Other Income under Tax Treaties

An Analysis of Article 21 of the OECD Model Convention

Alexander Bosman
# Table of Contents

Preface and Acknowledgments  
List of Abbreviations  
List of Figures  

## PART I  
General  

### CHAPTER 1  
Introduction  
1.1 Introductory Remarks  
1.2 Scope and Purpose of This Study  
1.3 Approach and Structure  

### CHAPTER 2  
Historical Development  
2.1 Introduction  
2.2 League of Nations  
   2.2.1 Introduction  
   2.2.2 1927 Draft Convention  
   2.2.3 1928 Draft Conventions  
      2.2.3.1 Draft No. Ia  
      2.2.3.2 Draft No. Ib  
      2.2.3.3 Draft No. Ic  
   2.2.4 Examples of “Other Income” Articles in Bilateral Tax Treaties Concluded in the Period 1921–1939  
   2.2.5 Work of the Fiscal Committee 1929–1946  
   2.2.6 1946 London and Mexico Draft Conventions  
2.3 OEEC  

vii
<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.2.3 Not Dealt with in the Foregoing Articles</td>
<td>79</td>
</tr>
<tr>
<td>4.2.3.1 General</td>
<td>79</td>
</tr>
<tr>
<td>4.2.3.2 Income Not within the Objective Scope of Other Distributive Rules</td>
<td>81</td>
</tr>
<tr>
<td>4.2.3.2.1 The Terms “Paid” and “Derived”</td>
<td>81</td>
</tr>
<tr>
<td>4.2.3.2.2 Causality</td>
<td>82</td>
</tr>
<tr>
<td>4.2.3.3 Income Not within the Geographical Scope of Other Distributive Rules</td>
<td>87</td>
</tr>
<tr>
<td>4.2.4 Wherever Arising</td>
<td>92</td>
</tr>
<tr>
<td>4.2.5 Resident</td>
<td>94</td>
</tr>
<tr>
<td>4.2.6 No Subject-to-Tax Clause</td>
<td>97</td>
</tr>
<tr>
<td>4.2.7 Function and Relevance of Article 21(1) within the System of the OECD Model</td>
<td>98</td>
</tr>
<tr>
<td>4.2.7.1 General</td>
<td>98</td>
</tr>
<tr>
<td>4.2.7.2 Hoge Raad 7 December 2001, BNB 2002/42</td>
<td>100</td>
</tr>
<tr>
<td>4.2.7.2.1 Facts and Decision of BNB 2002/42</td>
<td>101</td>
</tr>
<tr>
<td>4.2.7.2.2 Characterisation of Deducted Premiums</td>
<td>102</td>
</tr>
<tr>
<td>4.2.7.2.3 Arguments of the Hoge Raad and the Advocate General</td>
<td>102</td>
</tr>
<tr>
<td>4.2.7.2.4 Role of the “Other Income” Article</td>
<td>103</td>
</tr>
<tr>
<td>4.2.7.2.5 Taxation of Surrender of Annuity in Case of Emigration (Hoge Raad 19 June 2009, BNB 2009/264)</td>
<td>106</td>
</tr>
<tr>
<td>4.2.8 Triangular Cases Involving Dual Residence</td>
<td>109</td>
</tr>
<tr>
<td>4.2.9 Examples of Items of Income Falling under Article 21(1)</td>
<td>112</td>
</tr>
<tr>
<td>4.3 Article 21(2)</td>
<td>118</td>
</tr>
<tr>
<td>4.3.1 General</td>
<td>118</td>
</tr>
<tr>
<td>4.3.2 PE</td>
<td>119</td>
</tr>
<tr>
<td>4.3.3 Right or Property</td>
<td>119</td>
</tr>
<tr>
<td>4.3.4 Effectively Connected</td>
<td>120</td>
</tr>
<tr>
<td>4.4 Optional Third Paragraph</td>
<td>122</td>
</tr>
<tr>
<td>4.5 Other Model Conventions</td>
<td>125</td>
</tr>
<tr>
<td>4.5.1 Introduction</td>
<td>125</td>
</tr>
<tr>
<td>4.5.2 UN Model</td>
<td>125</td>
</tr>
<tr>
<td>4.5.2.1 General</td>
<td>125</td>
</tr>
<tr>
<td>4.5.2.2 Source State Taxation of Other Income</td>
<td>126</td>
</tr>
<tr>
<td>4.5.2.3 Source Rules</td>
<td>127</td>
</tr>
<tr>
<td>4.5.3 US Model</td>
<td>130</td>
</tr>
<tr>
<td>4.5.3.1 General</td>
<td>130</td>
</tr>
<tr>
<td>4.5.3.2 Article 21(1)</td>
<td>131</td>
</tr>
<tr>
<td>4.5.3.3 Article 21(2)</td>
<td>132</td>
</tr>
<tr>
<td>4.5.3.4 Limitation on Benefits</td>
<td>132</td>
</tr>
<tr>
<td>4.5.4 Belgian Model</td>
<td>132</td>
</tr>
</tbody>
</table>
Table of Contents

4.6 Deviations from the OECD Model 134
  4.6.1 General 134
  4.6.2 No “Other Income” Article 135
  4.6.3 Source State Taxation 136
  4.6.4 Both Contracting States May Tax 139
  4.6.5 Income Not Expressly Mentioned or Not Expressly Dealt With 140
  4.6.6 Income from Estates and Trusts 141
  4.6.7 Source State Taxation Limited to Certain Types of Income 142
  4.6.8 Subject-to-Tax Clause 143
  4.6.9 Anti-abuse Provisions 144
  4.6.10 Dual Residence Provision 145

PART II
Demarcation between Article 21 and Other Distributive Rules of the OECD Model 147

CHAPTER 5
Income from Immovable Property 149
  5.1 Introduction 149
  5.2 Some General Remarks on Article 6 149
  5.3 Demarcation between Article 6 and Article 21 150
  5.4 Income Not within the Objective Scope of Article 6 151
    5.4.1 Interpretation of Article 6 151
      5.4.1.1 Definition of Immovable Property 152
      5.4.1.2 Income from Immovable Property 156
      5.4.1.3 Article 6(3) 157
      5.4.1.4 Article 6(4) 158
    5.4.2 Application of Article 21 160
    5.4.3 Examples 161
      5.4.3.1 Insurance Payments 162
      5.4.3.2 Damages 162
      5.4.3.3 Expropriation Compensations 163
      5.4.3.4 Notional (Rental) Income 163
      5.4.3.5 Income from Inactive Use 166
      5.4.3.6 Components of Rent Concerning Movable Property 166
      5.4.3.7 Immovable Property Certificates 166
      5.4.3.8 Income from Shares 167
      5.4.3.9 Income from a Right to Use Immovable Property Embodied in Shares 168
      5.4.3.10 Distributions from REITs 168
      5.4.3.11 Capital Gains/Changes in Value 169
      5.4.3.12 Recapture of Depreciation 172
      5.4.3.13 Annuity Payments 173
5.4.3.14 Mortgage Loans 173
5.4.3.15 Waiver of Debt 174
5.4.3.16 Option Rights 174
5.4.3.17 Lease Payments 175
5.4.3.18 Total Return Swaps 176

5.5 Income from Immovable Property Not within the Geographical Scope of Article 6 177

5.6 Income from Immovable Property Attributable to a PE 180
5.6.1 Introduction 180
5.6.2 Immovable Property in a Contracting State, PE in the Same State 181
5.6.3 Immovable Property in the Residence State, PE in the Other Contracting State 183
5.6.3.1 Treaty Application by the PE State 183
5.6.3.2 Proposed Approach 185
5.6.3.3 Other Views 187
5.6.3.4 Avoidance of Double Taxation 190
5.6.4 Immovable Property in a Third State, PE in the Other Contracting State 192
5.6.4.1 Treaty Application by the PE State 192
5.6.4.2 Proposed Approach 194
5.6.4.3 Proposed Amendment of Article 21 197
5.6.4.4 Other Views 198
5.6.4.5 Avoidance of Double Taxation 201

Chapter 6
Business Profits 205
6.1 Introduction 205
6.2 Some General Remarks on Article 7 205
6.3 Demarcation between Article 7 and Article 21(1) 206
6.4 Income Not within the Objective Scope of Article 7 208
6.4.1 Interpretation of Article 7 208
6.4.2 Application of Article 21 210
6.4.3 Examples 210
6.4.3.1 Remunerations derived by Partners of Belgian Companies 210
6.4.3.2 Income from (Silent) Partnerships 211
6.4.3.3 CFC Legislation 212
6.4.3.4 Technical Service Fees 212
6.4.3.5 Limited Scope of Article 7 213
6.4.3.6 Income from Former Activities 213
6.4.3.7 Profit Share in Dutch Limited Partnership 214
6.4.3.8 Foreign Exchange Results 218
Table of Contents

6.4.3.9 Pension Contributions Enjoyed by Members of European Parliament 219
6.4.3.10 Emissions Rights 221

6.5 Income Not within the Geographical Scope of Article 7 223
6.6 Income Attributable to a PE 223
  6.6.1 Introduction 223
  6.6.2 Income Arising in the PE State 224
  6.6.3 Income Arising in the Residence State or in a Third State, while Maintaining a PE in the Other Contracting State 225
    6.6.3.1 Treaty Application by the PE State 225
    6.6.3.2 Avoidance of Double Taxation 229

CHAPTER 7
Profits from Shipping, Inland Waterways and Air Transport 231
  7.1 Introduction 231
  7.2 Some General Remarks on Article 8 231
  7.3 Demarcation between Article 8 and Article 21(1) 233
  7.4 Income Not within the Objective Scope of Article 8 235
    7.4.1 Interpretation of Article 8 235
    7.4.2 Application of Article 21 237
    7.4.3 Examples 238
      7.4.3.1 Limited Scope of Business Profits Article 238
      7.4.3.2 Partnership, No Enterprise/Business Profits 239
      7.4.3.3 No Independent Enterprise in Addition to “Shipping or Air Transport Enterprise” 240
  7.5 Income Not within the Geographical Scope of Article 8 240
  7.6 Income Attributable to a PE 241

CHAPTER 8
Dividends 243
  8.1 Introduction 243
  8.2 Some General Remarks on Article 10 243
  8.3 Demarcation between Article 10 and Article 21 245
  8.4 Income Not within the Objective Scope of Article 10 246
    8.4.1 Interpretation of Article 10 246
      8.4.1.1 Dividends 246
      8.4.1.2 Paid 252
      8.4.1.3 Company 253
      8.4.1.4 Resident 254
      8.4.1.5 Beneficial Owner 254
    8.4.2 Application of Article 21 256
    8.4.3 Examples 258
      8.4.3.1 Notional Income from Shares 258
      8.4.3.2 Deemed or Constructive Dividends 263
### Table of Contents

8.4.3.3 CFC Legislation 266
8.4.3.4 Income from Shares in a Company That Is Not a Treaty Resident 267
8.4.3.5 Tax on Dividends Cashed in a Contracting State 269
8.4.3.6 Income Not Treated as Income from Shares under the Source State's Tax Laws 270
8.4.3.7 Dividend Replacing Payments under Stock Lending and Repo Transactions 272
8.4.3.8 Cash Compensation in Respect of Dividends 275
8.4.3.9 Benefits in Kind (Right of Use) 275
8.4.3.10 Repurchase of Shares 276
8.4.3.11 Liquidation Proceeds 276
8.4.3.12 Distributions by Co-operatives 277
8.4.3.13 Income from Share Option Rights 278
8.4.3.14 Distributions from REITs 279
8.4.3.15 Bonus Shares 279
8.4.3.16 Repayment of Non-recognised Share Capital 280

8.5 Dividends Not within the Geographical Scope of Article 10 284
8.5.1 General 284
8.5.2 Höge Raad 28 February 2001, BNB 2001/295 (Dual Resident) 286
8.5.2.1 Facts and Decision of BNB 2001/295 286
8.5.2.2 Residence 288
8.5.2.3 Positive Attribution of the Right to Tax 289
8.5.2.4 Role of the "Other Income" Article 289
8.5.2.5 An Earlier a Fortiori Reasoning: Höge Raad 2 September 1992, BNB 1992/379 290
8.5.2.6 Residual Character of Article 10 292
8.5.3 Höge Raad 6 December 2002, BNB 2003/285 (International Holding Company Structure) 295
8.5.3.1 Facts and Decision of BNB 2003/285 295
8.5.3.2 Role of the "Other Income" Article 297
8.5.3.3 Positive Attribution of the Right to Tax 297
8.5.3.4 Good Faith? 298
8.5.3.5 Residual Character of Article 10 300

8.6 Dividends Attributable to a PE 302
8.6.1 Introduction 302
8.6.2 Dividends Paid by Company Residing in the PE State 302
8.6.3 Dividends Paid by a Company Residing in the Residence State of the Recipient of the Income or in a Third State, while Maintaining a PE in the Other Contracting State 303
8.6.3.1 Treaty Application by the PE State 303
8.6.3.2 Avoidance of Double Taxation 305
8.6.3.2.1 Dividend Paid by Company in State R 305
8.6.3.2.2 Dividend Paid by Company in State T 307
# Table of Contents

**Chapter 9**

**Interest**  
9.1 Introduction 313  
9.2 Some General Remarks on Article 11 313  
9.3 Demarcation between Article 11 and Article 21 315  
9.4 Income Not within the Objective Scope of Article 11 316  
9.4.1 Interpretation of Article 11 316  
9.4.1.1 Interest 316  
9.4.1.2 Paid 318  
9.4.1.3 Resident 319  
9.4.1.4 Beneficial Owner 319  
9.4.1.5 Arising 319  
9.4.2 Application of Article 21 322  
9.4.3 Höge Raad 18 June 2004, BNB 2004/314 (Fictitious Interest) 323  
9.4.3.1 Facts and Decision of BNB 2004/314 323  
9.4.3.2 Treaty Interpretation 325  
9.4.3.3 Shift in Right to Tax 326  
9.4.3.4 Positive Attribution of the Right to Tax? 326  
9.4.3.5 Good Faith 327  
9.4.3.6 Role of the “Other Income” Article; Subject-to-Tax Requirement 327  
9.4.3.7 Other Domestic Law Fictions 330  
9.4.3.8 Reverse Case 331  
9.4.3.9 Comparison to Höge Raad 27 August 1997, BNB 1998/50 332  
9.4.3.10 Comparison to Höge Raad 7 December 2001, BNB 2002/42 (Hungarian Annuity) 332  
9.4.4 Examples 333  
9.4.4.1 Penalty Charges 333  
9.4.4.2 Profit or Loss on Debt Instrument 333  
9.4.4.3 Excessive Interest Payments 334  
9.4.4.4 Derivatives 334  
9.4.4.5 Securities Lending; Repo Transactions 335  
9.4.4.6 Lease Payments 336  
9.4.4.7 Benefits in Kind (Right of Use) 337  
9.4.4.8 Indemnity Payment for Withholding Tax 337  
9.5 Interest Income Not within the Geographical Scope of Article 11 338  
9.5.1 General 338  
9.5.2 Residual Character of Article 11? 340  
9.6 Interest Income Attributable to a PE 341  
9.6.1 Introduction 341  
9.6.2 Interest Arising in the PE State 342
9.6.3 Interest Arising in the Residence State of the Recipient of the Income or in a Third State, while Maintaining a PE in the Other Contracting State

9.6.3.1 Treaty Application by the PE State

9.6.3.2 Avoidance of Double Taxation

9.6.3.2.1 Interest Arising in State R

9.6.3.2.2 Interest Arising in State T

CHAPTER 10

Royalties

10.1 Introduction

10.2 Some General Remarks on Article 12

10.3 Demarcation between Article 12 and Article 21

10.4 Income Not within the Objective Scope of Article 12

10.4.1 Interpretation of Article 12

10.4.1.1 Royalties

10.4.1.2 Payment

10.4.1.3 Resident

10.4.1.4 Beneficial Owner

10.4.1.5 Arising

10.4.2 Application of Article 21

10.4.3 Examples

10.4.3.1 Notional Income

10.4.3.2 Leasing

10.4.3.3 Sale of Assets

10.4.3.4 Annuity Payments

10.4.3.5 Technical Service Fees

10.4.3.6 Fees for Consultancy Services

10.4.3.7 Payment to Non-owner

10.4.3.8 Immovable Property

10.4.3.9 Interest on Damages

10.4.3.10 Excessive Royalty Payments

10.4.3.11 Consideration for Use of Right or Property Not within Article 12(2)

10.5 Royalty Income Not within the Geographical Scope of Article 12

10.5.1 General

10.5.2 Residual Character of Article 12?

10.6 Royalty Income Attributable to a PE

10.6.1 Introduction

10.6.2 Royalties Arising in the PE State

10.6.3 Royalties Arising in the Residence State of the Recipient of the Income or in a Third State, while Maintaining a PE in the Other Contracting State

10.6.3.1 Treaty Application by the PE State
<table>
<thead>
<tr>
<th>Chapter</th>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>10.6.3.2</td>
<td>Avoidance of Double Taxation</td>
<td>370</td>
</tr>
<tr>
<td>10.6.3.2.1</td>
<td>Royalties Arising in State R</td>
<td>370</td>
</tr>
<tr>
<td>10.6.3.2.2</td>
<td>Royalties Arising in State T</td>
<td>370</td>
</tr>
<tr>
<td>Chapter 11</td>
<td>Capital Gains</td>
<td>371</td>
</tr>
<tr>
<td>11.1</td>
<td>Introduction</td>
<td>371</td>
</tr>
<tr>
<td>11.2</td>
<td>Some General Remarks on Article 13</td>
<td>371</td>
</tr>
<tr>
<td>11.3</td>
<td>Demarcation between Article 13 and Article 21</td>
<td>374</td>
</tr>
<tr>
<td>11.4</td>
<td>Income or Gains Not within the Objective Scope of Article 13</td>
<td>377</td>
</tr>
<tr>
<td>11.4.1</td>
<td>Interpretation of Article 13</td>
<td>377</td>
</tr>
<tr>
<td>11.4.1.1</td>
<td>(Capital) Gains</td>
<td>377</td>
</tr>
<tr>
<td>11.4.1.2</td>
<td>Property</td>
<td>379</td>
</tr>
<tr>
<td>11.4.1.3</td>
<td>Alienation</td>
<td>380</td>
</tr>
<tr>
<td>11.4.2</td>
<td>Application of Article 21</td>
<td>380</td>
</tr>
<tr>
<td>11.4.3</td>
<td>Examples</td>
<td>382</td>
</tr>
<tr>
<td>11.4.3.1</td>
<td>Annuity Payments</td>
<td>382</td>
</tr>
<tr>
<td>11.4.3.2</td>
<td>Changes in Value of Property</td>
<td>382</td>
</tr>
<tr>
<td>11.4.3.3</td>
<td>Deemed Alienation of Shares in Connection with Emigration</td>
<td>384</td>
</tr>
<tr>
<td>11.4.3.4</td>
<td>Gain or Loss from Sale of Debt Instrument</td>
<td>389</td>
</tr>
<tr>
<td>11.4.3.5</td>
<td>Write-Down of Loan Receivable</td>
<td>390</td>
</tr>
<tr>
<td>11.4.3.6</td>
<td>Foreign Exchange Results</td>
<td>392</td>
</tr>
<tr>
<td>11.4.3.7</td>
<td>Liquidation Proceeds, Repurchases of Shares, Capital Reductions</td>
<td>393</td>
</tr>
<tr>
<td>11.4.3.8</td>
<td>Options</td>
<td>395</td>
</tr>
<tr>
<td>11.4.3.9</td>
<td>Income from Inactivity</td>
<td>396</td>
</tr>
<tr>
<td>11.4.3.10</td>
<td>Emissions Rights</td>
<td>397</td>
</tr>
<tr>
<td>11.4.3.11</td>
<td>Insurance Payments and Damages</td>
<td>398</td>
</tr>
<tr>
<td>11.5</td>
<td>Gains from the Alienation of Property Not within the Geographical Scope of Article 13</td>
<td>399</td>
</tr>
<tr>
<td>11.5.1</td>
<td>Introduction</td>
<td>399</td>
</tr>
<tr>
<td>11.5.2</td>
<td>Immovable Property Situated in the Residence State or in a Third State</td>
<td>399</td>
</tr>
<tr>
<td>11.6</td>
<td>Gains Attributable to a PE</td>
<td>401</td>
</tr>
<tr>
<td>11.6.1</td>
<td>Introduction</td>
<td>401</td>
</tr>
<tr>
<td>11.6.2</td>
<td>Gains from Alienation of Immovable Property Attributable to a PE</td>
<td>401</td>
</tr>
<tr>
<td>11.6.2.1</td>
<td>Introduction</td>
<td>401</td>
</tr>
<tr>
<td>11.6.2.2</td>
<td>Immovable Property in a Contracting State, PE in the Same State</td>
<td>402</td>
</tr>
<tr>
<td>11.6.2.3</td>
<td>Immovable Property in the Residence State, PE in the Other Contracting State</td>
<td>402</td>
</tr>
</tbody>
</table>
11.6.2.4 Immovable Property in a Third State, PE in the Other Contracting State 405
11.6.3 Gains from Alienation of Movable Property Attributable to a PE 408

CHAPTER 12
Income from Employment 411

12.1 Introduction 411

12.2 Some General Remarks on Articles 15 Et Seq. 411
  12.2.1 Article 15 (Income from Employment) 411
  12.2.2 Article 16 (Director's Fees) 414
  12.2.3 Article 17 (Entertainers and Sportspersons) 414
  12.2.4 Article 18 (Pensions) 415
  12.2.5 Article 19 (Government Service) 415
  12.2.6 Article 20 (Students) 416

12.3 Demarcation between Articles 15 Et Seq. and Article 21(1) 417
  12.3.1 General 417
  12.3.2 Dutch Case Law on Residual Character of Article 15 of the OECD Model 421

12.4 Income Not within the Objective Scope of Articles 15 Et Seq. 428
  12.4.1 Interpretation of Article 15 428
  12.4.2 Application of Article 21 430
  12.4.3 Höge Raad 5 September 2003, BNB 2003/379 (Fictitious Wage) 431
    12.4.3.1 Facts and Decision of BNB 2003/379 431
    12.4.3.2 Role of the "Other Income" Article 433
    12.4.3.3 Relation to Höge Raad Case Law regarding the "Closed System" of Articles 15 Et Seq. 436
  12.4.4 Examples 436
    12.4.4.1 Social Security Benefits 436
      12.4.4.1.1 General 436
      12.4.4.1.2 Sickness Benefits 438
      12.4.4.1.3 Disability Allowances (WAO/AAW or WIA Allowances) 441
    12.4.4.1.4 Supplementary Disability Allowances 445
    12.4.4.1.5 WAO-Compliant Allowance 446
    12.4.4.1.6 Policy in Response to Case Law 447
    12.4.4.1.7 Reasons for Exclusion of Dutch Disability Allowance from the "Closed System" of Articles 15 Et Seq. 449
  12.4.4.2 Pensions 451
    12.4.4.2.1 General 451
    12.4.4.2.2 Redemption of Pension Rights 452
    12.4.4.2.3 Transfer of Pension Capital 454
    12.4.4.2.4 Transfer of Private Pension Company after Emigration of Shareholder 455
### Table of Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>12.4.4.2.5 Taxation of Pension Rights in Case of Emigration</td>
<td>457</td>
</tr>
<tr>
<td>12.4.4.2.6 Various Decisions</td>
<td>461</td>
</tr>
<tr>
<td>12.4.4.3 Child Benefits</td>
<td>465</td>
</tr>
<tr>
<td>12.4.4.4 Company Car Benefits</td>
<td>467</td>
</tr>
<tr>
<td>12.4.4.5 Severance Payments</td>
<td>467</td>
</tr>
<tr>
<td>12.4.4.6 Compensation Paid in Respect of Loss of Income Following Injury or Disability</td>
<td>473</td>
</tr>
<tr>
<td>12.4.4.7 Strike Benefits</td>
<td>474</td>
</tr>
<tr>
<td>12.4.4.8 Non-competition Agreements</td>
<td>475</td>
</tr>
<tr>
<td>12.4.4.9 Stock Options</td>
<td>476</td>
</tr>
<tr>
<td>12.4.4.10 Employee Stock Ownership Plan</td>
<td>477</td>
</tr>
<tr>
<td>12.4.4.11 EU Scholarship</td>
<td>478</td>
</tr>
<tr>
<td>12.4.4.12 Payments Resembling Directors' Fees</td>
<td>479</td>
</tr>
<tr>
<td>12.4.4.13 Government Service</td>
<td>481</td>
</tr>
<tr>
<td>12.4.4.14 Entertainers and Sportpersons</td>
<td>483</td>
</tr>
<tr>
<td>12.5 Income Not within the Geographical Scope of Articles 15 Et Seq.</td>
<td>484</td>
</tr>
</tbody>
</table>

**PART III**

Summary and Conclusions 485

**CHAPTER 13**

Summary and Conclusions 487

13.1 Introduction 487

13.2 General Observations on Article 21 488

13.2.1 Demarcation 488

13.2.2 Function and Relevance of Article 21 of the OECD Model 491

13.2.2.1 Article 21(1) of the OECD Model 491

13.2.2.2 Article 21(2) of the OECD Model 495

13.2.2.3 Optional Third Paragraph of Article 21 of the OECD Model 496

13.2.3 Article 21 of the UN Model 497

13.2.4 Deviations from Article 21 of the OECD Model 498

13.2.5 Effectiveness of Article 21 of the OECD Model 499

13.2.5.1 Article 21(1) of the OECD Model 499

13.2.5.2 Article 21(2) of the OECD Model 499

13.3 Demarcation Based on Objective Scope 500

13.3.1 General 500

13.3.2 Income from Immovable Property 502

13.3.2.1 Residual Function of Article 21 502

13.3.2.2 Findings/Recommendations 504

13.3.3 Business Profits 506

13.3.3.1 Residual Function of Article 21 506

13.3.3.2 Findings/Recommendations 506
<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>13.3.4 Profits from Shipping, Inland Waterways and Air Transport</td>
<td>507</td>
</tr>
<tr>
<td>13.3.4.1 Residual Function of Article 21</td>
<td>507</td>
</tr>
<tr>
<td>13.3.4.2 Findings</td>
<td>508</td>
</tr>
<tr>
<td>13.3.5 Dividends</td>
<td>508</td>
</tr>
<tr>
<td>13.3.5.1 Residual Function of Article 21</td>
<td>508</td>
</tr>
<tr>
<td>13.3.5.2 Findings</td>
<td>510</td>
</tr>
<tr>
<td>13.3.6 Interest</td>
<td>512</td>
</tr>
<tr>
<td>13.3.6.1 Residual Function of Article 21</td>
<td>512</td>
</tr>
<tr>
<td>13.3.6.2 Findings/Recommendations</td>
<td>513</td>
</tr>
<tr>
<td>13.3.7 Royalties</td>
<td>514</td>
</tr>
<tr>
<td>13.3.7.1 Residual Function of Article 21</td>
<td>514</td>
</tr>
<tr>
<td>13.3.7.2 Findings</td>
<td>516</td>
</tr>
<tr>
<td>13.3.8 Capital Gains</td>
<td>517</td>
</tr>
<tr>
<td>13.3.8.1 Residual Function of Article 21</td>
<td>517</td>
</tr>
<tr>
<td>13.3.8.2 Findings/Recommendations</td>
<td>518</td>
</tr>
<tr>
<td>13.3.9 Income from Employment</td>
<td>519</td>
</tr>
<tr>
<td>13.3.9.1 Residual Function of Article 21</td>
<td>519</td>
</tr>
<tr>
<td>13.3.9.2 Findings</td>
<td>521</td>
</tr>
<tr>
<td>13.4 Demarcation Based on Geographical Scope</td>
<td>523</td>
</tr>
<tr>
<td>13.4.1 General</td>
<td>523</td>
</tr>
<tr>
<td>13.4.2 Dividends, Interest and Royalties</td>
<td>524</td>
</tr>
<tr>
<td>13.4.3 Capital Gains</td>
<td>525</td>
</tr>
<tr>
<td>13.5 Income Attributable to a PE</td>
<td>526</td>
</tr>
<tr>
<td>13.5.1 Immovable Property</td>
<td>526</td>
</tr>
<tr>
<td>13.5.1.1 Immovable Property Situated in State R</td>
<td>526</td>
</tr>
<tr>
<td>13.5.1.2 Immovable Property Situated in State T</td>
<td>528</td>
</tr>
<tr>
<td>13.5.1.3 Proposed Amendment of Article 21</td>
<td>529</td>
</tr>
<tr>
<td>13.5.2 Dividends, Interest and Royalties</td>
<td>530</td>
</tr>
<tr>
<td>13.5.3 Capital Gains</td>
<td>532</td>
</tr>
<tr>
<td>13.5.3.1 Immovable Property Situated in State R</td>
<td>532</td>
</tr>
<tr>
<td>13.5.3.2 Immovable Property Situated in State T</td>
<td>533</td>
</tr>
<tr>
<td>13.5.3.3 Proposed Amendment of Article 13</td>
<td>533</td>
</tr>
<tr>
<td>13.6 Final Remarks</td>
<td>534</td>
</tr>
</tbody>
</table>

**APPENDIX**

Suggested Amendments to the OECD Model and Commentaries 535

Bibliography 545

Table of Cases 559

Statements of Various Authorities and Official Documents 569