

TABLE OF CONTENTS

PART ONE: SOURCE

Chapter 1: Will a foreign tax liability arise if one has a foreign source of income or capital?

1.1 SOURCE 33

1.2 TYPES OF INCOME 34

1.2.1 Trading Income	34
1.2.2 Real Estate Income	37
Mitigation of income and capital gains tax	
1.2.3 Shipping Income	38
1.2.4 Passive Income: Dividends, Interest and Royalties	39
Dividends	
Interest	
Royalties	
1.2.5 Capital gains	40
1.2.6 Employment and consultancy income	40
Social security taxes	
Personal service companies	
Directors' Fees	
Pensions	
1.2.7 Entertainers and sportsmen	43
General rules relating to different types of income	
Country-specific legislation relating to entertainers and sportsmen	

1.3 WITHHOLDING TAX 48

Chapter 2: Is it possible to reduce a foreign tax liability through treaty or other arrangements?

2.1 FUNCTIONS OF DOUBLE TAX TREATIES 50

2.1.1 Clarification of taxing rights of each state	50
2.1.2 Avoidance of juridical double taxation	50
2.1.3 Prevention of fiscal evasion	50

2.2 PARTIES TO DOUBLE TAX TREATIES 51

2.3 ARRANGEMENT OF THE OECD MODEL TREATY 51

2.3.1 Articles to clarify application of the Model Treaty 52

Article 1 – Personal Scope	
Article 2 – Taxes Covered	
Article 3 – General Definitions	

Article 4 – Residence	
Article 5 – Permanent Establishment	
OECD Model Treaty definition of Permanent Establishment	
OECD Commentary to the Model Treaty	
E-Commerce and Permanent Establishments	
BEPS discussion on PEs in the digital economy	
Article 29 – Entry into Force	
Article 30 – Termination	
2.3.2 Articles to avoid juridical double taxation	60
Article 6 – Income from Immovable Property	
Article 7 – Business Profits	
Article 8 – Shipping, Inland Waterways Transport and Air Transport	
Articles 10, 11 and 12 – Dividends, Interest and Royalties	
Article 13 – Capital Gains	
Article 14 – Independent Personal Services	
Article 15 – Dependent Personal Services	
Article 16 – Directors’ Fees	
Article 17 – Artistes and Sportsmen	
Article 18 – Pensions	
Article 21 – Other Income	
Article 23 – Methods for Elimination of Double Taxation	
2.3.3 Articles to prevent tax avoidance/evasion	66
Article 9 – Associated Enterprises	
Article 26 – Exchange of Information	
EU Directive and Council of Europe/OECD Convention on Mutual Assistance	
Article 27 – Mutual Collection of Taxes	
European Union assistance in the collection of taxes	
2.3.4 Miscellaneous provisions	68
Article 24 – Non-discrimination	
Article 25 – Mutual Agreement Procedure	
Article 28 – Territorial Extension	
2.4 EU DIRECTIVES	69
2.4.1 EU Savings Tax Directive	69
2.4.2 EU Interest and Royalty Directive	70
2.4.3 EU Parent/Subsidiary Directive	70
2.4.4 EU Merger Directive	71

PART TWO: RESIDENCE

Chapter 3: Will one have to pay domestic tax on overseas sources of income or capital because of one's residence, even if one does not remit the income or capital?

3.1 ENTITY CLASSIFICATION AND GENERAL TAX CHARACTERISTICS	89
3.1.1 Sole traders	89
3.1.2 Companies	90
Limited companies	
Limited liability companies	
Protected cell companies	
3.1.3 Branch operations of foreign companies	91
3.1.4 Joint ventures	91
3.1.5 Partnerships	92
General partnerships	
Limited partnerships	
Limited liability partnerships	
3.1.6 Trading trusts	93
3.2 RESIDENCE, DOMICILE AND CITIZENSHIP	93
3.2.1 Individuals	93
Residence	
Centre of Vital Interests	
Domicile	
Citizenship	
Other connecting factors	
3.2.2 Companies	100
Management and control	
Ensuring non-residence	
Place of effective management under the OECD Model Treaty	
3.3 WORLDWIDE v. TERRITORIAL PRINCIPLES OF TAXATION	106
3.3.1 Worldwide	106
3.3.2 Territorial	106
3.4 CONSIDERATIONS ON TRANSFERRING RESIDENCE TO ANOTHER COUNTRY	107
3.4.1 Exit tax on individuals	107
3.4.2 Exit tax on companies	109
Corporate redomiciliation	
Corporate inversions	

Chapter 4: Is it possible to reduce one's domestic taxation liability by using foreign entities?

4.1 HOLDING COMPANIES	113
4.1.1 Participation exemptions	114
4.1.2 Controlled foreign company (CFC) laws	115
4.1.3 Shareholding requirement in subsidiary	116
4.1.4 Beneficial double tax treaty network	117
4.1.5 Corporate tax on dividends received and capital gains	117
4.1.6 Interest deductibility in holding company	119
4.1.7 Absence of withholding tax to ultimate shareholders	120
4.2 OFFSHORE TRUSTS	122
4.2.1 Basic trust concepts	122
4.2.2 Benefits of trusts	124
Main uses	
Alternative to a will	
Fiscal benefits	
Anonymity	
4.2.3 Trust recognition	126
The Hague Convention	
4.2.4 Trusts and double tax treaties	127
General definition of the OECD Model Treaty	
Double tax treaties and trusts: interaction	
4.2.5 Types of trust	130
Accumulation and maintenance trusts	
Asset protection trusts	
Bare trusts v. substantive trusts	
Employee benefit trusts (EBTs)	
Unapproved pension schemes	
Grantor trusts	
Hybrid trusts	
Purpose trusts	
Unit trusts and investment trusts	
4.2.6 Common trust concerns	135
Management and control	
Settlor-directed trusts	
Sham trusts	
4.3 FOUNDATIONS	137
4.4 LIFE ASSURANCE POLICIES	137
4.4.1 Personal portfolio bonds	138
4.4.2 Variable life insurance policies	139

PART THREE: INDIRECT TAXES

Chapter 5: Have you considered the impact of indirect taxes on income and capital?

5.1 VALUE ADDED TAXES	155
5.1.1 European Union VAT	155
5.1.2 Domestic VAT systems and the EU	
Importation of goods	156
Importation of services	
Export of goods and services	
Telecommunications	
VAT groupings	
Employee expenses	
5.1.3 European Union countries	159
5.2 OTHER SALES TAXES	160
5.2.1 GST basis of taxation	160
5.3 CUSTOMS DUTIES	163
5.4 CAPITAL TAXES	164
5.4.1 Wealth taxes	164
Mitigation of wealth and inheritance taxes	
5.4.2 Stamp duty	165
5.4.3 Inheritance tax	167

PART FOUR: TAX AVOIDANCE

Chapter 6: Would the advice stand up to scrutiny?

6.1 TAX MITIGATION, TAX AVOIDANCE AND TAX EVASION	178
6.1.1 Tax mitigation and tax avoidance	178
Acceptable tax mitigation	
Unacceptable tax avoidance	
6.1.2 Constituent elements of avoidance and evasion	
6.1.3 The tax adviser's role	181
Anti-money laundering legislation	
Exchange of information	
Disclosure of tax avoidance schemes	
Transparency and the OECD BEPS initiative	
6.1.3 The tax adviser's role	188
6.2 SHAM TRANSACTIONS	189
6.2.1 Sham – meaning of the term	189
6.2.2 Features and examples of a sham	189
6.2.3 Cases involving sham transactions	190
6.3 SUBSTANCE OVER FORM	193
6.4 GENERAL ANTI-AVOIDANCE RULES (GAAR)	197
6.5 USE OF LOW-TAX JURISDICTIONS	199

Characteristics of offshore jurisdictions

Chapter 7: Do the entities involved in a structure have substance?

7.1 BENEFICIAL OWNERSHIP CONCEPT	203
Indofoods and other cases	
7.2 CONDUIT COMPANIES	207
7.2.1 Limitation on benefits concept in double tax treaties	207
Development of anti-treaty shopping legislation	
US 'limitation on benefits' (LOB) provision	
Recent developments	
7.3 CFC LEGISLATION RELATED TO PASSIVE ACTIVITIES OF SUBSIDIARY COMPANIES	214

Passive Activities of Subsidiaries
Country-specific legislation

7.4 ANTI-AVOIDANCE PROVISIONS IN RESPECT OF TRANSFERS OF ASSETS ABROAD 221

7.5 ACCESSING OFFSHORE FUNDS & TAX AMNESTIES 224

7.5.1 General considerations 224

7.5.2 Trusts 225

Stockpiled gains representing undistributed net income

7.5.3 Tax amnesties 225

Chapter 8: Are transactions carried out at arm's length?

8.1 TRANSFER PRICING 227

8.1.1 Basic concepts 227

8.1.2 Transfer pricing cases 229

8.1.3 Adjustment of taxable profits 229

8.1.4 Clearance under advance tax rulings 234

8.1.5 Preparation of transfer pricing manuals 235

8.2 THIN CAPITALISATION 239

Country-specific legislation

8.3 FUNDAMENTAL CONSIDERATIONS IN DETERMINING ALLOWABLE EXPENSES 243

8.3.1 Review of specific deductions for individuals 245

8.3.2 Review of specific deductions for companies 246

Management fees

Director's remuneration

Loan interest

Patent royalties and licence fees

Insurance premiums paid to captive insurance companies

Other allowable expenses

8.4 CONSTRUCTIVE DIVIDENDS 253