**Questionnaire**

**COMPLIANCE ISSUES IN REGARD TO PARAGRAPH 4 OF ARTICLE 13 OF THE U.N. MODEL DOUBLE TAXATION CONVENTION BETWEEN**

**DEVELOPED AND DEVELOPING COUNTRIES**

***COUNTRY PRACTICES***

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| --- | --- |
| **United Nations Model Double Taxation Convention between Developed and Developing Countries** | **OECD Model Tax Convention on Income and Capital** |
| Article 13, paragraph 4:  4. Gains from the alienation of shares of the capital stock of a company, or of an interest in a partnership, trust or estate, the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State.  In particular:  (*a*) Nothing contained in this paragraph shall apply to a company, partnership, trust or estate, other than a company, partnership, trust or estate engaged in the business of management of immovable properties, the property of which consists directly or indirectly principally of immovable property used by such company, partnership, trust or estate in its business activities.  (*b*) For the purposes of this paragraph, “principally” in relation to ownership of immovable property means the value of such immovable property exceeding 50 per cent of the aggregate value of all assets owned by the company, partnership, trust or estate. | Article 13, paragraph 4:  4. Gains derived by a resident of a Contracting State from the alienation of shares deriving more than 50 per cent of their value directly or indirectly from immovable property situated in the other Contracting State may be taxed in that other State. |

**1. Taxpayer issues**

a) How does a taxpayer in your tax jurisdiction who alienates shares know that the property of the company, partnership, trust etc. whose shares have been alienated consists principally of ‘immovable property’ situated in a particular country and discharge his or her tax obligations to that country?

Click here to enter text.

b) The balance sheets of entities are on a particular date and reflect the position of assets on that date while the alienation can be on a date which falls between the two balance sheets dates. How does the taxpayer know that the property of the company, partnership, trust etc. consists principally of ‘immovable property’ situated in a particular country on the date of alienation of shares?

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c) Is the location of immovable properties disclosed in the balance sheets of companies, partnerships, trusts, etc. available in the public domain in your country? In case the same is not available, where would the taxpayer access information to determine his or her tax obligations?

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d) How does the taxpayer determine the relevant tax obligations in the situation when he or she transacts in shares based on price movement of scrip in a stock exchange and makes no analysis of the financials of the concerned entity?

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**2. Tax Administration issues**

a) The phrase ‘immovable property’ used in this paragraph has not been defined. Paragraph 1 of Article 13 also uses this phrase but makes an explicit reference to Article 6 and therefore the definition of ‘immovable property’ in Article 6 travels to paragraph 1 of Article 13. However, in paragraph 4 there is no reference to Article 6. This omission inspires the view that in the absence of a definition of ‘immovable property’ in Article 3, this phrase will have to take its meaning from the domestic law. How is ‘immovable property’ defined in your country?

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b) “Principally” in relation to ownership of ‘immovable property’ has been defined to mean the value of such ‘immovable property’ exceeding 50% of the aggregate value of all assets.

i. What is the date taken by your tax administration for determining such value?

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ii. Is the value taken by your tax administration the book value, cost or fair market value?

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iii. Which are the assets to be reckoned, i.e. whether all assets as per books or even the assets not in the books such as goodwill and other intangible property etc.?

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c) In a case where the ‘immovable property’ is situated in your country and the company is a resident of the other country and the share transaction takes place between the residents of the other country, your tax administration may not have access to information regarding such transactions to assert the taxation right, because the company whose shares are alienated is not in your territory. How does your tax administration tackle such a situation?

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d) Tax administrations may or may not know of abusive escape from the ambit of legislation/ the treaty provision, particularly by shareholders with controlling interest as the company can borrow short term to make the value of ‘immovable property’ at the relevant time less than 50%. What are the safeguards in your law to tackle such an abusive situation?

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**3. Interests covered**

Do your country’s legislation and treaty provisions cover alienations of shares in companies only, or do they extend to other interests such as in partnerships or trusts?

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**4. Other Comments**

Do you have any other comments on country practice in this area?

Click here to enter text.

Country practice referred to: Click here to enter text.

Your name (optional): Click here to enter text.

Email for follow up (optional): Click here to enter text.

Your assistance in evaluating country practice in this area is appreciated. The information will be used in evaluating country practice in this area, but specific contributors will not be identified.

*Please send completed questionnaires to:* [*pragya.saksena@gmail.com*](mailto:pragya.saksena@gmail.com) *cc’d to* [*lennard@un.org*](mailto:lennard@un.org)***by Friday, 4 July 2014.***