

Practical Problems of Tax Treaty Interpretation and Application: The Case Study Conference

A joint event by IFA Austrian, Czech,
Estonian, Hungarian, Polish and Slovak
Branch
- October 21, 2013, WU Vienna -

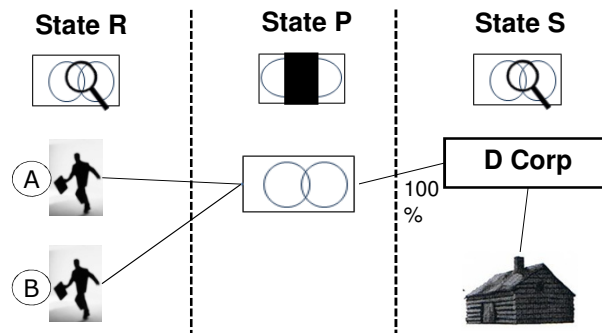
Case Study 1

Heinz Jirousek (AUT), Vaclav Zika (CZ), Gyöngyi Antal
(HU), Jana Kubisova (SK)

- A and B are residents of State R.
- They are partners of a partnership C, which is located in State P without having a permanent establishment there.
- The partnership owns 100 % of the shares of D Corp, which has its seat and place of effective management in State S.
- The property of D Corp consists exclusively of immovable property located in State S.
- The partnership C is treated as a transparent entity in the States R and S, but as a taxable entity in State P.

Case Study 1

Heinz Jirousek (AUT), Vaclav Zika (CZ), Gyöngyi Antal (HU), Jana Kubisova (SK)



- Who is entitled to treaty benefits in State S?
- Which country has the taxation rights on the sale of the shares in D Corp?



Case Study 2

Heinz Jirousek (AUT), Vaclav Zika (CZ), Gyöngyi Antal (HU), Jana Kubisova (SK)



- A is a resident of State R and is a member of the board of D Corp.
- D Corp is located in State P.
- State P treats D Corp as a taxable entity, whereas State R treats it as transparent for tax purposes.



Case Study 2

Heinz Jirousek (AUT), Vaclav Zika (CZ), Gyöngyi Antal (HU), Jana Kubisova (SK)



State R



State P



D Corp

- Which country has the taxation rights on the remuneration of A as a board member?



Case Study 3

Heinz Jirousek (AUT), Vaclav Zika (CZ), Gyöngyi Antal (HU), Jana Kubisova (SK)

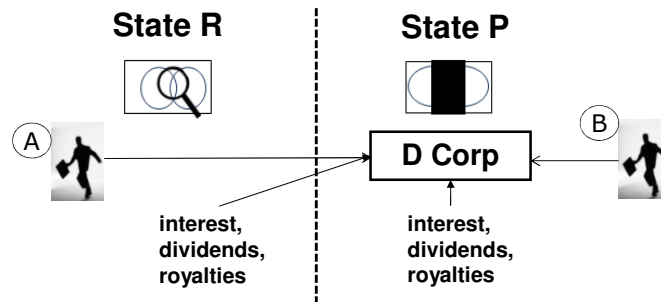


- D Corp is resident in State P and is treated as a taxable entity there.
- D Corp has two shareholders, A and B:
 - A is resident of State R.
 - B is resident of State P.
- It receives interest, dividends and royalties from sources in State R and State P.
- D Corp does not have a PE in State P or in State R and is treated as transparent in State R.



Case Study 3

Heinz Jirousek (AUT), Vaclav Zika (CZ), Gyöngyi Antal (HU), Jana Kubisova (SK)



- Which country has the taxation rights on the interest, dividends and royalties and to which amount?



International
Fiscal Association

Coffee Break

10:30-11:00

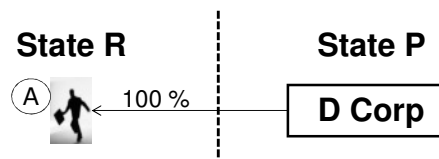


Case Study 4

Karsten Flüchter (GER), Helen Pahapill (EST), Mariusz Każuch (PL)



- D Corp is resident in State P and its 100 % shareholder A (individual) is resident in State R.
- D Corp is liquidated and A gets all the liquidation proceeds.



- Is State P entitled to levy a tax on the liquidation proceeds transferred to A?
- Will State R grant a credit?



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Case Study 5

Karsten Flüchter (GER), Helen Pahapill (EST), Mariusz Każuch (PL)



- A is a famous conductor and resident in State R.
- He conducts concerts in State S and many other countries.
- After a concert he is invited to a press conference, where he informs the media about his next marriage and wears a jacket with a logo of D Corp, which is resident in State P.
- Under his contract with D Corp he is obliged to wear a jacket with the logo of D Corp whenever he conducts a concert or gives press conferences anywhere and gets a remuneration 1,000.000 per year.

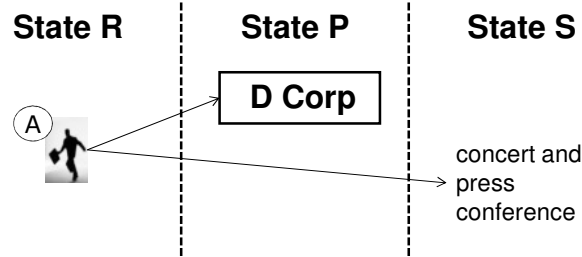


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Case Study 5

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- Which treaty provision is applicable?
- Is State P entitled to levy a tax and if so, on which part of the remuneration?



Case Study 6

Karsten Flüchter (GER), Helen Pahapill (EST), Mariusz Każuch (PL)

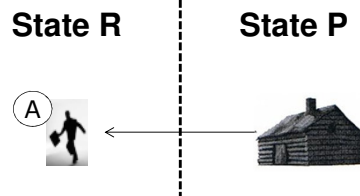


- A is resident in State R and runs a big agricultural farm in State P.
- A has a bank account in State P, which is only used for farming business.
- He receives interest from his bank account which is immediately invested in the farm.



Case Study 6

Karsten Flüchter (GER), Helen Pahapill (EST), Mariusz Każuch (PL)



- Which treaty provision is applicable?
- Is State P entitled to levy a tax on the interest income and if so, on which amount?



Lunch Break

12:30-14:00



Case Study 7

Heinz Jirousek (AUT), Vaclav Zika (CZ), Helen Pahapill (EST), Mariusz Każuch (PL)

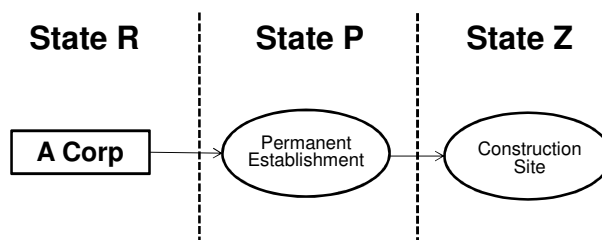


- A Corp is in the construction business and a resident of State R.
- A Corp has a PE in State P.
- From the PE in State P, A Corp runs a construction site in State Z: It takes them 13 months to build a hotel in State Z (Profit = 100).
- PE in State P generates profit from other activities than the construction site in State Z of 400.
- A Corp has an overall profit of 1,000, of which 500 are generated in the head office.



Case Study 7

Heinz Jirousek (AUT), Vaclav Zika (CZ), Helen Pahapill (EST), Mariusz Każuch (PL)



- Which countries have taxation rights for the profit generated from the activity in State Z?



Case Study 8

Heinz Jirousek (AUT), Vaclav Zika (CZ), Helen Pahapill (EST), Mariusz Każuch (PL)

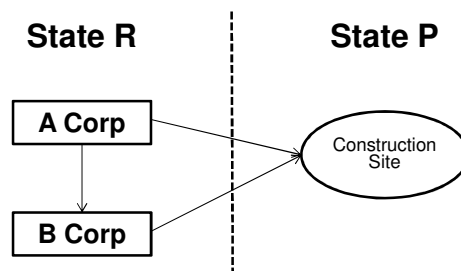


- A Corp is a resident of State R and is in the construction business.
- Under a contract with one of its clients, A Corp is obliged to build a hotel in State P within 13 months.
- Since A Corp does not have enough capacities right now, A Corp has subcontracted 100 % of the work to B Corp (resident of State R as well).



Case Study 8

Heinz Jirousek (AUT), Vaclav Zika (CZ), Helen Pahapill (EST), Mariusz Każuch (PL)



- May both A and B Corp's profits be taxed in State P?



Case Study 9

Heinz Jirousek (AUT), Vaclav Zika (CZ), Helen Pahapill (EST), Mariusz Każuch (PL)

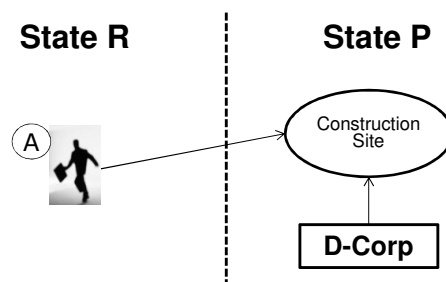


- Ms A is an architect resident in State R.
- She is supervising a construction site in State P, on behalf of the future owner of the building.
- The construction site is run by D Corp (resident in state P).



Case Study 9

Heinz Jirousek (AUT), Vaclav Zika (CZ), Helen Pahapill (EST), Mariusz Każuch (PL)



- Can Ms A's remuneration be taxed in P as well?



Coffee Break

15:30-16:00

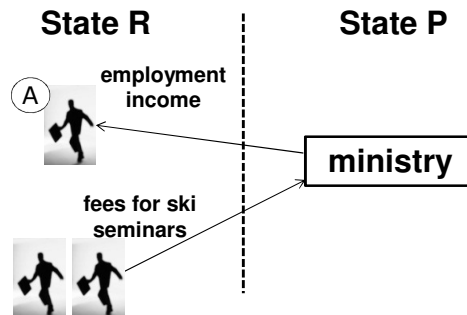
Case Study 10

Karsten Flüchter (GER), Gyöngyi Antal (HU), Jana Kubisova (SK)

- The Ministry for Trade and Tourism of State P runs many seminars in State R about skiing in State P.
- They charge participation fees for these seminars and make a profit from this activity.
- As a speaker for these seminars they employ Ms A (citizen of State P; resident of State R since her tenth birthday).

Case Study 10

Karsten Flüchter (GER), Gyöngyi Antal (HU), Jana Kubisova (SK)



- Which countries have taxation rights for the salary of Ms A?
- If she ever gets a pension: Where will the pension be taxed?



Case Study 11

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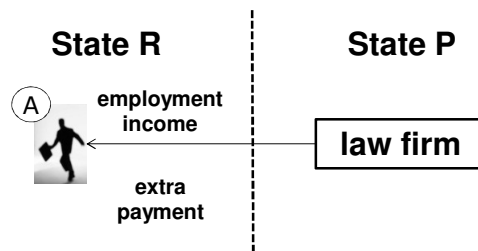


- Mr A works as a lawyer in State P and he is employed by a law firm in State P.
- He is a resident of state R.
- When he gets 65 years old, the law firm terminates the employment contract.
- Under the contract he is entitled to get an extra payment (an additional one year's salary) if he agrees not to work for a competitor for one year.



Case Study 11

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- How is the extra payment taxed?
- How is the extra payment taxed if he were a partner of the law firm and he is entitled to the payment under the partner agreement?



Case Study 12

Karsten Flüchter (GER), Gyöngyi Antal (HU), Jana Kubisova (SK)

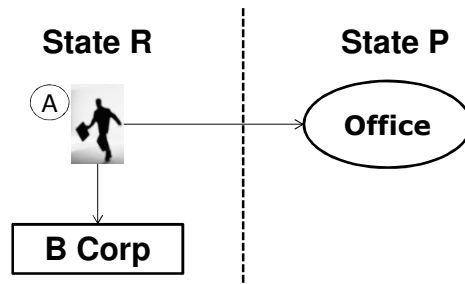


- Mr A (resident of State R) is an employee of B Corp (resident of State R).
- A's employment contract with B Corp:
 - bonus payment of 300,000.--, if A acquires more than 100 new clients / year for B Corp for three consecutive years; and
 - if A stays with B Corp for another three consecutive years.
- A starts to work for B Corp at the beginning of year X1.
- At the beginning of year X4 A is notified that he will get the bonus if he stays for another three years with the firm (100,000 per year).
- Until the beginning of year X4 he had worked in State R, then he is seconded to an office of B Corp in State P for the next three years.



Case Study 12

Karsten Flüchter (GER), Gyöngyi Antal (HU), Jana Kubisova (SK)



THE END

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