

Università Carlo Cattaneo – LIUC

International Tax Law a.a.2017/2018

Articles 6 and 21 OECD MC

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Article 6 OECD MC

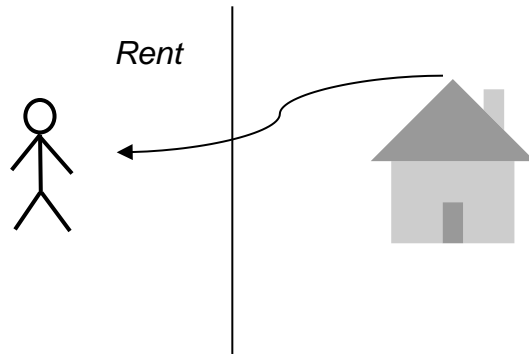
Income from immovable property

Income from immovable property

- Article 6(1)
“Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State”

Income from immovable property

- Article 6(1) applies only when the immovable property is located in the Contracting State different than the Contracting State of residence of the recipient of the income

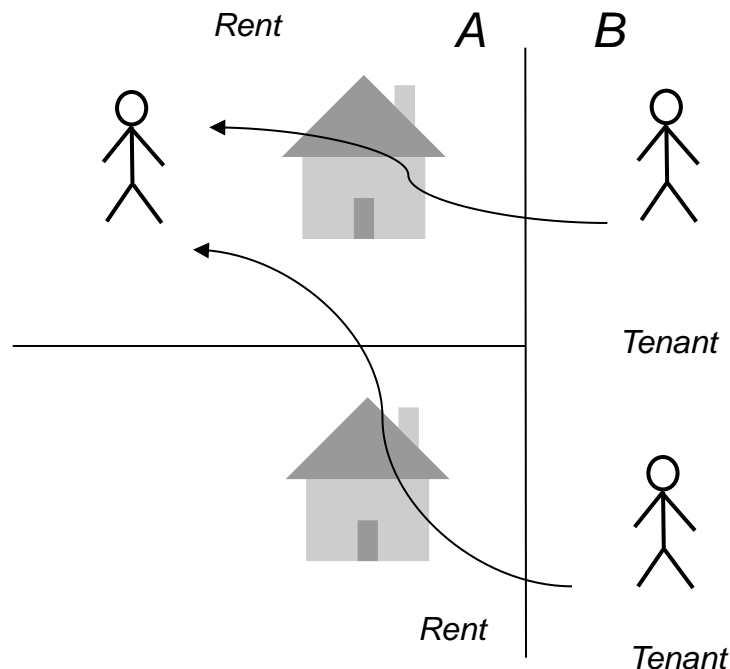


Article 6:

- Taxing right attributed to the State where the real estate property producing the income is situated (State of source)
- State of residence of the recipient of the income to eliminate the double taxation (credit method vs. exemption method)

Income from immovable property

- Article 6(1) OECD MC does not apply when real estate:
 - is not in a Contracting State
 - is in the Contracting State of residence of the recipient



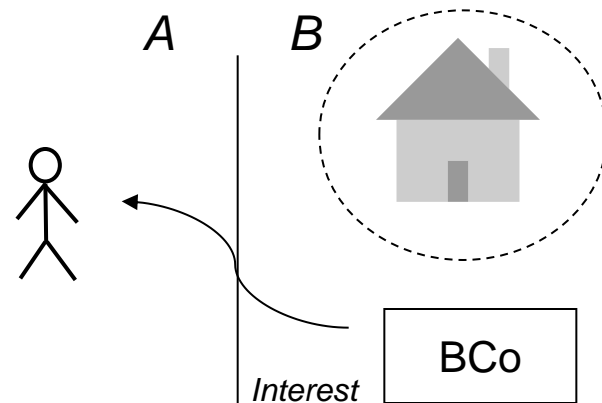
DTT A-B:

- *Art. 6(1) does not apply*
- *Art. 21 applies*
 - *Exclusive right to tax of A*

Definition of immovable property

Article 6(2):

- reference to the law of the Contracting State where the property is situated
- ships, boats and aircrafts shall never be considered immovable property
- income from indebtedness secured by immovable property is dealt with by Article 11



DTT A-B:

- *Art. 6 does not apply*
- *Art. 11 applies*

Income from agriculture and forestry

Article 6(1):

- Income from agriculture and forestry
 - Contracting States may agree to deal with it under Article 7 as a business income
 - Includes income from agricultural and forestry activities

Income from immovable property

Article 6(3):

- The provisions of article 6 shall apply irrespective of the form of exploitation of the immovable property
- Income derived from the direct use, letting or use in any other form of immovable property

Income from immovable property of an enterprise

Article 6(4):

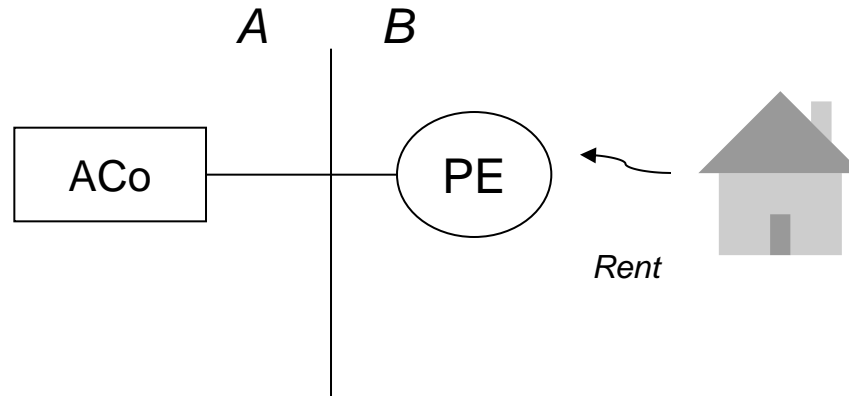
“The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise”

Article 7(4) (Business profit):

“Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article”

- Article 6 prevails over Article 7: the State in which the immovable property is located has the right to tax

Income from immovable property



DTT A-B:

- *Art. 7 does not apply even if the property is related to the PE*
- *Art. 6 applies*

Article 21 OECD MC

Other income

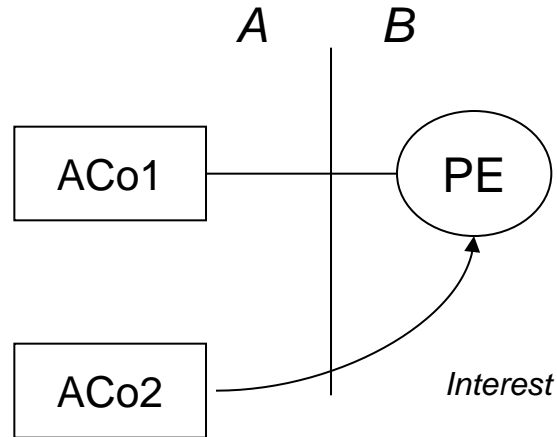
Other Income

- Article 21(1)
 - *“Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State”*
 - Exclusive right to tax to the Contracting State of residence
 - No taxing right to the other Contracting State

Other Income

- Coordination with Article 7:
 - Article 7(4) includes a residual provision according to which Article 7 does not apply in relation to items of income in the scope of other provisions of the OECD MC – potential conflict between Article 7 and Article 21
 - Article 21(2) provides that Article 7 prevails
- Applies to income from third States as well as to income from the Contracting State of residence

Other Income



DTT A-B:

- *Article 21 does not apply because interest is attributed to the PE*
- *Article 7 applies: right to tax of State B*
- *State A shall eliminate double taxation*
 - *If State A applies the exemption method, State A cannot tax the interest*
 - *Commentary (para. 6): the attribution of income producing assets to the PE might be considered abusive*