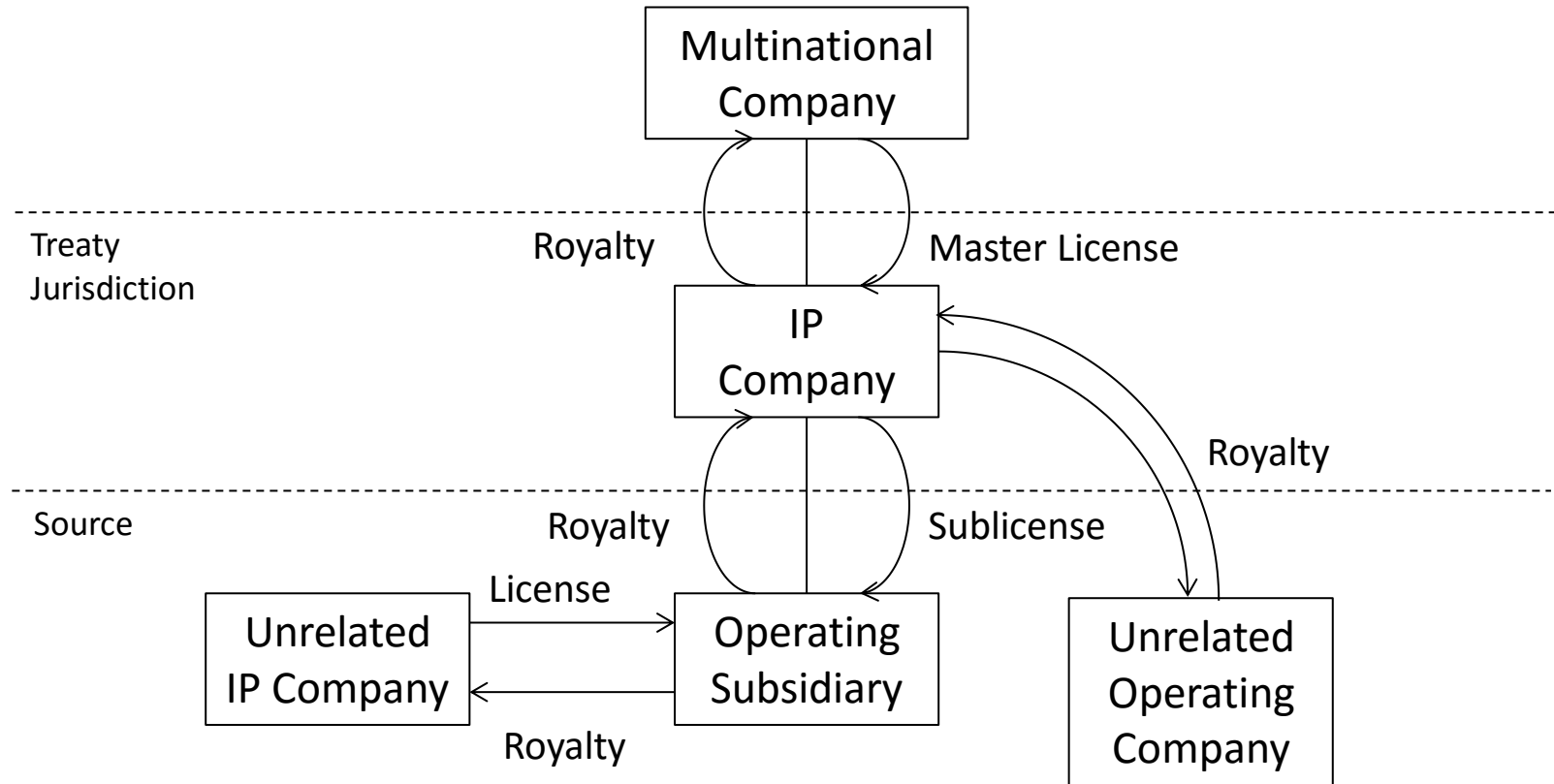


Tax Treaty Benefits

Chile-Argentina Double Tax Treaty

Leandro M. Passarella

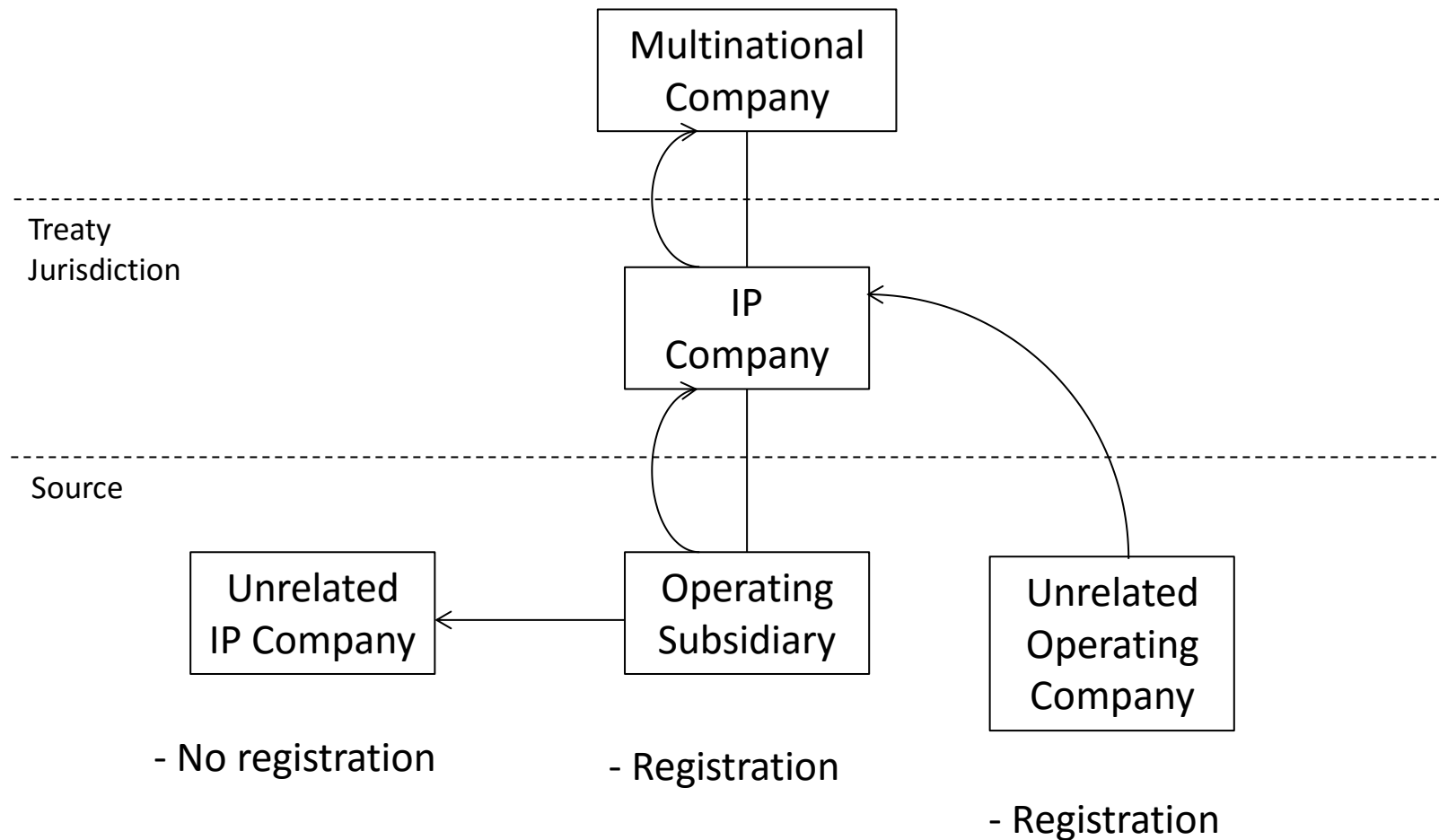
Situation



Summary

- Treatment of payments – Application of treaty rates
 - Beneficial ownership
 - Compliance with domestic laws and regulations
- Treatment of expenses – Non-discrimination
 - Issues under MC Article 24

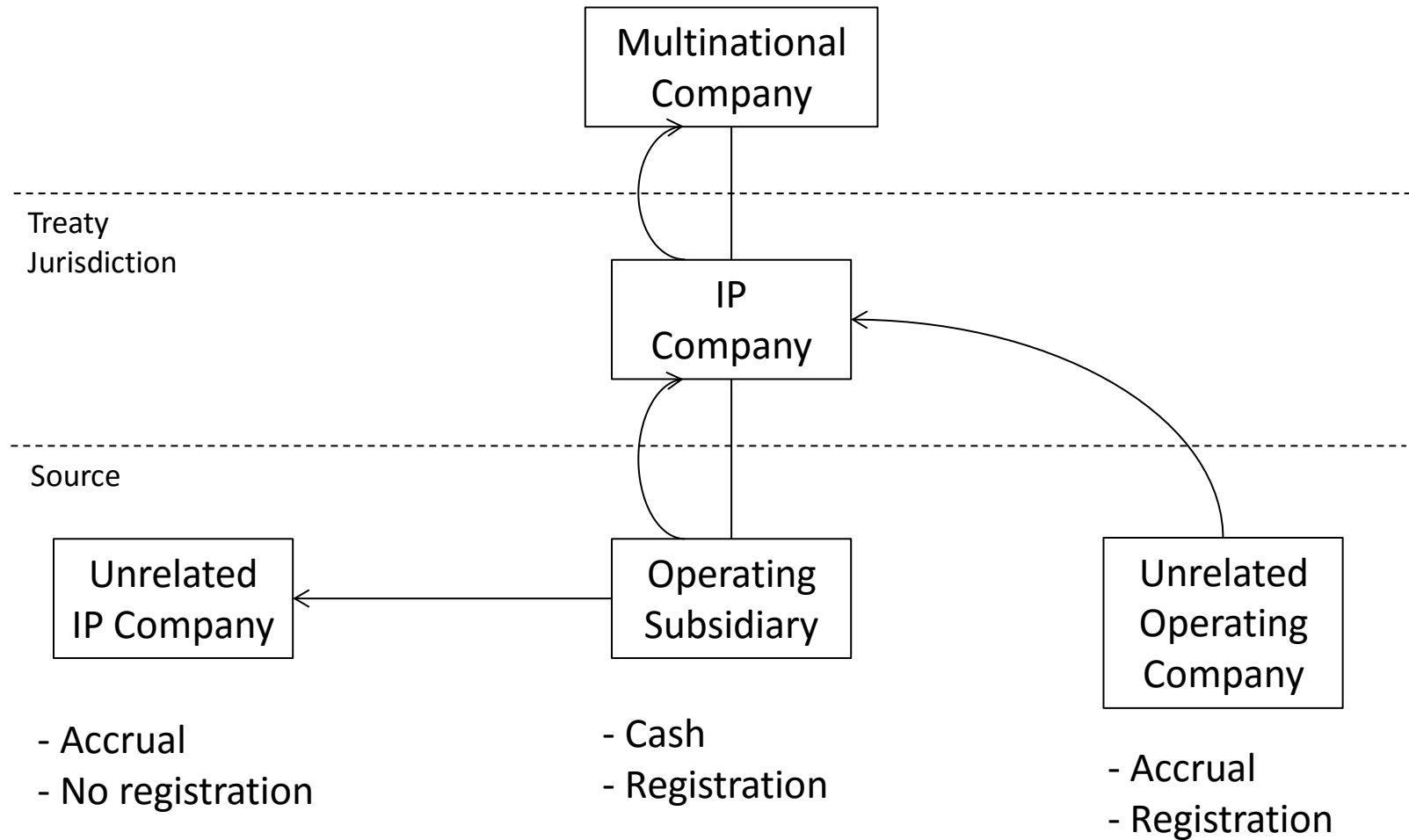
Treatment of payments



Withholding tax – Application of treaty rates

- Issues
 - Beneficial ownership
 - No definition of beneficial owner (“BO”) under domestic law.
 - Dynamic interpretation of what a BO is.
 - Argentine Tax Court applies newer versions of OECD’s Commentaries to DTCs based on older MC versions
 - Unknown position of higher courts
 - Impact of BEPS
 - Compliance with domestic laws and regulations
 - Registration requirement in some cases

Treatment of expenses



Non-discrimination (MC Art. 24)

- Issues
 - Applicable tests:
 - *Same circumstances* (par. 4)
 - Registration requirement
 - *Other or more burdensome taxation or connected requirements* (par. 5)
 - Accrual vs. Cash deduction
 - Similar issues may arise in the context of thin cap rules
 - Trial and error

Impact of BEPS

- Double Tax Treaty with Chile
 - Limitation of Benefits Clause
 - DTC applies to "residents" who are "qualified persons"
 - "Qualified person" is:
 - An individual
 - A State (national, provincial or local), or a State-owned company
 - A public company if during the fiscal year:
 - Its principal class of shares is traded on recognized markets, and
 - Such markets are "residents" or
 - The principal place of effective management and control is located in the country of residence
 - The above condition is fulfilled, directly or indirectly, by not more than 5 companies who hold more than 50% of the shares entitled to vote and value of the shares

Impact of BEPS

- DTC with Chile
 - Limitation of Benefits Clause (cont.)
 - “Qualified person” is:
 - A nonprofit entity established and maintained in a State
 - A pension or similar fund of an State with more than 50% of its beneficiaries who are individuals resident in such State
 - Funds set up in a State to invest for the benefit of individuals resident in that State
 - Private companies provided that (a) their controlling shareholders are "qualified persons", and (b) less than 50% of gross income be paid or owed (as deductible expenses) to other persons

Impact of BEPS

- DTC with Chile
 - Limitation of Benefits Clause (cont.)
 - Benefits available to residents who are not "qualified persons", but actively engage in business activities
 - It does not apply to investment activities, unless banks, insurance or securities companies
 - Activities in both countries must be substantially the same based on facts and circumstances
 - No DTC benefits to structures or transactions with main purpose to obtain such benefits
 - Exception: Granting of benefit is consistent with the object and purpose of the DTC

Impact of BEPS

- DTC with Chile
 - Limitation of Benefits Clause (cont.)
 - If benefits were granted to operations or structures that should not enjoy them, mutual agreement procedure to recommend changes
 - DTC benefits to be available to PEs in other jurisdictions, provided that they are subject to tax that is more than 40% of the tax that would be applicable in the jurisdiction of the head office