



Extractive Industries Taxation Issues Related to Tax Treaties

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(Session 5) Extractive Industries Taxation*

Capacity Building Unit
Financing for Development Office
Department of Economic and Social Affairs

<http://www.un.org/esa/ffd/>

Overview

- Application of Art. 6 and 7 in the case of mining and oil / gas extraction
- Coverage of exploration activities and activities on the continental shelf

to the exploration and
of mineral resources

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Application of Art. 6 and 7 in the case of mining and oil/gas extraction

- Art 6 covers

movable property, and

immovable property

income that a resident of the source State derives from

movable property in the source State or income

derived from immovable property in the source State or in third States is

Meaning of income from immovable property – Art. 6!

The provisions of paragraph 1 shall also apply to income derived from the direct lease, letting or use in any other manner of immovable property.

Distinguish between income derived from immovable property and income derived from movable property

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Income from immovable property

- Income derived from immovable property is income that results directly from the ownership or possession of real property as indicated in the Commentary on the Model of the Convention of the OECD of the League of Nations
- This includes typically:

an owner-occupied house in a foreign country; this corresponds to the concept of immovable property under the law of the country where the owner or possessor of the

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>ights to the extraction of nat_ ral reso rces

-)n man+ co ntries ownership of land
ownership of ndergro nd minerals,
-)n order to *e a*le to extract mineral
enterprise m st therefore o*tain 3extraction4 rights,
s all+ from the -tate

constit te 3immova*le propert+4



&1

Analysis under the >:- treat

- The mine constitutes a PE in -tate - mining are therefore taxable in -tate
 - -ince the resource royalties paid *+ government of -tate -, -tate - pro* a - does not tax them %if these royalties were paid *+ >Co to a non-resident taxable person, such royalties would *e taxable &''
- del, the PE cannot claim a
14 resource royalty paid *+ the
t ma+ deduct real expenses, i.e.

Example of special treat+ p

§ ()
Article . (cont*)

2. The term "real property" shall have the meaning given in the Contracting State in which the property is situated.

a' an+ nat+ ral reso+ rces, propert+ accessor+ to real estate, and rights to provisions of general law respecting real propert+ appl+, and rights to standing tim*er

b' a lease of land and an+ other interest in or over land, whether improved or unimproved, for nat+ ral reso+ rces, and a right to exploit

ed pa+ments either as consideration for or in



Example of special treatment

Article 22

Transmedian line oil and gas fields

2. The provisions of this Article shall apply notwithstanding the provisions of this Convention where the Contracting States have entered into an Agreement relating to the joint exploitation of a field which extends across the dividing line and that for the application of these provisions.

Production installations for a field are situated in a Contracting State, subject to paragraph 1, tax in that State, profits from the exploitation of the field shall be taxable in that State and shall not tax any resident of the other Contracting State.

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