Triangular cases: The application of bilateral tax treaties in multilateral situations
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Citation for published version (APA):
Fett, E. E. (2013). Triangular cases: The application of bilateral tax treaties in multilateral situations
Appendix 1:
Variations on the basic triangular cases

1.1. Introduction

This part of the thesis expands upon the analysis of the basic triangular cases conducted in earlier chapters and addresses the application of bilateral income tax treaties in other multilateral situations. The cases discussed are variations on the basic triangular cases, each of which essentially combines two of those basic cases. In general, the issues that arise in these more complicated multilateral cases (sometimes referred to as “quadrilateral cases”) are the same as those that arise in the basic cases, although there is sometimes an additional layer of complexity or an additional layer of taxation.

In addition to an analysis based on the existing treaty framework, this chapter discusses the solutions proposed throughout earlier chapters to test their application in quadrilateral cases and in doing so, also tests their application in the basic triangular cases. The beginning of each section of this appendix includes an overview of the proposed changes which are relevant for the particular situation under consideration; these overviews are necessarily brief and reference should be made to the more detailed discussion of the proposed solutions in earlier chapters. This appendix also draws heavily on the analysis of the basic triangular cases conducted throughout the thesis and should be understood in light of that analysis. It does not contain a detailed discussion of all the issues arising in triangular cases.

Scope

There are an almost endless number of variations on the basic triangular cases that could be imagined and this it is necessary to limit the situations being considered. This part therefore deals primarily with situations where four states are involved and does not deal with situations where fewer states are involved, e.g., where the payor and the recipient both have a presence in the same state. It also does not address situations where a person is resident in more than two states, situations combining a sub-PE triangular case with a reverse triangular case, or situations involving reverse sub-PE triangular cases.

The four cases discussed in this appendix are:

(i) A combination of a PE triangular case and a reverse PE triangular case (Section 1);
(ii) A combination of a PE triangular case and a reverse dual resident triangular case (Section 2);
(iii) A combination of a dual resident triangular case and a reverse PE triangular case (Section 3); and
(iv) A combination of a dual resident triangular case and a reverse dual resident triangular case (Section 4).

1430 The basic triangular cases referred to here are PE triangular cases, dual resident triangular cases, reverse PE triangular cases and reverse dual resident triangular cases. Chapter 1 contains a brief introduction to these cases (see Section 1.2.). For an analysis of PE triangular cases involving different categories of income, refer to Chapter 2. PE triangular cases are also discussed in Chapters 3 through 8. For discussion of dual resident triangular cases refer to Chapters 10 and 11; Chapter 10 contains an introduction and discussion of dual resident triangular cases involving various categories of income and Chapter 11 focusses on the application of treaties with third states. For discussion of reverse PE triangular cases and reverse dual resident triangular cases, see Chapter 12.

1431 Certain variations on the basic triangular cases have been dealt with previously by: Gusmeroli, M. "Triangular Cases and the Interest and Royalties Directive: Untying the Gordian Knot? – Part 1" 45 European Taxation 1, (2005), pp. 2-13. Gusmeroli discusses situations where a typical PE triangular case is combined with a reverse PE triangular case, including situations where both three and four states are involved; more detail will be given below. Gusmeroli also identifies other authors who have made passing reference to situations involving more than three states.


1433 Proposed solutions for triangular cases have been identified throughout this thesis; reference will be made to those chapters in this appendix where relevant. A more detailed overview of the proposed solutions can be found in Chapter 13.
Each of these situations will be described in more detail in the relevant section. For the purposes of the analysis in this appendix, it is assumed that all the states involved seek to impose tax under their respective domestic laws and that there are treaties in effect between all the relevant states. It is further assumed (except where specifically noted) that those treaties follow the 2010 OECD Model.

The analysis in this part is structured around the categories of income identified in the OECD Model, namely business profits (Article 7), dividends (Article 10), interest (Article 11), royalties (Article 12), income from immovable property (Article 6), income from shipping, inland waterways transport and air transport (Article 8), capital gains (Article 13) and other income (Article 21). It does not discuss income from employment (Article 15), directors’ fees (Article 16), artistes and sportsmen (Article 17), pensions (Article 18), government service (Article 19) or students (Article 20), which are outside the scope of this study.

Note that this part of the thesis may seem to contain some repetition but this has been done to ensure that each section can be easily understood without reading the entirety of this part of the thesis. To give an example, the treaty provision applicable to business profits (Article 7) is repeated for each of the four situations being addressed (in the sections dealing with business profits).