*axpayers can fre+uently t[redacted]
from property into capital gains.

*axpayers can fre+uently t[redacted]
from property into capital gains.

! " '

– , . " ('

2 4 broad but not uni-ersa[redacted]
principle is that capital gains should be taxed .as ha-ing source/ in the same country that would claim source taxation o-er the income from the asset.

– " " '

- 5ental income -. gain on sale of the rental property
- 5oyalty income -. gain on the sale of the patent
- %i-idend income -. gain on the sale of the stoc(

6

! " '

– , . " ('

– 7nconsistent application of the source principle2 0ometi[redacted] in-o(ed to 8ustify taxation and sometimes taxation does not follow the principle. 0uch inconsistencies are e-ident both in domestic law and in the UN and " # $ % odel *reaties.

– " " . " . '

- 7mmo-able property2 capital gains sourced to where property is located – consistent with rent.
- 9usiness property used by a nonresident in $ountry 0 ptden8.297(w)-0.221535(h)0.44307(e)0.44307(n)18.9616(t)08.9616(r)-0.0.44307(i)-18.7401(t)0

'

– ('

– 2 <rimary effect of treatie [redacted] allocate the taxing rights as between the source and residence 8urisdictions!

'

– ('

– 2 *reaty <ractice

– " '

86.13834 ( ) 7.55152 ( ) 7.5.TJ (/R20-159-14.-864 4..41319 ( )4.3834 ( ) 7..55152 ( )2.27667 ( )5. 4..41319 ( )4.1.TJ /R2010Td (L T

'

– ('

Allocate the taxing rights' " "

" '

– (" / # ' 1 364 '
> ! 7 " 8 '

- Nonresident holds stoc(in a corporation whose sole asset is $ountry 0 land. 7f nonresident sells the stoc(at a gain! $ountry 0 may! pursuant to the "#$% odel! tax that gain.
- Nonresident holds a partnership interest in a partnership that owns $ountry 0 land! and this lands constitutes 6BC of the -alue of the partnership. 7f nonresident sells the partnership interest! $ountry 0 may not! pursuant to the "#$% odel! tax the capital gain on the disposition of the partnership interest. 0ee "#$%. 4rt. 1&.1/ gains from alienation of property not otherwise specified shall only be taxable in residence 8urisdiction.

11

'

– ('

Allocate the taxing rights' " "

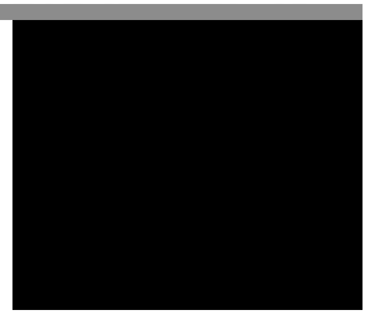
" '

– (" " ' 1 3&4 > *@
7 '

- 7f nonresident holds stoc(in a $ountry 0 corporation! then gains on the disposition of the stoc(may be taxed by $ountry 0 if within the 12 month period preceding the disposition! the nonresident held @directly or indirectly at least EE per cent Fpercentage set by treatyG of the capital of that company.A
- #xample2 7n a treaty context in which 4rt. 1&.1/ specifies a threshold of ;BC! if nonresident o7.9365–997nt443467(r)5.413.o7.9365–997n!h ;B$ountry 0 if

'

– ('



Allocate the taxing rights' " "

" . / " " . " '
" ". " . # > ! 7
+ " " + # # . " " . '

1. o-able property not part of a $ountry 0 permanent establishment .regardless of where

[redacted]

! ". # [redacted]

– " " #. " [redacted]
" "

3 4 "

3$4 / "

3 4 ! / " . "

21

! ". # [redacted]

3 4 Enforcement: 0ource countries fa [redacted]
challenges in trying to enforce taxation [redacted]
capital gains2

- Detection: 4wareness of the alienation and resulting gain
- Collection: 7nability to secure payment of tax
- Administrative Burden: %ecision as to type and amount of enforcement resources de-oted to identifying capital gains and collecting tax due

22

! ". # [redacted]

3 4 Enforcement:

– Detection:

, 7 ". # #. 8
. . . " 5. " 1

, # ". #. 8
" . " . 2
". -. . " " . #. 1

2&

! ". # > ' [redacted]

3 4 Enforcement:

– Detect . 25012(Q)-0.33315(C)-3.25012 [redacted] 28(C)-3.25015012(Q)-0

! ". #

3 4 Enforcement'

– Collection:

, . " " . " / 2
/ + . "
. " " 1 A 2
"" .
. " " . " # C 2 " "
". 1

21

! ". # > ' ')1. 78252( )-3.45915(252( )27

! ".

3 4 Enforcement'

– / . '

, " + " " . / " / " " " 1

, ! " . + # +
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, D / . 2 1 12 .
-. / 2 . . ". . " "
. " 1

, " "" + " '" C
2 " C " 1

26

! ". # > [redacted]

3$4 ax Avoidance Strategies: 4lthough exp[redacted]
the most ob-ious path for nonresident to a-oi[redacted]
of capital gains! other techni+ues are a-ailablez

– '

, #-en if source country generally see(s to tax gain on disposition of certain assets! the country li(ely has treaties not reflecting that position.

, Holding the asset through one or more layers of domestic or foreign entities! where source country does not tax indirect transfers.

, Where source country imposes taxation on a nonresident)s capital gains on alienation of! for example! stoc(in a company with more than 1BC of its -alue in immo-able source country property! then taxpayer may engage in short?term strategies to nominally reduce the percentage of assets represented by immo-able property.

2;

! ". # > [redacted]

#$% Developed Country rends' "-erall lo [redacted] country taxation of capital gains may in part [redacted] experiences! policy choices and tradeoffs [redacted] countries that might not support the same conclusion for capital importing countries2

, %e-eloped country preferences for residence based taxation

, #U mo-e towards more residence based taxation on certain intercorporate payments

, %e-eloped country interest in exempting di-idends and pro-iding parallel treatment for capital gains

, %e-eloped country experience with administrati-e burden of taxing nonresident capital gains