# COMMENTARY ON ARTICLE 4
# CONCERNING THE DEFINITION OF RESIDENT

## I. Preliminary remarks

1. The concept of "resident of a Contracting State" has various functions and is of importance in three cases:

*a)* in determining a convention's personal scope of application;

*b)* in solving cases where double taxation arises in consequence of double residence;

*c)* in solving cases where double taxation arises as a consequence of taxation in the State of residence and in the State of source or situs.

*(Amended on 11 April 1977; see HISTORY)*

2. The Article is intended to define the meaning of the term "resident of a Contracting State" and to solve cases of double residence. To clarify the scope of the Article some general comments are made below referring to the two typical cases of conflict, *i.e.* between two residences and between residence and source or situs. In both cases the conflict arises because, under their domestic laws, one or both Contracting States claim that the person concerned is resident in their territory.

*(Amended on 11 April 1977; see HISTORY)*

3. Generally the domestic laws of the various States impose a comprehensive liability to tax — "full tax liability" — based on the taxpayers' personal attachment to the State concerned (the "State of residence"). This liability to tax is not imposed only on persons who are "domiciled" in a State in the sense in which "domicile" is usually taken in the legislations (private law). The cases of full liability to tax are extended to comprise also, for instance, persons who stay continually, or maybe only for a certain period, in the territory of the State. Some legislations impose full liability to tax on individuals who perform services on board ships which have their home harbour in the State.

*(Amended on 11 April 1977; see HISTORY)*

4. Conventions for the avoidance of double taxation do not normally concern themselves with the domestic laws of the Contracting States laying down the conditions under which a person is to be treated fiscally as "resident" and, consequently, is fully liable to tax in that State. They do not lay down standards which the provisions of the domestic laws on "residence" have to fulfil in order that claims for full tax liability can be accepted between

the Contracting States. In this respect the States take their stand entirely on the domestic laws.

*(Amended on 11 April 1977; see HISTORY)*

5. This manifests itself quite clearly in the cases where there is no conflict at all between two residences, but where the conflict exists only between residence and source or situs. But the same view applies in conflicts between two residences. The special point in these cases is only that no solution of the conflict can be arrived at by reference to the concept of residence adopted in the domestic laws of the States concerned. In these cases special provisions must be established in the Convention to determine which of the two concepts of residence is to be given preference.

*(Amended on 11 April 1977; see HISTORY)*

6. An example will elucidate the case. An individual has his permanent home in State A, where his wife and children live. He has had a stay of more than six months in State B and according to the legislation of the latter State he is, in consequence of the length of the stay, taxed as being a resident of that State. Thus, both States claim that he is fully liable to tax. This conflict has to be solved by the Convention.

*(Amended on 11 April 1977; see HISTORY)*

7. In this particular case the Article (under paragraph 2) gives preference to the claim of State A. This does not, however, imply that the Article lays down special rules on "residence" and that the domestic laws of State B are ignored because they are incompatible with such rules. The fact is quite simply that in the case of such a conflict a choice must necessarily be made between the two claims, and it is on this point that the Article proposes special rules.

*(Amended on 11 April 1977; see HISTORY)*

## II. Commentary on the provisions of the Article

### *Paragraph 1*

8. Paragraph 1 provides a definition of the expression "resident of a Contracting State" for the purposes of the Convention. The definition refers to the concept of residence adopted in the domestic laws (see Preliminary remarks). As criteria for the taxation as a resident the definition mentions: domicile, residence, place of management or any other criterion of a similar nature. As far as individuals are concerned, the definition aims at covering the various forms of personal attachment to a State which, in the domestic taxation laws, form the basis of a comprehensive taxation (full liability to tax). It also covers cases where a person is deemed, according to the taxation laws

of a State, to be a resident of that State and on account thereof is fully liable to tax therein (*e.g.* diplomats or other persons in government service).

*(Amended on 17 July 2008; see HISTORY)*

8.1 In accordance with the provisions of the second sentence of paragraph 1, however, a person is not to be considered a "resident of a Contracting State" in the sense of the Convention if, although not domiciled in that State, he is considered to be a resident according to the domestic laws but is subject only to a taxation limited to the income from sources in that State or to capital situated in that State. That situation exists in some States in relation to individuals, *e.g.* in the case of foreign diplomatic and consular staff serving in their territory.

*(Replaced on 17 July 2008; see HISTORY)*

8.2 According to its wording and spirit the second sentence also excludes from the definition of a resident of a Contracting State foreign held companies exempted from tax on their foreign income by privileges tailored to attract conduit companies. It also excludes companies and other persons who are not subject to comprehensive liability to tax in a Contracting State because these persons, whilst being residents of that State under that State's tax law, are considered to be residents of another State pursuant to a treaty between these two States. The exclusion of certain companies or other persons from the definition would not of course prevent Contracting States from exchanging information about their activities (see paragraph 2 of the Commentary on Article 26). Indeed States may feel it appropriate to develop spontaneous exchanges of information about persons who seek to obtain unintended treaty benefits.

*(Replaced on 17 July 2008; see HISTORY)*

8.3 The application of the second sentence, however, has inherent difficulties and limitations. It has to be interpreted in the light of its object and purpose, which is to exclude persons who are not subjected to comprehensive taxation (full liability to tax) in a State, because it might otherwise exclude from the scope of the Convention all residents of countries adopting a territorial principle in their taxation, a result which is clearly not intended.

*(Replaced on 17 July 2008; see HISTORY)*

8.4 It has been the general understanding of most member countries that the government of each State, as well as any political subdivision or local authority thereof, is a resident of that State for purposes of the Convention. Before 1995, the Model did not explicitly state this; in 1995, Article 4 was amended to conform the text of the Model to this understanding.

*(Renumbered on 17 July 2008; see HISTORY)*

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8.5 This raises the issue of the application of paragraph 1 to sovereign wealth funds, which are special purpose investment funds or arrangements created by a State or a political subdivision for macroeconomic purposes. These funds hold, manage or administer assets to achieve financial objectives, and employ a set of investment strategies which include investing in foreign financial assets. They are commonly established out of balance of payments surpluses, official foreign currency operations, the proceeds of privatisations, fiscal surpluses or receipts resulting from commodity exports.[1] Whether a sovereign wealth fund qualifies as a "resident of a Contracting State" depends on the facts and circumstances of each case. For example, when a sovereign wealth fund is an integral part of the State, it will likely fall within the scope of the expression "[the] State and any political subdivision or local authority thereof" in Article 4. In other cases, paragraphs 8.6 and 8.7 below will be relevant. States may want to address the issue in the course of bilateral negotiations, particularly in relation to whether a sovereign wealth fund qualifies as a "person" and is "liable to tax" for purposes of the relevant tax treaty (see also paragraphs 6.35 to 6.39 of the Commentary on Article 1).

*(Replaced on 22 July 2010; see HISTORY)*

8.6 Paragraph 1 refers to persons who are "liable to tax" in a Contracting State under its laws by reason of various criteria. In many States, a person is considered liable to comprehensive taxation even if the Contracting State does not in fact impose tax. For example, pension funds, charities and other organisations may be exempted from tax, but they are exempt only if they meet all of the requirements for exemption specified in the tax laws. They are, thus, subject to the tax laws of a Contracting State. Furthermore, if they do not meet the standards specified, they are also required to pay tax. Most States would view such entities as residents for purposes of the Convention (see, for example, paragraph 1 of Article 10 and paragraph 5 of Article 11).

*(Renumbered on 22 July 2010; see HISTORY)*

8.7 In some States, however, these entities are not considered liable to tax if they are exempt from tax under domestic tax laws. These States may not regard such entities as residents for purposes of a convention unless these entities are expressly covered by the convention. Contracting States taking this view are free to address the issue in their bilateral negotiations.

*(Renumbered on 22 July 2010; see HISTORY)*

8.8 Where a State disregards a partnership for tax purposes and treats it as fiscally transparent, taxing the partners on their share of the partnership

1 This definition is drawn from: International Working Group of Sovereign Wealth Funds, *Sovereign Wealth Funds — Generally Accepted Principles and Practices — "Santiago Principles"*, October 2008, Annex 1.

income, the partnership itself is not liable to tax and may not, therefore, be considered to be a resident of that State. In such a case, since the income of the partnership "flows through" to the partners under the domestic law of that State, the partners are the persons who are liable to tax on that income and are thus the appropriate persons to claim the benefits of the conventions concluded by the States of which they are residents. This latter result will be achieved even if, under the domestic law of the State of source, the income is attributed to a partnership which is treated as a separate taxable entity. For States which could not agree with this interpretation of the Article, it would be possible to provide for this result in a special provision which would avoid the resulting potential double taxation where the income of the partnership is differently allocated by the two States.

*(Renumbered on 22 July 2010; see HISTORY)*

### *Paragraph 2*

9. This paragraph relates to the case where, under the provisions of paragraph 1, an individual is a resident of both Contracting States.

*(Renumbered and amended on 11 April 1977; see HISTORY)*

10. To solve this conflict special rules must be established which give the attachment to one State a preference over the attachment to the other State. As far as possible, the preference criterion must be of such a nature that there can be no question but that the person concerned will satisfy it in one State only, and at the same time it must reflect such an attachment that it is felt to be natural that the right to tax devolves upon that particular State. The facts to which the special rules will apply are those existing during the period when the residence of the taxpayer affects tax liability, which may be less than an entire taxable period. For example, in one calendar year an individual is a resident of State A under that State's tax laws from 1 January to 31 March, then moves to State B. Because the individual resides in State B for more than 183 days, the individual is treated by the tax laws of State B as a State B resident for the entire year. Applying the special rules to the period 1 January to 31 March, the individual was a resident of State A. Therefore, both State A and State B should treat the individual as a State A resident for that period, and as a State B resident from 1 April to 31 December.

*(Amended on 21 September 1995; see HISTORY)*

11. The Article gives preference to the Contracting State in which the individual has a permanent home available to him. This criterion will frequently be sufficient to solve the conflict, *e.g.* where the individual has a

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permanent home in one Contracting State and has only made a stay of some length in the other Contracting State.

*(Renumbered and amended on 11 April 1977; see HISTORY)*

12. Subparagraph *a)* means, therefore, that in the application of the Convention (that is, where there is a conflict between the laws of the two States) it is considered that the residence is that place where the individual owns or possesses a home; this home must be permanent, that is to say, the individual must have arranged and retained it for his permanent use as opposed to staying at a particular place under such conditions that it is evident that the stay is intended to be of short duration.

*(Replaced on 11 April 1977; see HISTORY)*

13. As regards the concept of home, it should be observed that any form of home may be taken into account (house or apartment belonging to or rented by the individual, rented furnished room). But the permanence of the home is essential; this means that the individual has arranged to have the dwelling available to him at all times continuously, and not occasionally for the purpose of a stay which, owing to the reasons for it, is necessarily of short duration (travel for pleasure, business travel, educational travel, attending a course at a school, etc.).

*(Replaced on 11 April 1977; see HISTORY)*

14. If the individual has a permanent home in both Contracting States, paragraph 2 gives preference to the State with which the personal and economic relations of the individual are closer, this being understood as the centre of vital interests. In the cases where the residence cannot be determined by reference to this rule, paragraph 2 provides as subsidiary criteria, first, habitual abode, and then nationality. If the individual is a national of both States or of neither of them, the question shall be solved by mutual agreement between the States concerned according to the procedure laid down in Article 25.

*(Amended on 11 April 1977; see HISTORY)*

15. If the individual has a permanent home in both Contracting States, it is necessary to look at the facts in order to ascertain with which of the two States his personal and economic relations are closer. Thus, regard will be had to his family and social relations, his occupations, his political, cultural or other activities, his place of business, the place from which he administers his property, etc. The circumstances must be examined as a whole, but it is nevertheless obvious that considerations based on the personal acts of the individual must receive special attention. If a person who has a home in one State sets up a second in the other State while retaining the first, the fact that

he retains the first in the environment where he has always lived, where he has worked, and where he has his family and possessions, can, together with other elements, go to demonstrate that he has retained his centre of vital interests in the first State.

*(Replaced on 11 April 1977; see HISTORY)*

16. Subparagraph *b)* establishes a secondary criterion for two quite distinct and different situations:

*a)* the case where the individual has a permanent home available to him in both Contracting States and it is not possible to determine in which one he has his centre of vital interests;

*b)* the case where the individual has a permanent home available to him in neither Contracting State.

Preference is given to the Contracting State where the individual has an habitual abode.

*(Replaced on 11 April 1977; see HISTORY)*

17. In the first situation, the case where the individual has a permanent home available to him in both States, the fact of having an habitual abode in one State rather than in the other appears therefore as the circumstance which, in case of doubt as to where the individual has his centre of vital interests, tips the balance towards the State where he stays more frequently. For this purpose regard must be had to stays made by the individual not only at the permanent home in the State in question but also at any other place in the same State.

*(Replaced on 11 April 1977; see HISTORY)*

18. The second situation is the case of an individual who has a permanent home available to him in neither Contracting State, as for example, a person going from one hotel to another. In this case also all stays made in a State must be considered without it being necessary to ascertain the reasons for them.

*(Replaced on 11 April 1977; see HISTORY)*

19. In stipulating that in the two situations which it contemplates preference is given to the Contracting State where the individual has an habitual abode, subparagraph *b)* does not specify over what length of time the comparison must be made. The comparison must cover a sufficient length of time for it to be possible to determine whether the residence in each of the two States is habitual and to determine also the intervals at which the stays take place.

*(Replaced on 11 April 1977; see HISTORY)*

20. Where, in the two situations referred to in subparagraph *b)* the individual has an habitual abode in both Contracting States or in neither, preference is given to the State of which he is a national. If, in these cases still, the individual is a national of both Contracting States or of neither of them, subparagraph *d)* assigns to the competent authorities the duty of resolving the difficulty by mutual agreement according to the procedure established in Article 25.

*(Replaced on 11 April 1977; see HISTORY)*

### *Paragraph 3*

21. This paragraph concerns companies and other bodies of persons, irrespective of whether they are or not legal persons. It may be rare in practice for a company, etc. to be subject to tax as a resident in more than one State, but it is, of course, possible if, for instance, one State attaches importance to the registration and the other State to the place of effective management. So, in the case of companies, etc., also, special rules as to the preference must be established.

*(Renumbered and amended on 11 April 1977; see HISTORY)*

22. It would not be an adequate solution to attach importance to a purely formal criterion like registration. Therefore paragraph 3 attaches importance to the place where the company, etc. is actually managed.

*(Renumbered and amended on 11 April 1977; see HISTORY)*

23. The formulation of the preference criterion in the case of persons other than individuals was considered in particular in connection with the taxation of income from shipping, inland waterways transport and air transport. A number of conventions for the avoidance of double taxation on such income accord the taxing power to the State in which the "place of management" of the enterprise is situated; other conventions attach importance to its "place of effective management", others again to the "fiscal domicile of the operator".

*(Amended on 23 July 1992; see HISTORY)*

24. As a result of these considerations, the "place of effective management" has been adopted as the preference criterion for persons other than individuals. The place of effective management is the place where key management and commercial decisions that are necessary for the conduct of the entity's business as a whole are in substance made. All relevant facts and circumstances must be examined to determine the place of effective management. An entity may have more than one place of management, but it can have only one place of effective management at any one time.

*(Amended on 17 July 2008; see HISTORY)*

24.1 Some countries, however, consider that cases of dual residence of persons who are not individuals are relatively rare and should be dealt with on a case-by-case basis. Some countries also consider that such a case-by-case approach is the best way to deal with the difficulties in determining the place of effective management of a legal person that may arise from the use of new communication technologies. These countries are free to leave the question of the residence of these persons to be settled by the competent authorities, which can be done by replacing the paragraph by the following provision:

> 3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall endeavour to determine by mutual agreement the Contracting State of which such person shall be deemed to be a resident for the purposes of the Convention, having regard to its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by this Convention except to the extent and in such manner as may be agreed upon by the competent authorities of the Contracting States.

Competent authorities having to apply such a provision to determine the residence of a legal person for purposes of the Convention would be expected to take account of various factors, such as where the meetings of its board of directors or equivalent body are usually held, where the chief executive officer and other senior executives usually carry on their activities, where the senior day-to-day management of the person is carried on, where the person's headquarters are located, which country's laws govern the legal status of the person, where its accounting records are kept, whether determining that the legal person is a resident of one of the Contracting States but not of the other for the purpose of the Convention would carry the risk of an improper use of the provisions of the Convention etc. Countries that consider that the competent authorities should not be given the discretion to solve such cases of dual residence without an indication of the factors to be used for that purpose may want to supplement the provision to refer to these or other factors that they consider relevant. Also, since the application of the provision would normally be requested by the person concerned through the mechanism provided for under paragraph 1 of Article 25, the request should be made within three years from the first notification to that person that its taxation is not in accordance with the Convention since it is considered to be a resident of both Contracting States. Since the facts on which a decision will be based may change over time, the competent authorities that reach a

decision under that provision should clarify which period of time is covered by that decision.

*(Added on 17 July 2008; see HISTORY)*

## Observations on the Commentary

25. As regards paragraphs 24 and 24.1, *Italy* holds the view that the place where the main and substantial activity of the entity is carried on is also to be taken into account when determining the place of effective management of a person other than an individual.

*(Amended on 17 July 2008; see HISTORY)*

26. *Spain*, due to the fact that according to its internal law the fiscal year coincides with the calendar year and there is no possibility of concluding the fiscal period by reason of the taxpayer's change of residence, will not be able to proceed in accordance with paragraph 10 of the Commentary on Article 4. In this case, a mutual agreement procedure will be needed to ascertain the date from which the taxpayer will be deemed to be a resident of one of the Contracting States.

*(Replaced on 21 September 1995; see HISTORY)*

26.1 *Mexico* does not agree with the general principle expressed in paragraph 8.8 of the Commentary according to which if tax owed by a partnership is determined on the basis of the personal characteristics of the partners, these partners are entitled to the benefits of tax conventions entered into by the States of which they are residents as regards income that "flows through" that partnership.

*(Amended on 17 July 2008; see HISTORY)*

26.2 *(Deleted on 17 July 2008; see HISTORY)*

26.3 *France* considers that the definition of the place of effective management in paragraph 24, according to which "the place of effective management is the place where key management and commercial decisions that are necessary for the conduct of the entity's business as a whole are in substance made", will generally correspond to the place where the person or group of persons who exercises the most senior functions (for example a board of directors or management board) makes its decisions. It is the place where the organs of direction, management and control of the entity are, in fact, mainly located.

*(Added on 17 July 2008; see HISTORY)*

26.4 As regards paragraph 24, *Hungary* is of the opinion that in determining the place of effective management, one should not only consider the place where key management and commercial decisions that are necessary for the

conduct of the entity's business as a whole are in substance made, but should also take into account the place where the chief executive officer and other senior executives usually carry on their activities as well as the place where the senior day-to-day management of the enterprise is usually carried on.

*(Added on 17 July 2008; see HISTORY)*

## Reservations on the Article

27. *(Deleted on 15 July 2014; see HISTORY)*

28. *Japan* and *Korea* reserve their position on the provisions in this and other Articles in the Model Tax Convention which refer directly or indirectly to the place of effective management. Instead of the term "place of effective management", these countries wish to use in their conventions the term "head or main office".

*(Amended on 23 October 1997; see HISTORY)*

29. *France* does not agree with the general principle according to which if tax owed by a partnership is determined on the basis of the personal characteristics of the partners, these partners are entitled to the benefits of tax conventions entered into by the States of which they are residents as regards income that "flows through" that partnership. For this reason, France reserves the right to amend the Article in its tax conventions in order to specify that French partnerships must be considered as residents of France in view of their legal and tax characteristics and to indicate in which situations and under which conditions flow-through partnerships located in the other Contracting State or in a third State will be entitled to benefit from the recognition by France of their flow-through nature.

*(Amended on 29 April 2000; see HISTORY)*

30. *Turkey* reserves the right to use the "registered office" criterion (legal head office) as well as the "place of effective management" criterion for determining the residence of a person, other than an individual, which is a resident of both Contracting States because of the provisions of paragraph 1 of the Article.

*(Renumbered on 21 September 1995; see HISTORY)*

31. The *United States* reserves the right to use a place of incorporation test for determining the residence of a corporation, and, failing that, to deny dual resident companies certain benefits under the Convention.

*(Amended on 17 July 2008; see HISTORY)*

32. *(Deleted on 15 July 2014; see HISTORY)*

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33. *Israel* reserves the right to include a separate provision regarding a trust that is a resident of both Contracting States.

*(Added on 15 July 2014; see HISTORY)*

34. *Estonia* reserves the right to include the place of incorporation or similar criterion in paragraph 1.

*(Added on 15 July 2014; see HISTORY)*

## HISTORY

**Title**: Amended when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, the heading read as follows:

"COMMENTARY ON ARTICLE 4 CONCERNING FISCAL DOMICILE"

**Paragraph 1:** Amended when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 1 and the heading preceding it read as follows:

"GENERAL COMMENTS

1. The concept of "domicile" has various functions and is of importance in three cases:

*a)* in determining a Convention's field of application with respect to physical and legal persons;

*b)* in solving cases where double taxation arises in consequence of double domicile;

*c)* in solving cases where double taxation arises as a consequence of conflict between domicile and source."

**Paragraph 2:** Amended when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 2 read as follows:

"2. The Article is intended only to define the meaning of the term "resident of a Contracting State" and to solve cases of conflict between two domiciles. For further elucidation of the Article some general comments are made below referring to the two typical cases of conflict, *i.e.* between two domiciles and between domicile and source. In both cases the conflict arises because, under their internal legislation, one or both Contracting States claim that the person concerned has his domicile in their territories."

**Paragraph 3:** Amended when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 3 read as follows:

"3. Generally the national legislations of the various States impose a comprehensive liability to tax — "full tax liability" based on the taxpayers' personal attachment to the State concerned (the State of "domicile"). This liability to tax is not imposed only on persons who are "domiciled" in a State in the sense in which "domicile" is usually taken in the legislations (civil law). The cases of full liability to tax are extended to comprise also, for instance, persons who stay continually, or

maybe only for a certain period, in the territory of the State. Some legislations impose full liability to tax on individuals who perform services on board ships which have their home port in the State."

**Paragraph 4:** Amended when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 4 read as follows:

"4. Conventions for the avoidance of double taxation do not normally concern themselves with the national rules of law of the Contracting States laying down the cases in which a person is to be treated fiscally as "domiciled" and, consequently, is "fully liable to taxation" in that State. They do not lay down standards which the national rules of law on "domicile" have to fulfil in order that claims for full tax liability can be accepted between the Contracting States. In this respect the States take their stand entirely on the national legislations."

**Paragraph 5:** Amended when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 5 read as follows:

"5. This manifests itself quite clearly in the cases where there is no conflict at all between two domiciles, but where the conflict exists only between domicile and source. But the same view applies in conflicts between two domiciles. The special point in these cases is only that no solution of the conflict can be arrived at by reference to the concept of domicile adopted in the national laws of the States concerned. In these cases special provisions must be established in the Convention to determine which of the two concepts of domicile is to be given preference."

**Paragraph 6:** Amended when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 6 read as follows:

"6. An example will elucidate the case. An individual has his permanent home in State A, where his wife and children live. He has had a stay of more than six months in State B and according to the legislation of the latter State he is, in consequence of the length of the stay, taxed as being domiciled in that State. Thus, both States claim that he is fully liable to tax. This conflict has to be solved by the Convention."

**Paragraph 7:** Amended when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 7 read as follows:

"7. In this particular case the Article (under paragraph 2) gives preference to the claim of State A. This does not, however, imply that the Article lays down special rules on "domicile" and that the national rules of law of State B are ignored because they are incompatible with such rules. The fact is quite simply that in the case of such a conflict a choice must necessarily be made between the two claims, and it is on this point that the Article proposes special rules."

**Paragraph 8:** Amended on 17 July 2008 by the report entitled "The 2008 Update to the Model Tax Convention", adopted by the OECD Council on 17 July 2008. Paragraph 8 as amended includes the first five sentences of paragraph 8 as they read before 17 July 2008. The sixth and seventh sentences were incorporated into paragraph 8.1, the ninth sentence was amended and incorporated into paragraph 8.3 and the eighth,

penultimate and final sentences were amended and incorporated into paragraph 8.2 After 23 July 1992 and until 17 July 2008, paragraph 8 read as follows:

> "8. Paragraph 1 provides a definition of the expression "resident of a Contracting State" for the purposes of the Convention. The definition refers to the concept of residence adopted in the domestic laws (cf. Preliminary remarks). As criteria for the taxation as a resident the definition mentions: domicile, residence, place of management or any other criterion of a similar nature. As far as individuals are concerned, the definition aims at covering the various forms of personal attachment to a State which, in the domestic taxation laws, form the basis of a comprehensive taxation (full liability to tax). It also covers cases where a person is deemed, according to the taxation laws of a State, to be a resident of that State and on account thereof is fully liable to tax therein (*e.g.* diplomats or other persons in government service). In accordance with the provisions of the second sentence of paragraph 1, however, a person is not to be considered a "resident of a Contracting State" in the sense of the Convention if, although not domiciled in that State, he is considered to be a resident according to the domestic laws but is subject only to a taxation limited to the income from sources in that State or to capital situated in that State. That situation exists in some States in relation to individuals, *e.g.* in the case of foreign diplomatic and consular staff serving in their territory. According to its wording and spirit the provision would also exclude from the definition of a resident of a Contracting State foreign-held companies exempted from tax on their foreign income by privileges tailored to attract conduit companies. This, however, has inherent difficulties and limitations. Thus it has to be interpreted restrictively because it might otherwise exclude from the scope of the Convention all residents of countries adopting a territorial principle in their taxation, a result which is clearly not intended. The exclusion of certain companies from the definition would not of course prevent Contracting States from exchanging information about their activities (cf. paragraph 2 of the Commentary on Article 26). Indeed States may feel it appropriate to develop spontaneous exchanges of information about companies which seek to obtain treaty benefits unintended by the Model Convention."

Paragraph 8 was previously amended on 23 July 1992 by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992 on the basis of paragraph 14 of a previous report entitled "Double Taxation Conventions and the Use of Conduit Companies" (adopted by the OECD Council on 27 November 1986). In the 1977 Model Convention and until 23 July 1992, paragraph 8 read as follows:

> "8. Paragraph 1 provides a definition of the expression "resident of a Contracting State" for the purposes of the Convention. The definition refers to the concept of residence adopted in the domestic laws (cf. Preliminary Remarks). As criteria for the taxation as a resident the definition mentions: domicile, residence, place of management or any other criterion of a similar nature. As far as individuals are concerned, the definition aims at covering the various forms of personal attachment to a State which, in the domestic taxation laws, form the basis of a comprehensive taxation (full liability to tax). It also covers cases where a person is deemed, according to the taxation laws of a State, to be a resident of that State and on account thereof is fully liable to tax therein (*e.g.* diplomats or other persons in government service). In accordance with the provisions of the second sentence of paragraph 1, however, a person is not to be considered a "resident of a Contracting State" in the sense of the Convention if, although not domiciled in that State, he is considered to be a resident according to the domestic laws but is subject only to a taxation limited to the income from sources in that State or to capital situated in

that State. That situation exists in some States in relation to individuals, *e.g.* in the case of foreign diplomatic and consular staff serving in their territory."

Paragraph 8 of the 1977 Model Convention corresponded to paragraph 10 of the 1963 Draft Convention. Paragraph 8 of the 1963 Draft Convention was deleted and paragraph 10 of the 1963 Draft Convention was amended and renumbered as paragraph 8 when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At the same time, the headings preceding paragraph 9 of the 1963 Draft Convention were amended and moved immediately before paragraph 8 (see history of paragraph 9). In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 10 read as follows:

"10. Paragraph 1 provides a definition of the expression "resident of a Contracting State" for the purposes of the Convention. The definition refers to the concept of residence adopted in the national laws (cf. General Comments). As criteria for the taxation as a resident the definition mentions: domicile, residence, place of management or any other similar criterion. As far as individuals are concerned, the definition aims at covering the various forms of personal attachment to a State which, in the national fiscal legislations, form the basis of a more comprehensive taxation (full liability to tax). An individual, however, is not to be considered a "resident of a Contracting State" in the sense of the Convention if, although not domiciled in that State, he is considered as a resident according to the national law and is only subject to a limited taxation on the income arising in that State."

In the 1963 Draft Convention and until it was deleted when the 1977 Model Convention was adopted, paragraph 8 read as follows:

"8. What is stated above gives the general background of the Article. Special comments are made below."

**Paragraph 8.1:** Replaced on 17 July 2008 when paragraph 8.1 was renumbered as paragraph 8.4 (see history of paragraph 8.4) and a new paragraph 8.1 was added by the report entitled "The 2008 Update to the Model Tax Convention", adopted by the OECD Council on 17 July 2008. The new paragraph 8.1 incorporated the sixth and seventh sentences of paragraph 8 as they read before 17 July 2008 (see history of paragraph 8).

**Paragraph 8.2:** Replaced on 17 July 2008 when paragraph 8.2 was renumbered as paragraph 8.5 (see history of paragraph 8.6) and a new paragraph 8.2 was added by the report entitled "The 2008 Update to the Model Tax Convention", adopted by the OECD Council on 17 July 2008. The new paragraph 8.2 incorporated, with amendments, the eighth, penultimate and final sentences of paragraph 8 as they read before 17 July 2008 (see history of paragraph 8).

**Paragraph 8.3:** Replaced on 17 July 2008 when paragraph 8.3 was renumbered as paragraph 8.6 (see history of paragraph 8.7) and a new paragraph 8.3 was added by the report entitled "The 2008 Update to the Model Tax Convention", adopted by the OECD Council on 17 July 2008. The new paragraph 8.3 incorporated, with amendments, the ninth sentence of paragraph 8 as it read before 17 July 2008 (see history of paragraph 8).

**Paragraph 8.4:** Corresponds to paragraph 8.1 as it read before 17 July 2008. On that date paragraph 8.4 was renumbered as paragraph 8.7 (see history of paragraph 8.8) and paragraph 8.1 was renumbered as paragraph 8.4 by the report entitled "The 2008 Update to the Model Tax Convention", adopted by the OECD Council on 17 July 2008.

Paragraph 8.1 was added on 21 September 1995 by the report entitled "The 1995 Update to the Model Tax Convention", adopted by the OECD Council on 21 September 1995.

**Paragraph 8.5:** Replaced on 22 July 2010 when paragraph 8.5 was renumbered as paragraph 8.6 (see history of paragraph 8.6) and a new paragraph 8.5 was added by the report entitled "The 2010 Update to the Model Tax Convention", adopted by the OECD Council on 17 July 2010.

**Paragraph 8.6:** Corresponds to paragraph 8.5 as it read before 22 July 2010. On that date paragraph 8.6 was renumbered as paragraph 8.7 (see history of paragraph 8.7) and paragraph 8.5 was renumbered as paragraph 8.6 by the report entitled "The 2010 Update to the Model Tax Convention", adopted by the OECD Council on 17 July 2010.

Paragraph 8.5 as it read after 17 July 2008 corresponded to paragraph 8.2. On 17 July 2008 paragraph 8.2 was renumbered as paragraph 8.5 by the report entitled "The 2008 Update to the Model Tax Convention", adopted by the OECD Council on 17 July 2008.

Paragraph 8.2 was added on 29 April 2000 by the report entitled "The 2000 Update to the Model Tax Convention", adopted by the OECD Committee on Fiscal Affairs on 29 April 2000.

**Paragraph 8.7:** Corresponds to paragraph 8.6 as it read before 22 July 2010. On that date paragraph 8.7 was renumbered as paragraph 8.8 (see history of paragraph 8.8) and paragraph 8.6 was renumbered as paragraph 8.7 by the report entitled "The 2010 Update to the Model Tax Convention", adopted by the OECD Council on 17 July 2010.

Paragraph 8.6 as it read after 17 July 2008 corresponded to paragraph 8.3. On 17 July 2008 paragraph 8.3 was renumbered as paragraph 8.6 by the report entitled "The 2008 Update to the Model Tax Convention", adopted by the OECD Council on 17 July 2008.

Paragraph 8.3 was added on 29 April 2000 by the report entitled "The 2000 Update to the Model Tax Convention", adopted by the OECD Committee on Fiscal Affairs on 29 April 2000.

**Paragraph 8.8:** Corresponds to paragraph 8.7 as it read before 22 July 2010. On that date paragraph 8.7 was renumbered as paragraph 8.8 by the report entitled "The 2010 Update to the Model Tax Convention", adopted by the OECD Council on 17 July 2010.

Paragraph 8.7, as it read after 17 July 2008, corresponded to paragraph 8.4. On 17 July 2008 paragraph 8.4 was renumbered as paragraph 8.7 by the report entitled "The 2008 Update to the Model Tax Convention", adopted by the OECD Council on 17 July 2008.

Paragraph 8.4 was added on 29 April 2000 by the report entitled "The 2000 Update to the Model Tax Convention", adopted by the OECD Committee on Fiscal Affairs on 29 April 2000 on the basis of Annex I of another report entitled "The Application of the OECD Model Tax Convention to Partnerships" (adopted by the OECD Committee on Fiscal Affairs on 20 January 1999).

**Paragraph 9:** Corresponds to paragraph 11 of the 1963 Draft Convention. Paragraph 9 of the 1963 Draft Convention was deleted and paragraph 11 of the 1963 Draft Convention was amended and renumbered as paragraph 9 when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At the same time, the headings preceding paragraph 9 of the 1963 Draft Convention were amended and moved immediately before paragraph 8 and the heading preceding paragraph 11 of the 1963 Draft Convention was moved immediately before paragraph 9. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 11 read as follows:

> "11. This paragraph relates to the case where, under the provision of paragraph 1, an individual is subject to tax as a resident in both Contracting States."

In the 1963 Draft Convention and until the adoption of the 1977 Model Convention, paragraph 9 and the headings preceding it read as follows:

> "2. SPECIAL COMMENTS ON THE ARTICLE
>
> *Paragraph 1*

9. The Conventions usually refer to the State of "domicile" in several Articles. It was felt that, for terminological reasons, it would be useful if a "shorthand expression" could be used in all cases where the State of "domicile" is mentioned. In the Article the term "resident" is used. This term is used in Conventions concluded by the United Kingdom and by the United States of America. In the Convention between the United Kingdom and France the expression "un résident" is used in the French text."

**Paragraph 10:** Amended on 21 September 1995 by the report entitled "The 1995 Update to the Model Tax Convention", adopted by the OECD Council on 21 September 1995. In the 1977 Model Convention and until 21 September 1995, paragraph 10 read as follows:

"10. To solve this conflict special rules must be established which give the attachment to one State a preference over the attachment to the other State. As far as possible, the preference criterion must be of such a nature that there can be no question but that the person concerned will satisfy it in one State only, and At the same time, it must reflect such an attachment that it is felt to be natural that the right to tax devolves upon that particular State."

Paragraph 10 of the 1977 Model Convention corresponded to paragraph 12 of the 1963 Draft Convention. Paragraph 10 of the 1963 Draft Convention was amended and renumbered as paragraph 8 (see history of paragraph 8) and paragraph 12 of the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) was renumbered as paragraph 10 when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977.

**Paragraph 11:** Corresponds to paragraph 13 of the 1963 Draft Convention. Paragraph 11 of the 1963 Draft Convention was amended and renumbered as paragraph 9 (see history of paragraph 9) and paragraph 13 of the 1963 Draft Convention was amended and renumbered as paragraph 11 when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 13 read as follows:

"13. The Article gives preference to the Contracting State in which the individual has a permanent home available to him. This is in accordance with the usual provisions in double taxation Conventions, and this criterion will frequently be sufficient to solve the conflict, *e.g.* where the individual has a permanent home in one Contracting State and has only made a stay of some length in the other Contracting State."

**Paragraph 12:** Replaced when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At that time, paragraph 12 of the 1963 Draft Convention was renumbered as paragraph 10 (see history of paragraph 10) and a new paragraph 12 was added.

**Paragraph 13:** Replaced when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At that time, paragraph 13 of the 1963 Draft Convention was renumbered as paragraph 11 (see history of paragraph 11) and a new paragraph 13 was added.

**Paragraph 14:** Amended when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 14 read as follows:

"14. If the individual has a permanent home in both Contracting States, the Article gives preference to the State with which his personal and economic relations are closest, this being understood as the centre of vital interests."

**Paragraph 15:** Replaced when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At that time, paragraph 15 of the 1963 Draft Convention was deleted and a new paragraph 15 was added. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 15 read as follows:

> "15. In the cases where the residence cannot be determined by reference to the above mentioned provisions, the Article provides as subsidiary criteria, first, habitual abode, and then nationality."

**Paragraph 16:** Replaced when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At that time, paragraph 16 of the 1963 Draft Convention was deleted and a new paragraph 16 was added. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of 1977 Model Convention, paragraph 16 read as follows:

> "16. If the individual is a national of both Contracting States or of none of them, the question shall be solved by mutual agreement between the States concerned according to the procedure laid down in Article 25."

**Paragraph 17:** Replaced when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At that time, paragraph 17 of the 1963 Draft Convention was amended and renumbered as paragraph 21 (see history of paragraph 21), the heading preceding paragraph 17 was moved with it and a new paragraph 17 was added.

**Paragraph 18:** Replaced when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At that time, paragraph 18 of the 1963 Draft Convention was amended and renumbered as paragraph 22 (see history of paragraph 22) and a new paragraph 18 was added.

**Paragraph 19:** Replaced when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At that time, paragraph 19 of the 1963 Draft Convention was amended and renumbered as paragraph 23 (see history of paragraph 23) and a new paragraph 19 was added.

**Paragraph 20:** Replaced when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At that time, paragraph 20 of the 1963 Draft Convention was renumbered as paragraph 24 (see history of paragraph 24) and a new paragraph 20 was added.

**Paragraph 21:** Corresponds to paragraph 17 of the 1963 Draft Convention. Paragraph 21 of the 1963 Draft Convention was deleted and paragraph 17 of the 1963 Draft Convention was amended and renumbered as paragraph 21 when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At the same time, the heading preceding paragraph 17 was moved with it and the heading preceding paragraph 21 was moved immediately before paragraph 26. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 17 and the heading preceding it read as follows:

> "*Paragraph 3*
>
> 17. This paragraph concerns companies and other bodies of persons not being individuals, irrespective of whether they are or not legal persons. It may be rare in practice for a company, etc. to be subject to tax as a resident in more than one State, but it is, of course, possible if, for instance, one State attaches importance to the registration and the other State to the place of effective management. So, in the case of companies, etc., also, special rules as to the preference must be established."

In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) until it was deleted when the 1977 Model Convention was adopted, paragraph 21 read as follows:

> "21. Ireland cannot envisage treating as non-resident in Ireland an individual who is resident in that country under Irish law. In Conventions which have been made by Ireland with other countries double taxation of the dual resident is relieved by way of exemption or of credit."

**Paragraph 22:** Corresponds to paragraph 18 of the 1963 Draft Convention. Paragraph 22 of the 1963 Draft Convention was deleted and paragraph 18 of the 1963 Draft Convention was amended and renumbered as paragraph 22 when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 18 read as follows:

> "18. It would not be natural to attach importance to a purely formal criterion like registration which is used but rarely in double taxation Conventions. Generally, these attach importance to the place where the company is actually managed, but the formulation of this criterion varies from one Convention to another."

In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) until it was deleted when the 1977 Model Convention was adopted, paragraph 22 read as follows:

> "22. Since the United States has traditionally imposed tax on the basis of citizenship (place of incorporation, in the case of companies), it reserves the right to do so when entering into tax Conventions with other O.E.C.D. Member countries."

**Paragraph 23:** Amended on 23 July 1992, by deleting the last sentence of the paragraph, by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992. In the 1977 Model Convention and until 23 July 1992, paragraph 23 read as follows:

> "23. The formulation of the preference criterion in the case of persons other than individuals was considered in particular in connection with the taxation of income from shipping, inland waterways transport and air transport. A number of conventions for the avoidance of double taxation on such income accord the taxing power to the State in which the "place of management" of the enterprise is situated; other conventions attach importance to its "place of effective management", others again to the "fiscal domicile of the operator". Concerning conventions concluded by the United Kingdom which provide that a company shall be regarded as resident in the State in which "its business is managed and controlled", it has been made clear, on the United Kingdom side, that this expression means the "effective management" of the enterprise."

Paragraph 23 of the 1977 Model Convention corresponded to paragraph 19 of the 1963 Draft Convention. Paragraph 19 of the 1963 Draft Convention was amended and renumbered as paragraph 23 when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 19 read as follows:

> "19. The formulation of the preference criterion in the case of persons other than individuals was considered in connection with the question of the taxation of income of shipping, inland waterways transport and air transport enterprises. A study of the existing bilateral Conventions for the avoidance of double taxation on such income has shown that a number of Conventions accord the taxing power to the State in which the "place of management" of the enterprise is situated; other

Conventions attach importance to its "place of effective management", others again to "the fiscal domicile of the operator". The Conventions concluded by the United Kingdom in recent years provide, as regards corporate bodies, that a company shall be regarded as resident in the State in which "its business is managed and controlled". In this connection it has been made clear on the United Kingdom side that this expression means the "effective management" of the enterprise."

**Paragraph 24:** Amended on 17 July 2008 by the report entitled "The 2008 Update to the Model Tax Convention", adopted by the OECD Council on 17 July 2008. After 29 April 2000 and until 17 July 2008, paragraph 24 read as follows:

"24. As a result of these considerations, the "place of effective management" has been adopted as the preference criterion for persons other than individuals. The place of effective management is the place where key management and commercial decisions that are necessary for the conduct of the entity's business are in substance made. The place of effective management will ordinarily be the place where the most senior person or group of persons (for example a board of directors) makes its decisions, the place where the actions to be taken by the entity as a whole are determined; however, no definitive rule can be given and all relevant facts and circumstances must be examined to determine the place of effective management. An entity may have more than one place of management, but it can have only one place of effective management at any one time."

Paragraph 24 was previously amended on 29 April 2000 by the report entitled "The 2000 Update to the Model Tax Convention", adopted by the OECD Committee on Fiscal Affairs on 29 April 2000. In the 1977 Model Convention and until 29 April 2000, paragraph 24 read as follows:

"24. As a result of these considerations, the "place of effective management" has been adopted as the preference criterion for persons other than individuals."

Paragraph 24 of the 1977 Model Convention corresponded to paragraph 20 of the 1963 Draft Convention. Paragraph 20 of the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963), was renumbered as paragraph 24 when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977.

**Paragraph 24.1:** Added on 17 July 2008 by the report entitled "The 2008 Update to the Model Tax Convention", adopted by the OECD Council on 17 July 2008.

**Paragraph 25:** Amended on 17 July 2008 by the report entitled "The 2008 Update to the Model Tax Convention", adopted by the OECD Council on 17 July 2008. After 29 April 2000 and until 17 July 2008, paragraph 25 read as follows:

"25. *Italy* does not adhere to the interpretation given in paragraph 24 above concerning "the most senior person or group of persons (for example, a board of directors)" as the sole criterion to identify the place of effective management of an entity. In its opinion the place where the main and substantial activity of the entity is carried on is also to be taken into account when determining the place of effective management."

Paragraph 25 was replaced on 29 April 2000 when paragraph 25 of the 1977 Model Convention was deleted and a new paragraph was added by the report entitled "The 2000 Update to the Model Tax Convention", adopted by the OECD Committee on Fiscal Affairs on 29 April 2000. In the 1977 Model Convention and until 29 April 2000, paragraph 25 read as follows:

"25. *New Zealand's* interpretation of the term "effective management" is practical day to day management, irrespective of where the overriding control is exercised."

Paragraph 25 was added when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977.

**Paragraph 26:** Replaced on 21 September 1995 when paragraph 26 of the 1977 Model was renumbered as paragraph 27 (see history of paragraph 27) by the report entitled "The 1995 Update to the Model Tax Convention", adopted by the OECD Council on 21 September 1995. At the same time the heading preceding paragraph 26 was moved with it and a new paragraph 26 was added.

**Paragraph 26.1:** Amended on 17 July 2008, by replacing the cross-reference to "paragraph 8.4" with "paragraph 8.7", by the report entitled "The 2008 Update to the Model Tax Convention", adopted by the OECD Council on 17 July 2008. After 28 January 2003 and until 17 July 2008, paragraph 26.1 read as follows:

> "26.1 *Mexico* does not agree with the general principle expressed in paragraph 8.4 of the Commentary according to which if tax owed by a partnership is determined on the basis of the personal characteristics of the partners, these partners are entitled to the benefits of tax conventions entered into by the States of which they are residents as regards income that "flows through" that partnership."

Paragraph 26.1 was added on 28 January 2003 by the report entitled "The 2002 Update to the Model Tax Convention", adopted by the OECD Council on 28 January 2003.

**Paragraph 26.2:** Deleted on 17 July 2008 by the report entitled "The 2008 Update to the Model Tax Convention", adopted by the OECD Council on 17 July 2008. After 28 January 2003 and until 17 July 2008, paragraph 26.2 read as follows:

> "26.2 Concerning the residence of tax-exempt not profit making organisations and charities, *Greece* adopts the view presented in paragraph 8.3 of the Commentary."

Paragraph 26.2 was added on 28 January 2003 by the report entitled "The 2002 Update to the Model Tax Convention", adopted by the OECD Council on 28 January 2003.

**Paragraph 26.3:** Added on 17 July 2008 by the report entitled "The 2008 Update to the Model Tax Convention", adopted by the OECD Council on 17 July 2008.

**Paragraph 26.4:** Added on 17 July 2008 by the report entitled "The 2008 Update to the Model Tax Convention", adopted by the OECD Council on 17 July 2008.

**Paragraph 27:** Deleted on 15 July 2014 by the Report entitled "The 2014 Update to the Model Tax Convention", adopted by the Council of the OECD on 15 July 2014. After 29 April 2000 and until 15 July 2014, paragraph 27 read as follows:

> "27. *Canada* reserves the right to use as the test for paragraph 3 the place of incorporation or organisation with respect to a company and, failing that, to deny dual resident companies the benefits under the Convention."

Paragraph 27 was amended on 29 April 2000 by the report entitled "The 2000 Update to the Model Tax Convention", adopted by the OECD Committee on Fiscal Affairs on 29 April 2000. After 21 September 1995 and until 29 April 2000, paragraph 27 read as follows:

> "27. *Canada* reserves the right to use as the test for paragraph 3 the place of incorporation or organisation with respect to a company."

Paragraph 27 as it read after 21 September 1995 corresponded to paragraph 26. On 21 September 1995 paragraph 27 was renumbered as paragraph 28 (see history of paragraph 28), paragraph 26 was renumbered as paragraph 27 and the heading preceding paragraph 26 was moved with it by the report entitled "The 1995 Update to the Model Tax Convention", adopted by the OECD Council on 21 September 1995.

Paragraph 26 was previously amended on 23 July 1992, by deleting the United States as a country making the reservation and incorporating that reservation into paragraph 30 (see history of paragraph 31), by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992. In the 1977 Model Convention and until 23 July 1992, paragraph 26 read as follows:

"26. *Canada* and the *United States* reserve the right to use as the test for paragraph 3 the place of incorporation or organisation with respect to a company."

Paragraph 26 was added when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977.

**Paragraph 28:** Amended on 23 October 1997, by adding Korea to the list of countries making the reservation, by the report entitled "The 1997 Update to the Model Tax Convention", adopted by the OECD Council on 23 October 1997. After 21 September 1995 and until 23 October 1997, paragraph 28 read as follows:

"28. *Japan* reserves its position on the provisions in this and other Articles in the Model Tax Convention which refer directly or indirectly to the place of effective management. Instead of the term "place of effective management", Japan wishes to use in its conventions the term "head or main office"."

Paragraph 28 as it read after 21 September 1995 corresponded to paragraph 27. On 21 September 1995 paragraph 27 was renumbered as paragraph 28 by the report entitled "The 1995 Update to the Model Tax Convention", adopted by the OECD Council on 21 September 1995.

Paragraph 27 was previously amended on 31 March 1994, by adding a second sentence, by the report entitled "1994 Update to the Model Tax Convention", adopted by the OECD Council on 31 March 1994. After 23 July 1992 and until 31 March 1994, paragraph 27 read as follows:

"27. *Japan* reserves its position on the provisions in this and other Articles in the Model Convention which refer directly or indirectly to the place of effective management."

Paragraph 27 as it read after 23 July 1992 corresponded to paragraph 28 of the 1977 Model Convention. On 23 July 1992 paragraph 27 of the 1977 Model Convention was deleted and paragraph 28 of the 1977 Model Convention was renumbered as paragraph 27 and amended, by deleting the word "also" immediately after "Japan", by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992. In the 1977 Model Convention and until 23 July 1992, paragraph 28 read as follows:

"28. *Japan* also reserves its position on the provisions in this and other Articles in the Model Convention which refer directly or indirectly to the place of effective management."

Paragraph 28 of the 1977 Model Convention was added when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977.

In the 1977 Model Convention and until it was deleted on 23 July 1992, paragraph 27 read as follows:

"27. *Japan* wishes to be free to conclude a bilateral convention which provides that the fiscal domicile of a resident of both Contracting States is to be determined through consultation between competent authorities. When entering into such consultation, Japan is prepared to take into consideration the rules set out in paragraph 2 of this Article as far as practicable."

Paragraph 27 of the 1977 Model Convention was added when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977.

**Paragraph 29:** Amended on 17 July 2008 by the report entitled "The 2008 Update to the Model Tax Convention", adopted by the OECD Council on 17 July 2008. After 29 April 2000 and until 17 July 2008, paragraph 29 read as follows:

"29. *France* does not agree with the general principle according to which if tax owed by a partnership is determined on the basis of the personal characteristics of the partners, these partners are entitled to the benefits of tax conventions entered

into by the States of which they are residents as regards income that "flows through" that partnership. Under French domestic law, a partnership is considered to be liable to tax even though, technically, that tax is collected from the partners; for that reason, France reserves the right to amend the Article in its tax conventions in order to specify that French partnerships must be considered as residents of France in view of their legal and tax characteristics."

Paragraph 29 was previously amended on 29 April 2000 by the report entitled "The 2000 Update to the Model Tax Convention", adopted by the OECD Committee on Fiscal Affairs on 29 April 2000. After 21 September 1995 and until 29 April 2000, paragraph 29 read as follows:

"29. *France* reserves the right to amend the Article in its tax conventions in order to specify that French partnerships must be considered as residents of France in view of their legal and tax characteristics."

Paragraph 29 as it read after 21 September 1995 corresponded to paragraph 28. On 21 September 1995 paragraph 28 was renumbered as paragraph 29 by the report entitled "The 1995 Update to the Model Tax Convention", adopted by the OECD Council on 21 September 1995.

Paragraph 28 was replaced on 23 July 1992 when paragraph 28 of the 1977 Model Convention was amended and renumbered as paragraph 27 (see history of paragraph 28) and a new paragraph 28 was added by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992.

**Paragraph 30:** Corresponds to paragraph 29 as it read before 21 September 1995. On that date paragraph 30 was renumbered as paragraph 31 (see history of paragraph 31) and paragraph 29 was renumbered as paragraph 30 by the report entitled "The 1995 Update to the Model Tax Convention", adopted by the OECD Council on 21 September 1995.

Paragraph 29 was added on 23 July 1992 by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992.

**Paragraph 31:** Amended on 17 July 2008, by deleting Mexico from the list of countries making the reservation, by the report entitled "The 2008 Update to the Model Tax Convention", adopted by the OECD Council on 17 July 2008. After 29 April 2000 and until 17 July 2008, paragraph 31 read as follows:

"31. *Mexico* and the *United States* reserve the right to use a place of incorporation test for determining the residence of a corporation, and, failing that, to deny dual resident companies certain benefits under the Convention."

Paragraph 31 was previously amended on 29 April 2000, by adding Mexico as a country making the reservation, by the report entitled "The 2000 Update to the Model Tax Convention", adopted by the OECD Committee on Fiscal Affairs on 29 April 2000. After 21 September 1995 and until 29 April 2000, paragraph 31 read as follows:

"31. The *United States* reserves the right to use a place of incorporation test for determining the residence of a corporation, and, failing that, to deny dual resident companies certain benefits under the Convention."

Paragraph 31 as it read after 21 September 1995 corresponded to paragraph 30. On 21 September 1995 paragraph 31 was renumbered paragraph 32 (see history of paragraph 32) and paragraph 30 was renumbered as paragraph 31 by the report entitled "The 1995 Update to the Model Tax Convention", adopted by the OECD Council on 21 September 1995.

Paragraph 30 was amended on 31 March 1994, by adding the word "certain" before the word "benefits", by the report entitled "1994 Update to the Model Tax Convention",

adopted by the OECD Council on 31 March 1994. After 23 July 1992 and until 31 March 1994, paragraph 30 read as follows:

> "30. The *United States* reserves the right to use a place of incorporation test for determining the residence of a corporation, and, failing that, to deny dual resident companies benefits under the Convention."

Paragraph 30 as it read after 23 July 1992 corresponded in part to paragraph 26 of the 1977 Model Convention (see history of paragraph 27). The reservation of the United States was incorporated into paragraph 30 by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992.

**Paragraph 32:** Deleted on 15 July 2014 by the Report entitled "The 2014 Update to the Model Tax Convention", adopted by the Council of the OECD on 15 July 2014. After 29 April 2000 and until 15 July 2014, paragraph 32 read as follows:

> "32. *Germany* reserves the right to include a provision under which a partnership that is not a resident of a Contracting State according to the provisions of paragraph 1 is deemed to be a resident of the Contracting State where the place of its effective management is situated, but only to the extent that the income derived from the other Contracting State or the capital situated in that other State is liable to tax in the first-mentioned State."

Paragraph 32 was replaced on 29 April 2000 when it was deleted and a new paragraph 32 was added by the report entitled "The 2000 Update to the Model Tax Convention", adopted by the OECD Committee on Fiscal Affairs on 29 April 2000. After 21 September 1995 and until 29 April 2000, paragraph 32 read as follows:

> "32. *Mexico* reserves the right to be excluded from the application of the portion of subparagraph *d)* of paragraph 2 that addresses double nationality, because the Mexican Constitution does not allow Mexican nationals to be nationals of any other State."

Paragraph 32 was added on 21 September 1995 by the report entitled "The 1995 Update to the Model Tax Convention", adopted by the OECD Council on 21 September 1995.

**Paragraph 33:** Added on 15 July 2014 by the report entitled "The 2014 Update to the Model Tax Convention" adopted by the Council on 15 July 2014.

**Paragraph 34:** Added on 15 July 2014 by the report entitled "The 2014 Update to the Model Tax Convention" adopted by the Council on 15 July 2014.