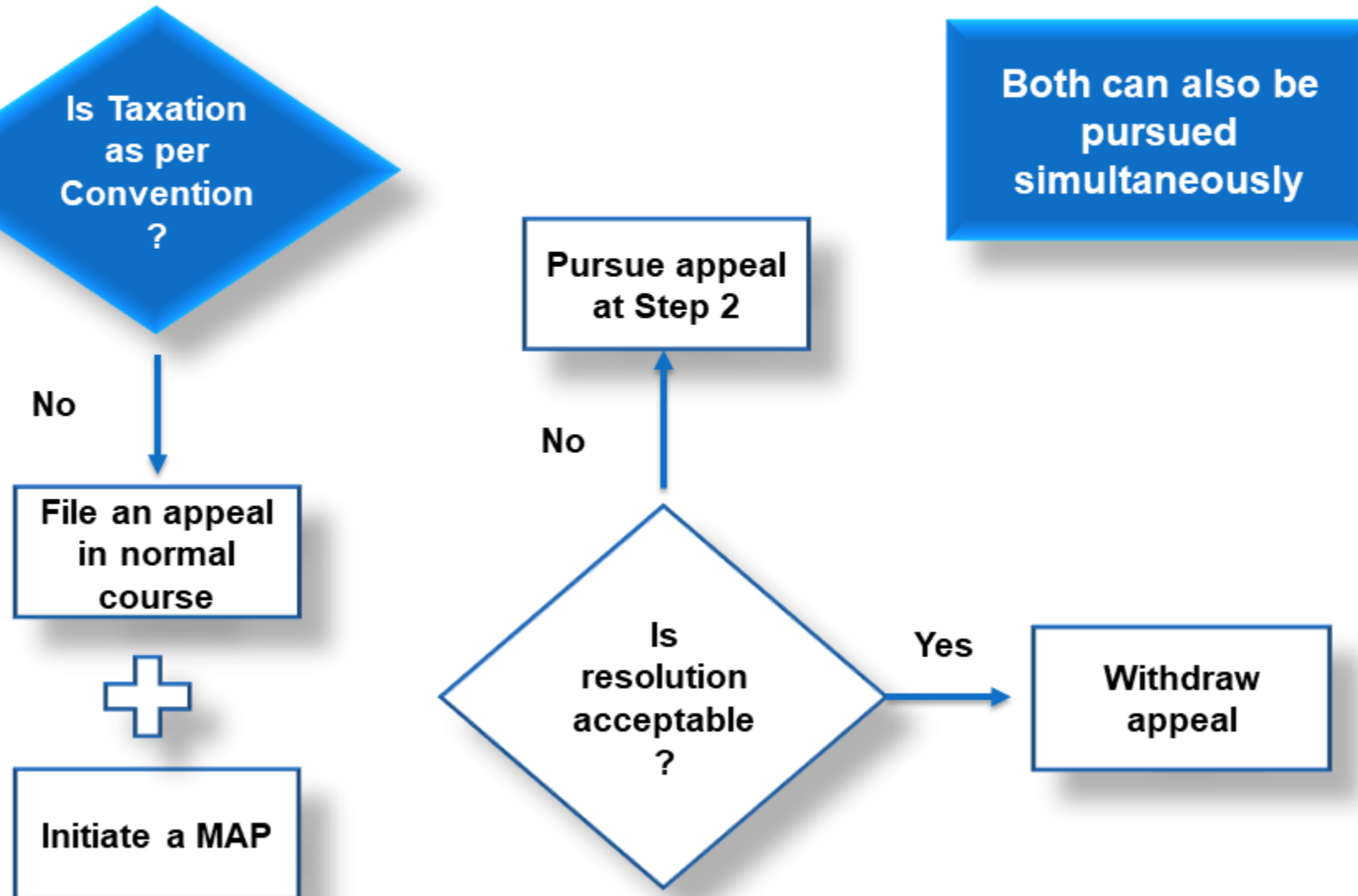
Actions should give rise to double taxation of the same income, which is contrary to the provisions of the Convention.

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IF TAXATION IS NOT AS PER CONVENTION, REMEDIES TO TAXPAYER



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ARTICLE 25(2) – ACTION OF COMPETENT AUTHORITY TO WHOM MAP APPLICATION HAS BEEN FILED

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ARTICLE 25(2) – ACTION OF COMPETENT AUTHORITY TO WHOM MAP APPLICATION HAS BEEN FILED

The competent authority shall endeavour,

if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution,

to resolve the case by mutual agreement with the competent authority of the other Contracting State,

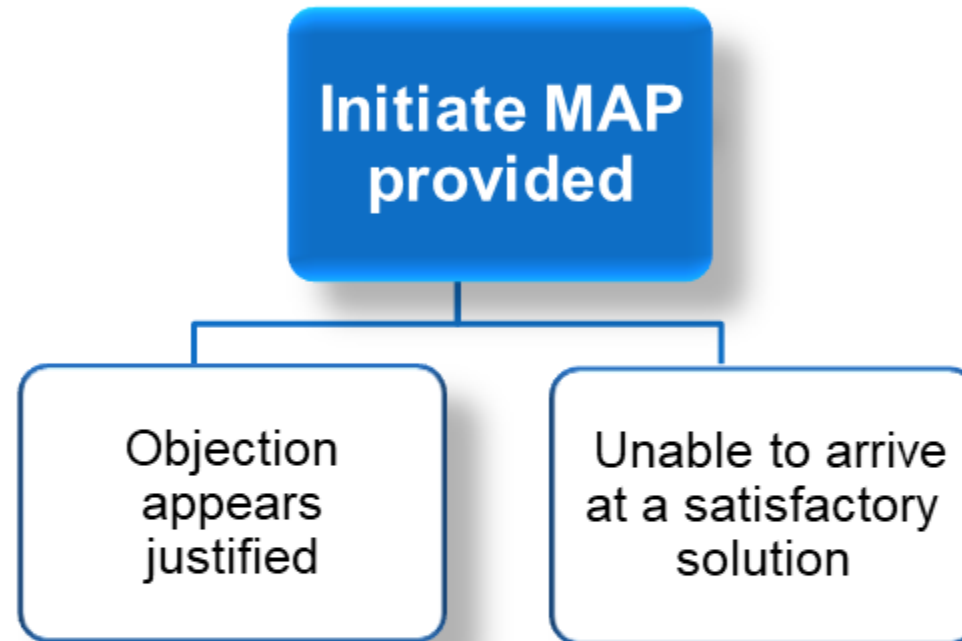
with a view to the avoidance of taxation which is not in accordance with the Convention.

Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

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Objective is avoiding taxation which is not in accordance with Treaty

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ARTICLE 25(3)- CONSULTATION BY AUTHORITIES

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The competent authorities of the Contracting States shall **endeavour**

to **resolve by mutual agreement**

any **difficulties or doubts** arising as to the **interpretation or application** of the Convention.

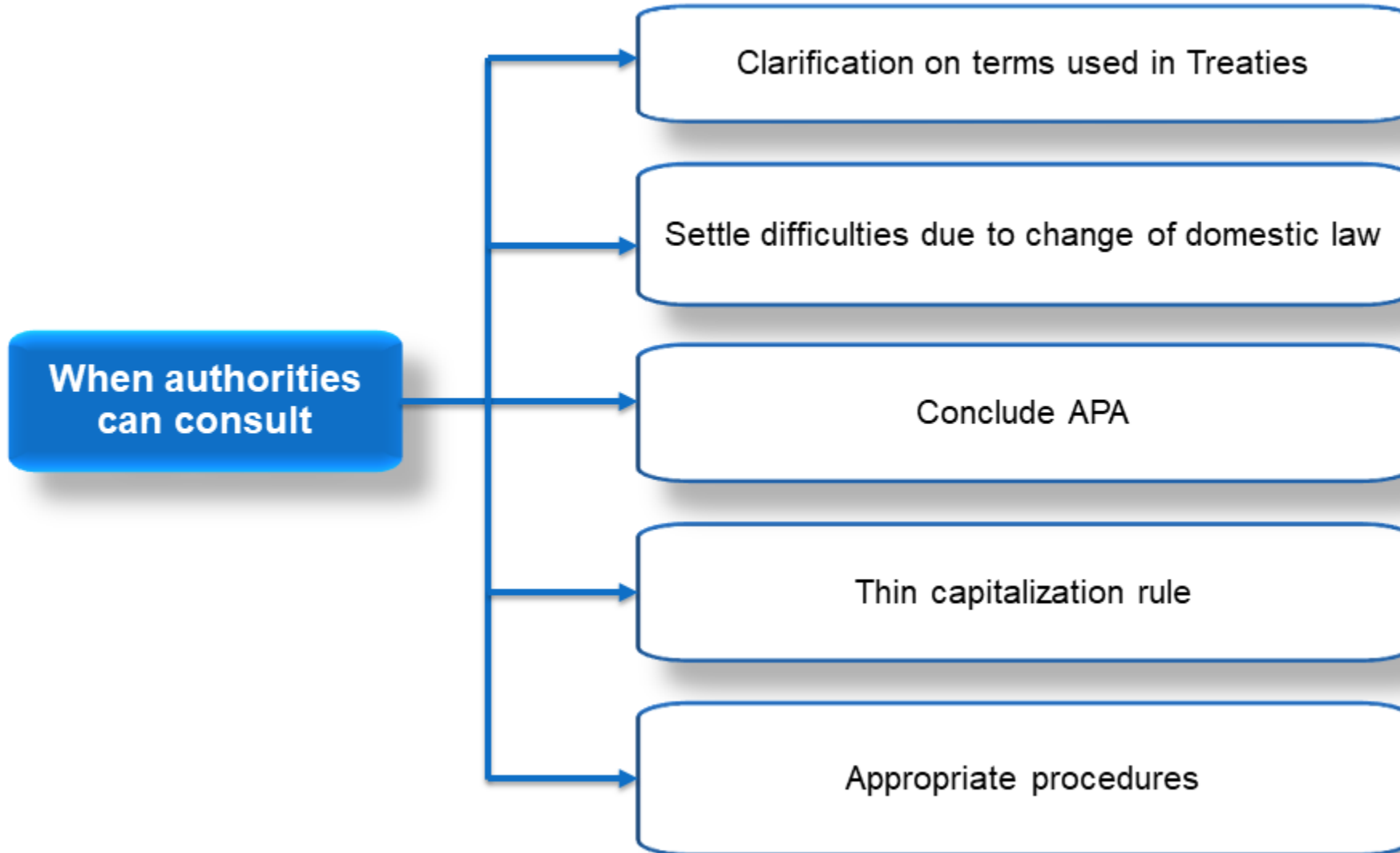
They may also **consult** together for the elimination of double taxation in **cases not provided for in the Convention**.



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Competent Authorities

Ministers of Finance or their authorized representatives normally responsible for the administration of the Convention

Other authorities (Ministry of Foreign Affairs, courts) have the right to interpret international treaties and agreements

Competent authority" designated in the Convention

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ARTICLE 25(4)- RULES FOR CONSULTATION

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The **competent authorities** of the Contracting States
may communicate with each other **directly**,
including through a **joint commission** consisting of themselves
or their **representatives**,
for the purpose of reaching an **agreement** in the sense of the
preceding paragraphs.



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When authorities can consult

Communicate with each other directly not necessary to go through diplomatic channels.

Communicate with each other by letter, facsimile transmission, telephone, direct meetings, or any other convenient means

Determine the number of members and the rules of procedure of this body.

Essential guarantees

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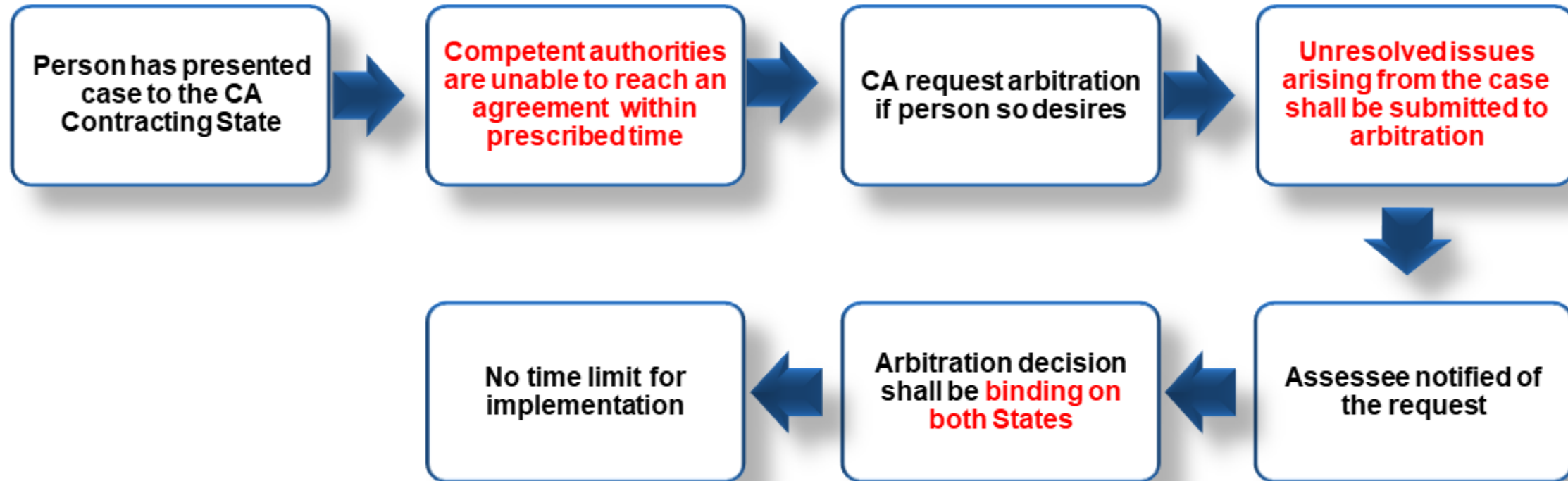


ARTICLE 25(5)- ARBITRATION CLAUSE

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Where,

(a) under paragraph 1, 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

(b) the competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph 2 within two years from the date when all the information required by the competent authorities in order to address the case has been provided to both competent authorities,



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Any unresolved issues arising from the case shall be submitted to arbitration if the person so requests in writing.

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.



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- With over 20 years of experience, Arinjay has helped Clients on International Tax , M&A Tax and Direct tax matters impacting their business in India and UAE . He has worked on International tax with over 750 transaction of Inbound Investment, Outbound Investments, Due diligence, Family Structuring and Succession planning across sectors ;
- Arinjay has worked with over 500 UAE companies on UAE Economic Substance Regulations advisory services, and UAE Corporate Tax (proposed to be introduced from June 1, 2023) ;
- Delivered Live Seminar and Webinar on Economic Substance Regulations and UAE Corporate Tax
- Author of various books in International Tax and Direct Tax ;
- Trained more than 2000 CA's in Live international tax course (With two of the largest global tax firms) and over 5000 students in International Tax
- Created India's first e learning course on International tax for professionals in 2016 with students from over 30 countries.
- Editor International Tax at Taxmann Publications, New Delhi - Handled the Journal on International Tax with Taxmann Publications, India's oldest Publishing house on tax and corporate law publications.
- Faculty at the International tax Course of ICAI during the year 2009 & 10



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Faculty

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DTAA
Double taxation avoidance
agreement

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