



Taxation of Income from Immovable Property

Presented:

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**For
Committee on
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Article 6 - Income from Immovable Property



- Taxability as per The Income tax Act, 1961-Taxable in India if property is situated in India - Section 9(1)(i).
- Article 6 of the OECD, U.N., and U.S. model conventions deal with income from Immovable Property.
- DTAA between India-Greece is an exception, income from immovable property falls under Article 10.
- The paragraphs of Article in all three conventions are similar with a minor difference.

Article 6 - Income from Immovable Property



UN Model

- *May be taxed in source state*
- Exhaustive meaning to Immovable Property
- Ships, Boats & Aircrafts *not* regarded as Immovable Property
- *Form of exploitation is not relevant*

OECD Model

- May be taxed in source state
- Exhaustive meaning to Immovable Property
- Ships, Boats & Aircrafts not regarded as Immovable Property
- Form of exploitation is not relevant

US Model

- May be taxed in source state
- Meaning as given in source country laws
- No such specific exclusion
- Form of exploitation is not relevant
- Option to compute income on gross or net basis

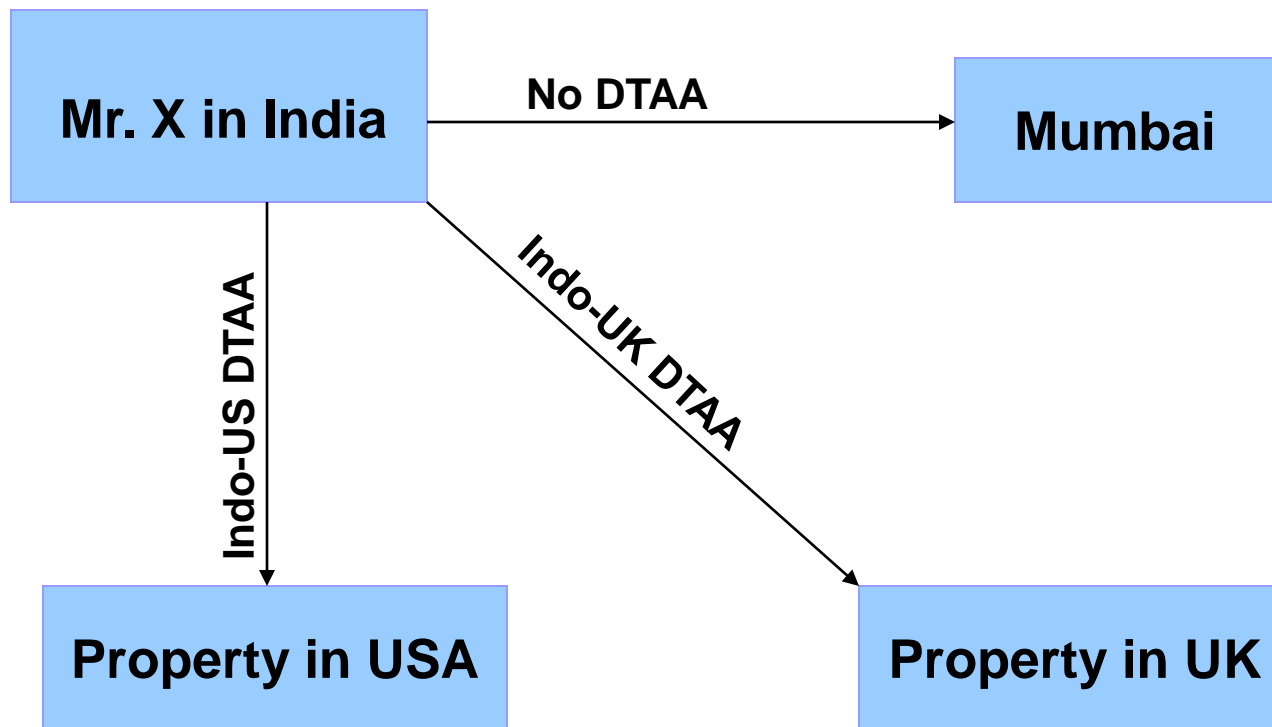
Both OECD and UN Model are identical
Most Indian DTAA's are based on UN Model

Article 6 - Income from Immovable Property



Paragraph	Overview of Provisions
6(1)	Grants rights of taxation to country where the property is situated
6(2)	Meaning of Immovable Property
6(3)	Explains forms of exploitation of property
6(4)	Explains treatment of property of an enterprise/used for performing services

Article 6 - Income from Immovable Property



Article 6 - Paragraph 1



- **Grants primary right of taxation to the country wherein property is situated**
 - Close economic connection between source of income and State of Source
- **Income from agriculture and forestry included**
 - May be taxed under Article 7 if agreed between two States
- **No mechanism for computing taxable income**
 - Domestic regulations should apply; para 2 of UN Model Commentary – taxable on net basis
- **Income from property situated in third State not covered**

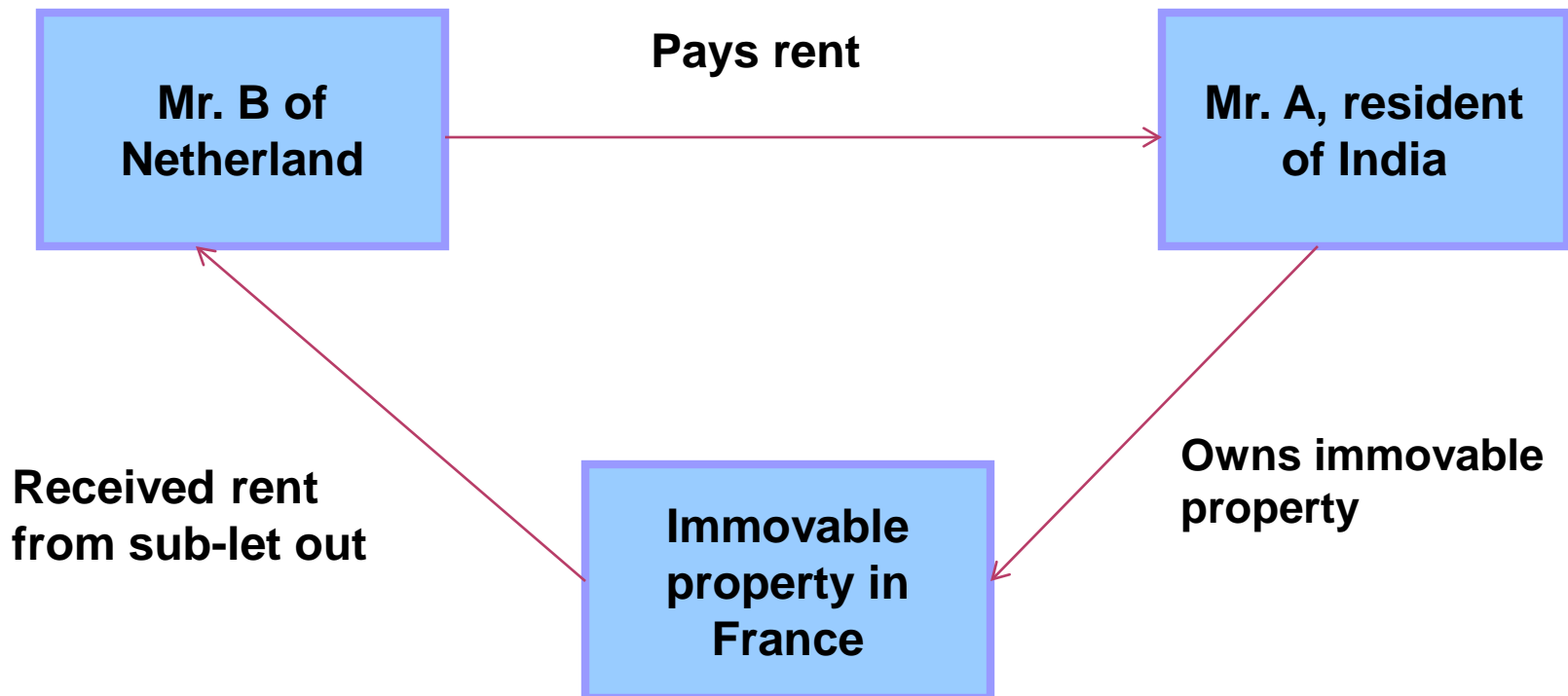
Income also taxable in the “State of Residence”

Article 6 - Paragraph 1



- Example- Mr. A, resident of India who owns property in France has let it out to a resident of Netherlands, Mr. B. Rent received taxable under 'Other Income'. Treaty between India and The Netherlands can not apply as the property is situated in France.
- If Mr. B sublets the property to Mr. C of France, income of Mr. B will be covered by Article 6 of France Netherlands treaty.

Article 6 - Paragraph 1



Article 6 - Paragraph 1



- **Controversy in interpretation of the terminology 'may be taxed in'-**

- The SC held in CIT v. P.V.A.L. Kulandagan Chettiar 267 ITR 654 that income from rubber estate in Malaysia was not taxable in India although Article 6 uses the words 'may be taxed in'. Madras and MP High Courts and Chennai ITAT have taken the same view.
- Notification No. 91/2008 dt. 28-8-2008 clarifies that where the treaty provides 'may be taxed in', such income shall be included in the income of resident in India.

Article 6 - Income from Immovable Property



● Paragraph 6(2)

- Meaning of immovable property
- Reference to domestic law (reference to article 3(2))
- Specific Inclusions
 - Property accessory to Immovable property
 - **Livestock** and equipments used in agriculture
 - Rights
- Specific Exclusions
 - Ships
 - Boats
 - Aircrafts

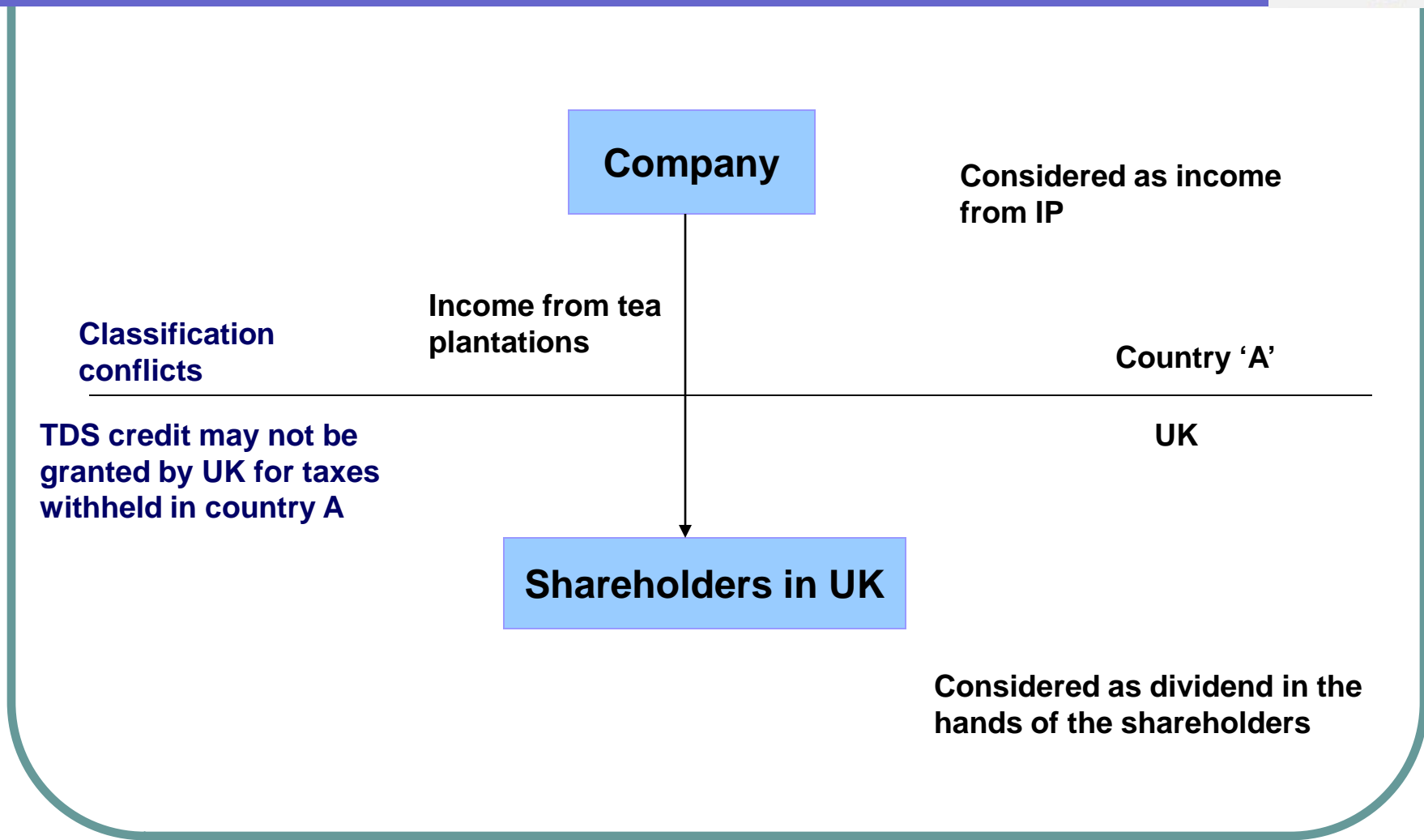
Article 6 - Income from Immovable Property



- **Meaning of ‘Immovable Property’ under the Income Tax Act (‘the Act’)**
- **Section 269 A (e)**

any land or any building or part of a building, and includes, where any land or any building or part of a building is transferred together with any machinery, plant, furniture, fittings or other things, such machinery, plant, furniture, fittings or other things also. *(including any rights pertaining to the above)*

Article 6 - Income from Immovable Property



Article 6 - Income from Immovable Property



- **Paragraph 6(3)**
 - **Forms of exploitation**
 - Direct use
 - Letting out
 - Indirect use / use in any other form
 - **Exclusions**

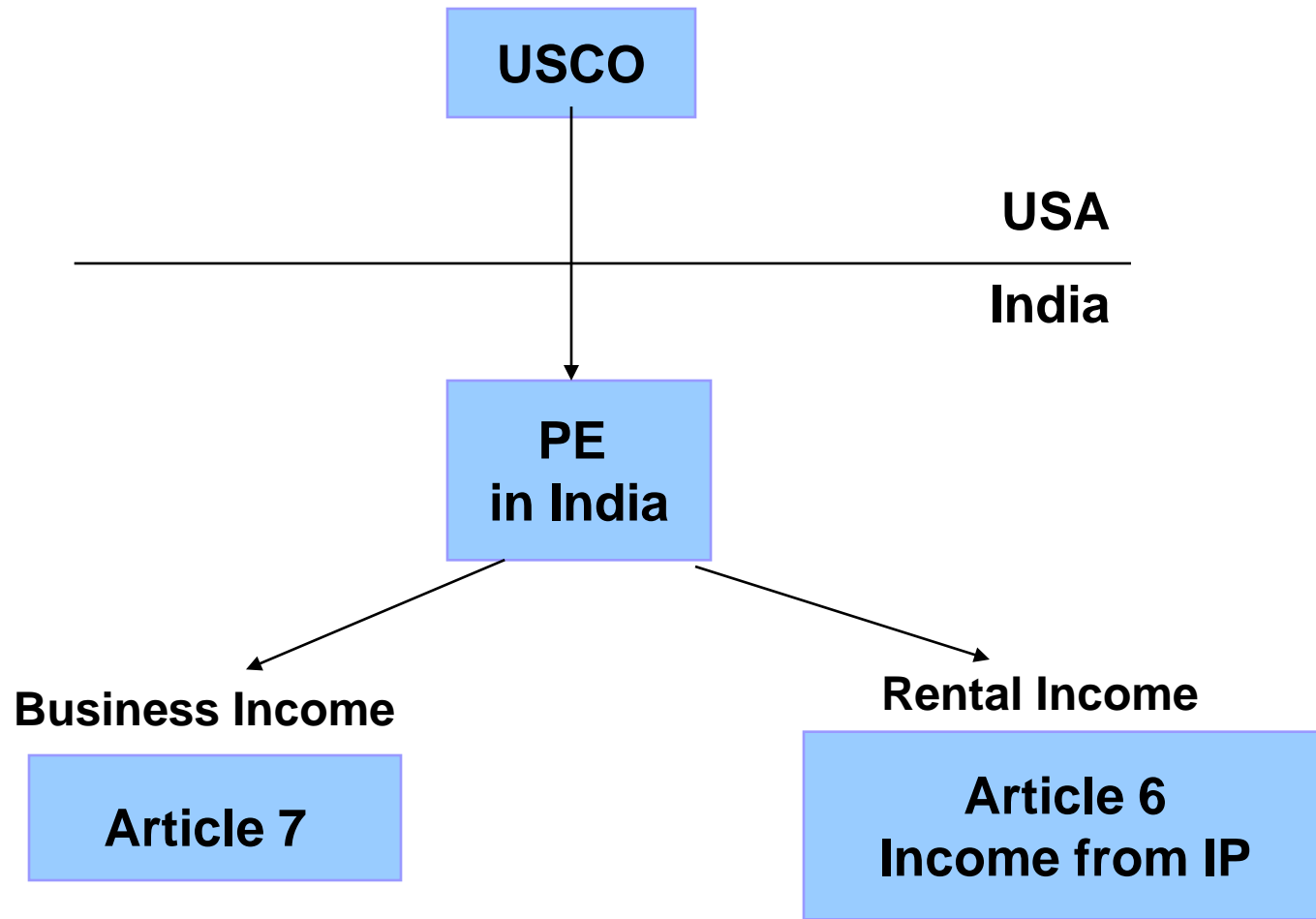
***Situs based taxation of income from IP
Irrespective of form of exploitation of property***

Article 6 - Paragraph 4



- **Priority of the rule of situs**
 - **Priority over Article 7**
 - **Income taxable under this article even if such property form part of PE of the enterprise or service provider**
- **Consequences on computation of income**
 - **Principles laid down in Article 7 do not apply**
 - **Restrictions do not apply**
 - **Principles of domestic tax law would prevail**

Article 6 - Paragraph 4



Article 6 - Indian Approach (Select India's DTAAs)



● Australia

- Expression “real property” used though the heading is “Immovable Property”
- It does not exclude “ships, boats and aircrafts”
- Separate definition for Australia and India
- Additional para 3 – lease of land or any other interest in or over land

● Germany

- Does not include “income from agriculture or forestry”
- “Immovable Property” not defined in Article 6
 - Defined in Article 3 (definitions) – same definition

Article 6 - Indian Approach (Select India's DTAAs)



- **USA**
 - Expression “real property” used
 - Inclusive and Exclusive part of the definition not included
- **UK**
 - Same as per UN Model
- **Includes income from agriculture**
 - Armenia/Austria/France
- **Does not include income from agriculture**
 - China/Denmark/Japan



- **SRM Firm & Others (1994) 208 ITR 400 (Mad)**
- **Kulandagan Chettiar (2004) 137 Taxman 460**
- **CIT Vs. R. M. Muthaiah (1993) 202 ITR 508/67**