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Article 13: Capital gains

Compliance Issues in Regard to Paragraph 4 of Article 13 of the United Nations Model Double Taxation Convention.

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Paragraph 4 of Article 13 is extracted below for ready reference:

"4. Gains from the alienation of shares of the capital stock of a company, or of an interest in a partnership, trust or estate, the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State. In particular:

(1) Nothing contained in this paragraph shall apply to a company, partnership, trust or estate, other than a company, partnership, trust or estate engaged in the business of management of immovable properties, the property of which consists directly or indirectly principally of immovable property used by such company, partnership, trust or estate in its business activities.

(2) For the purposes of this paragraph, "principally" in relation to ownership of immovable property means the value of such immovable property exceeding 50 per cent of the aggregate value of all assets owned by the company, partnership, trust or estate."

contrary view is that some international meaning to this term in preference to the domestic law meaning should contextually apply. This potential divergence in views of the resident State and source State can cause difficulties for the tax payer.

"Principally" in relation to ownership of 'immovable property' has been defined to mean the value of such 'immovable property' exceeding 50% of the aggregate value of all assets. The questions requiring clarification are:

(i) what is the date for determining such value?
(ii) whether the value is to be taken as book value, cost or fair market value?
(iii) which are the assets to be reckoned i.e. whether all assets as per books or even the assets not in the books like goodwill and other intangible property etc.?

In a situation where the 'immovable property' is situated in State A and the company

Questionnaire

Compliance issues in regard to paragraph 4 of Article 13 of the U.N. Model Convention – Country practices

1. Taxpayer issues

a) How does a tax payer in your tax jurisdiction who alienates his shares know that the

c) Is the location of immovable properties disclosed in the Balance Sheets of companies, partnerships, trusts, etc. available in the public domain in your State? In case the same is not available, where would the taxpayer access information to determine his tax obligation?

d) How does the taxpayer determine his tax obligation in the situation when he transacts

iii. Which are the assets to be reckoned, i.e. whether all assets as per books or even the assets not in the books like goodwill and other intangible property etc.?