

Persons Entitled to Treaty Benefits

UN-ITC Workshop on Administration of Tax
Treaties and Addressing Base-Eroding Payments

Who is a Resident?

Art 91: A resident of a Contracting State means any person who, under the laws of that State is liable to tax therein by reason of his domicile, residence, place of incorporation, place of management or any other criterion of a similar nature. It does not include any person who is liable to tax only in income from sources in that State.

/liable to tax (s/s-#2e"t to tax) e.g. Art 1 Com paras
<=&= referring to . EC !: (s /payment of tax) Art \$:
"onse"-ti(e (s "on"-rrent residen"e
the /pla"e of management) reB-irement,
the ex"l-sion for so-r"e only taxation

Enterprise of a Contracting (State)

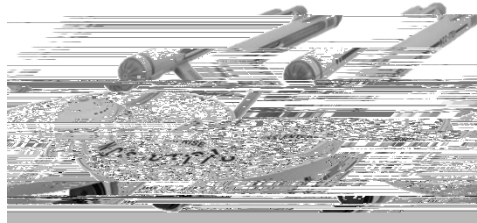
! definitions Art 9:39 =: > 9?: /permanent establishment

! eric (ing in "ome Arts 93 @91:3 1 9\$:

Daking payments Art 9:39 <:

Capital o) ned or allo"ated to Arts 91: > \$\$\$:

Capital o) ed or allo"ated from Arts 91: > \$<9<:



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Residence: Tie-breakers

Art 9:39: Where A an individual is a resident of both Contracting States, then A shall be deemed to be a resident only of A

9 : Where A a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only of the State in which its place of effective management is situated

6ele (ant for all p-poses identified in slides C > @,

Danip-lation of residence of artificial entities based on " - rrent tests in "l- ding effective management

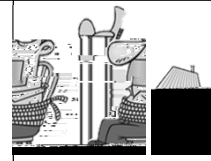
Eragmentation of "orporate o) nership and mo#ility of "apital leading to treaty shopping

. EC ! proposes repla"ing Art 9 :; BEP* A"tion = report

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Beneficial / Owner



Limits on source state taxation under Arts 1(9)(3) and 1(10): > 1(9): only apply where the beneficial owner of the income is a resident of the other Contracting State

! does not challenge /person/ or /resident/ so much as is a special income allocation rule for treaty purposes

What does beneficial ownership mean,

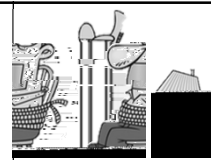
- 1 Domestic (same international meaning; Art 9: /in context other) residence
- 1 Sole (as per Commentary in determining meaning)

! isolation with other Articles e.g. taxation of dividends looks to the beneficial owner not taxation of gains on the shares does not

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Beneficial / Owner



Commentary on Art 1(9) para 1 (1994): EC!

Comment on Art 1(9) para 1(1) The term beneficial owner is not used in a narrow technical sense. It should be understood in its context and in light of the object and purposes of the Convention. Art 1(9) para 1(1) inconsistent with the object and purpose. A for the State of source to grant relief. A where a resident of a Contracting State other than through an agency or nominee relationship simply acts as a conduit for another person who in fact receives the benefit of the income earned. For these reasons, a conduit company cannot normally be regarded as the beneficial owner if, though the formal owner, it has, as a practical matter, (very narrow) powers which render it, in relation to the income earned, a mere fiduciary or administrator.

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2y-rids: / E ' 4 Report

Proposes "hanges to domesti" la) to
pre(ent ded- "tion I no in"ome and
do-#le ded- "tion o-t"omes

Primary and defensi(e r-les J need to kno) other
"o-ntryls tax la)

Dain fo"-s /related party0 and /str-"t-red arrangements0

No moti(e test J a-tomati" appli"ation #y reB-iring

