



Analysis of the tax treatment of rents and royalties under domestic law

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(Session ')

Capacity Building Unit
Financing for Development Office
Department of Economic and Social Affairs

<http://www.un.org/esa/ffd/>

Overview

- Introduction and basic concepts
- Taxation of residents and non-residents and royalty income
- Transfer pricing issues related to rents and

...ing rent and royalty income

Introduction and basic concepts

- Provides a framework to identify all the circumstances in which payments of rent and royalties are subject to a country's tax base
- Identifies the business of the risks of base erosion and the circumstances in which such base erosion may occur
- Provides responses that might be available to prevent such base erosion

Risks of cross-border base erosion and transfer pricing issues of deductible payments of rent and royalties

*ayer	+ecipient	+is,
\$esident	%on-resident	&' Income of resident payer is subject to preferential taxation
		2' \$ent or royalties are exempt from or sub(ect to reduced wit olding tax
		3' \$ent or royalties are exempt from or sub(ect to reduced wit olding tax
	\$elated non-resident	&' \$ent or royalty payments are excessive) transfer pricing issues

Risks of cross-border base erosion as a result of deductible payments of rent a

*ayer	+ecipient	+is,
%on-resident carrying on business in residence country	\$esident	&¹ Income of non-resident payer is subject to preferential taxation
	\$elated resident	&¹ \$ent or royalty payments are excessive) transfer pricing issues
	%on-resident	&¹ Income of non-resident payer is subject to preferential taxation
		2¹ Payments of rent or royalties are exempt from or subject to reduced wit olding tax
	3¹ Income of non-resident is subject to preferential taxation and rent or royalties are exempt from or subject to reduced wit olding tax	
	#¹ Payments of rent or royalties are excessive) transfer pricing issues	

+is, s of \$ase erosion with respect to the costs of research and development when transferred to a non-reside

ransferor	ransferee	+is,
\$esident	, rmls lengt non-resident	- ain on t e transfer is exempt or subject to preferential tax
\$esident	\$elated non-resident	. ale price is less t an t e fair market value of t e property
%on-resident	, rmls lengt non-resident	- ain on t e transfer is exempt or subject to preferential tax
%on-resident	\$elated non-resident	. ale price is less t an t e fair market value of t e property

Basic concepts

- The concept of rent
 - 9 Rent from immovable property
 - 9 Rent from movable property
- The concept of royalties

royalties

royalties with respect to

industrial; commercial and scientific

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Basic concepts

- - geographical source of rent and royalties
 - 9 Rent and royalty payments related to immovable property) usually where the property is located
 - 9 Two typical rules for rent and royalty payments for the use of movable property)

property is used

of the payer

and royalties to income

allocate rent and royalty expenses to

activities; activities taxable at ordinary

and at reduced or preferential rates

and tracing and apportionment

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Basic concepts

- Payments of rent and royalties to persons
- Payments for the use and exploration of natural resources

agreements

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Taxation of residents and non-residents on rent and royalty income

- Deduction of rent and royalty expenses from a country's tax base without an additional tax on the recipient typically arises

9 , non-resident carries on business through a fixed base or P" and rent and royalty expenses are

allocating the profits attributable to the

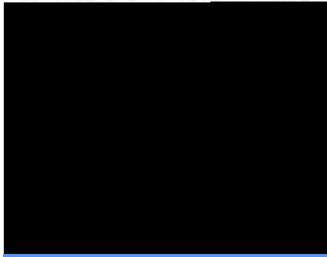
recipient receives rent and royalties from a

payer who deducts the payments

from its tax base whether or not the non-

&2

%on-residents with a permanent
establishment or fixed base



Transfer pricing issues related to rents and royalties

- Payments of rent or royalties to related persons)

9 Rent and royalties may not be paid to a non-resident as provided the use of property to a non-resident

Payment may be lower than the price a willing to pay insufficient payment

The country applies a patent box benefiting from that regime may be

" group may be allocated to the are higher

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Transfer pricing issues related to rents and royalties

- Two cases that are especially pertinent

9 Payments for the use of property or intangible property that has been

payer and is transferred to a non-resident related company that leases the property back to the payer

payments and contributions to SDE national enterprises

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Information concerning rent and royalty income and payments

The following information ideally

5.49a(o) - 4.44014(\ r)49a(o) - 4.44014(g(a) - 4.44014(l.4 10070 r)414(g(a) - 4.44014(l.4 1.440

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