

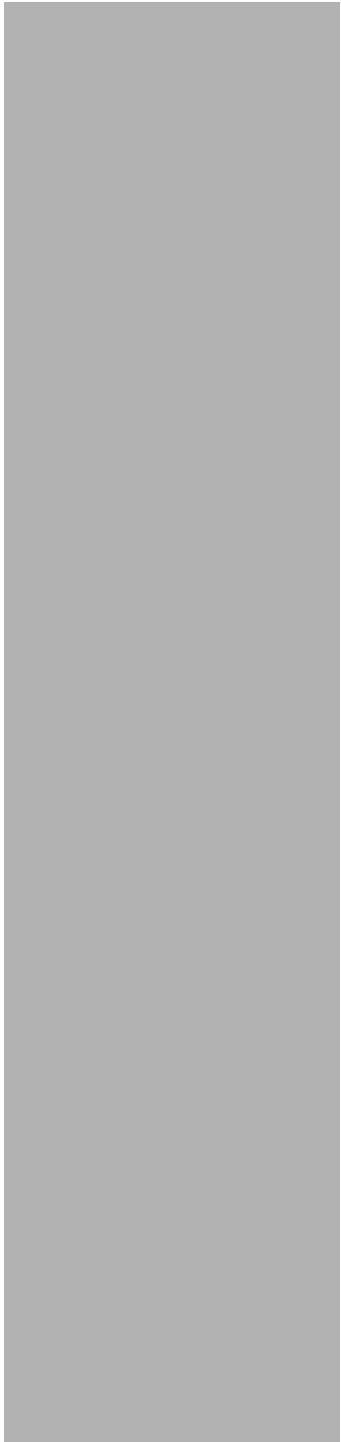
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TAXATION OF FEES FOR TECHNICAL SERVICES

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Taxation of Fees for Technical Services

- work on the issue was approved at 7th Annual Session of the Committee of Experts
- note prepared for the Subcommittee on Services (E/C.18/2012/4) earlier this year to start the work



Existing Provisions of the UN Model Dealing with Services

- under the existing provisions of the UN Model, there are no provisions dealing specifically with technical services
- therefore, income from technical services (other than construction, insurance, international transport, and entertainment) is taxable in accordance with Articles 7 and 14

Existing Provisions of the UN Model Dealing with Services

- under Article 7 income from technical services is taxable by the source country only if:
 - the taxpayer has a fixed place of business in the source country and the income is attributable to the PE, or
 - furnishes services in the source country for more than 183 days in respect of the same or connected projects

Existing Provisions of the UN Model Dealing with Services

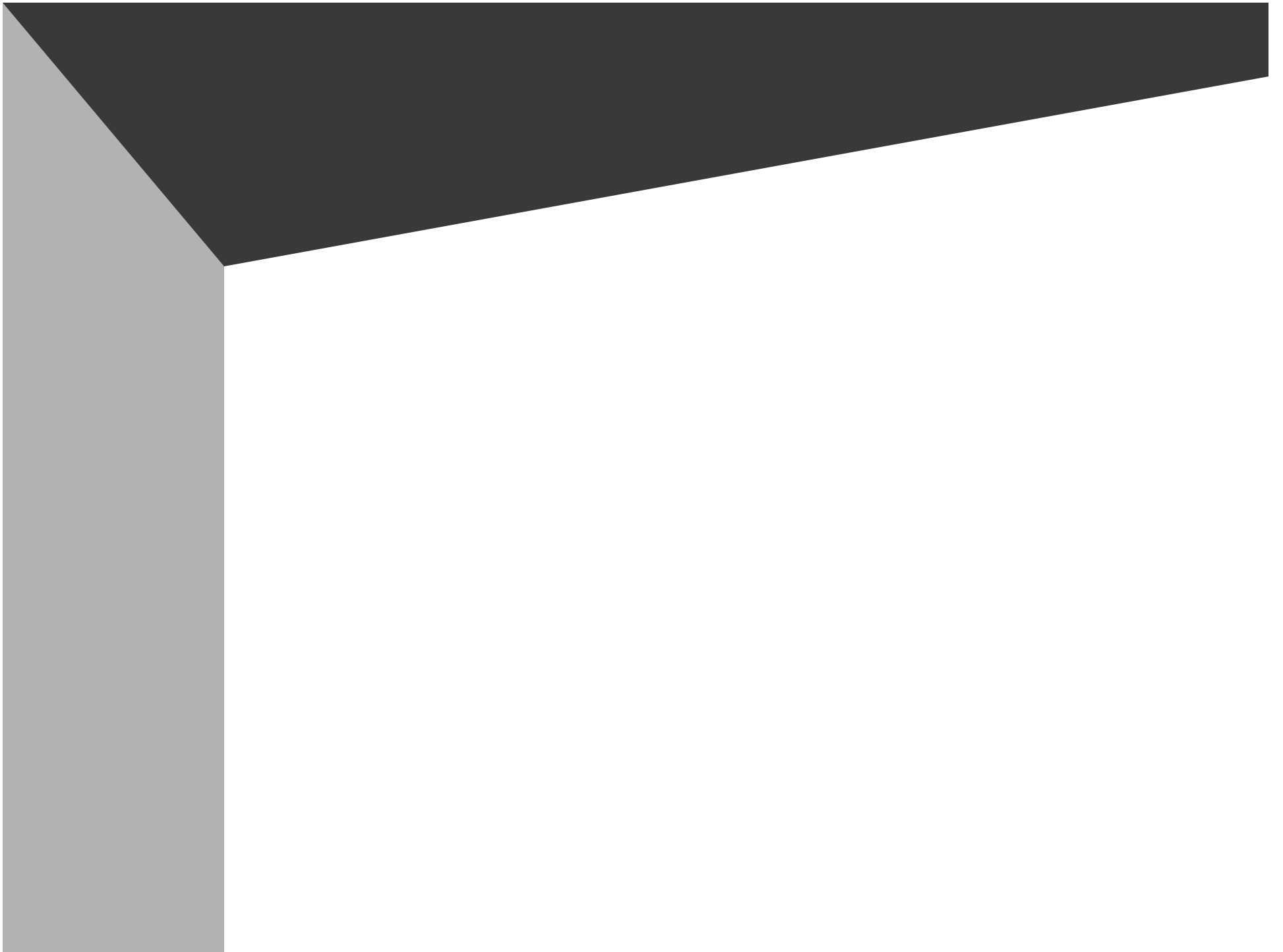
- under Article 14 income from technical services is taxable by the source country only if:
 - the taxpayer has a fixed base regularly available to him and the professional or independent services are attributable to the fixed base, or
 - the taxpayer stays in the source country for 183 days or more

The Issue

- it is relatively easy for enterprises resident in one contracting state to earn substantial income from

Options for Dealing with Fees for Technical Services

1. Revise the Commentary to add a neutral discussion of the issue – an objective discussion of the arguments for and against any special provisions for technical services
 - no recommendations
2. Revise the Commentary to add a neutral discussion of the issue and provide a selection of provisions dealing with technical services that have been included in actual bilateral treaties
 - no recommendations



Options for Dealing with Fees for Technical Services

4. Revise the time thresholds in Articles 5(3)(b) and 14(1)(b)
 - current thresholds are 183 working days and days of presence in source country
 - could be reduced to a lower threshold (e.g., 120 or 90 days)
 - would apply to all services, not just technical services
 - could have reduced threshold just for technical services

Options for Dealing with Fees for Technical Services

5. Revise Article 12 (Royalties) to include technical and other similar services
 - would apply to payments for technical services related to or connected with transfers of intellectual property
 - could be included in Commentary on Article 12 as an alternative provision

Options for Dealing with Fees for Technical Services

6. Revise Article 14 to include the base erosion conditions of Article 15(2)
 - the source country would be entitled to tax payments for professional or independent services if the payments were made by a resident of the source country or borne by a PE of a nonresident in the source country (i.e., deductible)
 - could be limited to technical and other similar services

Options for Dealing with Fees for Technical Services

7. Revise Article 21(3)

- currently, Article 21(3) allows the source country to tax other income that arises in the source country
- income from technical services could be defined to be other income for purposes of Article 21
- currently, there is no limit on source country under Article 21(3) but a limitation could be added

Options for Dealing with Fees for Technical Services

8. Add a new Article and Commentary dealing with Income from technical services
 - 134 of almost 2,000 treaties concluded in 14 years from 1997 to December 2010 contain such an article
 - what conditions for source country tax?
 - what method of source country tax?
 - requires definition of technical services
 - could be included in the Commentary as an alternative provision

Options for Dealing with Fees for Technical Services

9. Deem a subsidiary to be a PE of its nonresident parent
 - any income derived by parent from services rendered to subsidiary would be attributable to PE and subject to source country tax
 - would deal with intragroup services
 - not limited to technical services, but could be
 - would not apply to arm's-length services

Subcommittee Views

- majority of members of the Subcommittee on Services expressed support for a new Article and Commentary
- minority view set out in a note by Claudine Devillet suggests that a new Article is unnecessary, or at least premature, and more targeted solutions should be explored first

Major Issues in the Design of a New Article Dealing with Technical Services

- possible methods of defining technical services:
 - refer to “managerial, technical and consultancy services in the new Article and
 - 1) leave the expression undefined but provide guidance in the Commentary
 - 2) leave the terms to be given their meaning under domestic law
 - 3) provide an inclusive definition in the treaty
 - 4) provide an exclusive definition in the treaty

Major Issues in the Design of a New Article Dealing with Technical Services

2. Threshold requirement – options:

- no threshold
- services performed in the source country
- services performed in the source country for a minimum time
- physical presence in the source country for a minimum time

Major Issues in the Design of a New Article Dealing with Technical Services

3. Source of Income

- under existing provisions, source country tax is generally limited to services performed in the source country
- in some actual treaties, fees for technical services are treated like royalties and subject to source country tax if paid by a resident or borne by a PE
- should new Article be limited to services performed in the source country or apply to payments for services irrespective of where they are performed?

Major Issues in the Design of a New Article Dealing with Technical Services

4. Method of taxation

- net-basis taxation – source country allows deduction of expenses
- gross-basis taxation – withholding on fees for technical services at limited flat rate
- gross-basis taxation with no limit on rate
- allow taxpayer to elect net- or gross-basis taxation