



Application of tax treaties to non-residents (business profits and services)

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SumM

Introduction: treaty design and administration

- "country should have treaties signed and compatible with the legislation & administrative capabilities:
 - ' Complexity of treaty in line with complexity of legislation and sophistication of administration
- Examples:
 - ' P0 is complex for some countries for the # with) ordin s are easier to apply
 - ' +definition of source in domestic law aligned with) source in treaties

Application of tax treaties to business profits and services: procedures

- (GT system usually needed to collect information and provide funds
 - ' Especially in countries with strict laws on confidentiality
- (GT system applies with self-assessment)
- Two options in a treaty context
 - ' Sale (GT system for domestic < international income)
 - (GT and refund)
 - ' Different systems

Application of tax treaties to) * % + business profits
and services: procedures direct application % - '

- +isadvanta es:



<http://catedras.uca.es/eu-tax-law-jean-monnet>



Application of tax treaties to) * % +business profits and services': procedures \$erification treat entitlement %/'

- "dvanta es:
 - ' 4 ore contro\$ ex ante on w) et) er taxpayer) as access to a treaty
- +isadvanta es:
 - ' " d ! inistrative &urden for taxpayers and tax aut) orities: o&stac\$e to co ! ! ercia\$ transactions
 - ' Potentia\$ vio\$ation of treaty if :do ! estic procedure; exc\$udes taxpayer fro ! treaty
 - Issues of for ! # dead\$ines etc*
 - ' . &stac\$e for co ! ! ercia\$ transactions

Application of tax treaties to) * % +business profits and services': +alance of factors

- Le a\$ certainty
- P0s < non%P0s
- +ifferen t) res) o\$ds for &business profits < services
- 5is9 of avoidance
- - urdens on taxpayers# wit)) o\$din a ents# tax ad ! inistration

Obtain information to apply the treaty :



<http://catedras.uca.es/eu-tax-law-jean-monnet>



Application of treaty to non-residents +business profits and services

- () at treaty provision for business profits : - business profits; usually not defined in treaties:
 - ' Civil law countries# covers all < ! ost profits of someone carrying on entrepreneurial activities
 - ' Common law# not passive
- +ifferent articles can apply++

Application of treaty to non-residents: 12 threshold % ('

- Need to design definitions (t)res) o&ds t)at are easier to control:
 - require !ent of ;connected projects;# causes t)at reduce t) e t)res) o&d# "ction 2 - OPS (si ! ited effect)
- If t)res) o&d ! et# pro&e ! is attribution of profits:
 - ' Even if t)ere is a PO or fixed base# w)at are t) e profits to &e attributedH
- Effect of art* 67 and new provision on services U3 4C:
 - ' Easier to ad ! inister
 - ' PO way out to net taxation
 - ' - ut pro&e ! s:
 - :s)ift of &urden of t) e tax;: need to identify sectors w)ere t)at)appens and w)et)er exe ! ptions granted
 - Cross taxation: wit)) o&d and return to deduct directly connected expenses

Application of treaty to non-residents: 12 form of taxation % -'

- +raftin of art* 2 is a\$so re\$levant:
 - ' " . " v* traditiona\$ approac)# &ut do ! estic \$aw ! ust reco nize " . " < traditiona\$ approac)
 - " rt* 2*A* U3 4C: no deduction of royalties# services# interest (except &an9s) paid to :)ead office;= no attri&ution of inco ! e for t)e sa ! e reason to P0= sort of infor ! a\$ attri&ution ru\$e on free capita\$ para* 6? Co ! ! * art* 2 U3 4C
 - ' Force of attraction of U3 4C art* 2 (sa\$es of oods and !erc)andise of sa ! e or si ! i\$ar 9ind to t)at so\$d &y P0# ot)er &usiness activities sa ! e or si ! i\$ar 9ind as t)ose carried on &y t)e P0)
 - Captures on\$y profits in source country
 - ' "pportion ! ent . 6 -10 . 8 Tdx [(r) - 0 . 333 . 16291 (o) 4 . 3 (s) - 6 . 66667 (a) - 4 (!) - 6 . 9987 (e)

Administration of tax treaties to non-residents: enforcement of tax claims

- Traditionally enforce ! ent of tax c!ai ! s \$in9ed wit) assets in t)e country or appoint ! ent of representatives:
 - ' 0asier wit) P0s: fixed p!ace < a !ent usua\$\$y)ave assets in source State
 - ' Function of wit))o!din a ents
- -ut art* 72 . 0C+ < U3 and . 0C+ < Council\$ of 0urope Convention c)an e t)is situation (/ art* 7> on exc)an e of infor ! ation):
 - ' "ssistance in co\$\$ection of tax c!ai ! s
 - ' 5eEuires \$e is!ation < ad ! inistrations prepared for t)at

Case study 1

- Situation 6: two projects, two companies of the same group
 - ' Non resident Group of Companies entered into two different contracts re two different buildings (construction work) with the same client for two different sites*
 - ' Contracts are signed so that a part of the work would be performed by 35 parent Co (1 contract) and part of the work by 35 subsidiary of 35 parent Co (1 contract)* The subsidiary is a party to the contracts, but overall liability assumed by 35 Parent Co*
 - ' Does it matter whether the parent < subsidiary specialise in the parts assigned?
 - ' Consider also the situation of 35 workers < service providers of the companies
- Situation 7: "not" version of this situation would be if the subsidiary is a resident of source country (fraudulent exemption of article 2 - OPS/ specific clause)

Case study 2

- Situation 6:
 - ' Non resident Co (low tax jurisdiction)
 - ' Sto