

UN Capacity Building on Tax Treaty Administration Investment Income and capital gains

Jan J.P. de Goede

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Scope of paper on these types of income?

- Many aspects (treaty and domestic legal framework, compliance, administrative capabilities and procedures, information, avoidance, specific cases) ;
- Dividends, interest, royalties, compared to income from immovable property and capital gains;
- Importance to get better picture of scope and focus on the basis of needs expressed;
- Some maybe relevant points of interest:

Legal framework cross border income

- Aim of the treaty articles (specific allocation of taxing rights to avoid double taxation via restriction/ relief)
- Treaty definition of the types of income covered (notions of dividends, interest, royalties, immovable property and capital gains)
- Scope of the taxing rights under domestic law regarding such items of income (can these be taxed at all, or broader scope?)

Legal framework cross border income (2)

- Way of levying taxes on such income:
 - by assessment (does the non-resident know, does one file, burden of filing, entitlement to deductions, administrative capabilities to discover and handle, timing tax revenue);
 - by withholding (is there a cash flow, who will be assigned to withhold, on gross income, better compliance, quick revenue)
- Differences between types of income

Legal framework cross border income (3)

- Entitlement to benefits and burden of proof (residence, beneficial ownership, general anti-abuse approaches; also specific anti-abuse not included in the text of the model, LOB?)
- Enforcement via penalties, additional assessments, liability for the tax in case of failure withholding agent;
- Litigation, mutual agreement procedures to clarify or solve problems

Aspects of implementation

- Administrative procedures (mutual agreement or domestic based);
- WHT: reduction at source or refund (various pros and cons of each);
- Requirements in applications (residence, beneficial ownership etc.);
- Burden of proof/ certification of residence etc.;
- Administrative format (paper, electronic);
- Use of Intermediaries.

Information/ auditing. Specific cases

- Which information to be provided by taxpayers, withholding agents, other contracting state?
- How to check, verify, especially if payor and recipient are non-resident (like especially in case of immovable property and sale of shares)?
- Mutual assistance (art 26,27), FATCA?
- Specific cases: hybrid entities, exempt pension funds/charities, investment funds?



Thank you.

j.degoede@ibfd.org