









**E/C.18/2016/CRP.22**



















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<sup>23</sup> Para 3 of Commentary.9-5(r)121 0 i60887o

2012 OECD changes to Commentaries on the term "at the disposal"

*Whether a location may be considered to be at the disposal of an enterprise in such a way that it may constitute a "place of business through which the business of [that] enterprise is wholly or partly carried on" will depend on that enterprise having the effective power to use that location as well as the extent of the presence of ~~the~~ enterprise at that location and the activities that it performs there. This is illustrated by the following example. Where an enterprise has an exclusive legal right to use a particular location which is used only for carrying on that enterprise's own business activities (e.g. where it has legal possession of that location), that location is clearly at the disposal of the enterprise.*

Examples of tax treaties referring to legal rights related to the extractive industry as a PE























Examples of tax treaties with a different time period under the construction clause

Article 5(3) treaty between Morocco and the United Arab Emirates of 9 February 1999

Article 5(1)(g) treaty between Jordan and Romania of 10 October 1983

71 0 595.39(-)12(ag) Article 5(3) - 12(b) (p) 8 (v) 42 (A) 16 (r) - 5 (n) 3 (o) 3 (t) 14 (N) Article 1996/000887301554218012h) 0 of 1 036









Article 12(3)(c) of the tax treaty between Australia and Chile of 10 March 2010

3. The term "royalties" in this Article means payments or credits, whether periodical or not, and however described or computed, to the extent to which they are made as consideration for:

(..)

(c) the use of, or the right to use, industrial, commercial or scientific equipment;

New paragraph 5.5 in the OECD Model (2012)

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<sup>46</sup> Up to 1992, the definition of royalties in article 12 of the OECD Model (1977) also included the right "to use industrial, commercial or scientific equipment", however some countries have made reservations to maintain such taxation right.

<sup>47</sup> Health, Safety and Environmental.



























Agreed Text for New Article [16] as of 21 October 2015 – Fees for Technical Services



Examples of Tax treaties that include technical fees

Italy - Vietnam Income Tax Treaty of 26 November 1996

Article 12

Royalties and fees for technical services



