

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

Berlin 1- 1e"em#er \$%1&

Article 25' Introduction

The principal function of the () tax
provision in Article 25 is to resolve
any differences in interpretation and
treaty

!o) the taxation issues may arise from disagreements
"on"erning the facts of a particular case or the
interpretation of particular Article of the treaty or from
the way the treaty is applied

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Article 25' Introduction

Article 25 covers different situations

1, Cases where a taxpayer resident in one country
that he is not being or may not be taxed in
another country under the provisions of the treaty

2, Cases where the competent authorities on their own initiative
resolve questions of interpretation or application of the treaty

3, Cases involving double taxation which are not provided for in the
substantive articles of the treaty. Here legal basis are available
rarely used

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Article 5 Intro

7) Types of Article 5 proceedings

- Taxpayer-initiated (AP res) Its in an agreement as to how the treaty applies in the taxpayer's case
- CA-initiated proceedings typically result in a preliminary ruling or other form of advice indicating how the states will interpret or apply the treaty
- Whether do the tax cases rarely occur either for a specific TxP or general guidance

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Typical (AP) cases

Taxpayer-initiated cases

- Transfer pricing disputes
- Article 9 allocation of profit disputes
- Existence of PE
- Mutual residence Article 23
- Characterization issues

CA initiated cases

- Common interpretation of treaty term

Whether do the tax cases

- Third country resident with PE in both states

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* o . (AP opera

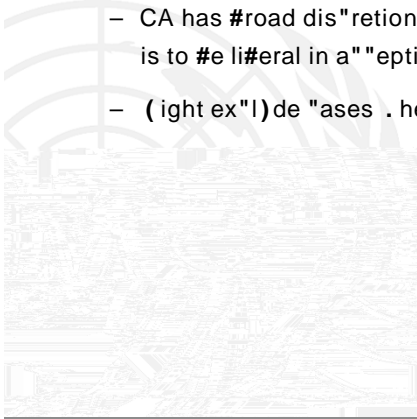
Arti"le § 2:3 a) thori;es the CAs to



Requirements for taxpayer (AP

resident CA must establish that
is satisfied

- CA has broad discretion to accept or reject case but must practice is to be liberal in accepting cases
- (right exception) cases where there is finding of a significant



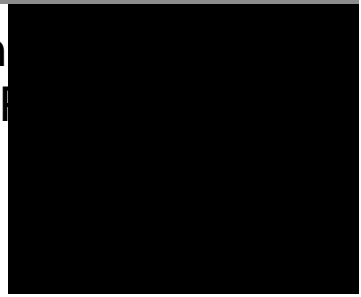
Time limits for TP-init

TP must present "case" within 3 years
inappropriate taxation

– **extension**



Collection of tax as "on
initiated (A



Example' Art & Art 9

Company =5 a resident of /tate =5 "arries
= and /tate /,

Aor the year in 6)estion5 it made a total p
reported all of that profit in /tate = and none in /tate /

/tate / assesses tax on \$& of the profits of Company =5 finding
that they . ere attri#)ta#le to #)siness a"ti4ities in /tate /,

Company / is th)s s)#>"t to 0>)ridi"al1 do)#le taxation5 that
is5 the same legal person is s)#>"t to do)#le taxation on the
same amo)nt of profit5 \$& in the Example

15

Example 1' Art & Art 9

Within years of the assessment of the
files a "laim for (AP relief . ith /tate =5 i
"laiming that it is #eing taxed 0not in a"
treaty15 sin"e its #)siness a"ti4ities in /t
or a)xiliary1 th)s not a PE)nder Arti"le &2:32e3

The CA of /tate = a"epts the "laim)nder Arti"le \$&5 para, 15
finding it >)stified, It "annot resol4e the "ase)nilaterally and
"onta"ts the CA of /tate / to open a (AP "ase

After negotiations5 the CAs of /tate / and /tate = agree that

Example \$' Profit al

Suppose in Example 1 that after the reorganization, the tax authorities find that Company A does have 1% of the total profit is attributable to Company A. This under the AP5 rate is entitled to the profits and under Article 5 is required to provide the taxation relief on that 1% of profit and has the right to tax the remaining 9%, which the taxation has been avoided,

Under the AP5 Company A is entitled to a refund of the taxes on the original 1% of profit it reported to Country A and does not pay tax on the 1% of profit it should have reported

(AP and transfer pri Arti"le D

Under Arti"le D5 ad)stments to a res
profits are allo . ed if it has dealings
the other "ontra"ting state . hi"h are

As a res)lt5 there . ill #e potential e"onomi" do)#le
taxation as a portion of the profits . ill #e taxed in #oth
"o)ntries

Where a "o)ntry has made an ad)stment to the profits of
a resident taxpayer 2a 0primary1 ad)stment35 Arti"le D2\$3
o#liges the "o)ntry of the related party to make a
0"orresponding1 ad)stment to red) "e its taxing "laims
and th)s eliminate the potential do)#le taxation

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Appli"ation of (AP i 56670)183337 (o

Application of (AP in primary "base

* o . e4er5 the UN Commentary to Article
pro4ides that 0most "o)ntries1 "onsi
do)#le taxation of the type des"ri#ed
taxation not in a""ordan"e . ith the t
#y Article \$& (AP

Th)s)nder this interpretation Article \$&5 para, 1 it . o)ld
possi#le to open a (AP resol4e the e"onomi" do)#le
taxation arising from disagreement as to the appli"ation
of Article D

Application of (AP in primary "base

E4en . here the treaty does not "on
o#ligation to make a "orresponding
Article D2\$35 the UN Commentary Ar
takes the position that (AP is a4ailable tho)gh noting
that 0some "o)ntries1 do not follo . this 4ie .

?i4en the p)urpose of the treaty to a4oid do)#le
taxation5 it seems hard to >)stify ref)sal to "onsider

0/e"ondary1 ad>)s

7n"e the "o)ntries ha4e agreed on the
0"orresponding1 ad>)stments to in"o
e"onomi" do)#le taxation5 there is st
implementing the ad>)stments as the
original transa"tion are in the 0 . rong pla"e1

UN Commentary5 Arti"le \$&5 para, :: "onsiders 4ario)s
te"hni6)es s)"h as allo . ing a payment . hi"h . o)ld
other . ise #e taxa#le to #e tax ne)tral or pro4iding for the
esta#lishment of an a""o)nt paya#le . hi"h "an #e
dis"harged . itho)t tax "onse6)en"es,

