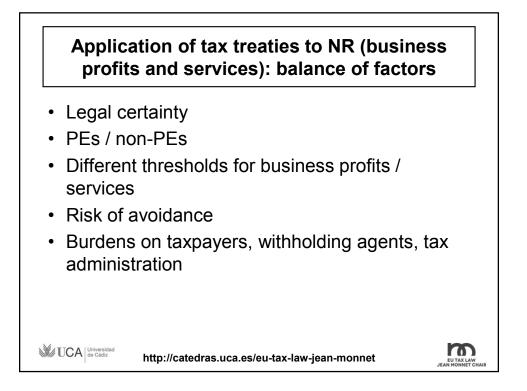


- Obstacle for commercial transactions

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Obtaining information to apply the treaty: business profits and services (1)

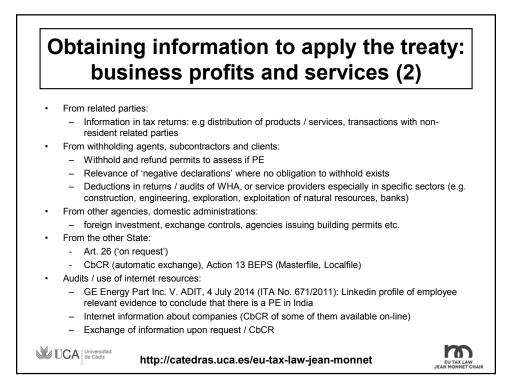
- Factors:
 - 'Hybrid' nature of business profits / services: NR try to avoid PEs
 - PE threshold highly factual / can arise retroactively (discovered by tax administration or by factual circumstances, prolongation, delays in business transactions)
 - Overlap: taxpayer having a PE may have been regarded as not having a PE, connection of both systems should be regulated
 - But treaty may make taxpayer disclose PE: withholding on gross income, PE way out
- · Different types of information:
 - From taxpayer
 - From withholding agents / subsidiaries / clients
 - From other agencies, domestic administrations
 - From the other State
- · From taxpayer
 - TINs, Registration with tax or other authorities:
 - But non-residents without PE: excessive burden, more information from payer
 - Disclosure obligations of foreign 'representative offices' (India), connection with art. 5.4. (very relevant to detect representative offices and auxiliary activities)

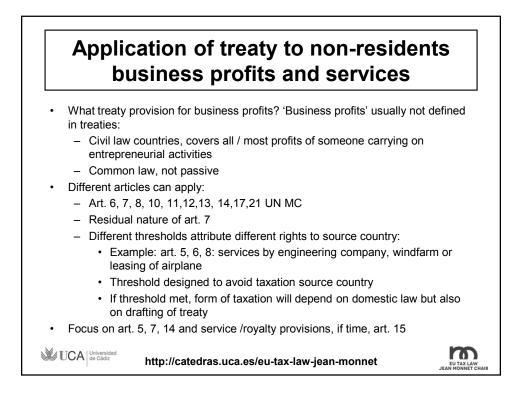
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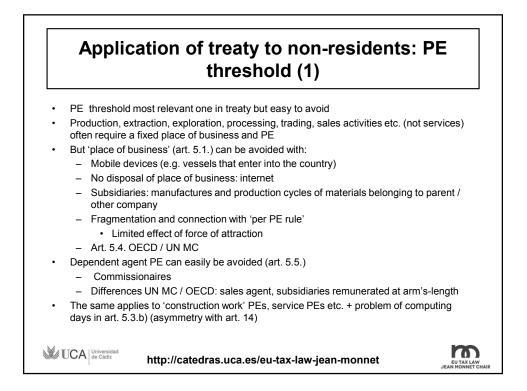
• Returns by taxpayer: PEs (above all)

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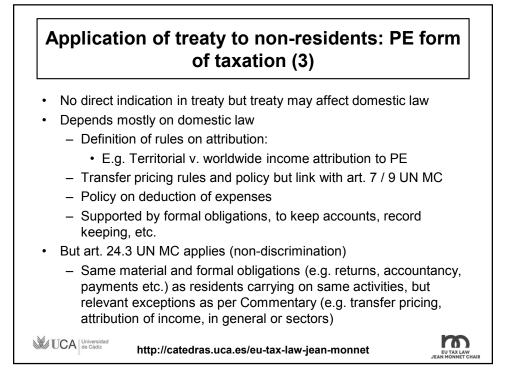
Application of treaty to non-residents: PE threshold (2)

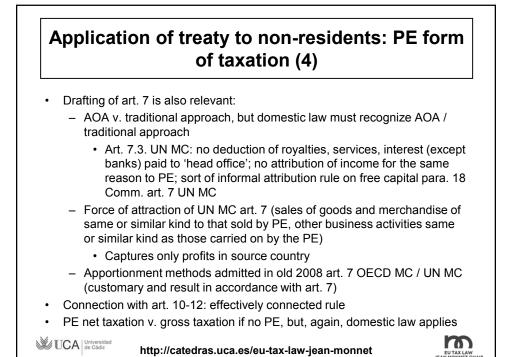
- · Need to design definitions / thresholds that are easier to control:
 - requirement of 'connected projects', clauses that reduce the threshold, Action 7 BEPS (limited effect)
- · If threshold met, problem is attribution of profits:
- Even if there is a PE or fixed base, what are the profits to be attributed?
- Effect of art. 12 and new provision on services UN MC:
- Easier to administer
- PE way out to net taxation
- But problems:
 - 'shift of burden of the tax': need to identify sectors where that happens and whether exemptions granted
 - Gross taxation: withhold and return to deduct directly connected expenses

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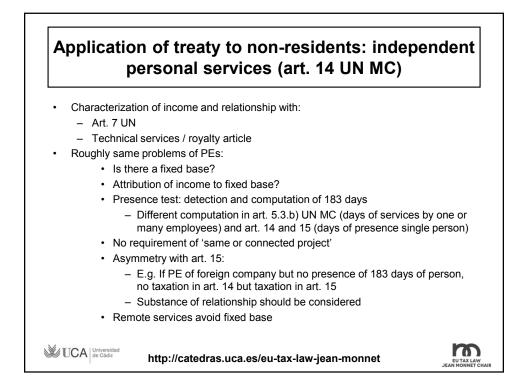


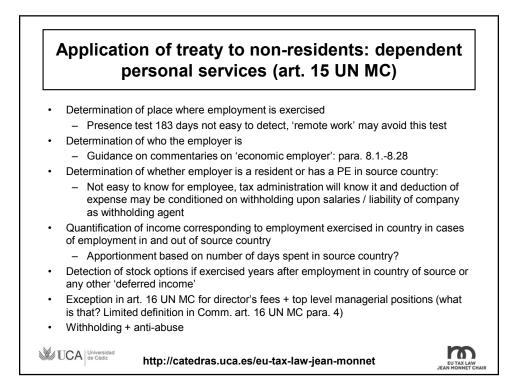


Application of treaty to non-residents: royalties and technical services Source: - are domestic rules in line with treaty rules (payer v. place of performance)? - asymmetries in design are common for services / royalties? Main issue with regard to art. 12 OECD / UN MC is type of income covered (e.g. Technical assistance, services connected with royalties in mixed contracts etc.) If technical services article added issues are very similar (e.g. Income covered, relationship with art. 12 or art. 7, 14) Some countries have the position that art. 21 UN covers income from services Withholding agents: - Solve the problem of detection of PEs - But may have the problem of knowing the type of income covered by specific article No problem of attribution of profits, but problems with deduction of expenses: Fictitious income taxed (not credited) if no deduction - Withhold and refund procedures may be needed - But low rates may avoid the trouble - Gross-up (can be avoided in targeted sectors with domestic law)

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Administration of tax treaties to non-residents: enforcement of tax claims

- Traditionally enforcement of tax claims linked with assets in the country or appointment of representatives:
 - Easier with PEs: fixed place / agent usually have assets in source State
 - Function of withholding agents
- But art. 27 OECD / UN and OECD / Council of Europe Convention change this situation (+ art. 26 on exchange of information):
 - Assistance in collection of tax claims
 - Requires legislation / administrations prepared for that
 - Possibility to relax 'pressure' on withholding agents and representatives, less need to appoint representatives

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