



## Major design elements in drafting domestic legislation to counter base erosion related to rent and royalties

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

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

## Overview

- Introduction
- Restrictions on the deduction of royalties paid to non-residents
- Withholding taxes on rent and royalties
- Rent and royalty expenses incurred by residents
- Preferentially taxed income





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## Research and development

- Taxing gains realized on the transfer of intellectual property transferred
- Should any gain on the transfer of intellectual property be entitled to any preferential treatment

## Sample withholding tax pr

2+ Any person not resident in 3country B shall pay tax on any of the following amounts that a person resident in 3country B receives as/ on account of/ or in lieu of credits/ or is deemed by the provisions of this paragraph to be received by a non-resident person as/ on account of/ or in lieu of:

\*a, any payment (any rent/ royalty or other similar payment) for the use of or the right to use any immovable property located in 3country B

or the right to use in 3country B any industrial/ commercial or scientific immovable property located in 3country B or any right/ patent/ trademark/ design or formula or process/ or any other similar

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## Sample withholding tax pr

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\*c, any payment for the use of or the right to use any industrial/ commercial or scientific immovable property located in 3country B

\*d, any payment for an agreement by the non-resident person not to use or to allow any other person to use property described in subparagraph \*a. or \*b. or information described in subparagraph

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## Sample withholding tax pr

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\*e, any payment that is dependent on the use of or the right to use any immovable property from property

\*f, any payment for the use of or the right to use any motion picture film/ or any film/ video tape/ or other means of reproduction for the purpose of a television broadcast and

or the right to use in 3country B any motion picture film/ or any film/ video tape/ or other means of reproduction for the purpose of radio

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## Sample withholding tax pr

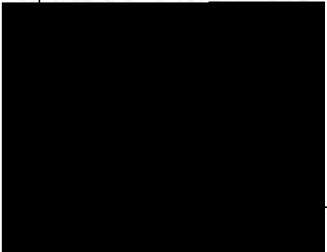
2+ >or the purposes of this paragraph/

\*a, (Immovable property) includes property and equipment used in agriculture/ forestry/ usufruct of immovable property/ or any other activity and variable or fixed payments for the working of or the right

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# Sample withholding tax pr

!+ person resident in 3ountry B that pays a  
paragraph : to a non-resident person shall with  
such non-resident person at the rate of CC per c



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## Administrative aspects% checklist related to the deductibility of rent

1) If income from rent and royalties from a foreign country is taxable%

- Verify the amount of foreign source income from a resident's tax return/ supporting schedules and foreign tax return
- If the country uses a per country limitation on the foreign tax credit/ tax paid to each foreign country on the basis of the foreign tax return
- Verify that the per country limitation on the foreign tax credit/ tax paid to each foreign country on the basis of the foreign source income from a resident's tax return/ supporting schedules and foreign tax returns
- Verify that the foreign tax credit is properly calculated and that the expenses should be allocated to foreign source income

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## Administrative aspects% checklist related to the deductibility of rent

2) If income from rent and royalties from a foreign country is exempt%

- Verify the amount of foreign income \$qualifying for the foreign tax credit/ tax paid to each foreign country on the basis of the foreign tax return
- Verify that the foreign income is taken into account to determine a resident's tax rate/ verify that the rate is calculated properly, taking into account the foreign tax credit/ tax paid to each foreign country on the basis of the foreign tax return
- Verify that the foreign tax credit is properly calculated and that the expenses allocated to exempt foreign source income are not taken into account against the country's tax base \*assuming/ verifying that the expenses incurred to earn exempt income are not taken into account under the country's domestic law,

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## Administrative aspects% checklist related to the taxation of rent and royalties

1) If non-residents are subject to tax on a net basis \*e.g. = 7 situations,%

- Identify the non-resident recipients of rent or royalties to non-residents \*if payments of rent or royalties to non-residents are subject to provisional withholding/ verify that payers are withholding properly on the basis of withholding information returns/ payers' tax returns and other information

2) If the threshold is met \*e.g. fixed base/ presence in the country/ days/ or other domestic threshold, verify that the non-resident is not improperly avoiding any threshold

3) Verify that the non-resident is subject to tax from tax returns/ supporting schedules and third-party information returns

4) Verify that the production of rent or royalties apply to non-residents and that the restrictions are applied properly

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## Administrative aspects% checklist related to the taxation of rent and royalties

2) If non-residents are subject to tax on a withholding basis%

- Verify that payers \*residents and non-residents are withholding properly on the basis of withholding information returns/ payers' tax returns and other information

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