



Administration of tax treaties with respect to investment income

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Agenda

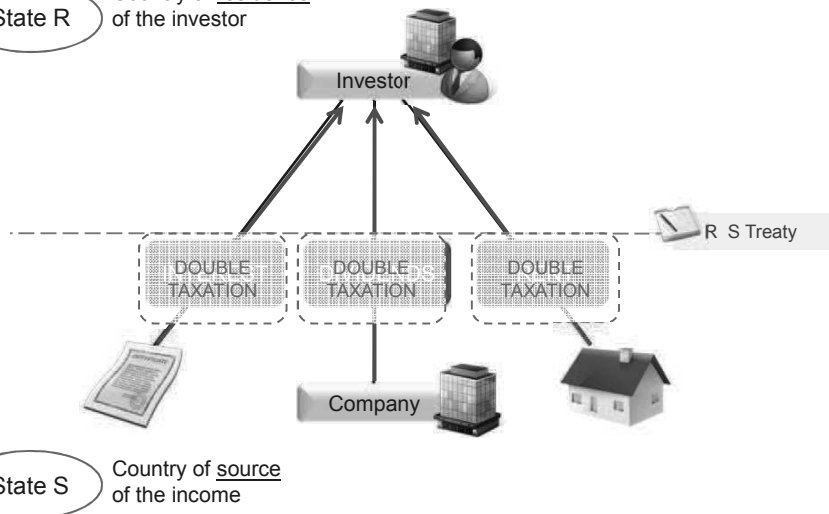
- ▶ **Procedures in the source state**
- ▶ **Tax collection under domestic laws?**
 - ▶ Withholding tax
 - ▶ Taxation by assessment
- ▶ **Application of tax treaties to non-residents – steps**
- ▶ **Dividends, Interest and Royalties**
 - ▶ System of direct reduction of WHT at source
 - ▶ System of refund
 - ▶ Certificate of residence
 - ▶ Beneficial owner
- ▶ **Income from immovable property**



Investment Income

State R

Country of residence
of the investor



State S

Country of source
of the income



Application of tax treaties

Treaties?

- Silent
- Except for Articles on Dividends, Interest and Royalties

“the competent authorities shall by MA settle the mode of application”

- Commentaries: source countries are free to apply domestic law
- Do countries make such mutual agreements?
- Generally accepted standardized approaches?
 - TRACE
 - FATCA



Application of tax treaties: general considerations



Legal framework

Tax treaty: binding force in legal system

Publicly available

Legal basis for implementing decrees regulations, etc. about :

- modalities of granting treaty benefits
- statutory time limits to apply for them
- competent authorities and tax administration officials/units

Tax administration

Legal power to acquire information and to enforce

Taxpayer: administrative burden; time issue; appeal

Tax administration structure for tax treaty application:

- Local offices
- Centralized unit



Investment Income

State R

Country of residence of the investor

Investor

DOUBLE TAXATION

DOUBLE TAXATION

DOUBLE TAXATION

R S Treaty

Company

State S

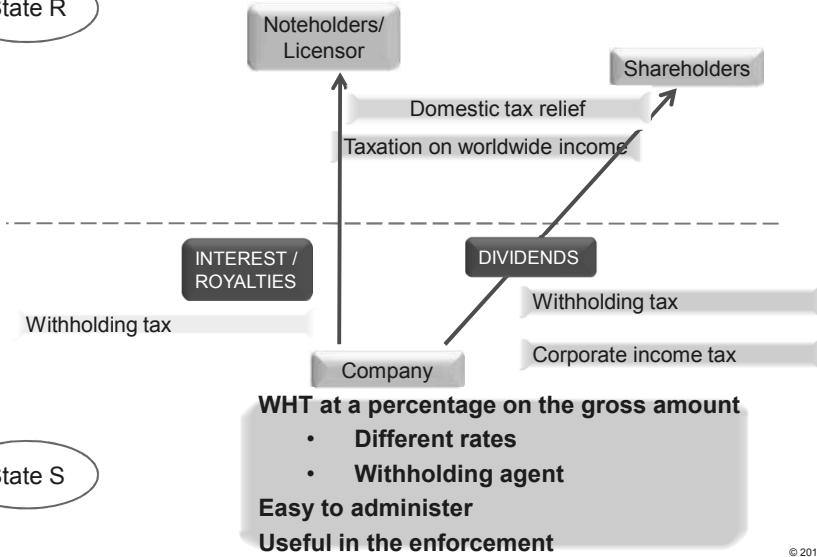
Country of source of the income

Ways of levying taxes under domestic law ?



Domestic law: Withholding tax

State R

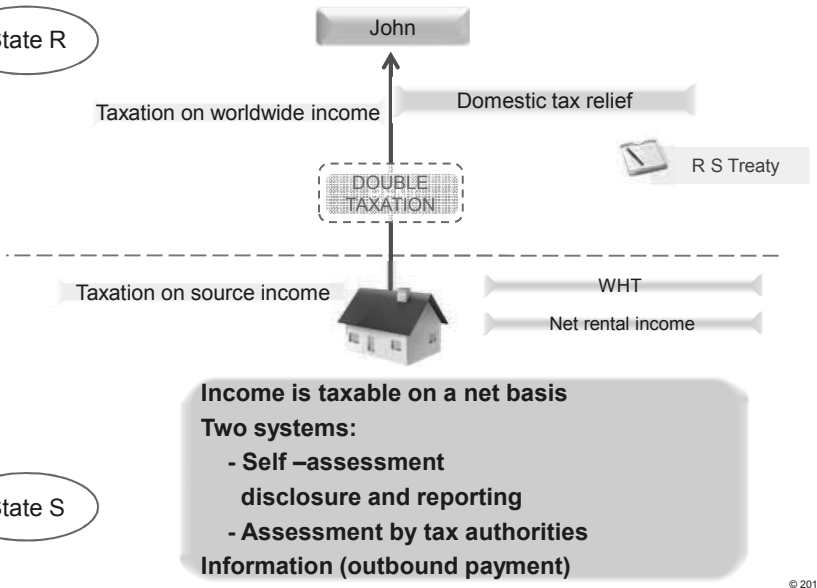


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Domestic law: Taxation by assessment

State R



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Application of tax treaties to non-residents

► Aspects of importance

- Allocation of taxing rights for each type of income
 - Selection of the allocation rule
 - Relevance of the “definition”

- Who is allowed to claim the treaty benefits?

- How the treaty is properly applied?
 - Reduction at source
 - Relief at the residence

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Steps for application of tax treaties

State R

Relief of tax levied at source

Enterprise Inc.

1.- Identify the recipient
Taxpayers ID numbers?

2.- Residence of recipient
Certification?

4.- Beneficial owner
Sworn statement?

3.- Income categorization
and tax determination

DIVIDENDS

INTEREST

ROYALTIES

Art. 10

Art. 11

Art. 12

State S

5% or 15% on gross payment

...% on gross payment

No taxation
...% on gross amount

Participation threshold

Reduced rates
Exemptions

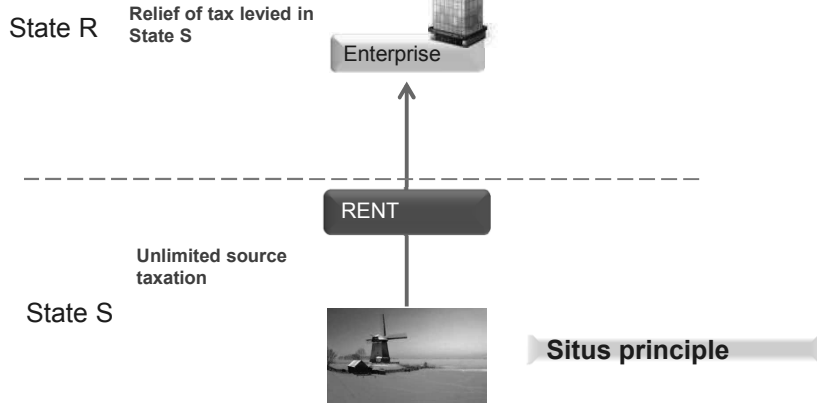
5.- Tax collection method

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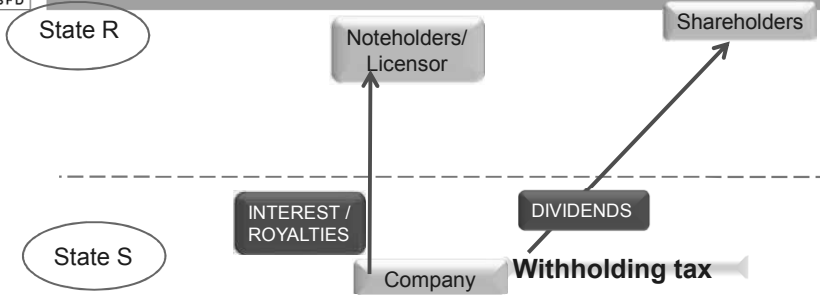
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Steps for application of tax treaties



Application of tax treaties: dividends, interest and royalties



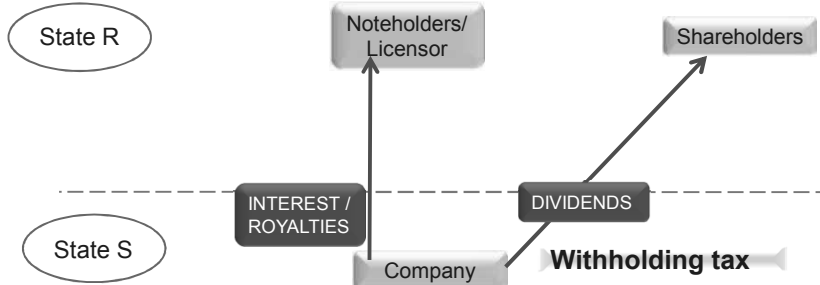
System of refund:

- Tax is withheld under domestic law rates
- Non-resident beneficial owner files a request for refund
- Financial intermediaries
- Form (paper and/or electronic)

For State (keeps money) For Taxpayer (less favourable)



Application of tax treaties: dividends, interest and royalties



Reduction at source method (complemented by refund):

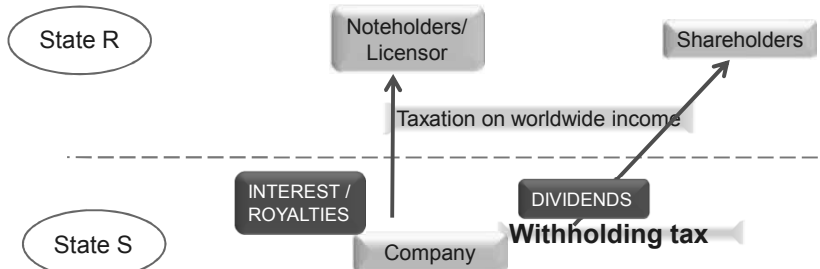
- Tax is withheld under treaty rates
- Form (paper and/or electronic) to submit by taxpayer
- Decision by tax authority to WHT agent to apply treaty rate
- Alternative is that decision is made by WHT agent
- For State (faster / audit) For Taxpayer (attractive)

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Application of tax treaties: residence certificate



Resident of State R = Certificate from tax authorities of State R

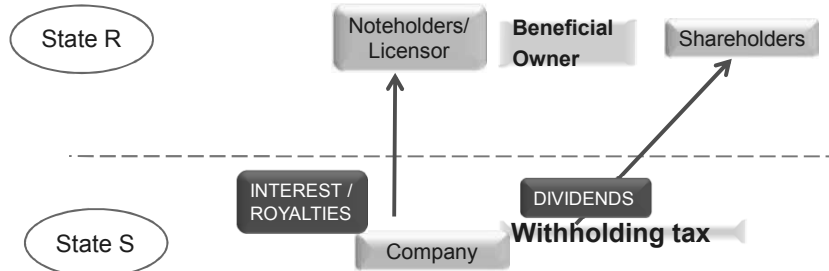
- widespread and sometimes formalized by MAP
- (1) taxpayer to provide it to WHT agent or to tax authorities of State S
- (2) sent directly to the tax authorities of State S
- annual requirement or certificate for each transaction
- potential delay / amount of information / additional certification
- alternative: reduction of WHT based on the address: abuse?

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Application of tax treaties: Beneficial Ownership Requirement



Resident of State R = Beneficial Owner

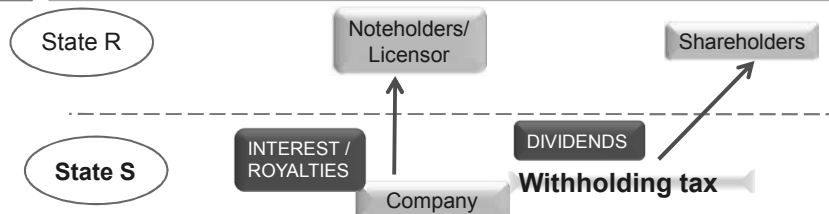
- problem of meaning (domestic law initiatives)
- certify by tax administration of State R (possible?)
- sworn statement by taxpayer for State S or for WHT agent
- sworn statement by WHT agent
- statement only or additional information (“who enjoy ... without obligation to pass it on”)

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Application of tax treaties - Case of Chile: Certification



Online service www.sii.cl: online certificates:

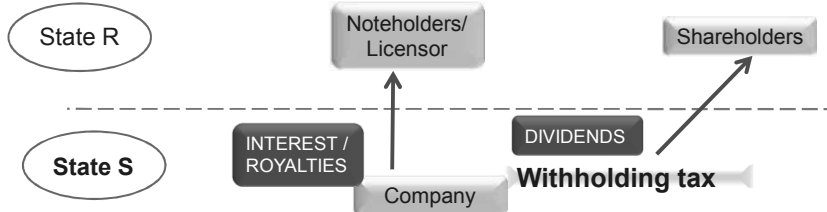
- Person resident in Chile and subject to tax (Chile as State R)
- Person has paid taxes during a tax period (Chile as State S)
- Issued electronically and automatically
- Foreign tax administration may check using a verification code
- Circular issued by the tax administration 2004 and 2005 (limited English information).

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Application of tax treaties - Case of Chile as State S & BO



Withholding Agents:

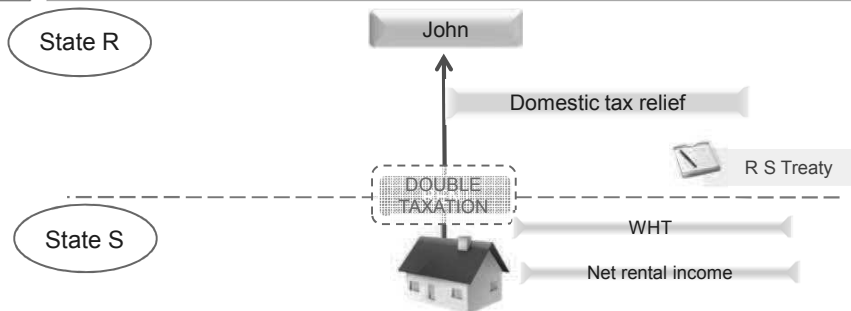
- Annual Sworn Statement (15 March): WHT of previous year
 - Electronic form (or paper)
 - Fine (late submission or omission)
- Information: receptor is resident of State R and the beneficial owner
 - Circular from tax administration concerning beneficial owner - OECD
 - Resolution issued by the tax administration (2008)

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Application of tax treaties: Immovable property



Domestic self-assessment + treaty unlimited taxation right

not necessary any specific arrangement for granting treaty benefits

problem information:

- property owned by non-resident / income derived
- public register information available to the tax administration
- fiscal intelligence measures / EOI

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Thank you

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