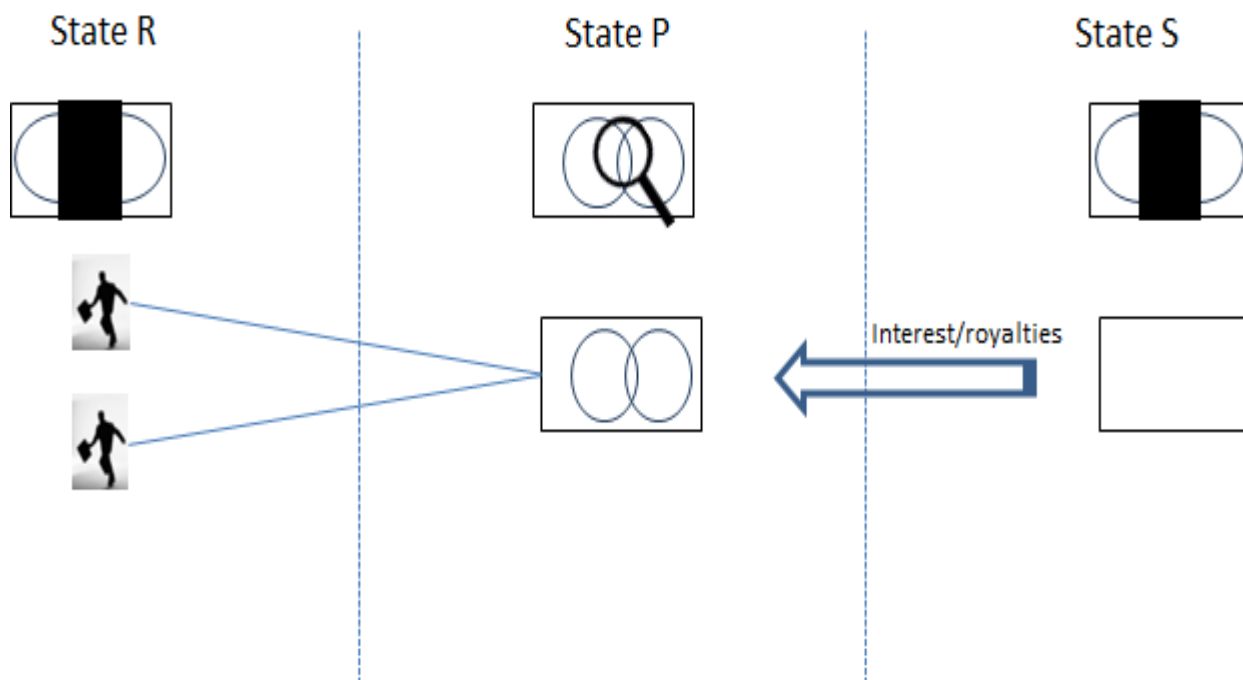


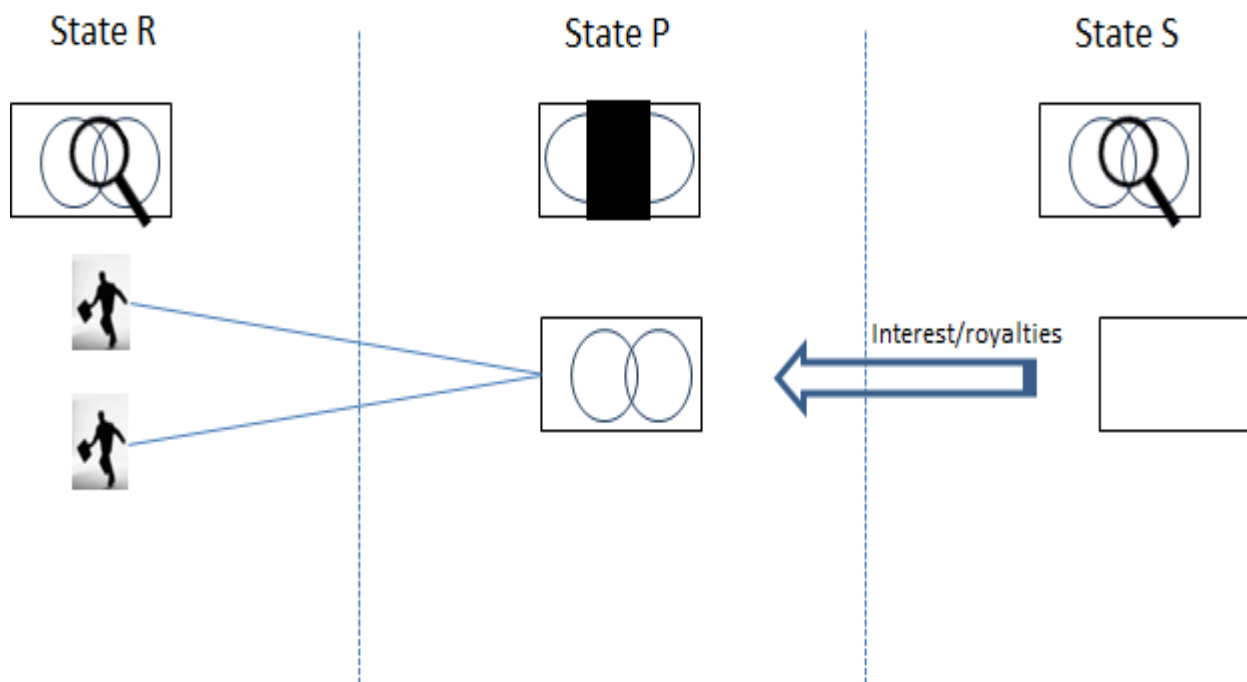
Tax Treaty Rules for Hybrid Mismatches (Art 1 par 2 OECD Model Convention)

Michael Lang

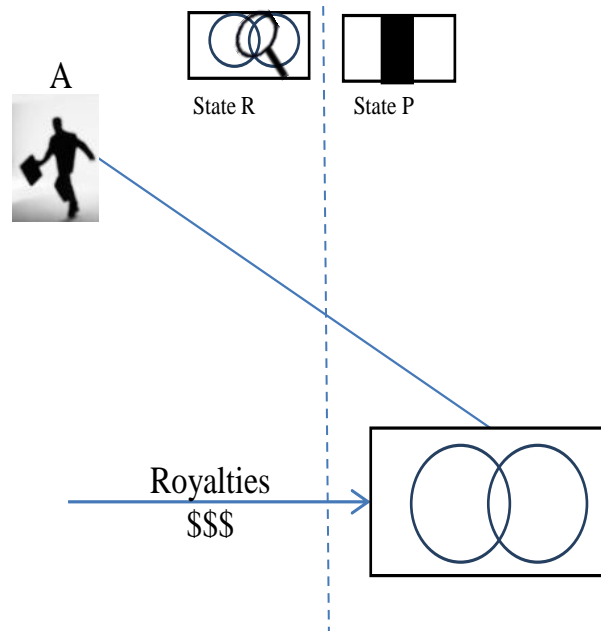
Allocation Conflicts I



Allocation Conflicts II



Allocation Conflicts III



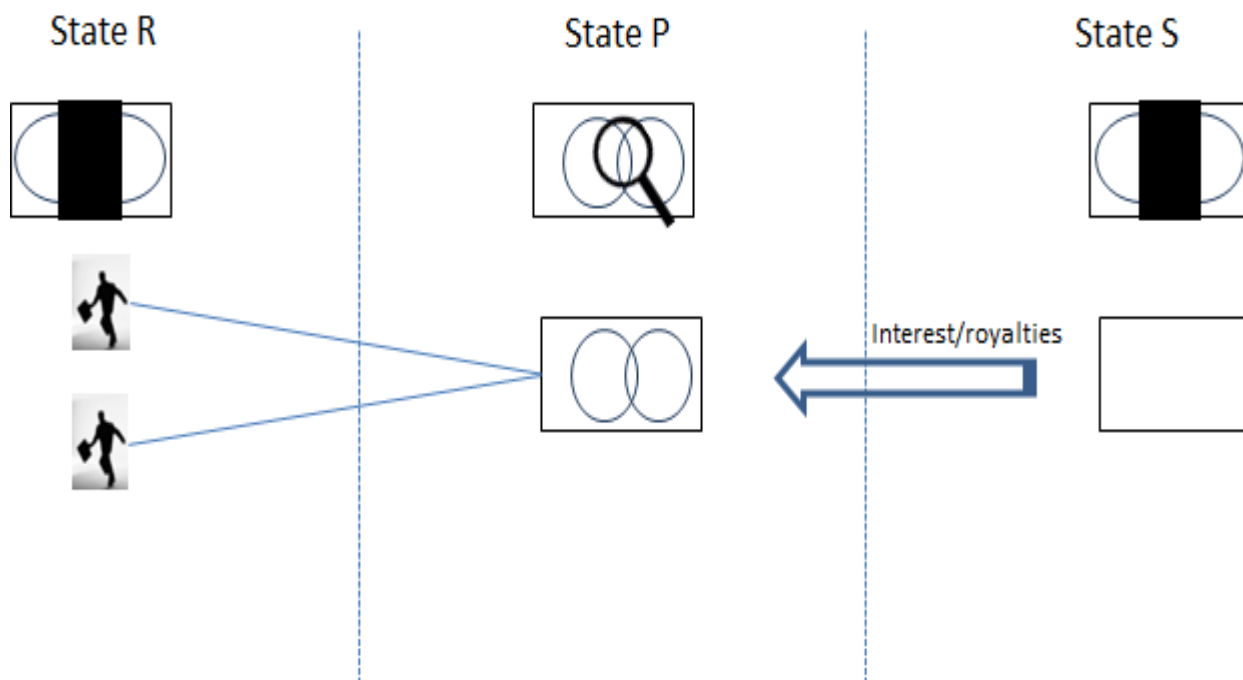
NEW ART 1 PAR 2 OECD-MA

Art 1 par 2 OECD MC: „For the purposes of this Convention, income derived by or through an entity or arrangement that is treated as wholly or partly fiscally transparent under the tax law of either Contracting State shall be considered to be income of a resident of a Contracting State but only to the extent that the income is treated, for purposes of taxation by that State, as the income of a resident of that State.

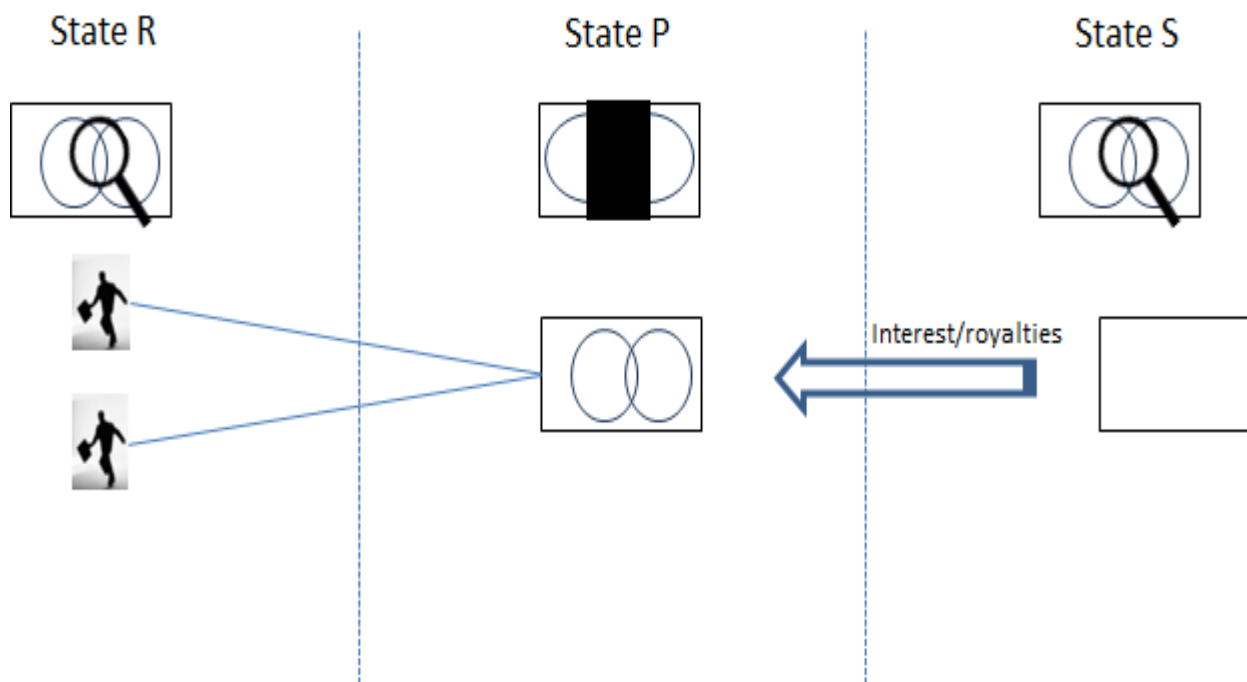
Art 1 Abs 2 OECD-MC: Requirements

- **income**
- **derived by or through an entity or arrangement**
- **that is treated as wholly or partly fiscally transparent under the tax law of either Contracting State**
- **shall be considered to be income of a resident of a Contracting State but only to the extent that the income is treated, for purposes of taxation by that State, as the income of a resident of that State.**

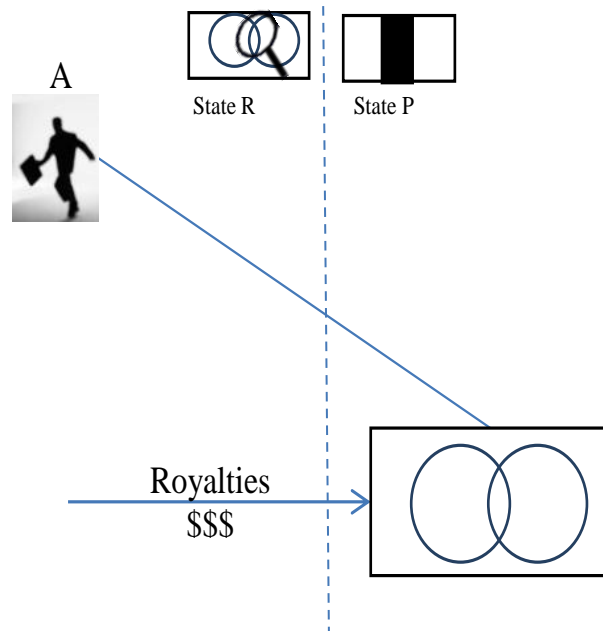
Allocation Conflicts I



Allocation Conflicts II



Allocation Conflicts III



Analysis of Art 1 par 2 OECD-MC

- ❖ **Income**
- ❖ **Scope goes beyond partnerships**
 - Trusts
 - Investmentfunds
 - ...
- ❖ **Argumentum e contrario**

- ❖ **Legal Basis for Partnership Report Approach**
- ❖ **Interpretation Problems**
- ❖ **Convincing Policy? (Source versus Residence state)**