

**Conference**  
**Mumbai December 2013**  
**Taxation of Services: OECD v/s UN Model**

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# Services

- **Cross-border trade in services now exceeds trade in goods**
- **Wide variety of domestic law tax treatments of income from services**
  - **No consistent approach to classification, source, nexus or method of taxation**
- **Different treaty approaches to source taxation of income from services**

# Services - domestic law

- **Source of services income under domestic law**
  - **Source where services physically performed**
  - **But also may be source where**
    - activities carried on through PE
    - services 'used' in the jurisdiction
    - contract made in the jurisdiction
    - services paid for by resident or PE
    - deduction allowed in jurisdiction

# Services – classification issues

- **‘Services’ not defined in treaties**
- **OECD Commentary on Article 12 distinguishes between services and royalties**
  - **Some countries have broader interpretation of royalties, especially supply of know-how**

# Services – Treaty nexus

3 main approaches:

1. **No special rules - Article 7 applies (OECD Model approach)**
  - treated as business profits, fixed place of business threshold
  - net taxation of attributable profits

# Services – Treaty nexus

3 main approaches:

2. Additional time threshold - Article 7 or Article 14 applies (UN Model approach)

- deemed Service PE, net taxation of attributable profit
- Art 14 - fixed base or >183 days

# Services – Treaty nexus

3 main approaches:

3. Withholding tax - Article 12 or separate article applies (royalty approach)

- usually only applies to income from technical services or technical assistance
- interpretation 'supply of know-how', or extensions to royalties definition, or separate article
- source rule based on residence of payer or place where PE is situated

# Services – UN Model – Art. 5(3)(b)

- UN Model services PE clause creates a deemed PE if services are rendered beyond a certain time limit
  - “The furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only if activities of that nature continue (for the same or a connected project) within the country for a period or periods aggregating more than 183 days in any 12-month period commencing or ending in the fiscal year concerned.”*
- The territorial requirement depends on the interpretation of the term “activities ... within”
- Same or connected project requirement

# Services – UN work

- **The Committee of Experts on International Cooperation in Tax Matters**
- **Work on the 2011 UN Model update**
- **The Subcommittee on Article 5 - Permanent Establishments**
- **Deletion of Article 14?**

# Services – UN work

- The discussion on scope of Article 14
- Paragraph 9 of the Commentaries to article 14:  
*“Payments to an enterprise in respect of the furnishing by that enterprise of the activities of employees or other personnel are subject to Articles 5 and 7.”*

# Services – UN work

- **New paragraph 11 of the Commentaries to article 14**

***“Some countries interpret Article 14 differently from the interpretation delineated in paragraphs 9 and 10 above. These countries may, therefore, wish to clarify their positions and agree on these aspects bilaterally, if not already dealt with.”***

# Services – UN work

- US Tax Treaty Model (1996):

## Article 14

***1. Income derived by an individual who is a resident of a Contracting State in respect of the performance of personal services of an independent character shall be taxable only in that State.***

# Services – UN work

- Further work by the UN Committee (paragraph 17 of the Introduction)
- *“... The Committee also identified treaty policy issues that require further work and it mandated one Subcommittee to address the issues of the taxation treatment of services in general and in a broad way including all related aspects and issues. Furthermore, the issue of taxation of fees for technical services should also be addressed. .... The work programme of the Committee, including that on services, will be made available as it develops on the Committee s website.”*

# **Services – UN work**

**UN paper by Secretariat: E/C.18/2013/CRP.17**

**Study of the treatment of services approved by committee of experts in 2009**

**Note prepared for October 2012 meeting - 9 options for dealing with technical services**

**Selected: Addition of a new Article dealing with technical services**

# Services – UN work

## Ninth Committee meeting Oct 2013 - new members

- Prof Brian Arnold paper: E/C.18/2013/CRP.5
- Tizhong Liao paper: E/C.18/2013/CRP.16

**Mandate:** The Subcommittee is mandated to address the issue of the taxation treatment of services in general in a broad way.

The particular issue of taxation of fees for technical services will be addressed by presenting wording, including different options, for the text of the Article on Technical Services at the tenth annual session.

Recognizing the extensive work that is required, the Subcommittee will report at the tenth and subsequent annual sessions.

**THANK YOU  
MUCHAS GRACIAS**

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