



المديرية العامة للضرائب
GENERAL ADMINISTRATION OF TAXES



Taxation of Services

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June 4, 2014

New York



Outline

- Importance of services in the economy
- Definition of services under domestic law
- Source and nexus
- Taxation of income from services under domestic law
- Taxation of services under Morocco tax treaties draft
- Issues



The importance of services in the economy

- Services represented 49 % of GDP in 2007 and 52% in 2012.
- Import of services:
2007: 7.52% of GDP
2012: 8.40% of GDP ↑
- Export of services:
2007: 15% of GDP
2012: 13.9% of GDP ↓



Definition of services under domestic law

- No definition of “services” for income tax purpose.
- However, not relevant as income from services is treated in the same way as other business income.
- No specific tax treatment for technical services.



Definition of services under domestic Law

- Generally admitted “services” would encompass a broad range of activities such as :
 - providing assistance or advice, construction activities, performing as an entertainer or providing air or sea transport;
 - Providing financial support...



Source and nexus

- Morocco will tax any services income sourced in its jurisdiction.
- No threshold under domestic law.
- Sourced in Morocco means:
 - services physically performed in Morocco,
 - activities are carried through a PE situated in Morocco,
 - services are “used “ in Morocco irrespective of whether the services are actually performed in Morocco,
 - the payer is a resident of Morocco or a PE situated in Morocco.



Taxation of income from **outbound** services under domestic law

- Taxed as ordinary income for:
 - companies (30 % tax rate) and,
 - individuals (progressive rate, with top rate of 38%).
- However for companies, if services rendered are effectively connected to a PE of the Moroccan company in the other jurisdiction, Morocco cannot tax because it applies a territorial taxation for active income to companies.



Taxation of income from **inbound** services under domestic law

- These services are subject to a withholding tax applied on a gross basis at the rate of 10%.
- However, if services connected to a branch established in Morocco → taxed as ordinary income (30%) on the net basis.
- No special rate for technical services fees or other services such as management or consulting services rendered by non-resident enterprises → same tax treatment as general services.



Taxation of services under Morocco draft for tax treaties negotiation

- PE supervisory activities in connection with construction, assembly or installation projects → generally a 6-month threshold
- Art 5(3) of the UN MC deemed service PE: furnishing of services through employees or other personnel → 3-month threshold



Taxation of services under Morocco draft for tax treaties negotiation

- Specific deeming rules for natural resource activities:

“ The term permanent establishment also encompass an enterprise which provides in a Contracting State service, facilities or plant and machinery on hire used for the prospecting for, extraction or exploration of oil and natural resources.” →No threshold.



Taxation of services under Morocco draft for tax treaties negotiation

- Art 5(6) of the UN MC → deemed PE for insurance enterprises
- Art 14 of the UN MC (independent personal services)
- Art 16 of the UN MC (Directors' fees and remuneration of top-level management officials)



Taxation of services under Morocco draft for tax treaties negotiation

- Income from services generally taxed on a net basis except when the DTA provides otherwise.
- For instance, it is the case for technical services as they are frequently included in the definition of royalties → limited taxation on a gross basis (generally 10%).



The “royalties” article

- the most discussed article during DTA negotiations
- includes among others:
 - Payments for the leasing of equipment,
 - Payments for information concerning industrial, commercial or scientific experience,
 - Technical assistance and the furnishing of services and personnel.



The “royalties” article

- However, if the technical service fee is effectively connected with a PE or a fixed base in the source state then, Art 7 (+ limited force of attraction when available) or 14 will apply → taxation on a net basis.



Concerns

- Erosion of domestic tax bases in Morocco:
 - payments by non residents for **management, consulting and technical services are deductible** in Morocco, but
 - are not always subject to withholding tax under the treaty.



Issues

- Limited force of attraction and deemed PE clause are not always relevant because of the lack of information gathering resources,
- Not easy to negotiate a tax treaty that includes gross taxation for services.



Issues

- The flow of services is generally not equal between Morocco and the treaty partner → Loss of tax revenues for Morocco.
- How could developing countries protect their tax base?



Issues

- Double non taxation. Service rendered by a PE of a Moroccan company may not be taxed at all → because of territoriality principle in Morocco and the treaty that limits the other contracting state to tax below a certain threshold.



Opportunities for the erosion of the tax base

- Taxpayers may structure their business in Morocco in a way to elude taxes
 - services rendered for connected projects by the same non resident at different locations to avoid having a PE.
 - tax administration does not have adequate information gathering resource to discover the facts.



Opportunities for the erosion of the tax base

- Contracts between the Moroccan client and the non resident service provider may be concluded in a way to avoid taxation in Morocco

→ services not mentioned separately in the contract but added to the total price of the imported goods.

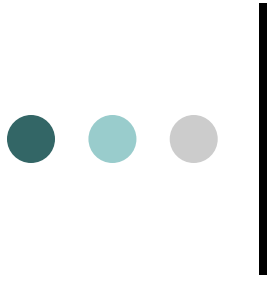
- Resident providers using related enterprises to carry out connected projects to avoid having a PE in Morocco

→ discovered after auditing the Moroccan client, but often too late to tax the non resident service provider.



Conclusion

- It is difficult for developing countries to counteract these types of tax planning.
- The BEPS action plan needs to address these issues.



THANK YOU !