

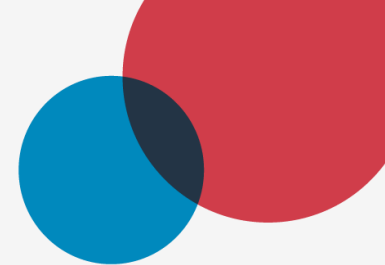
PASSIVE INCOME

PRESENTATION BY
RAHUL CHARKHA

July 31, 2019

Your global tax partner

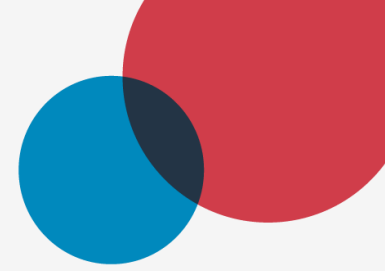
OUTLINE



1. Active vs Passive income
2. Dividends
3. Interest
4. Royalties
5. Concept of beneficial ownership
6. Attribution of taxing rights – a synopsis

**ACTIVE vs
PASSIVE
INCOME**

ACTIVE vs PASSIVE INCOME



Capital employed

Equity

Debt

Permission to use assets

Purchase with subsequent disposal



Passive incomes

Dividends

Interest

Royalties

Capital gains

Activities

Employment

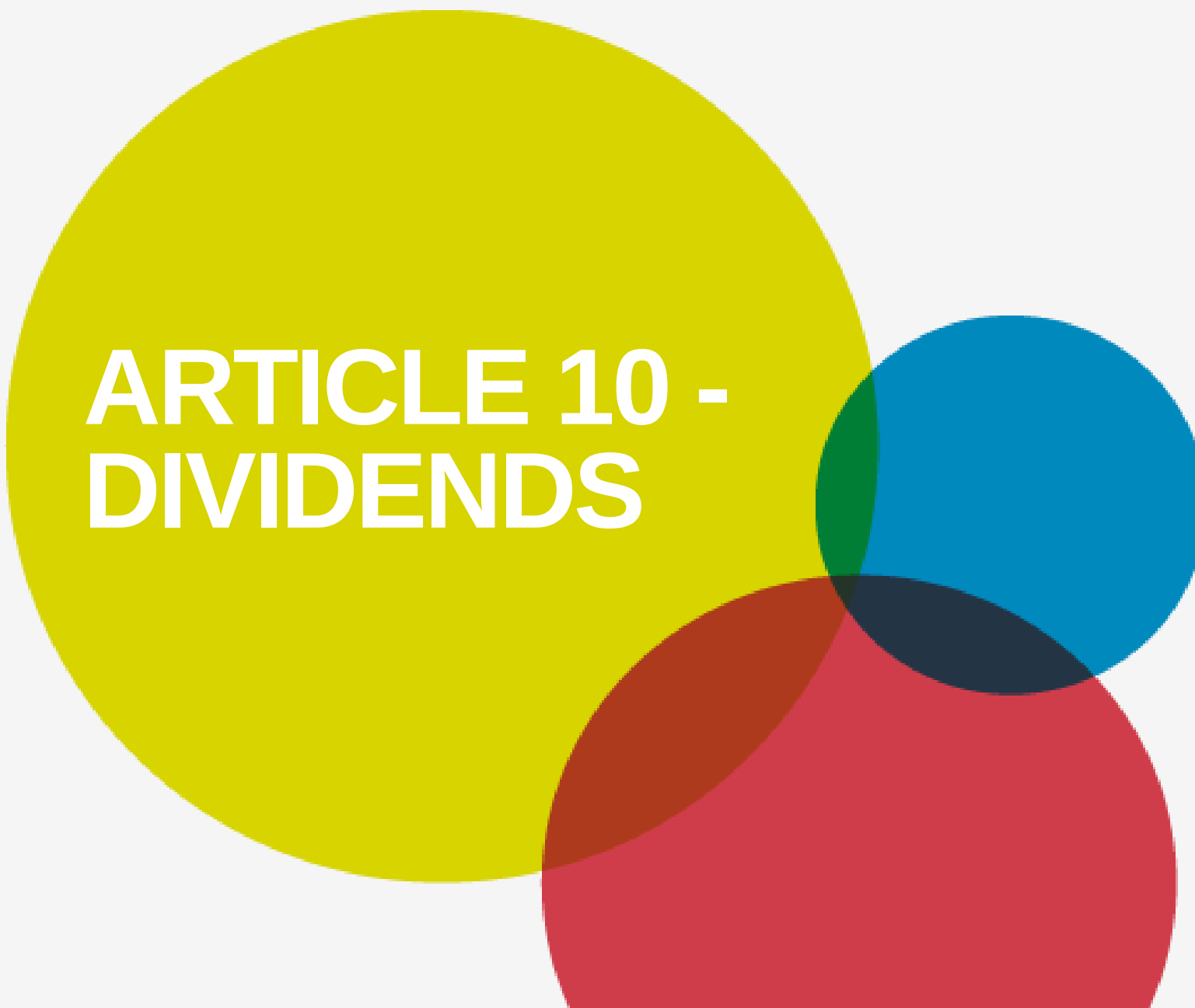
Professional service



Active incomes

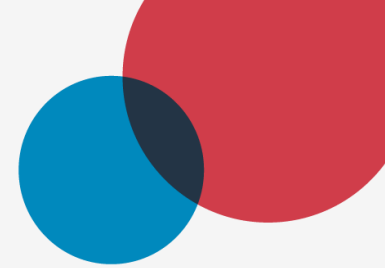
Dependent personnel service

Independent personnel service

The background features a large yellow circle on the left and three overlapping circles on the right: a blue circle at the top, a red circle at the bottom, and a dark blue circle in the center where they overlap. The text 'ARTICLE 10 - DIVIDENDS' is centered within the yellow circle.

ARTICLE 10 - DIVIDENDS

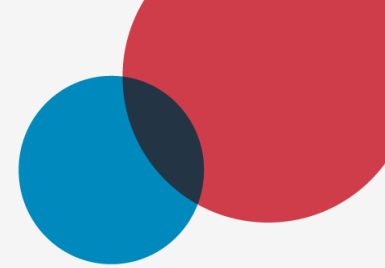
DOMESTIC TAXATION OF DIVIDENDS



Text	Classical tax system	Imputation tax system
Taxes corporate profits when derived	Yes	Yes
Taxes dividend when distributed	Yes	No*
Credit for corporate income tax paid	No	Partial
Economic double taxation	Yes	No

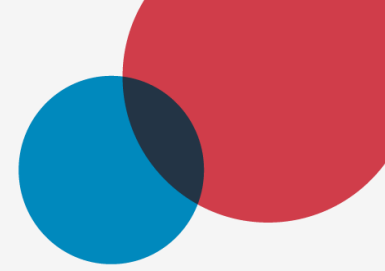
* Dividend tax credit is granted to shareholders, calculated according to dividends distributed but limited by reference to corporate tax paid with respect to the profits distributed

DOMESTIC TAXATION OF DIVIDENDS



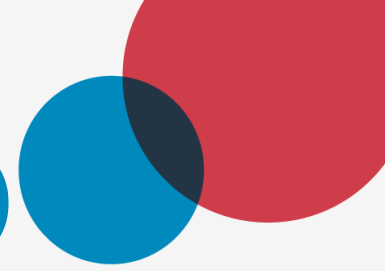
- ❖ Different tax systems for resident corporations and non-resident corporations
- ❖ Imputation system – usually only for domestic situations
- ❖ Classical system – international tax system as embodied in tax treaties (OECD model)
- ❖ Issue to be resolved using domestic systems which is difficult without international cooperation

DIVIDENDS – AN OVERVIEW



- ❖ 10(1) – Distributive rule
- ❖ 10(2) – Taxing rights of source state ('State S')
- ❖ 10(3) – 'Dividend' defined
- ❖ 10(4) – Permanent Establishment ('PE') exclusion
- ❖ 10(5) – Extra territorial taxation

'DIVIDENDS' DEFINED – ARTICLE 10(3)



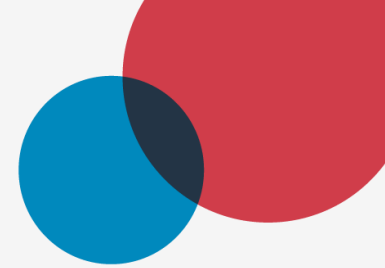
❖ 'Dividends' means income from

- shares;
- 'jouissance' shares or 'jouissance' rights;
- mining shares;
- founders' shares;
- other rights, not being debt-claims, participating in profits, as well as
- income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident

❖ Meaning of the term 'paid'

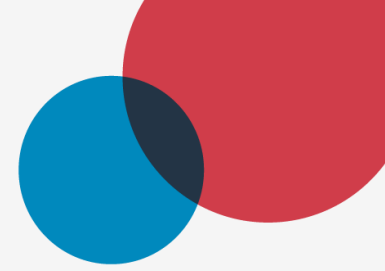
❖ TAXAND

DIVIDENDS – INCLUSIONS AND EXCLUSIONS



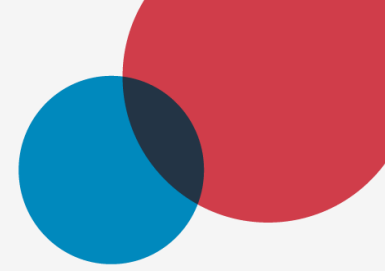
DIVIDEND INCLUDES	DIVIDEND EXCLUDES
Interest on loan if the lender shares risk	Interest on convertible debentures before conversion
Profit distribution by co-operative societies	Debt-claim participating in profit
Benefits in money or money's worth ❖ bonus shares; profits on a liquidation and disguised distributions of profits	Profit distribution by partnership
Benefit to non-shareholders is deemed dividend in certain cases ❖ concealed holding; beneficiary is 'closely connected' to shareholder	Reimbursement of capital

DISTRIBUTIVE RULE – ARTICLE 10(1)



- ❖ Bilateral scope – none of the states have exclusive right to tax dividend
 - Exception – India-Greece tax treaty
- ❖ State of Residence ('State R') may tax the dividend without limitation
- ❖ State S may also tax subject to limitations
- ❖ Tax sharing can be achieved only if State R relinquishes double taxation through credit method – OECD model commentary ('MC') Article 23, para 47

TAXING RIGHTS OF STATE S – ARTICLE 10(2)



❖ Limited taxing rights to State S if ‘beneficial ownership’ test is met

- Beneficial owner is a resident of State R
- Limited taxing right to State S
- Taxation in State S on gross basis
- Foreign direct investment /Portfolio investment

(Beneficial ownership $\geq$ 25 percent – 5 percent, else 15 percent)

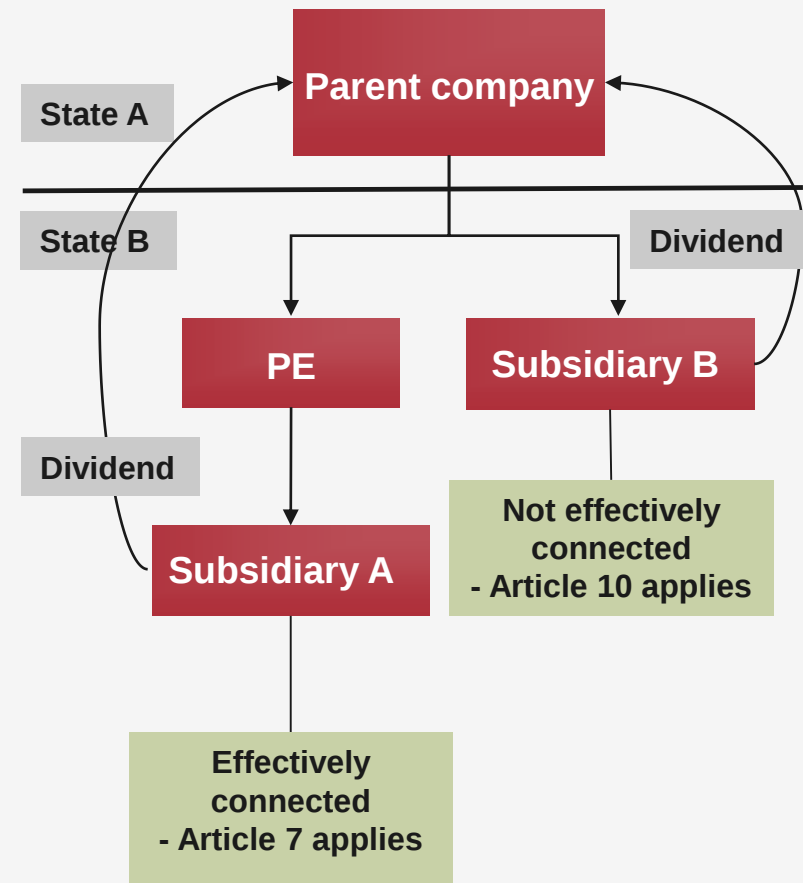
❖ Taxation in State S according to its domestic law

❖ Corporate taxation of the company remains unaffected

❖ TAXAND

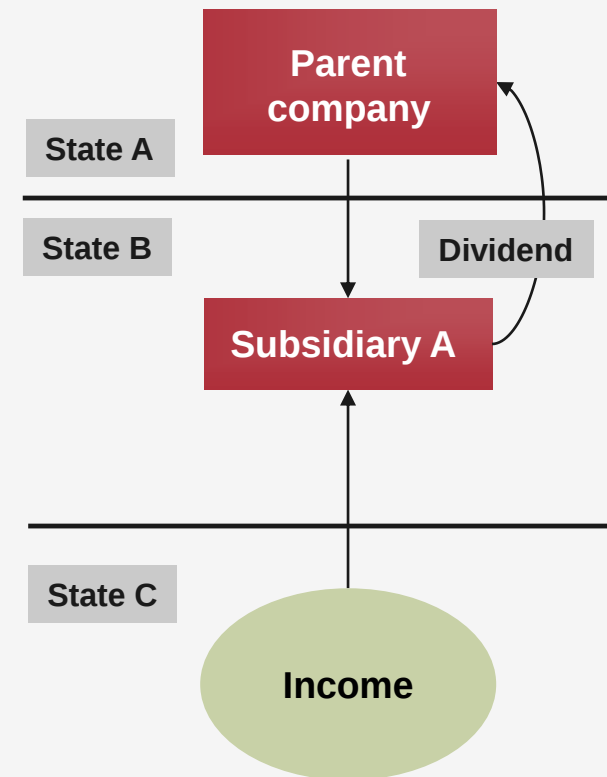
PE EXCLUSION – ARTICLE 10(4)

- ❖ Exception to Article 10(1) and 10(2)
 - Beneficial owner resident of State A
 - Carries on business in State B
 - Through a PE situated in State B and
 - Dividend is 'effectively connected' to such PE
- ❖ Article 7 shall apply
- ❖ Meaning of the term 'effectively connected'

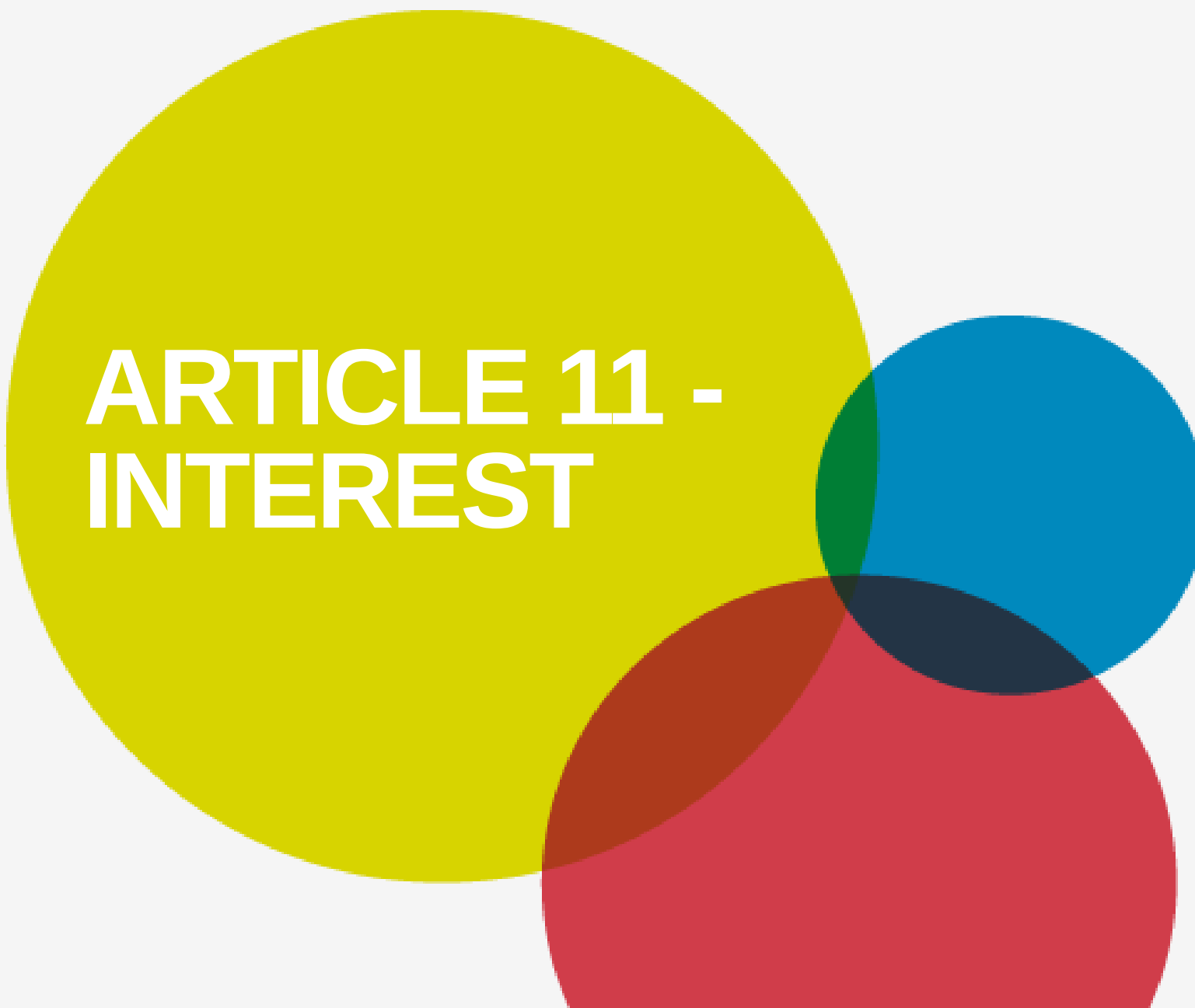


EXTRA - TERRITORIAL TAXATION – ARTICLE 10(5)

- ❖ Restricts right of a country to tax dividend declared by a non-resident company
- ❖ Prevents imposition of tax on the undistributed profits of a non-resident company
- ❖ Exceptions to Article 10(5):
 - Dividends paid to a resident of third state; or
 - Dividends paid are effectively connected with a PE of recipient of dividends in third State

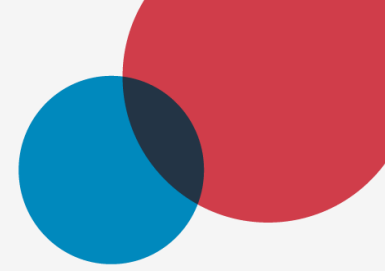


Parent can claim benefits of B-C tax treaty to prevent State C from taxing dividends



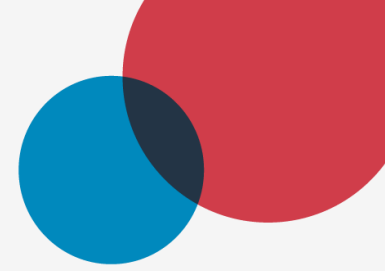
ARTICLE 11 - INTEREST

INTEREST – AN OVERVIEW



- ❖ 11(1) – Distributive rule
- ❖ 11(2) – Taxing rights of State S
- ❖ 11(3) – ‘Interest’ defined
- ❖ 11(4) – PE exclusion
- ❖ 11(5) – Sourcing rules
- ❖ 11(6) – Arms length interest

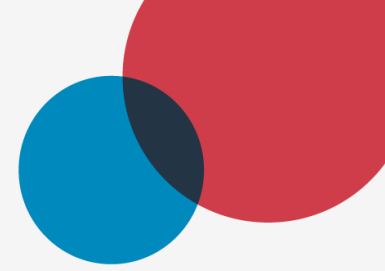
'INTEREST' DEFINED – ARTICLE 11(3)



- ❖ 'Interest' means income from
 - debt-claims of every kind (secured or unsecured; participative or non-participative);
 - government securities;
 - bonds or debentures;
 - premiums and prizes attached to securities, bonds or debentures
- ❖ Interest on convertible bond before conversion is included except if the loan shares the risk run by debtor company
- ❖ Penalty charges for late payment excluded
- ❖ Income dealt with in Article 10 excluded

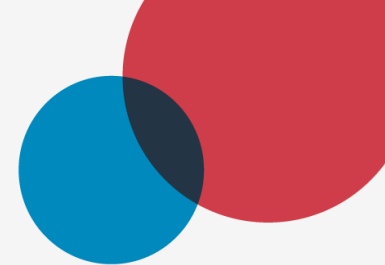
❖ **TAXAND**

DISTRIBUTIVE RULE – ARTICLE 11(1)



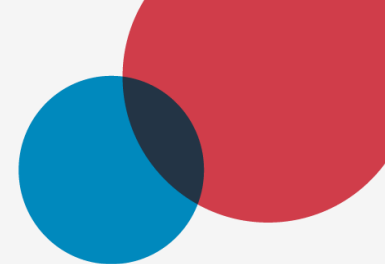
- ❖ Bilateral scope – none of the states have exclusive right to tax
- ❖ State R of the beneficial owner may tax the interest without limitation
- ❖ State S may also tax
- ❖ Tax sharing can be achieved only if State R relinquishes double taxation through credit method – OECD MC Article 23, para 47

TAXING RIGHTS OF STATE S – ARTICLE 11(2)



- ❖ Limited taxing rights to State S if ‘beneficial ownership’ test is met
 - Beneficial owner is a resident of State R
 - Limited taxing rights to State S
 - Taxation in State S on gross basis
- ❖ Taxation in State S according to its domestic law

POSSIBLE EXCEPTIONS



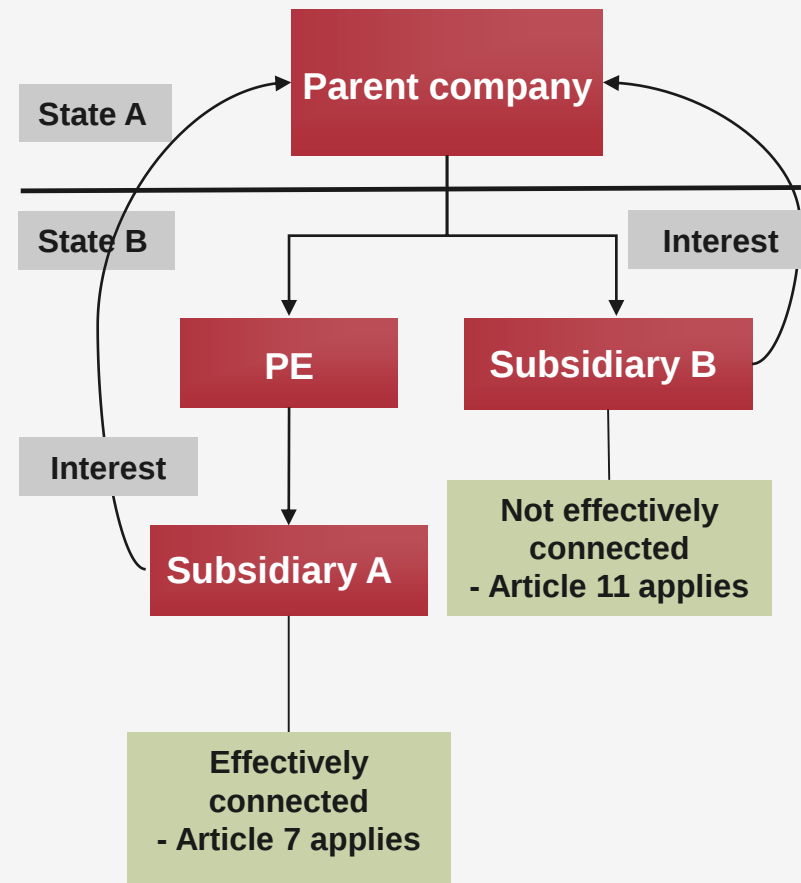
❖ Interest paid

- by State
- by Political subdivisions
- by Central bank
- by a Government or statutory body
- pursuant to export financing programmes
- by financial institutions (net taxation problem)
- on sales on credit
- tax-exempt entities (e.g. pension funds)

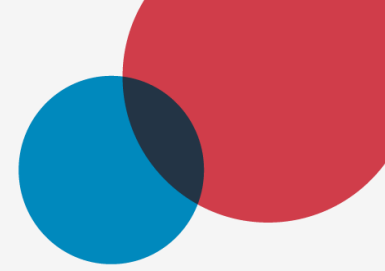
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 - Through a PE situated in State B and
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❖ Article 7 shall apply



SOURCING RULES – ARTICLE 11(5)

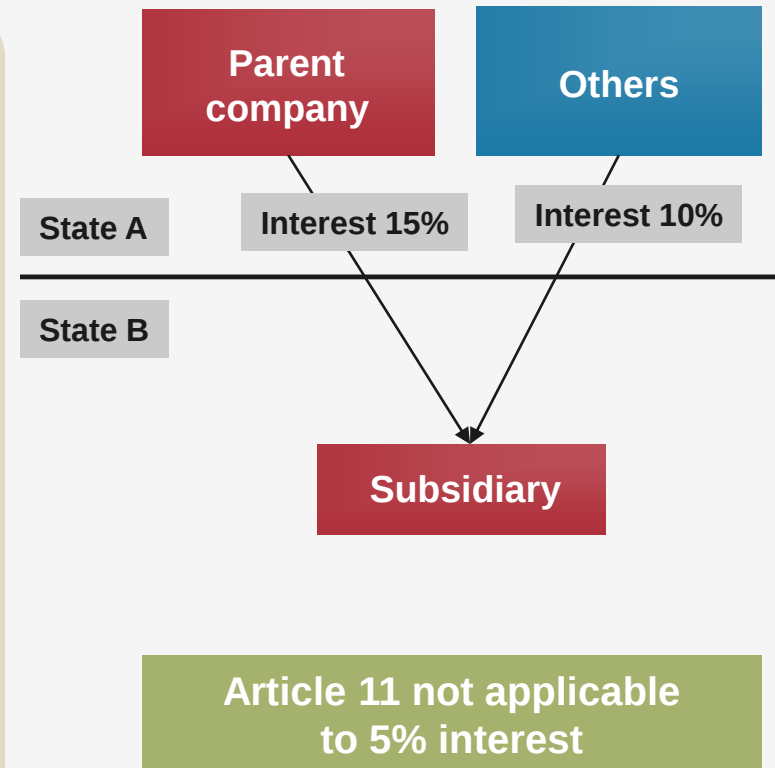


- ❖ Interest 'arises' in the State R of the payer
- ❖ Exception – interest deemed to arise in the State where PE is situated
 - Existence of PE in the other State
 - Liability to pay interest in connection with the PE and
 - Interest borne by PE

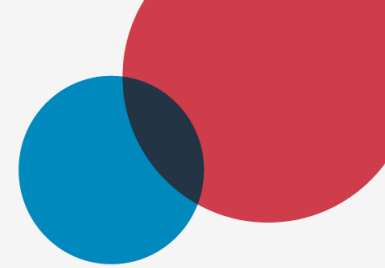
ARMS LENGTH INTEREST – ARTICLE 11(6)

- ❖ Interest adjusted when
 - Special relationship between payer and beneficial owner
 - Between both of them and third party
 - Excess interest paid because of special relationship
- ❖ Only arms length interest subject to limited taxation in State S
- ❖ Excess taxed at normal rates as per the domestic law subject to other Articles

❖ TAXAND

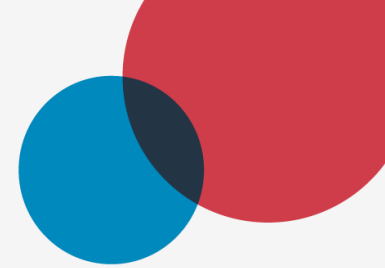


HYBRID INSTRUMENTS



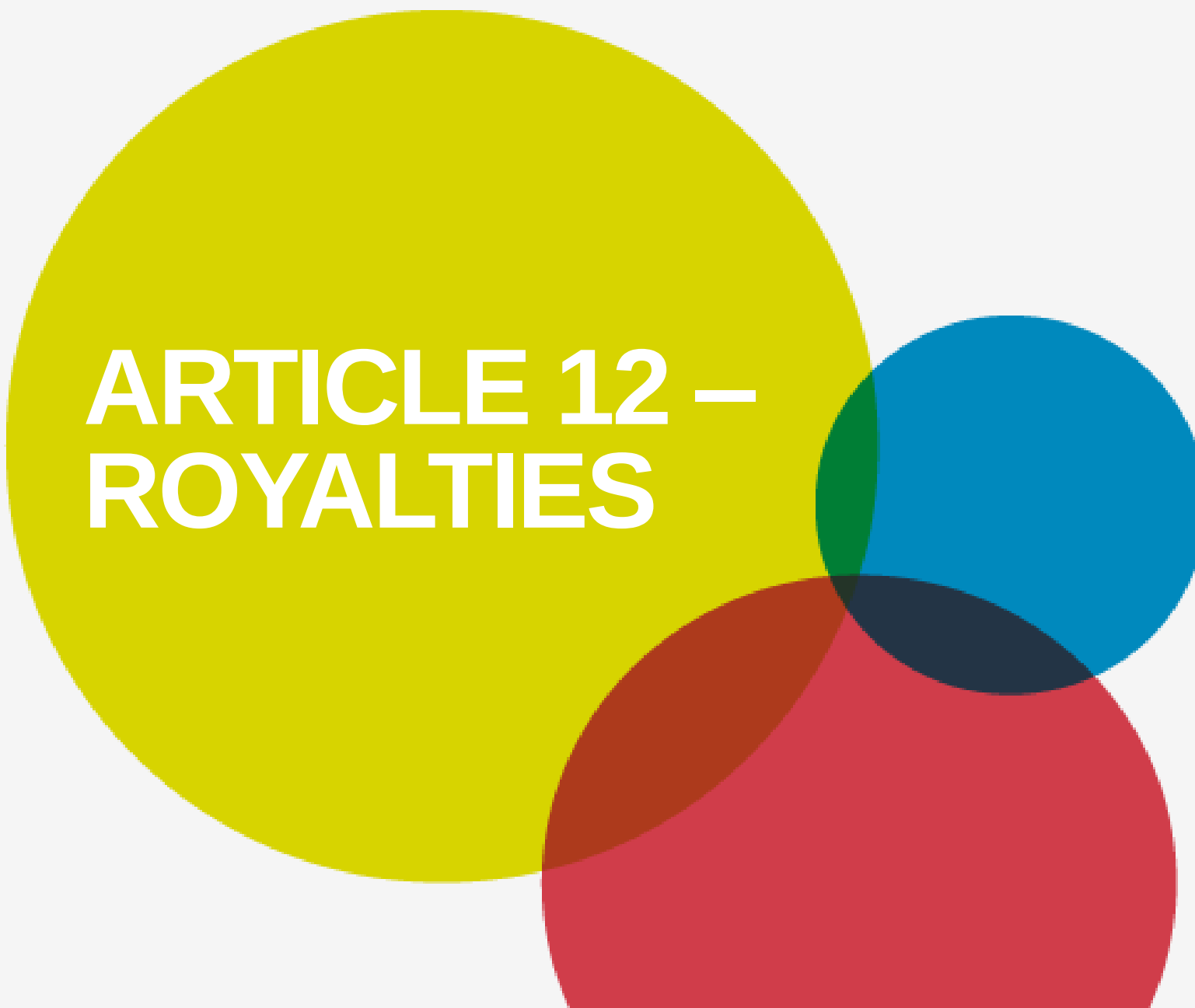
INCOME	NATURE	WHETHER OR NOT DEDUCTIBLE ?
Dividend	Return on equity	Not Deductible
Interest	Return on debt	Deductible
Hybrid Dividend in State S and Interest in State R	Tax treaty classification (OECD MC) Article 11 does not include items of income which are dealt with under Article 10 (Article 11, para 19) Circumstances where the lender shares the risks run by the enterprises (Article 11, para 25)	

HYBRID INSTRUMENTS



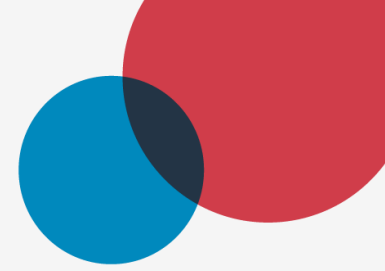
- ❖ A combination of debt and equity features in one instrument
- ❖ Different tax qualification in a cross-border scenario offers tax planning opportunities
 - WHT exemption
 - Conversion into exempt income (i.e. interest /dividend)
 - Double dip
- ❖ Usual suspects
 - Preferred Equity Certificates (or CPECs), hybrid loans, profit sharing loans

BEPS Action Plan 2, aimed at neutralizing the impact of hybrid mismatch arrangements, has recommended certain changes to domestic law and OECD Model Convention to counter tax planning opportunities

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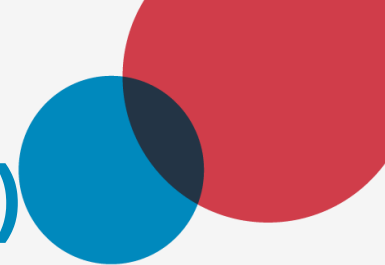
ARTICLE 12 – ROYALTIES

ROYALTIES – AN OVERVIEW



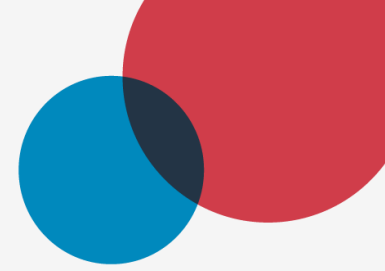
- ❖ 12(1) – Distributive rule
- ❖ 12(2) – Royalties defined
- ❖ 12(3) – PE exclusion
- ❖ 12(4) – Arms length royalties

'ROYALTIES' DEFINED – ARTICLE 12(2)



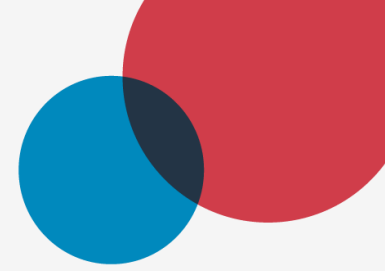
PARTICULARS	OECD MODEL	UN MODEL
- means payments of any kind (license payment or compensation for infringement) received as a consideration for the use of, or the right to use, (whether or not registered)	✓ ☐	✓ ☐
- any copyright of literary, artistic or scientific work including cinematograph films,	✓ ☐	✓ ☐
- or films or tapes used for radio or television broadcasting	x	✓ ☐
- any patent, trademark, design or model, plan, secret formula or process	✓ ☐	✓ ☐
- or for the use of, or the right to use, industrial, commercial or scientific equipment	x	✓ ☐
- or for information concerning industrial, commercial or scientific experience	✓ ☐	✓ ☐

DISTRIBUTIVE RULE – ARTICLE 12(1)



- ❖ OECD Model – OECD model prefers tax incidence wholly in the State of residence of the payee
- ❖ UN Model – UN Model basically accepts the rule of taxation in the State of residence of payee but gives limited right of taxation in the State of source also
- ❖ The term 'arising' is not defined

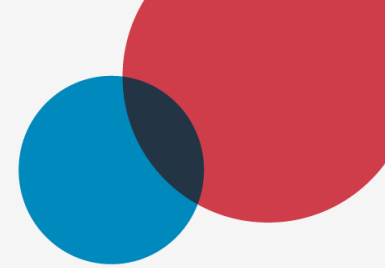
DETERMINATION OF ROYALTIES



- ❖ 'Right to use' – Criteria for determination
 - Payments for the right to use 'copyright' – royalties
 - Payment for purchase of 'copyrighted article' – not royalties
 - Payments for rights in relation to the acts of copying so as to enable the effective operation by the user - not royalties
 - Payment for the transfer of full ownership of the rights in the copyright - not royalties
 - Payment for acquisition of software – not royalties

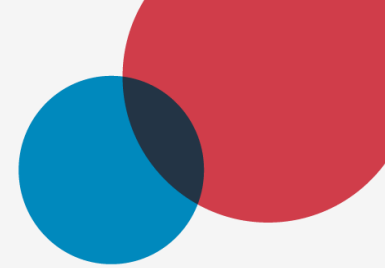
❖ TAXAND

DETERMINATION OF ROYALTIES



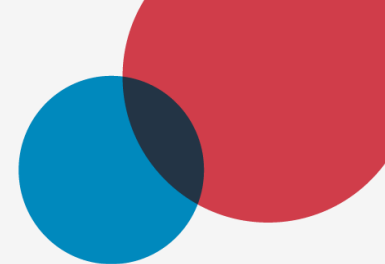
- ❖ Right to use equipment – Criteria for determination
 - The customer has physical possession of the equipment
 - The customer controls the equipment
 - The customer has significant economic or possessory interest in the equipment
 - The provider does not bear any risk of substantially diminished receipts or substantially increased expenditures if there is non-performance

DETERMINATION OF ROYALTIES



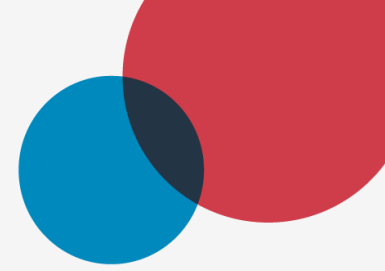
- The provider does not use the property concurrently to provide services to others
- ❖ Right to use secret formula/process – Criteria for determination
 - Imparting information about ideas and principles underlying the program viz logic, algorithms or programming language or techniques may be characterized as right to use secret formula
 - Process is a series of actions or steps to achieve a particular end

DETERMINATION OF ROYALTIES



SUPPLY OF KNOW-HOW	PROVISION OF SERVICES
<u>Know-how contract</u> – one party agrees to impart know-how to the other, so that the other party can use the same for his own account, the special knowledge experience which remains unrevealed to the public <u>Know-how</u> – payments received for information concerning industrial, commercial or scientific experience (OECD MC Article 12, para 11.1)	<u>Contract for the provision of services</u> - one party undertakes to use the customary skills and knowledge of the other party (OECD MC Article 12, para 11.2)
Supply information which already exists	Undertaking to perform services which may require the use of special knowledge, skill or expertise
The supplier only needs to supply existing information or reproduce existing facts	The supplier needs to incur expenditure in order to perform his contractual obligations

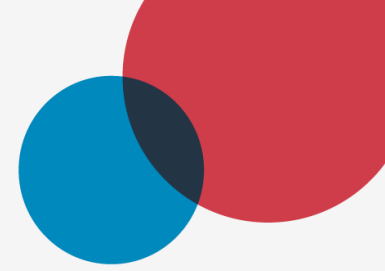
DETERMINATION OF ROYALTIES



❖ Franchise (mixed contracts)

- Knowledge and experience is imparted to the franchisee
- Varied technical assistance, as well as financial assistance and sometimes supply of goods
- Involves both service and transfer of know-how

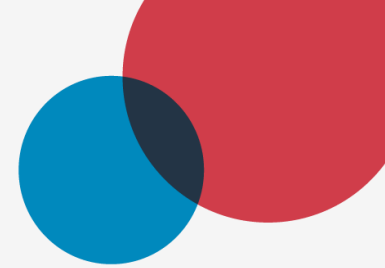
DETERMINATION OF ROYALTIES



❖ Software payments

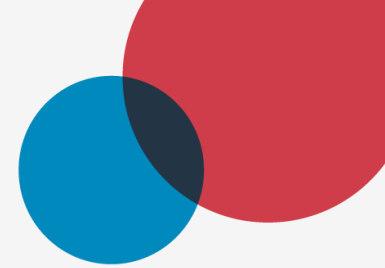
- Payments made for the acquisition of partial rights in the copyright
- Transferor does not involve full alienation of the copyrights, thus will represent a royalty where the consideration is for granting of rights to use the program in a manner that would, without such license, constitute an infringement of copyright

ROYALTIES AND TECHNICAL FEES



- ❖ Can technical fees be treated as royalties ? – Yes if,
 - The technical fees fits the definition of a royalty and
 - The grantor has no PE or fixed base in the source country
- ❖ Extension of the definition of royalties in treaties to include technical fees (e.g. Argentina, Brazil, Philippines, Thailand, India, Indonesia etc) or
- ❖ ‘New’ Article 13 – Technical Fees which are defined as “*payments in consideration for any services of a technical, managerial or consultancy nature*” (e.g. Malaysia, Pakistan)

FEES FOR INCLUDED SERVICES



❖ India-US tax treaty

“ *FIS means payments of any kind to any person in consideration for the rendering of any technical or consultancy services (including through the provision of services of technical or other personnel) if such services:*

- (a) are ancillary and subsidiary to the application or enjoyment of the right, property or information for which a payment described in paragraph 3 is received; or*
- (b) make available technical knowledge, experience, skill, know-how, or processes, or consist of the development and transfer of a technical plan or technical design.* ”

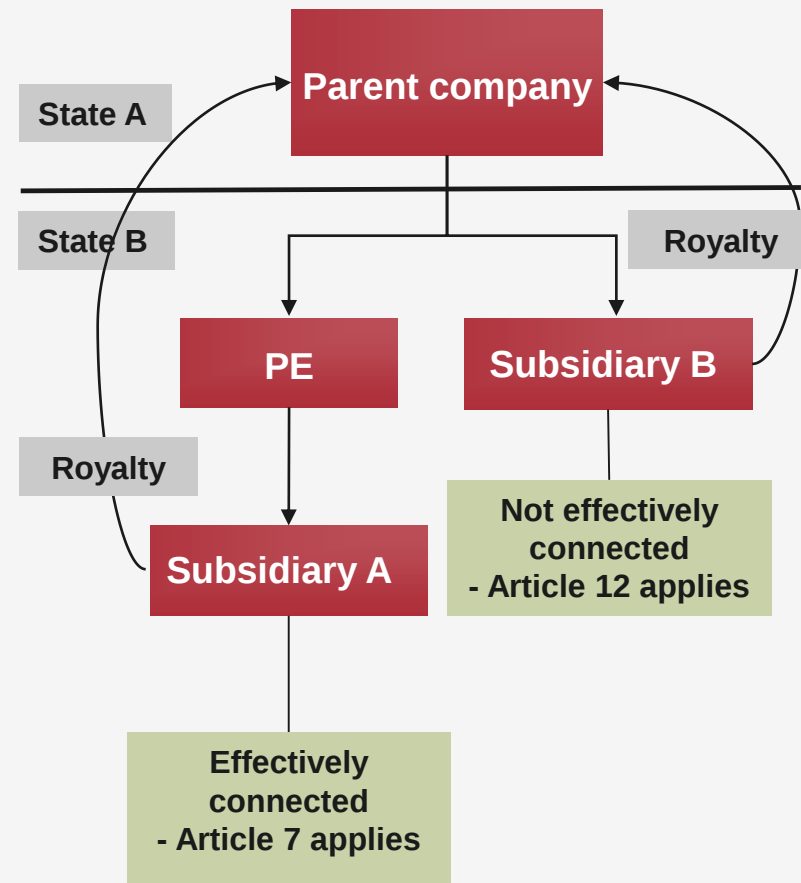
PE EXCLUSION – ARTICLE 12(3)

❖ Exception to Article 12(1)

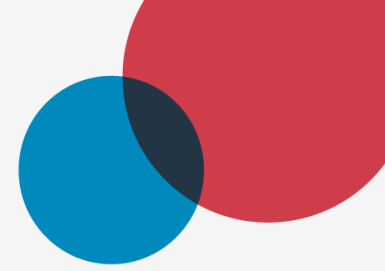
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- Carries on business in State B
- Through a PE situated in State B and
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❖ Article 7 shall apply

❖ TAXAND



ARMS LENGTH ROYALTIES – ARTICLE 12(4)



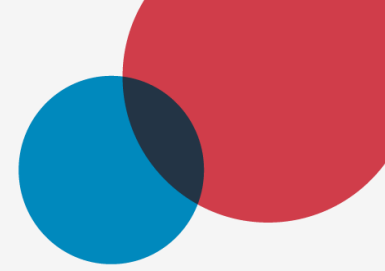
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❖ Only arm's length royalties subject to limited taxation in State S

❖ Excess taxed at normal rates as per the domestic law subject to other Articles

ATTRIBUTION OF TAXING RIGHTS – A SYNOPSIS



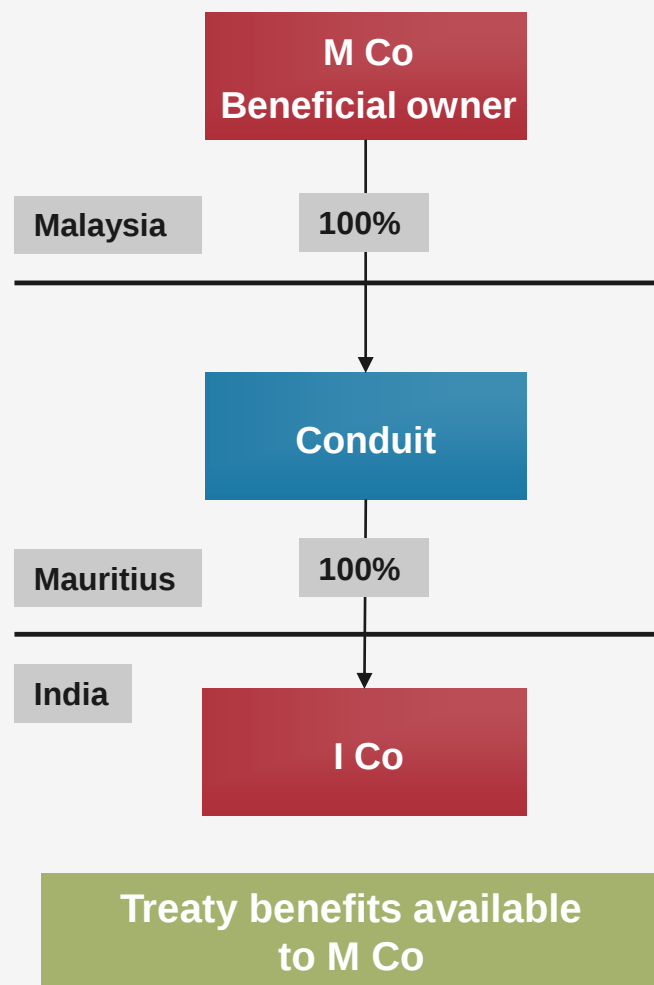
- ❖ State S (S) – Limited taxation right on gross income
- ❖ State R (R) – Unlimited taxation right on net income plus elimination of double taxation
- ❖ Tax sharing (TS)

MODEL CONVENTION	DIVIDENDS	INTEREST	ROYALTIES
OECD	TS	TS	R
UN	TS	TS	TS
US	TS	R	R

**BENEFICIAL
OWNERSHIP**

BENEFICIAL OWNERSHIP

- ❖ 'Beneficiary' or 'beneficial owner' denotes a person who benefits financially from property held by another (e.g. trust)
- ❖ Only a 'beneficial owner' enjoys concessional tax treatment under a tax treaty
- ❖ Intermediary (e.g. conduit company, agent, nominees) cannot avail benefits of tax treaty
- ❖ 'Real' title vs 'formal' title
- ❖ 'Substance' vs 'form'
- ❖ OECD MC – Article 10, para 12



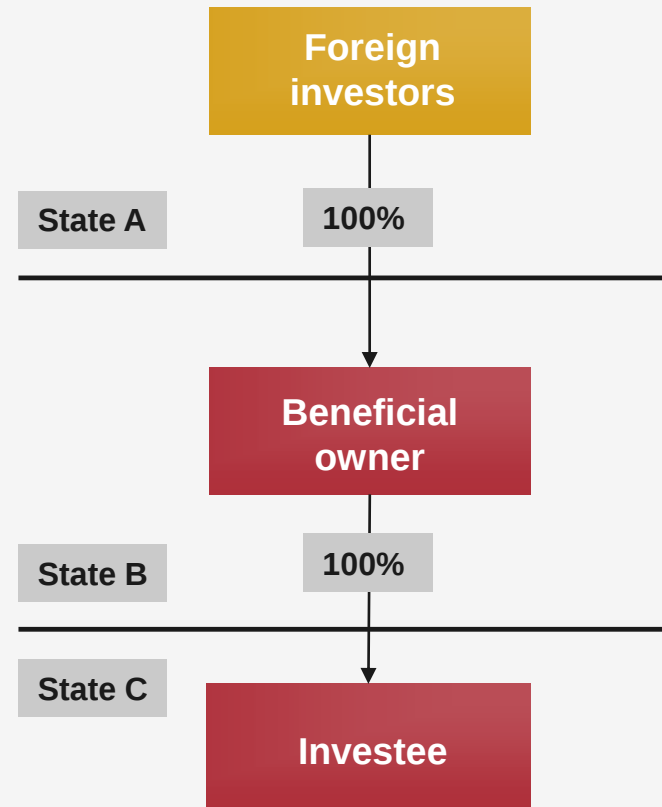
BENEFICIAL OWNERSHIP

❖ Beneficial owner B

- Is a private investment company or a base company
- Is held by foreign shareholders
- Does not declare any dividend
- Enjoys preferential tax treatment in State R

❖ Whether State S (here, State C) should limit its taxing rights ?

❖ TAXAND



CASE STUDY – INTERTEK TESTING SERVICES

Facts

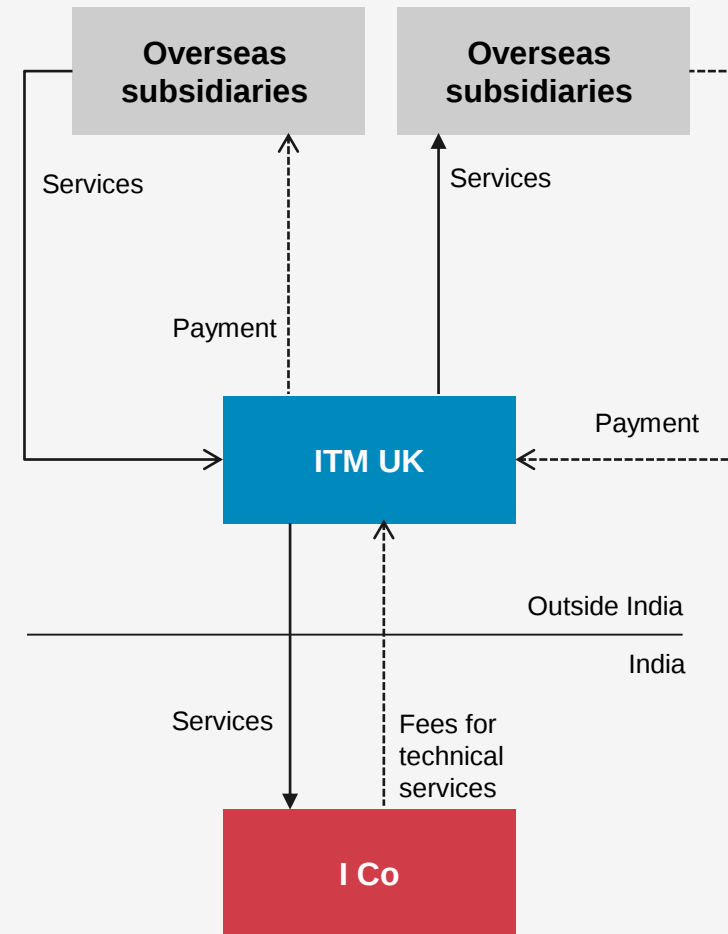
- ❖ I Co, is an Indian company engaged in the business of rendering testing and inspection services to its Indian and overseas clients. It is a subsidiary of the U.K. based company, namely, Intertek Group PLC, U.K
- ❖ ITM UK, another subsidiary of Intertek Group pooled requisite resources and skills from overseas group entities and provided such services to other group entities including I Co, either directly or by deputing personnel of any other group company
- ❖ For this, ITM charged cost plus mark-up of 7.5% to I Co and other entities

Issue under consideration

- ❖ Can revenue allege lack of beneficial ownership on assumption basis and deny benefit under the DTAA?

Principle

- ❖ AAR held that in the absence of definite material, revenue cannot proceed on mere presumption that the payee of FTS is not capable of rendering any services and is merely a conduit



CASE STUDY – UNIVERSAL INTERNATIONAL MUSIC B.V.

Facts

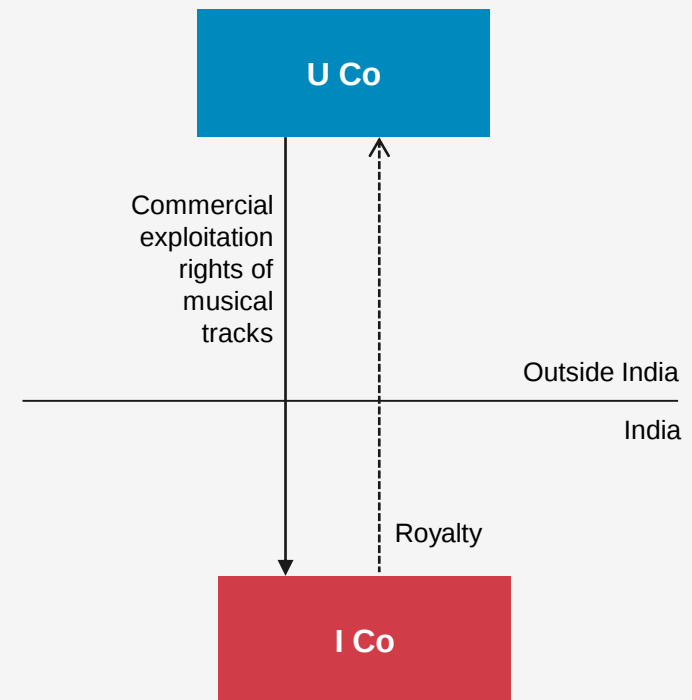
- ❖ Universal International Music B.V. U Co, (U Co), a company incorporated in Netherlands
- ❖ U Co received royalty for commercial exploitation rights of musical tracks from 'U' India (P.) Ltd. (I Co)

Issue under consideration

- ❖ Can U Co be treated as the beneficial owner of the 'royalty' and be given the benefit of amended article 12 of the DTAA?
- ❖ Would tax residency certificate (TRC) serve as sufficient evidence regarding the residential status of the U Co?

Principle

- ❖ Bombay High Court held that TRC issued by the tax authority of the contracting State to be accepted as sufficient evidence regarding the status of the residential assessee and the beneficial ownership in terms of the Circular No. 789, dated 13-4-2000, of CBDT



CASE STUDY - 13 OF 1995

Facts

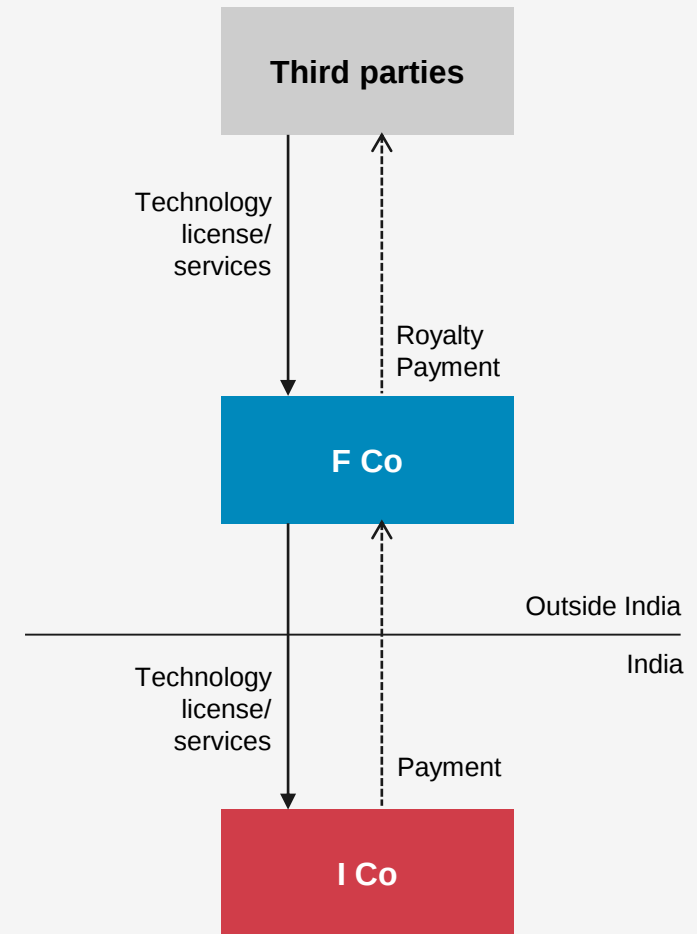
- ❖ F Co, a French company entered into agreement with an Indian company I Co for, inter alia, licensing of technology and providing engineering services
- ❖ F Co provided such technology licenses/ services by utilising its own resources or by acquiring it from third party
- ❖ F Co received entire consideration from I Co. Further, F Co paid to the third parties

Issue under consideration

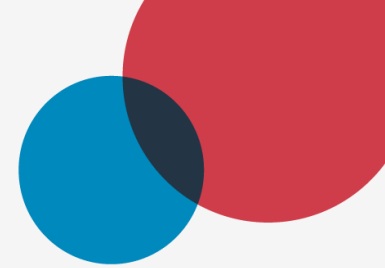
- ❖ Can F Co be considered as the 'beneficial owner' in terms of Article 13.6 of India-France DTAA in respect of the licence technology/ services procured from its world-wide affiliates and/or third parties ?

Principle

- ❖ Unless the processes and expertise referred to are supplied directly by third parties to I Co, the royalties and technical fees paid by I Co to F Co will belong to the F Co and be in its beneficial ownership

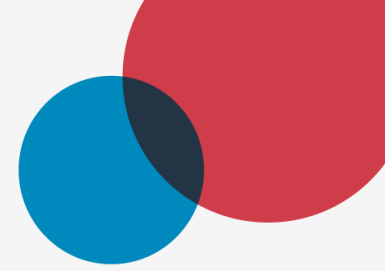


INTERNATIONAL APPROACH (1/2)



- ❖ The concept of beneficial ownership has been included in the passive income articles of the **OECD Model since 1977** and the **UN Model since 1980**
- ❖ Paragraph 12 of **OECD Model Commentary 2003**
“[the concept of beneficial ownership] makes plain that the State of source is not obliged to give up taxing rights...merely because that income was immediately received by a resident of a State with which the State of source had concluded a convention.”
- ❖ There were several **Rulings in the international courts of law** on this concept
 - *Aiken Industries v Commissioner of Internal Revenue* (1971)
 - *Del Commercial Properties Inc v Commissioner of Internal Revenue* (1999)
 - *Indofood International Finance Ltd. V. JP Morgan Chase Bank NA* (2006)
 - *Prévost Car Inc. v. The Queen* (2008)
 - *Ministre de l'Economie, des Finances et de Industrie v Société Bank of Scotland* (2006)
- ❖ **2014 OECD update** answered the questions raised by above judgements, in summary, beneficial ownership in the Model and in tax treaties has an international fiscal meaning / autonomous treaty meaning and moreover, is intended to be a narrow specific anti-abuse rule with limited application.
- ❖ There was **no update to UN commentary between 2011 and 2017**. No project to address the concept of beneficial ownership and the outstanding questions as to its meaning and application was undertaken for the 2017

INTERNATIONAL APPROACH (2/2)



❖ Commentary on OECD's 2014 update

- The concept of beneficial ownership does not take its meaning from domestic law or other OECD instrument, but rather has an autonomous treaty meaning. The intention of the beneficial ownership concept was to clarify the use of the words “*paid to...a resident*” in the Model and so should be read in that context. Beneficial owners are those that have the right to use and enjoy the payment unconstrained by contractual or legal obligations to pass the payment on. Essentially meaning that persons acting as fiduciaries, agents and nominees are not beneficial owners.
- Use and enjoyment of property that derives the income is distinguished from the legal ownership of the property. An obligation to pass payments on can be contractual or can be found to exist on the basis of facts and circumstances.

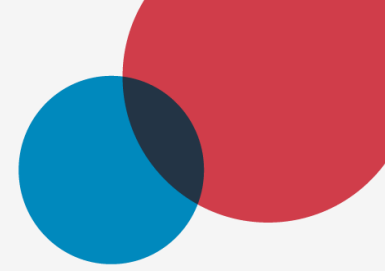
❖ Proposed changes to UN Model Convention by 18th session of UN committee of Experts on International Cooperation in Tax Matters

- Article 12 - However, such royalties arising in a Contracting State may also be taxed in that State the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed ____ per cent (the percentage is to be established through bilateral negotiations) of the gross amount of the royalties. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.
- This isn't just relevant for Articles 10-12 of the UN Model, but also 12A (fees for technical services). However, note the commentary on Article 12A already incorporates the key elements of the 2014 OECD clarification language. Adopting the same approach for 10-12 would promote consistency across all four Articles.

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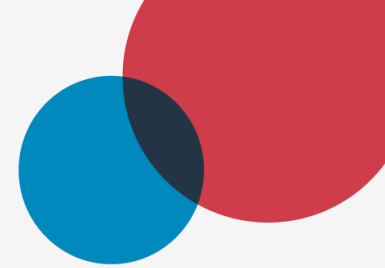
TAX SPARING PROVISIONS

TAX SPARING PROVISIONS



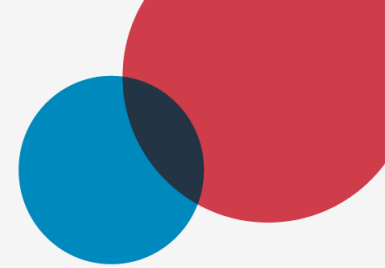
- ❖ To promote foreign investments, reduced rates or no WHT is provided
- ❖ If no or lower WHT rates provided, no credit (sacrifice ends in budget of the other Contracting State)
- ❖ Solution: no WHT but still entitled to credit (usually temporary)
- ❖ EU States tend to grant tax sparing, US does not

TAX SPARING PROVISIONS



- ❖ Concerns on the overall usefulness of the granting of tax sparing relief, particularly:
 - Potential for abuse offered by tax sparing;
 - Effectiveness of tax sparing as an instrument of foreign aid to promote economic development of the source country (e.g. reduced WHT on repatriation of profits, tax sparing may therefore provide an inherent incentive to foreign investors to engage in short-term investment projects and a disincentive to operate in the source State on a long-term basis); and

TAX SPARING PROVISIONS

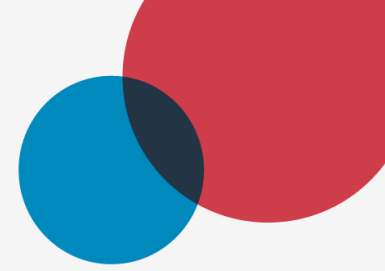


- General concerns with the way in which tax sparing may encourage States to use tax incentives.

Committee's view - tax sparing should be considered only in regard to States the economic level of which is considerably below that of OECD Member States.

**ANTI-
AVOIDANCE**

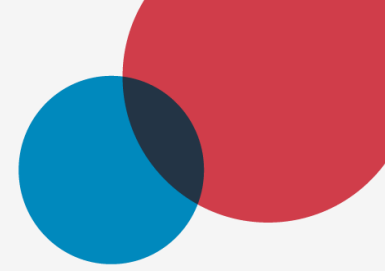
ANTI-AVOIDANCE MEASURES



❖ Anti-avoidance measures provided in the treaties

- Beneficial Ownership
- Controlled Foreign Corporations (CFC) Rules
- Limitation on Benefits (LOB) Provisions
- Anti-tax-haven provisions
- General anti-avoidance rules (GAAR)
- BEPS

IMPLEMENTING RULES

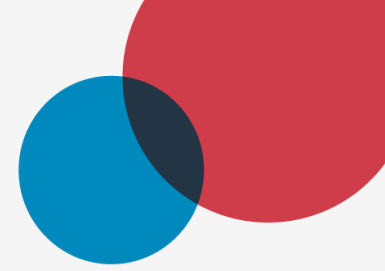


- ❖ Contracting States may establish rules for the application of the Articles 10, 11 and 12
- ❖ Documentary evidence (e.g. certificate of domicile /residence)
- ❖ Time limits

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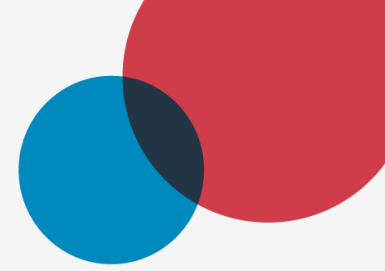
ARTICLE 6 – IMMOVABLE PROPERTY

ARTICLE 6 – IMMOVABLE PROPERTY



- ❖ Income derived by a resident from immovable property (including income from agriculture or forestry) situated in another State may be taxed in the other State.
- ❖ Rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources are included in this Article

ARTICLE 6 – IMMOVABLE PROPERTY



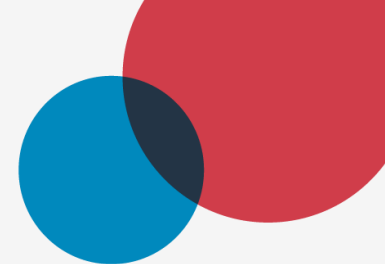
❖ Domestic legislation

- Taxed on net basis; or
- Taxed in a different way (deemed income)

❖ Taxation under tax treaties

- Taxed on net basis
- Taxation right granted to source state
- Relief for double taxation in residence state

DEFINITION

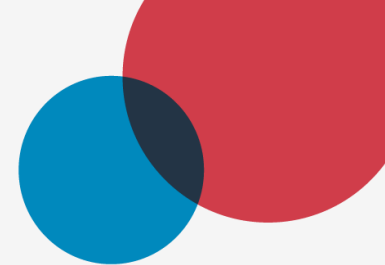


“ The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated.

The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources;

Ships, boats and aircraft shall not be regarded as immovable property. ”

OTHER DEFINITIONS



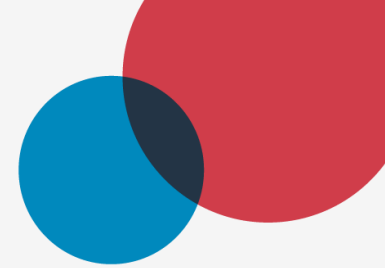
- ❖ Interest on mortgage loans may be considered as income from immovable properties. As such, Article 6 and not Article 11 will be applicable.
- ❖ Q: A Netherland (NL) bank issues a loan to UK Ltd on behalf of UK Ltd's Spanish branch office, for which loan UK Ltd provides security with a mortgage on immovable property it owns in Israel
- ❖ Whose right to tax? Applicable treaty?
 - NL-UK treaty
 - NL-Spain treaty
 - NL-ISR treaty

❖ TAXAND

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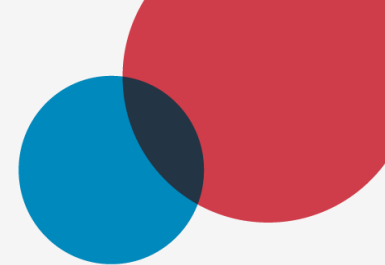
ARTICLE 13 – CAPITAL GAINS

ARTICLE 13 – CAPITAL GAINS



ARTICLE	TYPE OF PROPERTY	RIGHT TO TAX
13(1)	Immovable	State in which IP situated
13(2)	Movable – PE	PE State
13(3)	❖ Ships or aircraft operated in international traffic ❖ Boats engaged in inland waterways transport or ❖ Movable property pertaining to operation of above	State of effective management
13(4)	Shares deriving > 50% of value directly or indirectly from immovable property	State in which IP situated
13(5)	Property other than above	Resident State

FEATURES



- ❖ Domestic law of State to be relied on to decide on:
 - whether capital gains should be taxed
 - how to tax

- ❖ Cannot be construed as giving a State the right to tax capital gains if such right is not provided for in its domestic law

- ❖ Does not address:
 - Type of tax to be applied
 - Distinction between capital gains and commercial profits
 - Limit amount of capital gains levied
 - Define 'alienation' (e.g. capital appreciation & revaluation of assets)

❖ TAXAND

THANK YOU

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