

COMMENTARY ON ARTICLE 6 CONCERNING THE TAXATION OF INCOME FROM IMMOVABLE PROPERTY

C (6)

1. Paragraph 1 gives the right to tax income from immovable property to the State of source, that is, the State in which the property producing such income is situated. This is due to the fact that there is always a very close economic connection between the source of this income and the State of source. Although income from agriculture or forestry is included in Article 6, Contracting States are free to agree in their bilateral conventions to treat such income under Article 7. Article 6 deals only with income which a resident of a Contracting State derives from immovable property situated in the other Contracting State. It does not, therefore, apply to income from immovable property situated in the Contracting State of which the recipient is a resident within the meaning of Article 4 or situated in a third State; the provisions of paragraph 1 of Article 21 shall apply to such income.

(Amended on 11 April 1977; see HISTORY)

2. Defining the concept of immovable property by reference to the law of the State in which the property is situated, as is provided in paragraph 2, will help to avoid difficulties of interpretation over the question whether an asset or a right is to be regarded as immovable property or not. The paragraph, however, specifically mentions the assets and rights which must always be regarded as immovable property. In fact such assets and rights are already treated as immovable property according to the laws or the taxation rules of most OECD member countries. Conversely, the paragraph stipulates that ships, boats and aircraft shall never be considered as immovable property. No special provision has been included as regards income from indebtedness secured by immovable property, as this question is settled by Article 11.

(Amended on 11 April 1977; see HISTORY)

2.1 The phrase “including income from agriculture or forestry” in paragraph 1 extends the scope of Article 6 to include not only income derived from immovable property as defined in paragraph 2 but also income from activities that constitute agriculture or forestry. Income from agriculture and forestry includes not only the income that an enterprise engaged in agriculture or forestry derives from selling its agricultural and forestry production but also income that is an integral part of the carrying on of agriculture or forestry activities — for instance, income derived from the acquisition or trading of emissions permits (the nature of these permits is explained in paragraph 75.1 of the Commentary on Article 7) where such acquisition or trading is an integral part of the carrying on of agriculture or forestry activities, e.g. where the permits are acquired for the purpose of

carrying on these activities or where permits acquired for that purpose are subsequently traded when it is realised that they will not be needed.

(Added on 15 July 2014; see HISTORY)

3. Paragraph 3 indicates that the general rule applies irrespective of the form of exploitation of the immovable property. Paragraph 4 makes it clear that the provisions of paragraphs 1 and 3 apply also to income from immovable property of industrial, commercial and other enterprises. Income in the form of distributions from Real Estate Investment Trusts (REITs), however, raises particular issues which are discussed in paragraphs 67.1 to 67.7 of the Commentary on Article 10.

(Amended on 17 July 2008; see HISTORY)

4. It should be noted in this connection that the right to tax of the State of source has priority over the right to tax of the other State and applies also where, in the case of an enterprise, income is only indirectly derived from immovable property. This does not prevent income from immovable property, when derived through a permanent establishment, from being treated as income of an enterprise, but secures that income from immovable property will be taxed in the State in which the property is situated also in the case where such property is not part of a permanent establishment situated in that State. It should further be noted that the provisions of the Article do not prejudice the application of domestic law as regards the manner in which income from immovable property is to be taxed.

(Amended on 29 April 2000; see HISTORY)

Reservations on the Article

5. Finland reserves the right to tax income of shareholders in Finnish companies from the direct use, letting, or use in any other form of the right to enjoyment of immovable property situated in Finland and held by the company, where such right is based on the ownership of shares or other corporate rights in the company.

(Amended on 23 July 1992; see HISTORY)

6. France wishes to retain the possibility of applying the provisions in its domestic laws relative to the taxation of income from shares or rights, which are treated therein as income from immovable property.

(Added on 11 April 1977; see HISTORY)

7. Spain reserves its right to tax income from any form of use of a right to enjoyment of immovable property situated in Spain when such right derives

from the holding of shares or other corporate rights in the company owning the property.

(Added on 23 July 1992; see HISTORY)

8. *Canada* reserves the right to include in paragraph 3 a reference to income from the alienation of immovable property.

(Added on 29 April 2000; see HISTORY)

9. *New Zealand* reserves the right to include fishing and rights relating to all natural resources under this Article.

(Added on 29 April 2000; see HISTORY)

10. The *United States* reserves the right to add a paragraph to Article 6 allowing a resident of a Contracting State to elect to be taxed by the other Contracting State on a net basis on income from real property.

(Added on 29 April 2000; see HISTORY)

11. *Australia* reserves the right to include rights relating to all natural resources under this Article.

(Added on 15 July 2005; see HISTORY)

12. *Mexico* reserves the right to treat as immovable property any right that allows the use or enjoyment of immovable property situated in a Contracting State where that use or enjoyment relates to time sharing since under its domestic law such right is not considered to constitute immovable property.

(Added on 15 July 2005; see HISTORY)

13. *Estonia* reserves the right to include in the definition of the term “immovable property” any right of claim in respect of immovable property because such right of claim may not be included in its domestic law meaning of the term.

(Added on 15 July 2014; see HISTORY)

14. *Israel* reserves the right to include in paragraph 2 “any option or similar right to acquire immovable property”.

(Added on 15 July 2014; see HISTORY)

HISTORY

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 read as follows:

“1. All Double Taxation Conventions in force give the right to tax income from immovable property to the State of source, that is, the State in which the property producing such income is situated. This uniform practice in the Conventions is due

to the fact that there is always a very close economic connection between the source of the income and the State of source. The rule laid down in paragraph 1 of the Article is in conformity with this practice.”

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. Defining the concept of immovable property by reference to the laws of the State of situs, as is provided in paragraph 2, will help to avoid difficulties of interpretation over the question whether an asset or a right is to be regarded as immovable property or not. The Article, however, specifically mentions the assets and rights which must always be regarded as immovable property. In fact such assets and rights are already treated as immovable property according to the laws or the taxation rules of most O.E.C.D. Member countries. Conversely, the Article stipulates that ships, boats and aircraft shall never be considered as immovable property. No special provision has been included as regards income from indebtedness secured by immovable property, as the question is settled by Article 11 on the taxation of interest.”

Paragraph 2.1: 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, on the basis of another report entitled “Tax treaty issues related to emissions permits/credits” (adopted by the OECD Committee on Fiscal Affairs on 26 June 2014).

Paragraph 3: 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, on the basis of another report entitled “Tax Treaty Issues Relating to REITs” (adopted by the OECD Committee on Fiscal Affairs on 20 June 2008). After 29 April 2000 and until 17 July 2008, paragraph 3 read as follows:

“3. Paragraph 3 indicates that the general rule applies irrespective of the form of exploitation of the immovable property. Paragraph 4 makes it clear that the provisions of paragraphs 1 and 3 apply also to income from immovable property of industrial, commercial and other enterprises.”

Paragraph 3 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 on the basis of the Annex of another report entitled “Issues Related to Article 14 of the OECD Model Tax Convention” (adopted by the OECD Committee on Fiscal Affairs on 27 January 2000). In the 1977 Model Convention and until 29 April 2000, paragraph 3 read as follows:

“3. Paragraph 3 indicates that the general rule applies irrespective of the form of exploitation of the immovable property. Paragraph 4 makes it clear that the provisions of paragraphs 1 and 3 apply also to income from immovable property of industrial, commercial and other enterprises and to income from immovable property used for the performance of independent personal services.”

Paragraph 3 was previously 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. As indicated in paragraph 3 of the Article, the general rule applies irrespective of the form of exploitation of the immovable property. Paragraphs 3 and 4 also make it clear that the provisions of the Article apply not only to income from immovable property of industrial, commercial and other enterprises as well

as to income from immovable property used for the performance of professional services.”

Paragraph 4: 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 on the basis of the Annex of another report entitled “Issues Related to Article 14 of the OECD Model Tax Convention” (adopted by the OECD Committee on Fiscal Affairs on 27 January 2000). In the 1977 Model Convention and until 29 April 2000, paragraph 4 read as follows:

“4. It should be noted in this connection that the right to tax of the State of source has priority over the right to tax of the other State and applies also where, in the case of an enterprise or of non-industrial and non-commercial activities, income is only indirectly derived from immovable property. This does not prevent income from immovable property, when derived through a permanent establishment, from being treated as income of an enterprise, but secures that income from immovable property will be taxed in the State in which the property is situated also in the case where such property is not part of a permanent establishment situated in that State. It should further be noted that the provisions of the Article do not prejudice the application of domestic law as regards the manner in which income from immovable property is to be taxed.”

Paragraph 4 was previously 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. It should be noted in this connection that the right to tax of the State of source has priority over other rights to tax and applies also where, in the case of a business undertaking or of non-industrial and non-commercial activities, income is only indirectly derived from immovable property. This does not prevent income from immovable property, when derived through a permanent establishment, from being treated as income of a business enterprise, but secures that income from immovable property will be taxed in the State in which the property is situated also in the case where such property is not part of a permanent establishment situated in that State. It should further be noted that the provisions of the Article do not prejudice the application of national laws as regards the manner in which income from immovable property is to be taxed.”

Paragraph 5: Amended on 23 July 1992 by the report entitled “The Revision of the Model Convention”, adopted by the OECD Council on 23 July 1992, by substituting the word “held” for the word “owned”. In the 1977 Model Convention and until 23 July 1992, paragraph 5 read as follows:

“5. Finland reserves the right to tax income of shareholders in Finnish companies from the direct use, letting, or use in any other form of the right to enjoyment of immovable property situated in Finland and owned by the company, where such right is based on the ownership of shares or other corporate rights in the company.”

Paragraph 5 and the heading preceding it were added when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977.

Paragraph 6: Added when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977.

Paragraph 7: 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 8: 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 9: 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.

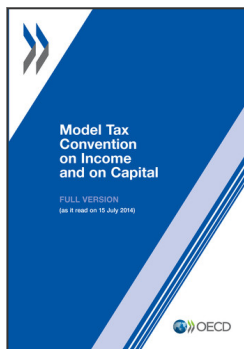
Paragraph 10: Added on 29 April 2000 by the report entitled “The 2000 Update to the Model Tax Convention”, adopted by the OECD Committee on Fiscal Affairs on 29 April 2000.

Paragraph 11: Added on 15 July 2005 by the report entitled “The 2005 Update to the Model Tax Convention”, adopted by the OECD Council on 15 July 2005.

Paragraph 12: Added on 15 July 2005 by the report entitled “The 2005 Update to the Model Tax Convention”, adopted by the OECD Council on 15 July 2005.

Paragraph 13: 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 14: 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.



From:
**Model Tax Convention on Income and on Capital
2014 (Full Version)**

Access the complete publication at:
<https://doi.org/10.1787/9789264239081-en>

Please cite this chapter as:

OECD (2015), "Commentary on Article 6: Concerning the Taxation of Income From Immovable Property", in *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris.

DOI: <https://doi.org/10.1787/9789264239081-40-en>

This work is published under the responsibility of the Secretary-General of the OECD. The opinions expressed and arguments employed herein do not necessarily reflect the official views of OECD member countries.

This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

You can copy, download or print OECD content for your own use, and you can include excerpts from OECD publications, databases and multimedia products in your own documents, presentations, blogs, websites and teaching materials, provided that suitable acknowledgment of OECD as source and copyright owner is given. All requests for public or commercial use and translation rights should be submitted to rights@oecd.org. Requests for permission to photocopy portions of this material for public or commercial use shall be addressed directly to the Copyright Clearance Center (CCC) at info@copyright.com or the Centre français d'exploitation du droit de copie (CFC) at contact@cfcopies.com.