



Nairobi, Kenya
 24 March 2017




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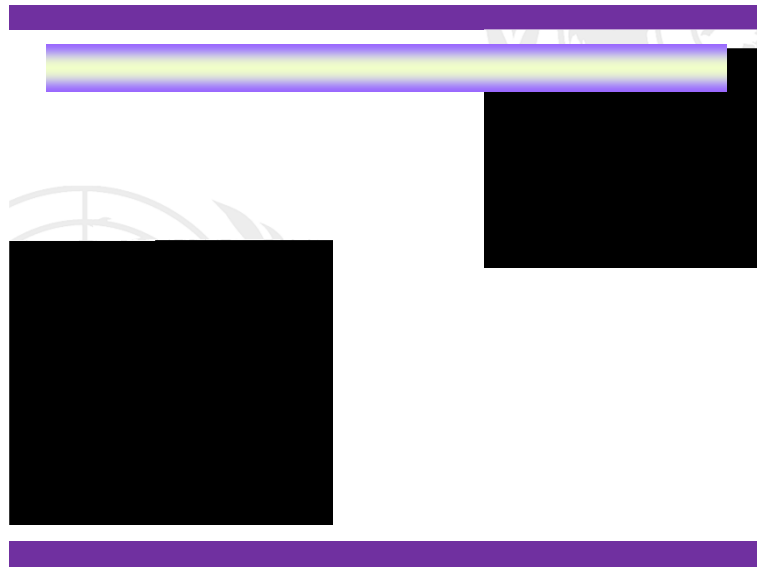
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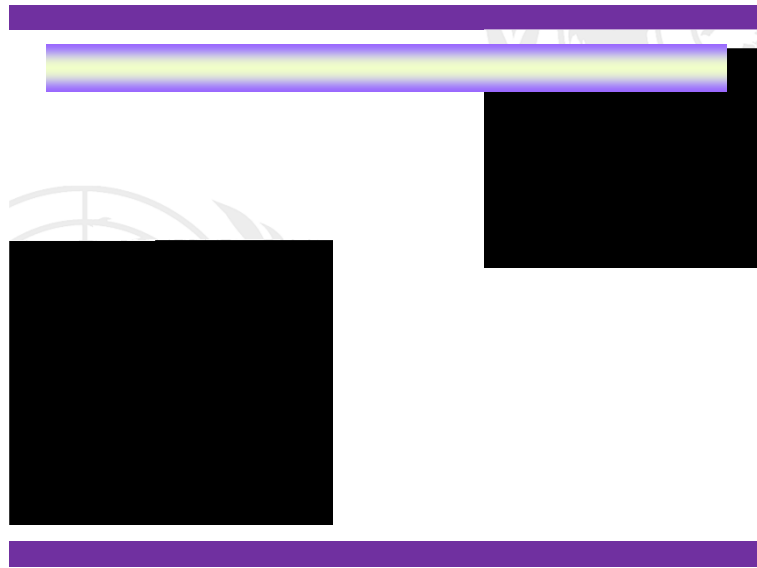
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 • The company must be a resident of the country of origin of the dividend for the entire period of the dividend's payment.
 • The company must be a resident of the country of origin of the dividend for the entire period of the dividend's payment.

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 • The company must be a resident of the country of origin of the dividend for the entire period of the dividend's payment.
 • The company must be a resident of the country of origin of the dividend for the entire period of the dividend's payment.

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• The company must be a resident of the country of origin of the dividend for the entire period of the dividend's payment.
 • The company must be a resident of the country of origin of the dividend for the entire period of the dividend's payment.
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• The company must be a resident of the country of origin of the dividend for the entire period of the dividend's payment.
 • The company must be a resident of the country of origin of the dividend for the entire period of the dividend's payment.
 • The company must be a resident of the country of origin of the dividend for the entire period of the dividend's payment.

30

Nonresidents Financing Resident Entities with Debt

- Nonresident parent financing & liability with debt or equity
- Nonresident has preference share

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Nonresidents Financing Resident Entities with Debt

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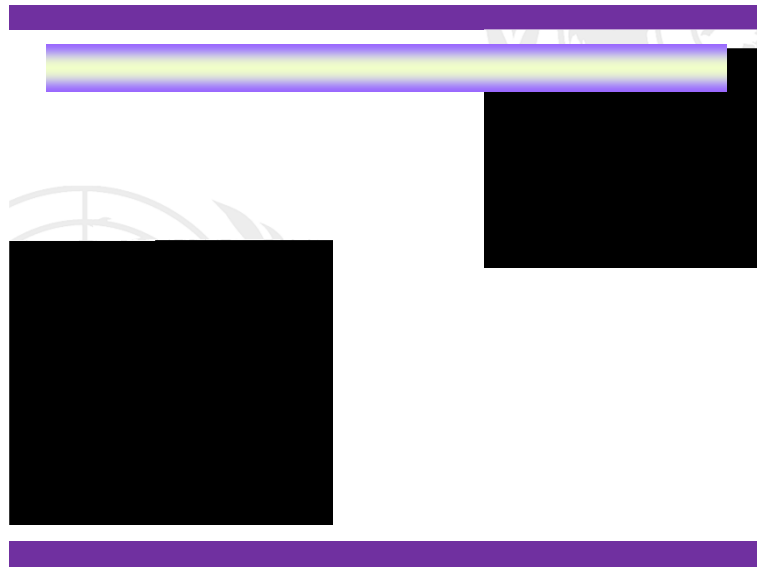
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OECD/G20 BEPS Action 4: Interest Deductions

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Debt-to-Equity ratio is a financial ratio that compares a company's total liabilities to its shareholder equity. It is calculated as follows:

- Debt-to-Equity ratio = Total Liabilities / Shareholder Equity

This ratio is used to measure a company's financial leverage. A higher ratio indicates that a company is more heavily financed by debt, which can increase its risk. Conversely, a lower ratio indicates that a company is more heavily financed by equity, which is generally considered less risky.

The debt-to-equity ratio is also used to compare a company's financial structure to that of its peers in the same industry. A company with a higher ratio than its peers may be considered more financially risky.

For example, if a company has total liabilities of \$100 million and shareholder equity of \$50 million, its debt-to-equity ratio would be 2.0. This means that for every dollar of equity, the company has two dollars of debt.

-2

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-4

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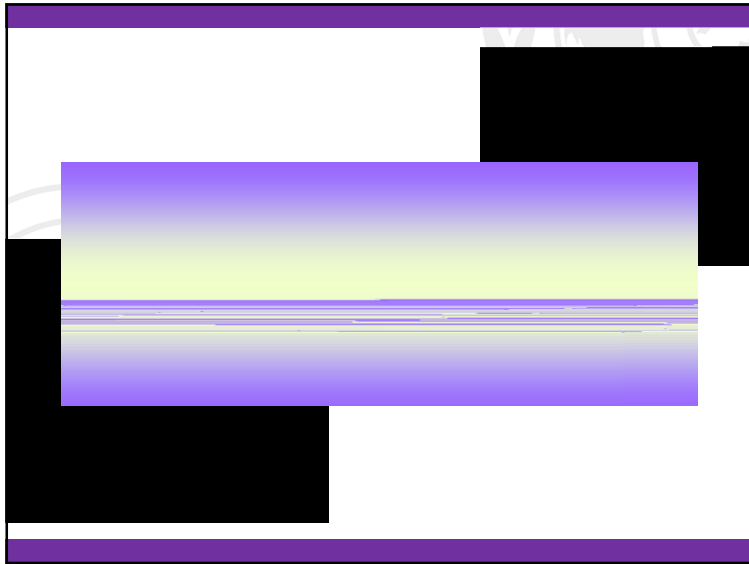
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Domestic Law:
Nonresidents Earning Domestic Source Income

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Domestic Law:
Nonresidents Earning Domestic Source Income

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Domestic Law:
Nonresidents Earning Domestic Source Income

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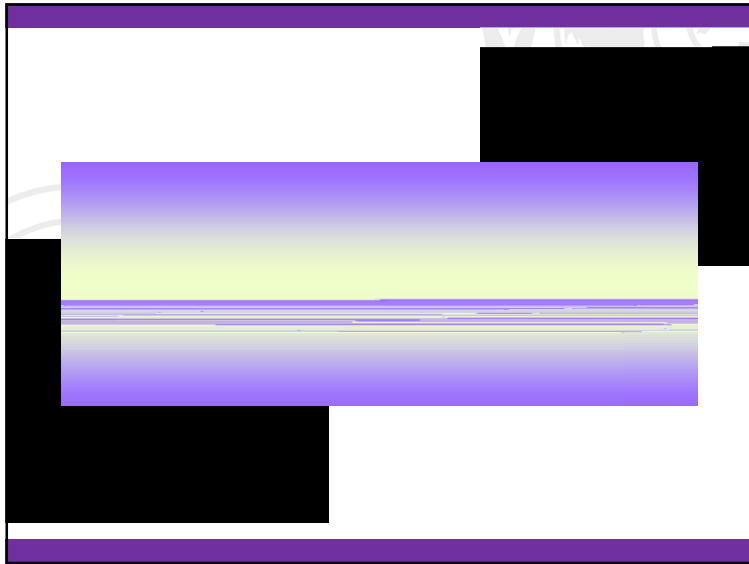
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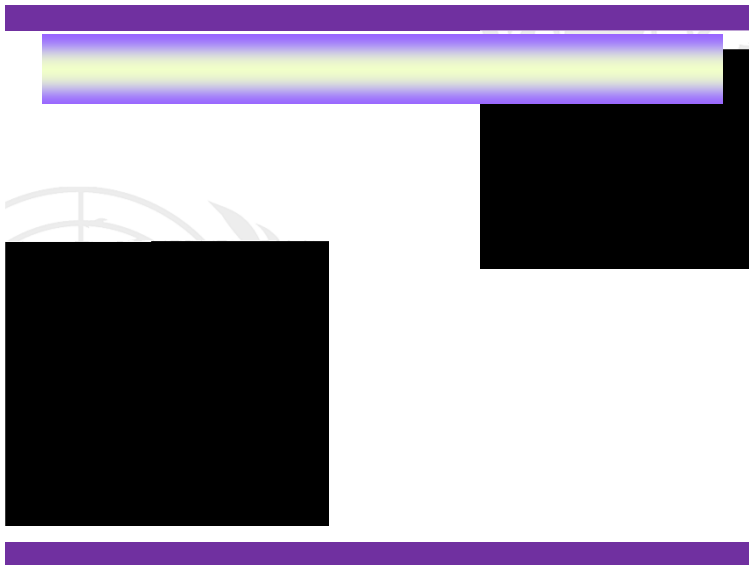
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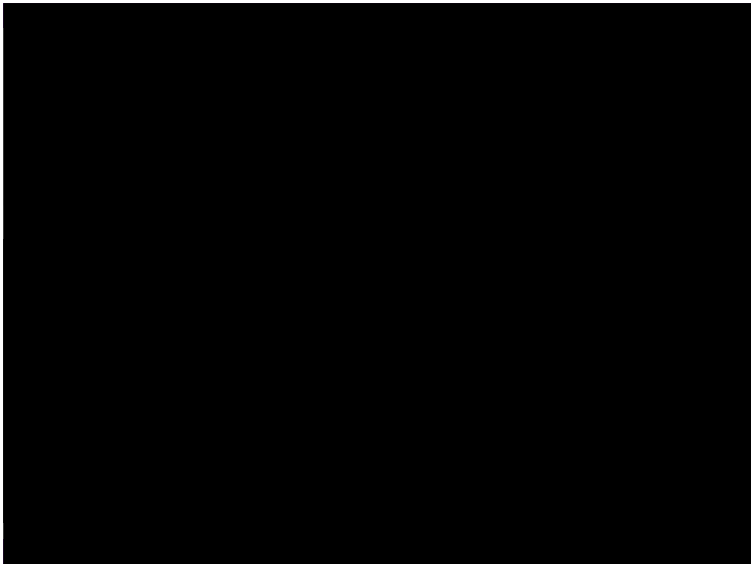
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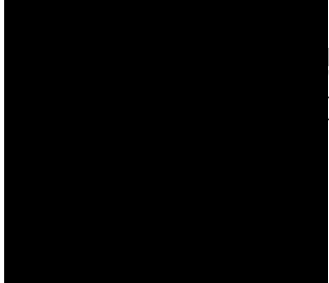
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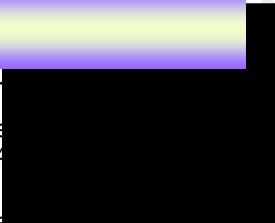


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117

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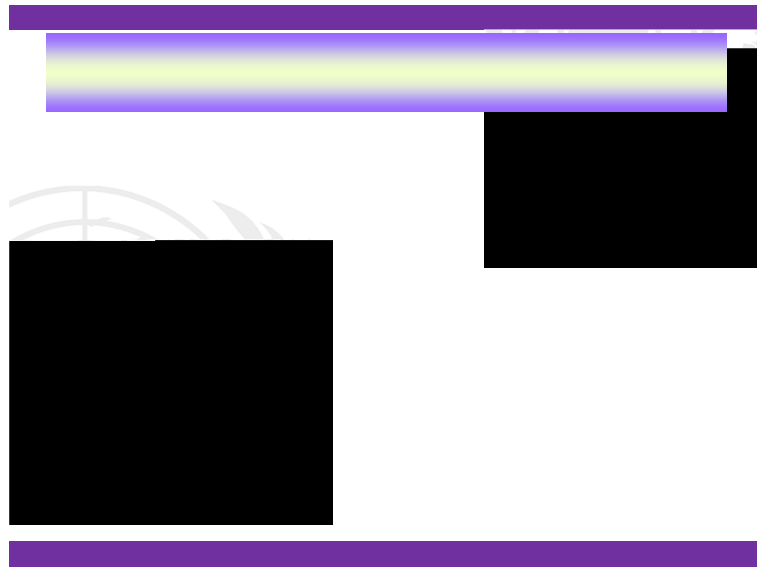
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ib*e on*y . hen "i1i"en"!
be a**ocate" to \$orei&n
\$or p, rpo!e! o\$
i&n ta6 cre"it

12;

[Redacted]

- 2 intere!t on \$, n"! , !e" to
!hare! o\$ re!i"ent co / pany / a
\$ro / nonre!i"ent ac>, iror to ac
co / pany

2
on or earnin&!?!trippin&
b,t not "i!a**o .
re!t "e", ction!
nti?a1oi"ance r,*e!
nti?ab, !e r,*e

12B

[Redacted]

[Redacted]

[Redacted]

- 7"enti\$ication o\$ the / ajor !tr, ct,
"o / e!tic *a . to pre!ent ba!e ero
- %a / p*e *e&!*ation . ith e6p*anat

atie! to prevent ba!e ero!ion
re !, &&!tion! on h%o 339-5404(a) n0 . 8 1 8 426

- Three /ajori!!!, e! o\$ ba!e e

1(E6ce!!i1e intere!t "e", ctid
pay / ent! to nonre!i"ent!

nonre!i"ent! n! eoe / pt \$10 /
p re", ce" ta6
on! c'ai / e" by re!i"ent! to
\$a1o, rab*y ta6e" inco / e

- 8 ithho*"in& ta6 o\$\$!et! e\$\$e
"e", ction

– 8 ithho*"in& can be / a"e a d
"e", ction of the intere!t pay

/ ay be e6ce!!i1e an"

e" "o, b*e ta6ation

! / ay be pa!!e" on to
co, ntry in !o / e

1=:

- 8 hat rate o\$. ithho*"in& !h
- app*ie"G

- Lery "i\$\$ic,*t i!! ,e

"in& ta6 i! a proby for a
e
ay not be cre"itab*e by

140

- 8 hat per!on! are re>,ire" to
- 3ypica**y i / po!e" on re!i"en
nonre!i"ent! . ith a #E or \$i6e

a6 \$ro / in"i!i" , a*! \$or
/ ent! are non"e" , ctib*e
"e" , ctib*e pay / ent!
i! , ! , a**y jointy *iab*e \$or

141

- 7nteri / or \$ina* . ithho*"in& ta6

- On"er interi / . ithho*"in&, no

\$i*e a ta6 ret, rn an" pay ta6 o

'i5e5_ o*ci/ _ oet_ o* e6pen!e!, p

n"

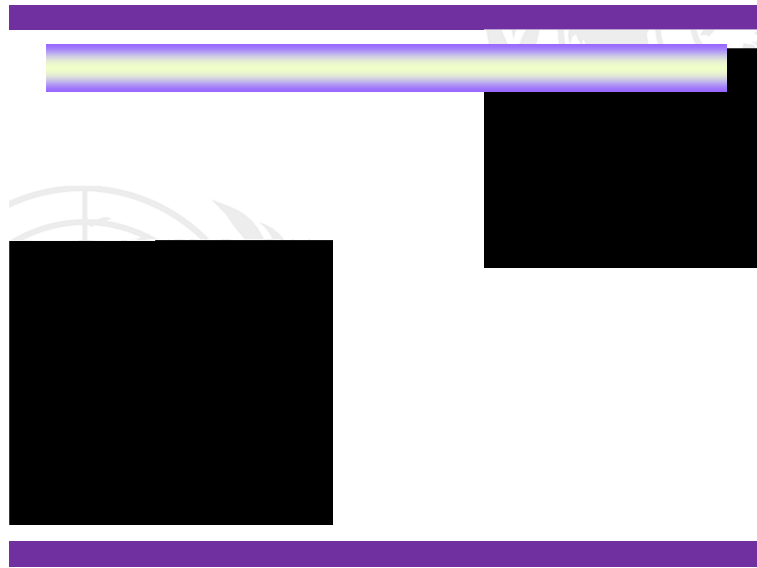
o / p*iance an"

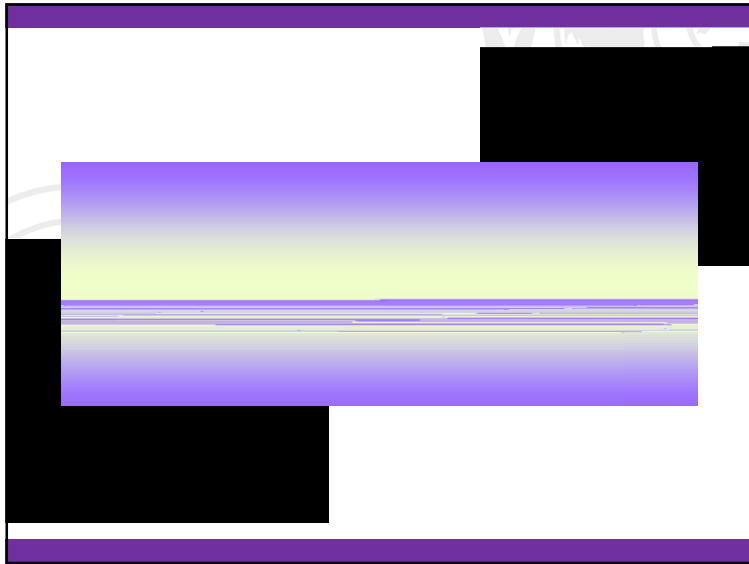
t!

thoritie! to i!! ,e . ai1er!

t i! probab*y e6e / pt \$ro /

142





'1(8 here a re!"ent co / pany, c
\$inancia" in!tit, tion, / a4e! a pa
in a ta6ation year to a mre"ate "N
*en&thN non?re!"ent, the intere
ear to the e6
any!! tota" intere!t pay / ent!
ar Mto non?re!"ent!N Mto non?
/ the co / pany "oe! not "ea"
t the co / pany!! a1era&e "ebt
! M1F-, 2, or = ti / e!N the
e>, ity \$or the yearF

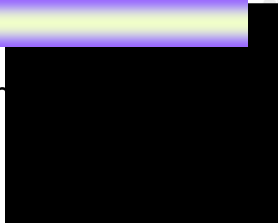
- #ro1i!ion! \$or2

- More &enero, ! ratio \$or \$inan
- Carry\$or . ar" o\$ e6ce!! intere

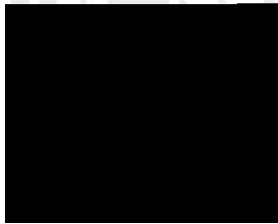
ee / e" to be "11"en"
o partner!hip! an" tr, !t!
o nonre!i"ent!
re!t that / eet! the ar / !!



'1(9ny per!on not re!i"ent in



'4(7\$ a per!on re!i"ent in Co
to . ithho*" ta6 a! re>,ire"



• 9rtf 7 or 142 yo, r co, ntry ca
 • 9rtf 7'=(2 yo, r co, ntry / , !t
 "e", ction o\$ intere!t attrib,
 ! re!i"ent! cannot e ,ct
 h i!! , e \$or "o / e!tic *a .
 o, ntry can *i / it
 ct to 9rtf 24'=(

1:1

• 9rtf 24'=(2 prohibit! *e!! \$a1
 ta6ation o\$ #E 'not \$i6e" ba
 • 3here\$ore, no re!triction! o
 / p, tin& profit! o\$ #E
 e" to re!i"ent!

1:8

• Don't a&ree to 9rtf 24'=(
 • 9&ree on'y to / o!t?\$a1o, re
 treat / ent in 9rtf 24'=(
 n! on intere!t "e", ction!

170

• En! , re that e6ce!! intere!t
 a**ocate" to #E
 • Don't a**o . "e", ction o\$ no
 to OECD J, n"er 9rtf 7(
 n& ta6 on any intere!t
 p, tin& #E profit!
 'e 9rtf 11'-(

171

- On "er 9rtf 11'2(, yo, r co, ntry i
inter!t pai" to re!i"ent! o\$ the
a&ree" rate

!t

n& ta6 on inter!t , n"er
ithho" in& ta6 , n"er 9rtf 11
re! ba'ancin& o\$!e1era'

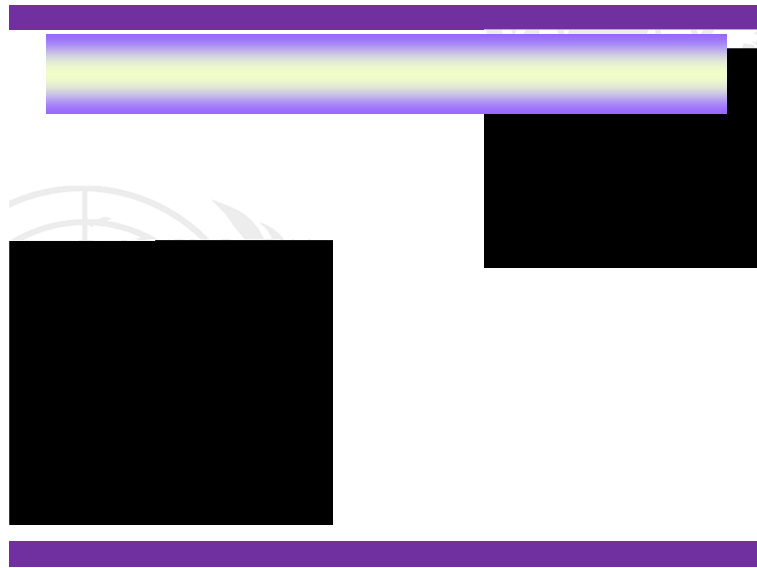
• 9na*y!i! o\$ pro!i!ion! o\$ "o /
 re!pect to the ta6ation o\$ inco
 !er!ice! \$ro / the per!ecti1e
 o\$ ta6 t
 !er!ice! \$ro / the
 e ero!ion
 in&
 e ri!4! o\$ E#% .ith
 \$ro / !er!ice! an" po!!ib*e

17:

• 7"enti\$ication o\$ ba!ic patter
 inco / e \$ro / !er!ice!2
 1F 7nco / e "eri1e" by re!i"ent
 "e yo,r co,
 by nonre!i"ent! \$ro /
 /e" or ,!e" in yo,r co,ntry
 ay be ero"e" i\$ yo,r
 ta6 inco / e \$ro / !er!ice!
 "e", ction o\$ pay / ent! \$or

177

• Mo!t co,ntrie! "o not "e\$in
 • 5o .e1er, i\$ inco / e \$ro / !e
 certain tye! o\$!er!ice! i!
 ther inco / e or other
 r) -3 . 53 8 87(1) 9 . 61539(i) 0 . 846276(c e . 3845(t) 0 . r) -3 . 5 . 845102(o) 925 rc e . 38028(o) -1 .



- Even if you, r co, ntry take! re
inco / e \$ro / !erlice! on a .c
re!i"ent! can e!tab!h contro
(to earn in
genera**y not ta6ab*e by yo, r
y earn "o / e!tic !o, rce
te ta6ab*e entitie!
i"ent in yo, r co, ntry

- a!ic pattern! \$or ta6in& !er1
or ,!e" in a co,ntry?
– 9** pay / ent! to nonre!i"ent! \$c

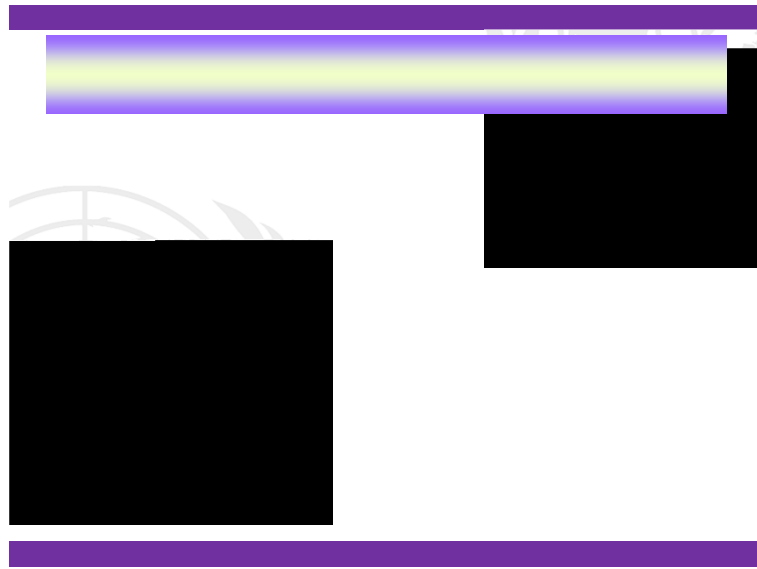
- General rule – no taxation

– E / property / interest / exercise in t

- E / property / interest / exercise by

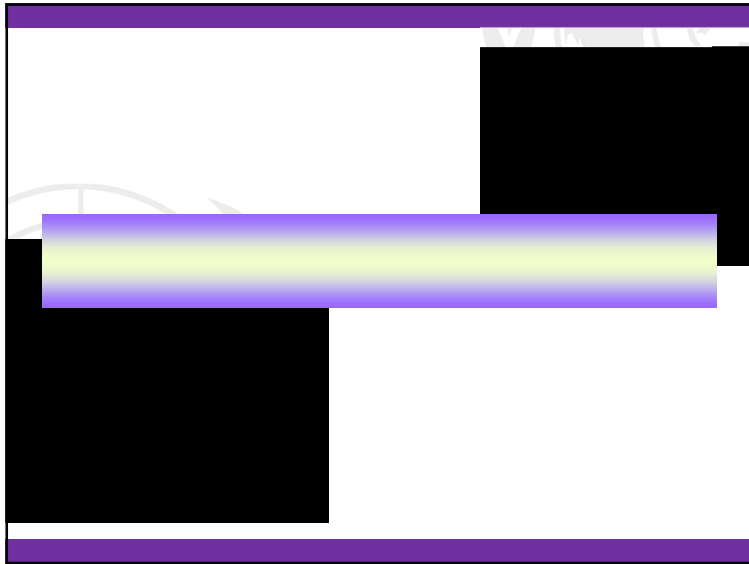
a nonresident with a #E or
the country an "ordinary or
by the #E or "base", or
resident in the country for / ore
in any 12 / month period"

1B2



-)ee! \$or technica* !erlice! an
i\$ the payer i! a re!i"ent or a
a #E or \$i6e" ba!e that bear!

!erlice! are 6676 not to
\$ they are borne by a #E or
her co, ntry



• +i!4! . ith re!pect to

1(re!i"ent! earnin& inco / e \$ro /

2(nonre!i"ent! earnin& inco / e \$

in& on the type o\$!er!ice!

. ith re!pect to re*ate"?party

! "# "

20-

• Major \$actor! in i"enti\$yin& an

ri!4! o\$ ba!e ero!ion . ith re!

— 8 hat inco / e \$ro / !er!ice! "oe! yo,

r!ice! are "e" ,ctib'eG

in . hich the nonre!i"ent !er!ice

6 the pay / ent!G

, r co, ntry!! ta6 treatie! i / po!e on

/ !er!ice!G

tran!action!

20:

• +e!i"ent! earnin& inco / e \$

e / p*oy / ent !er!ice!

• Major ri!4 i! that ! , ch inco

territoria* !y

ta6 on . or* " . i"e

/ e, or at *ea!t en! , re

e not "e" ,ctib'e

ti / itation on \$orei&n ta6

er*y

207

- Major ri!4! o\$ ba!e ero!ion .
nonre!i"ent! earnin& inco / e
e / p*oy / ent?

tic *a . i\$ nonre!i"ent
"oye" by a nonre!i"ent . ith
e in yo , r co , ntryG
e" , ctib*e
on to . ithho*" ta6 on
p*oyer

20;

2(3a6 , n"er "o / e!tic *a . i\$ no
e / p*oyee i! e / p*oye" by a n
carryin& on b , !ine!! in yo , r

t! / ay try to
h co / / i!!ionaire
o1in& actiitie! to "i\$\$erent
actiitie! per/or / e" by

20B

=(9rtf 1 - '2(. i** pre1ent yo , r co
ta6in& nonre!i"ent e / p*oyee
nonre!i"ent e / p*oyer a1oi" !

co , ntry
oi" ha1in& a #E or \$i6e" ba!e
rti\$icia* / ean!
oi"ance r , *e! in "o / e!tic *a .
OECD E#% 9ction 7

210

4(Ee&a* re*ation! hip o\$ e / p*oy
in "epen"ent contractor

- 3hr(a) - 0 . 699702(c) - 5 . 15

2943(E)e [(%) - 1

- (Nonre!i"ent entity hire! o, t
 re!i"ent! o\$ yo, r co, ntryA the
 i! nonre!i"ent in!tea" o\$ re!i

y not be ab'e to ta6, n' or
 treaty i\$ nonre!i"ent e / p'oyer
 E or \$i6e" ba!e in yo, r

c anti?ai"oi"ance r, *e! that
 ! o\$ yo, r ta6 treatie! or
 r, *e

212

: () ee! pai" to nonre!i"ent "ire
 re / , neration o\$ nonre!i"ent
 re!i"ent co / panie!

e / , neration o\$ nonre!i"ent
 e, ctib*e a

! !ho, *" be !, bject to

, *" contain 9rtf 1: o\$ ON
 OECD Mo"e* appie! on'y to

21=

7(9 / o, nt! pai" by yo, r &o1ern
 nonre!i"ent e / p'oyee!

- 9 / o, nt! pai" re", ce &o1ern

! pai" !ho, *" be !, bject to
 re!pectie o\$. here the
 or / e"

, *" contain 9rtf 1B 'note
 not app'y to in"epen"ent

214

; (#en!ion! pai" to nonre!i"ent
 e / p'oyee!

- 9 / o, nt! pai" or prior contrib

t yo, r co, n

pay / ent! !ho, *" be !, bject

, *" contain 9rtf 1;
 ON Mo"e*

21-

[Redacted]

- %o / e entertainer! an" ath^et
! , b!tantia* a / o, nt! in a !hor
- %o* .tion? vo. r co. ntry !ho, "*"
 - a thre!ho" (\$10 /
 - !port! acti1itie! per\$or / e"
 - *" contain 9rtf 17

21:

[Redacted]

- Nonre!i"ent entertainer! an"
atte / pt to a1oi" ta6 by a! !i&!
another per!on 'ef&F, contro**
- *a . !ho, * 17 p0!e tab on
e o\$. ho recei1e! it
*" contain 9rtf 17'2(

217

[Redacted]

[Redacted]

[Redacted]

- 9 / o , nt! pai" by re!i"ent! an" r
#E or \$i6e" ba!e in yo , r co , ntry
!er1ice pro1i"er \$or !er1ice! per
yo , r co , ntry . i** be "e" , ctib*e

hho" in& ta6 or "eny
on \$ee! \$or technica* !er1ice!(
a1e !pecia* pro1i!ion! to
n& ta6
9rtic*e 129 in 0N Mo" e* on
r1ice!

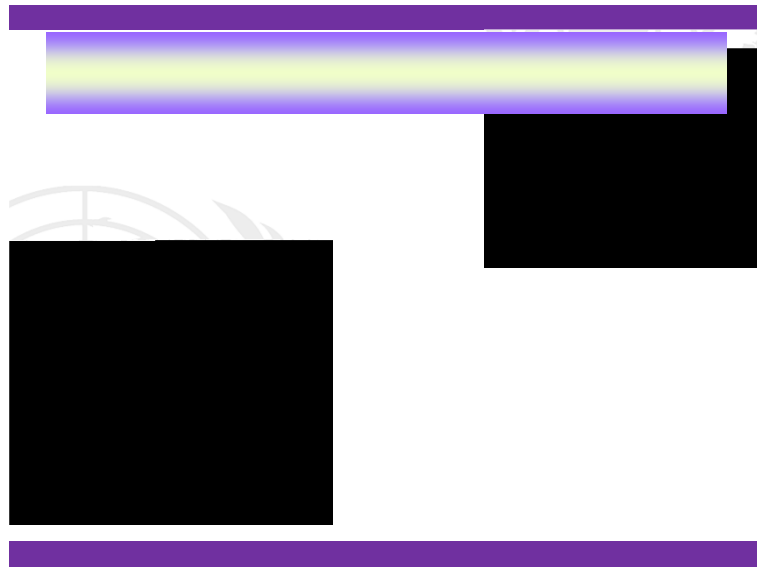
- 9rtic*e -'4(*i / ite" to acti1itie
preparatory or a ,6i*riary con!i
!eparate*y or toðer

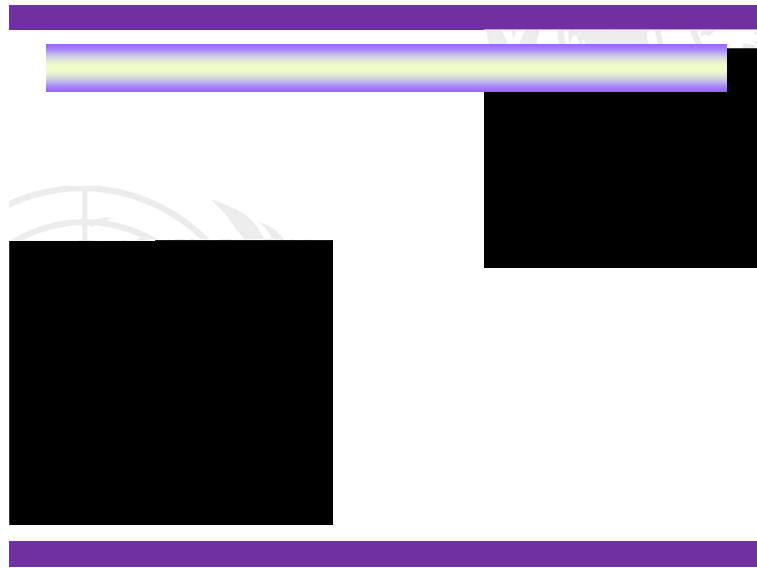
anti?ra& / e

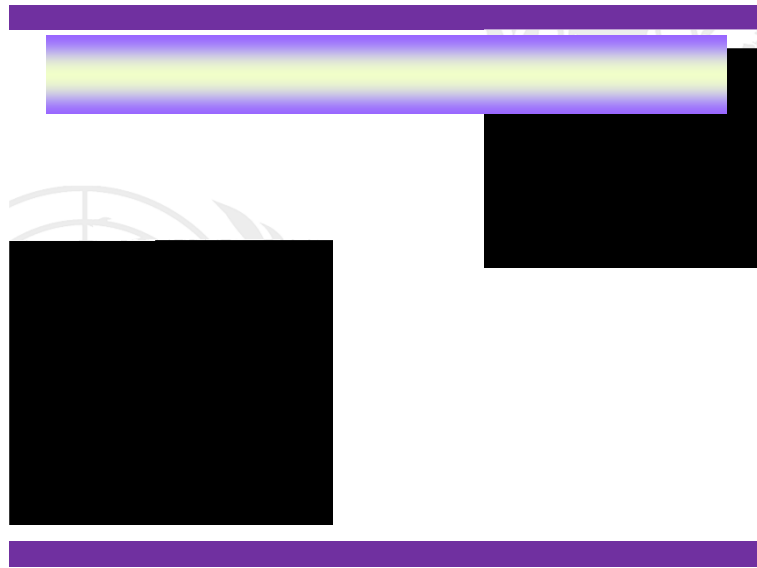
e -'4("oe! not app*y i\$
y re*ate" enterpri!e ha! a \$i6e"
#E in the co, ntry or i\$ o1era**
aratory or a ,6i*riary a! *on& a!
are co / p*e / entary \$, nction!
ne!! operation

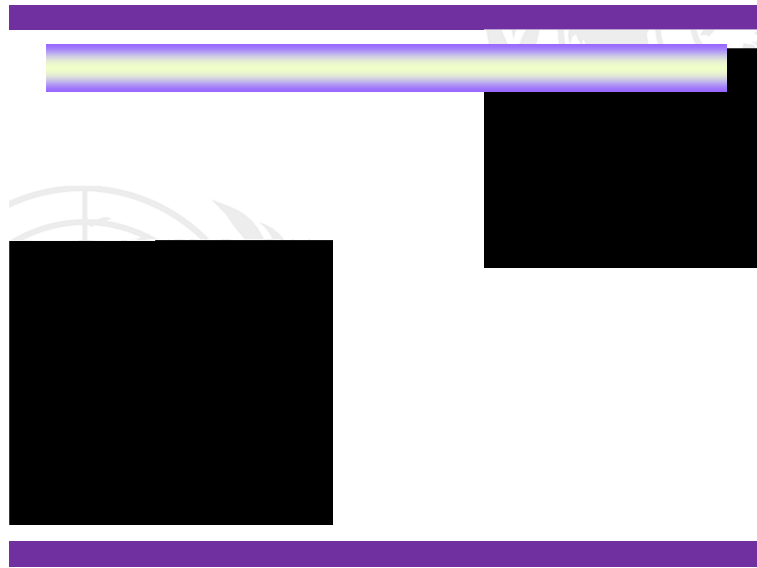
224

- +e1i!e" 9rtic*e -'-(. ith re!pect to
- 7nc*, "e! a&ent . ho habit, a*y conc*,









- +i!4! o\$ ba!e ero!ion?

1(91oi"ance o\$ thre!ho*" re> ,

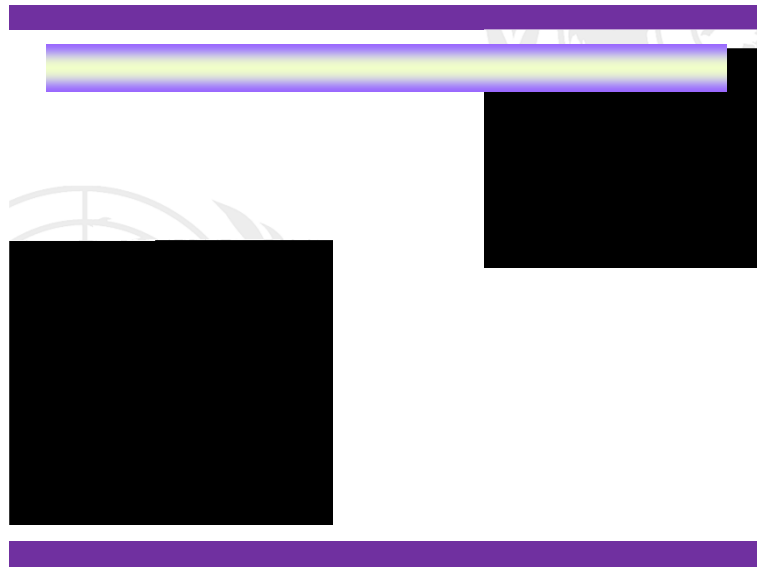
– E'i / inate or re" , ce thre!ho*" /

cti1itie! in co , ntry

pin& an" air tran!portation

ere\$ore, not , ! , a**y ! , bject to

244



• 8 hat rate of \$. ithho*"in& !ho

• Lery "i\$\$ic,*t i!! ,e

• 7n theory, . ithho*"in& ta6 i! a

not be cre"itab*e by

"i\$\$erent !er1ice!G

nce b,r"en \$or . ithho*"in&

2-2

not be cre"itab*e by

"i\$\$erent !er1ice!G

nce b,r"en \$or . ithho*"in&

[Redacted]

-F #ay / ent! to nonre!i"ent enterta

:F #ay / ent! to nonre!i"ent !hippin

tran!portation enterpri!e! \$or &oc

[Redacted] o, r co, ntry

[Redacted] !i"ent! \$or / ana&eria*, technica*

[Redacted] e!

2-:

[Redacted]

[Redacted]

[Redacted]

'1(9ny per!on not re!i"ent in 'yo

pay ta6 o\$ QQ percent o\$ the \$o**

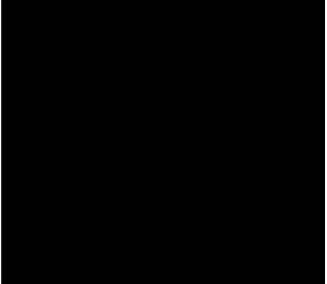
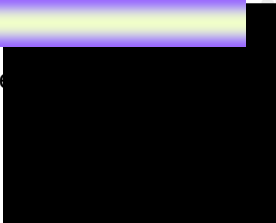
that a per!on re!i"ent in 'yo, r c

[Redacted]

) -4 . 44014(e) -4 . 4014(y)27 . 4725(!) -5 . 4944(e) -4 . 44014(n) -47022(p) -4 . 4404(e) -4



"(!a*ary, . a&e! or other re / , ne



'1(8 here one o\$ the principa* p , rpo!e
arran&e / ent i! to obtain bene\$it! , n
the pro1i!ion! o\$ an a&ree / ent bet .
an " another co , ntry \$or the e'i / inatic
ta6ation, tho!e bene\$it! !ha" be "en

- Director! \$ee! an" re / , nera
/ ana&er!



– En! , re that yo, r ta6 treatie! co

ce

a6 treatie! contain 9rtf 1B o\$ the



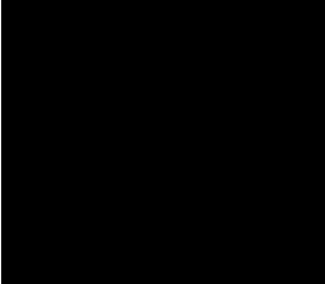
a6 treatie! contain 9rtf 1;

ne ON Mo"e*



- 7n! , rance

- En! , re yo , r treatie! contain 9n
 - Mo"e



[Redacted]

- Three / ain !o, rce!2
 - The re!"ent ta6payer
 - The ta6 a, thortie! o\$ other co, yo- r co- ntry ba! ta6 treatie! or

[Redacted]

\$orei&n re1en, e an"
 o, nt o\$ \$orei&n ta6 pai"
 re*ate"?party intere!t an"
 ta6 ret, rn or !eparate

2:0

[Redacted]

-)ie / ain !o, rce!2
 - The nonre!"ent !er1ice pro1i" intere!t
 - 9 "oer! repre!entati1e or a&ent

[Redacted]

ay / ent! to the nonre!"ent
 o\$ other co, ntrie! . ith . hich
 ta6 treatie! or 37E9!, inc", "in&
 report!
 e a, thorty , n"er "o / e!tic
 / ation

2:1

[Redacted]

- 7"enti\$ication o\$ nonre!"ent!
 \$ro / 2
 - 3a6 ret, rn!
 - Like res- ire / ent!

[Redacted]

on re>, ire / ent!
 \$payer i"enti\$ication n, / ber!
 'eF&F, entertainer! (
 t or i / po!!ib*e to i"enti\$y
 e pro1i"er!A there\$ore,
 !e . ithho*"in& ob*i&ation
 on re!"ent payer!

2:2

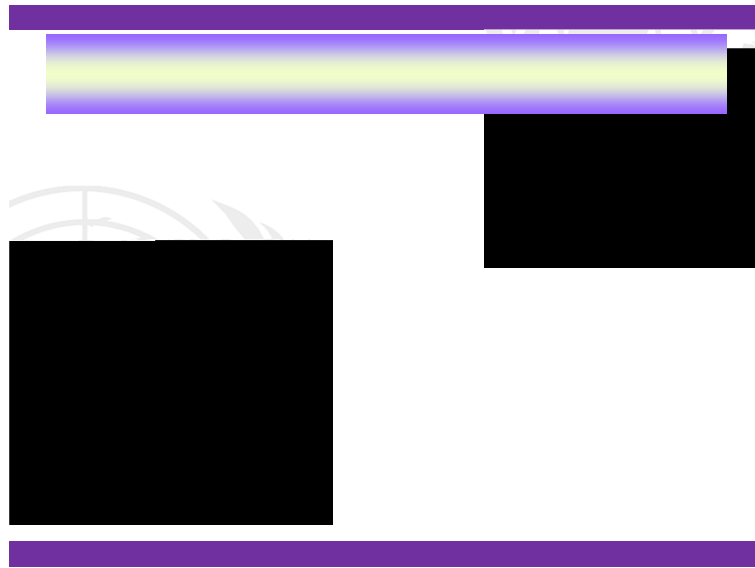
[Redacted]

- 7"enti\$ication o\$ nonre!"ent!
 intere!t2
 - 7\$ ta6ab'e on a net ba!i!, ta6 re

[Redacted]

! ba!i!, on, ! on "inno" ind
 nonre!"ent recipient!
 po!!ib*e to i"enti\$y
 ent!A there\$ore, nece!!ary
 in& or reportin& ob*i&ation

2:3



- +e>, ire" in\$or / ation inc*, "e
- N, / ber o\$ e / p*oyee!
- %tate" capita*

& b, !ine!! in co, ntry an"

*e&i!*ation – 9ction 1=
/ entation pac4a&e . ith

[Redacted]

- Co / / on !tan"ar" \$or reporting abo,t in1e!t / ent inco / e
- 9pp"ie! to in"i1i", a"! an" ent

face thro, &n tab treatre!,
 tra* Con1ention on M, t, a*

e6chan&e" in\$or / ation / , !t

2B:

[Redacted]

- 7 / p*e / entation o\$ C%+ re>, i
- 9pp"icab'e treaty to a**o . e6cha

De / e!t i n e, thori<in& e6cha

ty a&ree / ent to operationa"i<e

Mo"e* Co / petent 9, thoriy
 ntrie! to , !e

2B7

[Redacted]

- 9!! , / e! that co, ntry ta6e! a
- !er1ice! an" intere!t "eri1e"
- 'i\$ co, ntry "oe!n!t ta6, a, "it i
- nece!!ary(

er1ication techniz, 0: that

ent o\$ ri!4! o\$

" a**ocation o\$ en\$orce / ent

e!t ri!4!

en" on co / p'e6ity o\$

e!tic *a . . ith re!pect to

er1ice! an" intere!t

2B:

[Redacted]

- 9, "it an" 1er1ication o\$ re!i"
- inco / e \$ro / \$orei&n !er1ice!
- inter!t i! the !a / e a! \$or re
- \$orei&n !o, rce inco / e &enera

on o\$ re!i" ent! inc, rrin&

o earn \$orei&n !o, rce

!line!! inco / e or

a* a, "it i!! , e

2B8

- 9, "it an" 1erisication o\$ nonre
on a net ba!i!
- 0! ,a**y acti1itie! can \$oc, ! o

[Redacted]

- Deter / ination o\$ treaty re!"e
- 7! nonre!"ent !er1ice pro1i"e

interet a re!"ent o\$ a co , ntr

ta6 treaty

r / ine" , n"er 9rtf 4 o\$ the

reference to the *a . o\$ the

ence \$ro / ta6 a , thortie! o\$

=04

[Redacted]

- Certi\$icate! / ay a*!o be re> ,

Jbene\$icia* o . nerK re> , ire / er

129

e \$or / a*!e

!e o\$ \$or / !

i\$ certi\$icate i! re> , ire" \$or

nonre!"ent

=0-

[Redacted]

- Can . ithho*"in& a&ent! re*y c

a" "re!! or "o they ha1e to ob

certi\$icateG

More efficient treaty on a" "re!

ab, !e

are *i4e*y to . ithho*" hi&her

"o / e!tic *a . i\$ re!"ence

!ary

! / ay ha1e *i / itation?on?

y !hoppin&(pro1i!ion!

=0:

[Redacted]

- D, a* re!"ence !it, ation!
- 9rtf 4 pro1i"e! tie?brea4er r, *

re!"ence to one co , ntry

er r, *e in 9rtf 4 =(

y re!o*1e " , a* re!"ence

* a&ree / ent proce" , re

ie! o\$ten , !e" \$or ta6

e!

=07



