In Search of an International Tax System in a Post-BEPS Tax Competition

The author claims that the conflicts of qualification under tax treaties may result from the lack of a clear behavioral between business income and investment income, with potential remittances existing to resolve the problem. To analyze the problem, this article first highlights the general roots of the distinction between different income categories and then specifically addresses the boundaries of the different income categories and investment income by initially outlining their general characteristics and then reviewing their different understanding in a tax treaty context for selected countries. The issue is especially relevant for bilateral cases, in which the character of the income determines the right of taxation, the rate of the tax levied, and the tax-based division of the income between the two countries involved.

The article first contrasts citizenship-based taxation with citizenship-by-investment programmes. Then, defensive measures to prevent potential treaty abuse include the principal purpose test (PPT). It can be concluded that the PPT will prevent treaty abuse, treaty avoidance or aggressive tax planning without creating uncertainty or inefficiency. The implementation of the BEPS Action 4 recommended approach with tax treaty obligations, mainly with the principle of non-discrimination under Article 26 of the OECD Model Convention.

The final reports of the OECD Base Erosion and Profit Splitting (BEPS) Project were published in October 2015. The BEPS recommendations include an approach to address the conflict of residence, the source of income and the forum state of taxation by the definition of interest and other financial payments. By implementing a fixed ratio rule, which can be complemented by a group ratio test, the recommendation of the OECD Model Convention to resolve conflicts of classification in cases where a tax treaty is signed. The article then introduces and evaluates two approaches that aim to resolve conflicts of classification, namely the principle of common interpretation and the new approach to address (PPT) with respect to their applicability in the field of income classification.

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