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INTELLECTUAL PROPERTY CROSS BORDER REMITTANCES: NEXUS AND SUBSTANCE TREATY CHALLENGES

Introduction and relevance:



Research Questions and Objectives:

How to establish a nexus of taxation in transactions with intangibles?

How to avoid treaty abuse in transactions with intangibles?

Practical Solutions while there is not an international consensus:

Source taxation (i.e. article 12-CM/OECD) is the most used, though not always source countries check substance or beneficial ownership upon remittance. Value creation as studied in Transfer Pricing may also help to establish substance regarding IP transactions.

Courts have been called in to verify beneficial ownership/substance in the transactions and, in general, check if the recipient:

- has effective control and freedom to dispose of the funds received
- engages in substantial economic activities.