

INTERPRETATION OF DTAA

Employee remuneration, Director Fees,
Artistes and Sports person
Article 15, 16 and 17

Article 15

OECD Model (2010)

1. Subject to the Provisions of Articles 16, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a contracting state [in respect of an employment] shall be taxable only in that state unless the employment is exercised in the other contracting state. If the employment is so exercised, such remuneration as is derived there from may be taxed in that other state.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

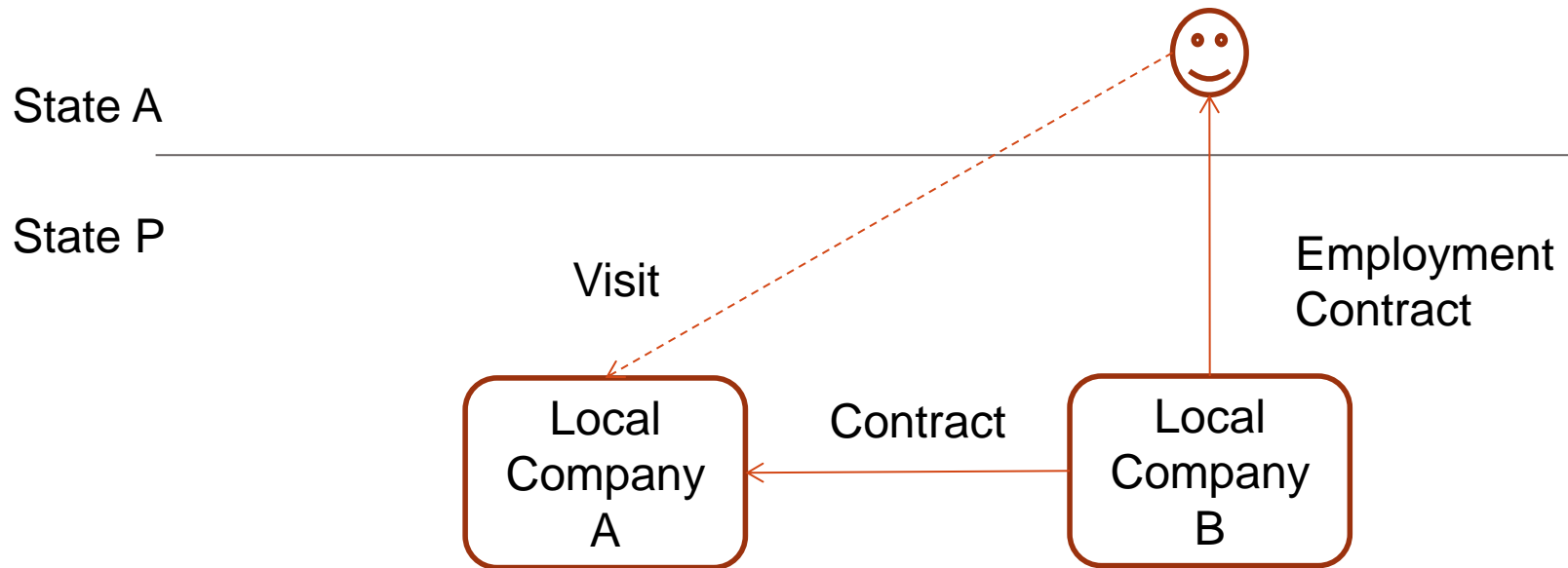
(a) The recipient is present in the other State for a period or periods not exceeding in the aggregate [183 days] in any [twelve-month period] [commencing or ending in the fiscal year concerned], and

(b) The remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and

(c) The remuneration is [not borne by] a [permanent establishment which the employer has in] the other state.

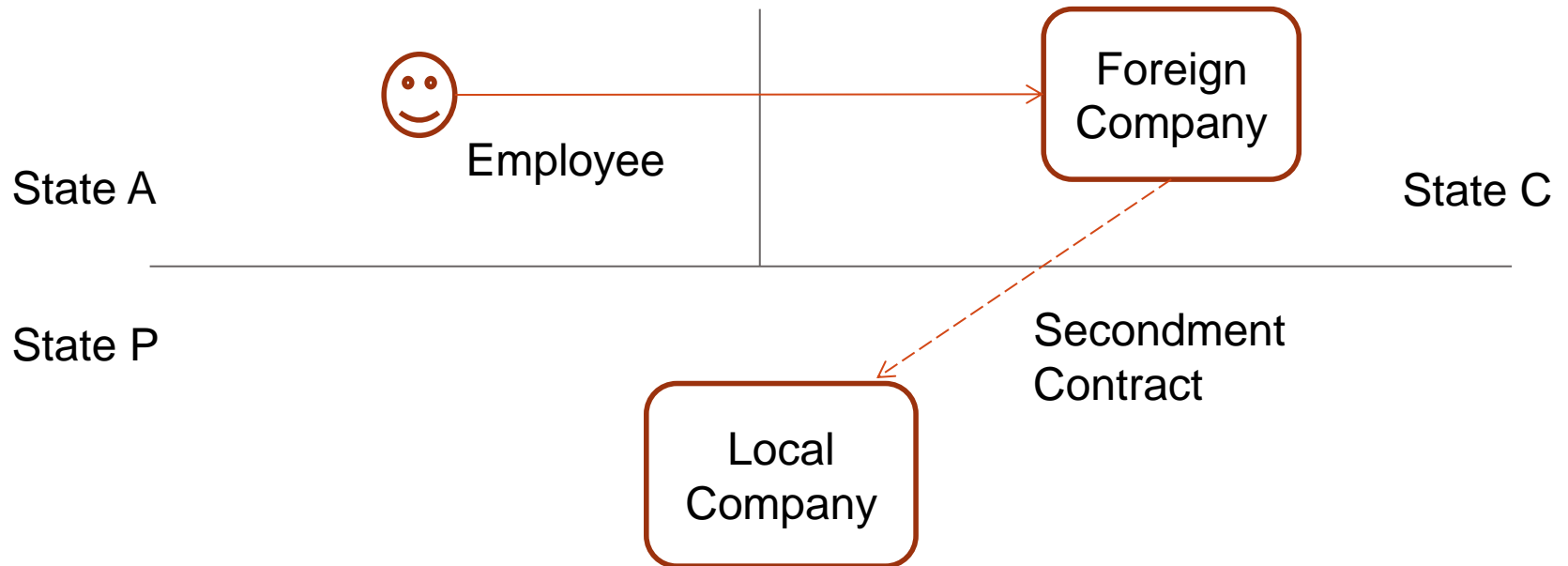
3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic, or aboard a boat engaged in inland waterways transport, may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

Article 15



Whether A-P DTAA apply?

Article 15



Which DTAA to apply?

- A-C Treaty
- C-P Treaty
- A-P Treaty
- All of the above

Hypothetical Tax?

ESOP?

Article 16(1)

OECD Model (2010)	UN Model(2011)	US Model (1996)
<p>1. Director's fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other state.</p>	<p>1. Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the Board of Directors of a company which is a resident of the other Contracting State may be taxed in that other State.</p>	<p>1. Directors' fees and other compensation derived by a resident of a Contracting State for services rendered in the other Contracting State in his capacity as a member of the board of directors of a company that is a resident of the other Contracting State may be taxed in that other Contracting State.</p>

Article 16(2)

OECD Model (2010)	UN Model(2011)	US Model (1996)
	<p>2. Salaries, wages and other similar remuneration derived by a resident of a Contracting State in his capacity as an official in a top-level managerial position of a company which is a resident of the other Contracting State may be taxed in that other State.</p>	

Article 17 (1)

OECD Model (2010)	UN Model (2011)	US Model (1996)
<p>Notwithstanding the provisions of Articles 7 and 15, income derived by a resident of a contracting state as an entertainer, such as theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other contracting state , may be taxed in that other state same</p>		<p>1. Income derived by a resident of a Contracting State as an entertainer, such as a theater, motion picture, radio, or television artiste, or a musician, or as a sportsman, from his Personal activities as such exercised in the other Contracting State, which income would be exempt from tax in that other Contracting State under the provisions of Articles 14 (Independent Personal Services) and 15 (Dependent Personal Services) may be taxed in that other State, except where the amount of the gross receipts derived by such entertainer or sportsman, including expenses reimbursed to him or borne on his behalf, from such activities does not exceed twenty Thousand United States dollars (\$20,000) or its equivalent in _____ for the taxable year concerned.</p>

Article 17(2)

OECD Model (2010)	UN Model (2011)	US Model (1996)
2. Where Income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.		2. Where income in respect of activities exercised by an entertainer or a sportsman in His capacity as such accrues not to the entertainer or sportsman himself but to another person, that income, notwithstanding the provisions of Articles 7 (Business Profits) and 14 (Independent Personal Services), may be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised, unless it is established that neither the entertainer or sportsman nor persons related thereto participate directly or indirectly in the profits of that other person in any manner, including the receipt of deferred remuneration, bonuses, fees, dividends, partnership distributions, or other distributions.

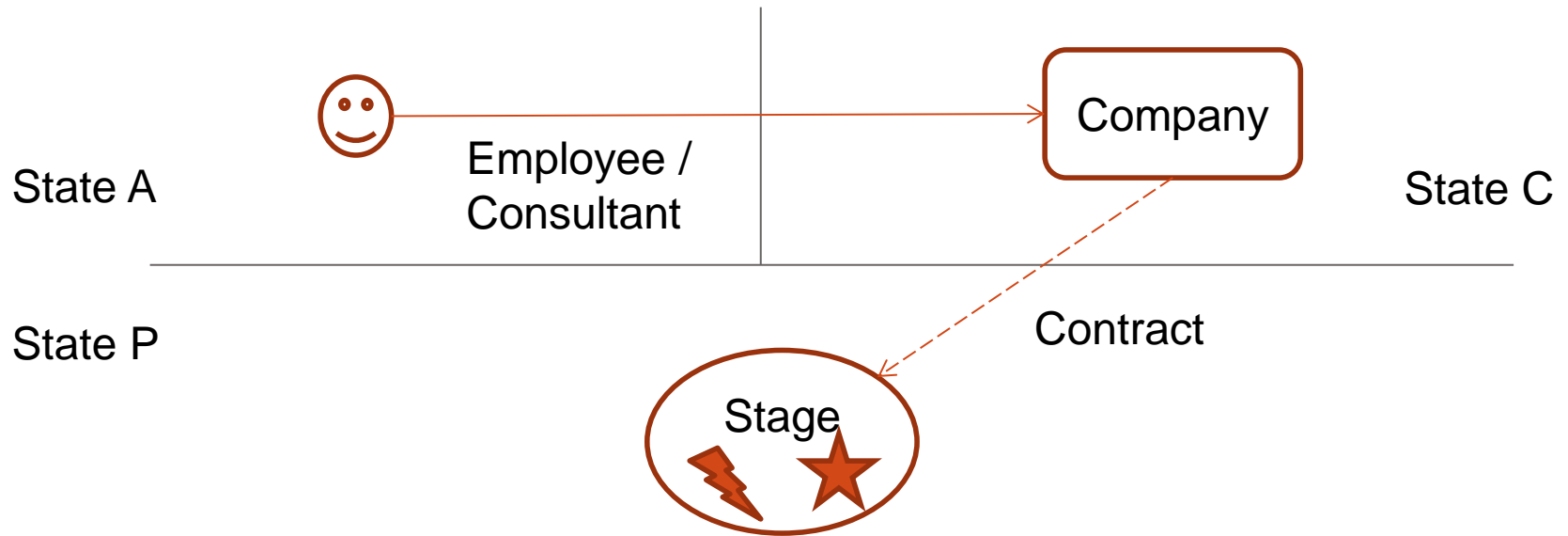
Article 17 (Intro)

- By the entertainer/sportsperson
 - Entertainer not defined / not exhaustive
 - Model / Support Team / Lecturer
 - Politicians
 - Individually or in a group
- as an entertainer/sportsperson in public performance
- Derived from personal activities in Source State
 - Live performances or recorded performances
 - No distinction – Celebrities or amateurs or as a hobby
 - Includes income directly or indirectly connected with performance
 - Quantum time-wise and amount-wise (India-US and India-UAE)
 - Performance, training, promotion, sponsorship, advertising, image rights, interview, cancellation

Article 17 (Intro)

- Sponsorship Income / Endorsement Fee / Image Rights
 - Agassi case amends OECD Commentary (also draft stage 2010)
- Dual role – predominant activity
- If fees unrelated to performance, State C or State A to tax?
- Art. 17(2) – applies to all
 - Rationale – salary reduced
 - Exception – India-US and India-Canada TT – If entertainer does not control distribution of deferred remuneration / profits

Triangular Case Study



Which DTAA to apply?

- A-C Treaty
- C-P Treaty
- A-P Treaty
- All of the above
- Other situation: Restaurants contracts with foreign company according to which musician will perform in restaurant. Restaurant does not pay any performance fees but merely provides temporary space for performance. The admission fees are shared at source?

Questions

- Televised Performance – Presenter, Interviewer ??
- Theatrical Performance – Theatre actor, Dancer, Orchestra ??
- Commentator, Cheerleaders, Coach, Umpire ??
- Other sports activities - Footballers, golfers, cricketers, billiards players, chess tournaments, ??
- Bowling, racing drivers, horse race ??
- Support Staff – producer, director, crew, choreographers, etc. ??

Article 17 v/s Art. 12 v/s Art. 7

- voice-over artist, stand-in, stunt person, puppeteer, etc. ??
- Royalty for reproducing artiste's work for future sale ??
- Income from advertisement or sponsorship or endorsement ??
(predominant/apportion if many countries)
- Severance pay ?? (where to draw the line)
- Cancellation fee for inactivity ??
- Expense of family members ??

MUSIC Performances

What is included?

- Performances, Rehearsals, Sponsorship, Promotion, Entitlement from the sale of merchandising at venues, Flat fee for filming or recording of the performances,
- Miscellaneous income from television and radio (coincide with touring/event)

What is not included?

- % sales for recording of performances
- Sales of merchandising at normal retail outlets - unconnected
- Payments to non-performers such as crew members, technicians etc.

CBDT Circular 787/2000

Entertainer receives consideration for:	Article??
Performance without pay	No tax
Live performance or live telecast/broadcast in India	Art. 17
Copyright for acquiring license to broadcast/telecast	Art. 12
Copyright of performance in India for subsequent sale	Art. 12
Endorsement relating to performance in India	Art. 17
Guarantee money to NR sports association	Art. 23

Case Study A: Endorsement Fees

- **Ignacio is swimmer.** He lives outside the UK. He has one endorsement contract with a sports company and another with a breakfast cereal manufacturer. Both contracts reward him for competing in swimming competitions and attending company promotional events.
- In the 2010-11 tax year Ignacio **competes** in six swimming competitions around the world including the European championship which is held in the UK. Each competition lasts for three days and he competes every day. He receives a fixed amount for number of competitions around the world plus 5% of ticket sales for each concert.
- Before every competition Ignacio spends two weeks **training** in the country where the competition is held. His training routine is to swim for an hour, take a break then train in the gym for an hour take another break and then train for another hour in the gym. In addition on 150 days of the year he trains in a gym or in the pool for at least three hours a day.
- Ignacio attends one **promotional event** for the sports company and two for the cereal manufacturer. All three events are outside the UK. These days counts as (promotional) performance days.
- Taxability of endorsement fees from Sports company and cereal manufacturer?

Endorsement

- Endorsement includes:
 - Specific performances (specific events)
 - Achieving specific ranking slot at the end of year
 - Retainer or general income for always using certain brand equipment for performing in public or promoting sponsor's product
- Connected to event performances in Source State
 - Main day : Event day, Sponsor Day, Promotion Day,
 - Others : Training Days (includes general fitness)
 - Exclude : holiday, injury, travelling, non-physical training (mapping)
- Apportioned to weighted average of ranking, working day, physical presence, etc.

US Ruling

- Apportionment between royalty and personal service
 - Sponsors pay for entertainer's image as well as performance at the tournaments (when not directly connected to events)
 - Kramer – 70:30, Goosen – 50:50, Garcia – 65:35,
 - IRS defined royalties: to include payments for the right to use professional athlete's name, photograph, likeness or facsimile signature.
 - IRS - personal services includes endorsements, personal appearances and interviews in connection with events
- Ranking and placement bonuses – Article 17 to apply (IRS)
- Signing Bonus / Non-compete fee
 - Not compensation for services but to prevent players from signing with others
 - Income is attributed to the place where the person forfeits his right to act

Thank You