Limitation on Benefits Clauses in light of the BEPS Action Plan

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Research Question

How to interpret and apply the LOB rule proposed in the report on BEPS Action 6? Is the LOB rule effective and practical in preventing treaty shopping?

Objectives

❖ Explore the rationales underlying the LOB rule
❖ Facilitate the interpretation and application of the LOB rule
❖ Evaluate the current LOB rule and propose suggestions

Methodology

❖ **Historical study** on the development of LOB provisions, especially focusing on the US practice
❖ **Comparative analysis** on various LOB articles in the existing tax treaties, e.g. LOB articles in treaties concluded by Japan and India
❖ **Legal Conceptual analysis** on the text of the LOB article proposed in the report on BEPS Action 6

BEPS Action 6

A US approach to be an OECD approach?

A benchmark to evaluate the LOB approach

Criticism on the LOB Rule

❖ A mind boggling **complexity** and many countries may simply not have the administrative capacity to apply it
❖ **Uncertainty of the rationales** underlying the LOB rule
❖ The **scope** of the LOB rule remains **unclear**: the objective tests in the LOB article may be over-inclusive or under-inclusive when being used to examine transactions or arrangements

Evaluation of the LOB Rule

❖ Goal attainment
❖ Legal certainty
❖ Tax equity
❖ Proportionality
❖ Revenue effects
❖ Administrative feasibility/simplicity

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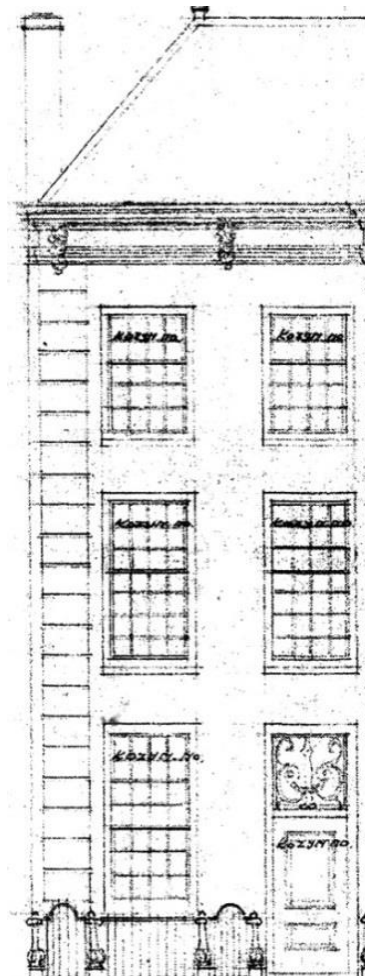
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