

POSITIONS ON ARTICLE 12 (ROYALTIES) AND ITS COMMENTARY

Positions on the Article

1. *Bulgaria and Ukraine* reserve the right to exclude from the scope of this Article royalties arising from property or rights created or assigned mainly for the purpose of taking advantage of this Article and not for *bona fide* commercial reasons.

(Amended on 28 January 2003; see HISTORY)

2. *(Deleted on 22 July 2010; see HISTORY)*

Paragraph 1

3. *Albania, Argentina, Armenia, Azerbaijan, Belarus, Brazil, Bulgaria, Colombia, Croatia, the Democratic Republic of the Congo, Gabon, Indonesia, Ivory Coast, Kazakhstan, Lithuania, Malaysia, Morocco, the People's Republic of China, the Philippines, Romania, Russia, Serbia, Singapore, South Africa, Thailand, Tunisia, Ukraine, Vietnam and Hong Kong, China* reserve the right to tax royalties at source.

(Amended on 15 July 2014; see HISTORY)

3.1 *Latvia* reserves the right to tax royalties at source if the recipient of the income is an individual who is resident of the other Contracting State.

(Added on 15 July 2014; see HISTORY)

4. *Armenia* reserves the right to tax copyright royalties for literary, scientific and artistic work at a reduced tax rate.

(Added on 17 July 2008; see HISTORY)

4.1 *India* reserves the right to: tax royalties and fees for technical services at source; define these, particularly by reference to its domestic law; define the source of such payments, which may extend beyond the source defined in paragraph 5 of Article 11, and modify paragraphs 3 and 4 accordingly.

(Added on 17 July 2008; see HISTORY)

Paragraph 2

5. *Argentina, Brazil, Gabon, Ivory Coast, Morocco, Russia, Thailand and Tunisia* reserve the right to continue to include in the definition of royalties income derived from the leasing of industrial, commercial or scientific equipment and

of containers, as provided for in paragraph 2 of Article 12 of the 1977 Model Double Taxation Convention.

(Amended on 28 January 2003; see HISTORY)

6. The *Philippines, Thailand and Vietnam* reserve the right to include fees for technical services in the definition of royalties.

(Amended on 15 July 2014; see HISTORY)

7. *Argentina, Brazil, Gabon, Ivory Coast and Tunisia* reserve the right to include fees for technical assistance and technical services in the definition of “royalties”.

(Amended on 15 July 2014; see HISTORY)

7.1 *Morocco* reserves the right to include in the definition of the royalties, payments for services, technical assistance, technical and economic studies and all kind of services fees.

(Added on 28 January 2003; see HISTORY)

7.2 *Colombia* reserves the right to include payments received for the furnishing of technical assistance, technical services and consulting services within the definition of royalties.

(Added on 15 July 2014; see HISTORY)

8. *Albania, Armenia, Azerbaijan, Belarus, Brazil, Bulgaria, Colombia, India, Indonesia, Kazakhstan, Latvia, Malaysia, the People’s Republic of China, the Philippines, Romania, Russia, Serbia, Thailand and Vietnam* reserve the right to include in the definition of royalties payments for the use of, or the right to use, industrial, commercial or scientific equipment.

(Amended on 15 July 2014; see HISTORY)

8.1 *Serbia* reserves the right to include in the definition of royalties income derived from the leasing of ships or aircraft on a bare boat charter basis and containers.

(Amended on 17 July 2008; see HISTORY)

8.2 *Malaysia* reserves the right to include in the definition of royalties income derived from the leasing of containers and ships or aircraft, including on a slot hire, time charter, voyage charter, or a bare boat charter basis, whether or not such charters are crewed, equipped or provisioned.

(Added on 15 July 2005; see HISTORY)

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

9. Belarus reserves the right to include a reference to transport vehicles in the definition of royalties.

(Added on 23 October 1997; see HISTORY)

10. Argentina, Brazil, Morocco and Romania reserve the right to include in the definition of the royalties payments for transmissions by satellite, cable, optic fibre or similar technology.

(Amended on 15 July 2014; see HISTORY)

10.1 Argentina and Vietnam reserve the right to include in the definition of royalties, payments for the use of or the right to use of “films, tapes or digital media used for radio or television broadcasting”.

(Amended on 15 July 2014; see HISTORY)

11. Albania, Malaysia, Serbia and Vietnam reserve the right to deal with fees for technical services in a separate Article similar to Article 12.

(Amended on 22 July 2010; see HISTORY)

12. Albania, Argentina, Armenia, Azerbaijan, Belarus, Brazil, Bulgaria, Colombia, Croatia, Gabon, Indonesia, Ivory Coast, Kazakhstan, Latvia, Lithuania, Malaysia, Morocco, the People’s Republic of China, the Philippines, Romania, Serbia, Singapore, South Africa, Thailand, Tunisia, Ukraine, Vietnam and Hong Kong, China reserve the right, in order to fill what they consider as a gap in the Article, to add a provision defining the source of royalties by analogy with the provisions of paragraph 5 of Article 11, which deals with the same issue in the case of interest.

(Amended on 15 July 2014; see HISTORY)

12.1 Morocco reserves the right to include in the paragraph a reference to other business activities carried on in the other State of the same and similar kind as those effected through a permanent establishment.

(Added on 28 January 2003; see HISTORY)

12.2 The Democratic Republic of the Congo and Malaysia reserve their position on the treatment of software.

(Amended on 22 July 2010; see HISTORY)

12.3 Kazakhstan reserves the right to include in the definition of royalties payments for the use of, or the right to use, software.

(Added on 17 July 2008; see HISTORY)

Positions on the Commentary

13. Argentina, Morocco, Serbia and Tunisia do not adhere to the interpretation in paragraphs 14 and 15 of the Commentary. They hold the view that payments relating to software fall within the scope of the Article where less than the full rights to software are transferred, either if the payments are in consideration for the right to use a copyright on software for commercial exploitation or if they relate to software acquired for the personal or business use of the purchaser.

(Amended on 17 July 2008; see HISTORY)

14. Vietnam does not agree with paragraph 9 of the Commentary. Even if the phrase “for the use of, or the right to use, industrial, commercial or scientific equipment” is not included in paragraph 2 and income from the leasing of equipment falls under Article 7, the fact that an enterprise of a Contracting State leases heavy equipment to a person resident in Vietnam will constitute a permanent establishment of that enterprise in Vietnam.

(Added on 23 October 1997; see HISTORY)

15. Brazil does not agree with the interpretation provided in paragraphs 17.1 to 17.4, especially in view of the principle of taxation at the source of payments in its legislation.

(Added on 28 January 2003; see HISTORY)

16. Malaysia cannot adhere to the new additional sentence in paragraph 11.2, i.e. “Payments made under the latter contracts generally fall under Article 7”. Malaysia treats payments for the provision of services as Special Classes of Income under her domestic law and not as business income.

(Added on 28 January 2003; see HISTORY)

17. India reserves its position on the interpretations provided in paragraphs 8.2, 10.1, 10.2, 14, 14.1, 14.2, 14.4, 15, 16 and 17.3; it is of the view that some of the payments referred to may constitute royalties.

(Added on 17 July 2008; see HISTORY)

17.1 Colombia does not adhere to the interpretations provided in paragraphs 8.2, 13.1, 14, 14.1, 14.2, 14.4, 15, 16 and 17.3; under its tax laws some of the payments referred to may constitute royalties.

(Added on 15 July 2014; see HISTORY)

18. India does not agree with the interpretation that information concerning industrial, commercial or scientific experience is confined to only previous experience.

(Added on 17 July 2008; see HISTORY)

19. *Malaysia* does not adhere to the interpretation in paragraph 14.2 because *Malaysia* is of the view that licence fees for rights to distribute software constitute royalties.

(Added on 17 July 2008; see HISTORY)

20. *India* does not agree with the interpretation in paragraph 9.1 of the Commentary on Article 12 according to which a payment for transponder leasing will not constitute royalty. This notion is contrary to the Indian position that income from transponder leasing constitutes an equipment royalty taxable both under *India's* domestic law and its treaties with many countries. It is also contrary to *India's* position that a payment for the use of a transponder is a payment for the use of a process resulting in a royalty under Article 12. *India* also does not agree with the conclusion included in the paragraph concerning undersea cables and pipelines as it considers that undersea cables and pipelines are industrial, commercial or scientific equipment and that payments made for their use constitute equipment royalties.

(Added on 22 July 2010; see HISTORY)

21. *India* does not agree with the interpretation in paragraph 9.2 of the Commentary on Article 12. It considers that a roaming call constitutes the use of a process. Accordingly, the payment made for the use of that process constitutes a royalty for the purposes of Article 12. It is also the position of *India* that a payment for a roaming call constitutes a royalty since it is a payment for the use of industrial, commercial or scientific equipment.

(Added on 22 July 2010; see HISTORY)

22. *India* does not agree with the interpretation in paragraph 9.3 of the Commentary on Article 12. It considers that a payment for spectrum license constitutes a royalty taxable both under *India's* domestic law and its treaties with many countries.

(Added on 22 July 2010; see HISTORY)

23. *Azerbaijan* and the *People's Republic of China* do not adhere to the interpretation in paragraph 10.1 because they take the view that some payments for the exclusive distribution rights of a product or a service in a given territory may be treated as royalties.

(Amended on 15 July 2014; see HISTORY)

24. *Bulgaria* does not adhere to the interpretation, given in paragraph 14.4 of the Commentary on Article 12, and is of the opinion that a distribution intermediary who distributes software to clients and with relation to these clients requests from the software copyright holder or from another person who has the right to copy the software, to provide software copies, irrespective

whether on a tangible media or electronically, uses the copyright in the software product.

(Added on 15 July 2014; see HISTORY)

HISTORY

Paragraph 1: Amended on 28 January 2003, by adding Bulgaria as a country indicating the position, by the report entitled “The 2002 Update to the Model Tax Convention”, adopted by the OECD Council on 28 January 2003. After 23 October 1997 and until 28 January 2003, paragraph 1 read as follows:

“1. Ukraine reserves the right to exclude from the scope of this Article royalties arising from property or rights created or assigned mainly for the purpose of taking advantage of this Article and not for *bona fide* commercial reasons.”

Paragraph 1 was included when this section was added in 1997 by the report entitled “The 1997 Update to the Model Tax Convention”, adopted by the OECD Council on 23 October 1997.

Paragraph 2: Deleted on 22 July 2010 by the report entitled “The 2010 Update to the Model Tax Convention”, adopted by the OECD Council on 22 July 2010. After 23 October 1997 and until 22 July 2010, paragraph 2 read as follows:

“2. Romania reserves the right to include an additional article dealing with commissions. This article has the same structure as Article 11 on interest.”

Paragraph 2 was included when this section was added in 1997 by the report entitled “The 1997 Update to the Model Tax Convention”, adopted by the OECD Council on 23 October 1997.

Paragraph 3: Amended on 15 July 2014, by changing the list of countries indicating the position by adding Azerbaijan, Colombia and Singapore and deleting Latvia, by the Report entitled “The 2014 Update to the Model Tax Convention”, adopted by the Council of the OECD on 15 July 2014. After 22 July 2010 and until 15 July 2014, paragraph 3 read as follows:

“3. Albania, Argentina, Armenia, Belarus, Brazil, Bulgaria, Croatia, the Democratic Republic of the Congo, Gabon, Indonesia, Ivory Coast, Kazakhstan, Latvia, Lithuania, Malaysia, Morocco, the People’s Republic of China, the Philippines, Romania, Russia, Serbia, South Africa, Thailand, Tunisia, Ukraine, Vietnam and Hong Kong, China reserve the right to tax royalties at source”

Paragraph 3 was previously amended on 22 July 2010, by changing the list of countries indicating the position by adding Indonesia and Hong Kong, China and deleting Chile, Israel and Slovenia, by the report entitled “The 2010 Update to the Model Tax Convention”, adopted by the OECD Council on 22 July 2010. After 17 July 2008 and until 22 July 2010, paragraph 3 read as follows:

“3. Albania, Argentina, Armenia, Belarus, Brazil, Bulgaria, Chile, Croatia, the Democratic Republic of the Congo, Gabon, Israel, Ivory Coast, Kazakhstan, Latvia, Lithuania, Malaysia, Morocco, the People’s Republic of China, the Philippines, Romania, Russia, Serbia, Slovenia, South Africa, Thailand, Tunisia, Ukraine and Vietnam reserve the right to tax royalties at source.”

Paragraph 3 was previously amended on 17 July 2008, by changing the list of countries indicating the position by adding Armenia, Chile, the Democratic Republic of the Congo and Kazakhstan, deleting Estonia and replacing Serbia and Montenegro with Serbia and the reference to “China” with “the People’s Republic of China”, by the report entitled “The 2008 Update to the Model Tax Convention”, adopted by the OECD

Council on 17 July 2008. After 15 July 2005 and until 17 July 2008, paragraph 3 read as follows:

“3. *Albania, Argentina, Belarus, Brazil, Bulgaria, China, Croatia, Estonia, Gabon, Israel, Ivory Coast, Latvia, Lithuania, Malaysia, Morocco, the Philippines, Romania, Russia, Serbia and Montenegro, Slovenia, South Africa, Thailand, Tunisia, Ukraine and Vietnam* reserve the right to tax royalties at source.”

Paragraph 3 was previously amended on 15 July 2005, by adding Serbia and Montenegro to the list of countries indicating the position, by the report entitled “The 2005 Update to the Model Tax Convention”, adopted by the OECD Council on 15 July 2005. After 28 January 2003 and until 15 July 2005, paragraph 3 read as follows:

“3. *Albania, Argentina, Belarus, Brazil, Bulgaria, China, Croatia, Estonia, Gabon, Israel, Ivory Coast, Latvia, Lithuania, Malaysia, Morocco, the Philippines, Romania, Russia, Slovenia, South Africa, Thailand, Tunisia, Ukraine and Vietnam* reserve the right to tax royalties at source.”

Paragraph 3 was previously amended on 28 January 2003, by adding Albania, Bulgaria, Croatia, Gabon, Ivory Coast, Morocco, Slovenia and Tunisia to the list of countries indicating the position, by the report entitled “The 2002 Update to the Model Tax Convention”, adopted by the OECD Council on 28 January 2003. After 23 October 1997 and until 28 January 2003, paragraph 3 read as follows:

“3. *Argentina, Belarus, Brazil, China, Estonia, Israel, Latvia, Lithuania, Malaysia, the Philippines, Romania, Russia, South Africa, Thailand, Ukraine and Vietnam* reserve the right to tax royalties at source.”

Paragraph 3 was included when this section was added in 1997 by the report entitled “The 1997 Update to the Model Tax Convention”, adopted by the OECD Council on 23 October 1997.

Paragraph 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 4 as it read before 28 January 2003 was deleted by the report entitled “The 2002 Update to the Model Tax Convention”, adopted by the OECD Council on 28 January 2003. After 23 October 1997 and until 28 January 2003, paragraph 4 read as follows:

“4. *Slovakia* reserves the right to tax royalties at source but is prepared to exempt from tax copyright royalties in respect of a cultural, dramatic, musical or artistic work, but not including royalties in respect of motion picture films and works on film or videotape or other means of reproduction for use in connection with television.”

Paragraph 4 was included when this section was added in 1997 by the report entitled “The 1997 Update to the Model Tax Convention”, adopted by the OECD Council on 23 October 1997.

Paragraph 3.1: 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.

Paragraph 4.1: 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 5: Amended on 28 January 2003, by adding Gabon, Ivory Coast, Morocco, and Tunisia to the list of countries indicating the position, by the report entitled “The 2002 Update to the Model Tax Convention”, adopted by the OECD Council on 28 January 2003. After 23 October 1997 and until 28 January 2003, paragraph 5 read as follows:

“5. *Argentina, Brazil, Russia and Thailand* reserve the right to continue to include in the definition of royalties income derived from the leasing of industrial,

commercial or scientific equipment and of containers, as provided for in paragraph 2 of Article 12 of the 1977 Model Double Taxation Convention.”

Paragraph 5 was included when this section was added in 1997 by the report entitled “The 1997 Update to the Model Tax Convention”, adopted by the OECD Council on 23 October 1997.

Paragraph 6: Amended on 15 July 2014, by deleting Argentina from the list of countries indicating the position, by the Report entitled “The 2014 Update to the Model Tax Convention”, adopted by the Council of the OECD on 15 July 2014. After 17 July 2008 and until 15 July 2014, paragraph 6 read as follows:

“6. *Argentina, the Philippines, Thailand and Vietnam* reserve the right to include fees for technical services in the definition of royalties.”

Paragraph 6 was previously amended on 17 July 2008, by adding Vietnam to the list of countries indicating the position, by the report entitled “The 2008 Update to the Model Tax Convention”, adopted by the OECD Council on 17 July 2008. After 23 October 1997 and until 17 July 2008, paragraph 6 read as follows:

“6. *Argentina, the Philippines and Thailand* reserve the right to include fees for technical services in the definition of royalties.”

Paragraph 6 was included when this section was added in 1997 by the report entitled “The 1997 Update to the Model Tax Convention”, adopted by the OECD Council on 23 October 1997.

Paragraph 7: Amended on 15 July 2014, by adding Argentina to the list of countries indicating the position, by the Report entitled “The 2014 Update to the Model Tax Convention”, adopted by the Council of the OECD on 15 July 2014. After 28 January 2003 and until 15 July 2014, paragraph 7 read as follows:

“7. *Brazil, Gabon, Ivory Coast and Tunisia* reserve the right to include fees for technical assistance and technical services in the definition of “royalties”.”

Paragraph 7 was previously amended on 28 January 2003, by adding Gabon, Ivory Coast and Tunisia as countries indicating the position, by the report entitled “The 2002 Update to the Model Tax Convention”, adopted by the OECD Council on 28 January 2003. After 23 October 1997 and until 28 January 2003, paragraph 7 read as follows:

“7. *Brazil*, reserves the right to include fees for technical assistance and technical services in the definition of “royalties”.”

Paragraph 7 was included when this section was added in 1997 by the report entitled “The 1997 Update to the Model Tax Convention”, adopted by the OECD Council on 23 October 1997.

Paragraph 7.1: 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 7.2: 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 8: Amended on 15 July 2014, by changing the list of countries indicating the position by adding Azerbaijan and Colombia and deleting Lithuania, by the Report entitled “The 2014 Update to the Model Tax Convention”, adopted by the Council of the OECD on 15 July 2014. After 22 July 2010 and until 15 July 2014, paragraph 8 read as follows:

“8. *Albania, Armenia, Belarus, Brazil, Bulgaria, India, Indonesia, Kazakhstan, Latvia, Lithuania, Malaysia, the People’s Republic of China, the Philippines, Romania, Russia, Serbia, Thailand and Vietnam* reserve the right to include in the definition of royalties payments for the use of, or the right to use, industrial, commercial or scientific

equipment. Bulgaria intends to propose in bilateral negotiations the source taxation of royalties on industrial, commercial or scientific equipment at a lower rate than the rate applied to the rest of the royalty payments.”

Paragraph 8 was previously amended on 22 July 2010, by changing the list of countries indicating the position by adding Indonesia and Thailand and deleting Chile, by the report entitled “The 2010 Update to the Model Tax Convention”, adopted by the OECD Council on 22 July 2010. After 17 July 2008 and until 22 July 2010, paragraph 8 read as follows:

“8. *Albania, Armenia, Belarus, Brazil, Bulgaria, Chile, India, Kazakhstan, Latvia, Lithuania, Malaysia, the People’s Republic of China, the Philippines, Romania, Russia, Serbia and Vietnam* reserve the right to include in the definition of royalties payments for the use of, or the right to use, industrial, commercial or scientific equipment. Bulgaria intends to propose in bilateral negotiations source taxation of royalties on industrial, commercial or scientific equipment at a lower rate than the rate applied to the rest of the royalty payments.”

Paragraph 8 was previously amended on 17 July 2008, by changing the list of countries indicating the position by adding Armenia, Brazil, Chile, India, Kazakhstan, Russia and Vietnam and replacing Serbia and Montenegro with Serbia and the reference to “China” with “the People’s Republic of China”, by the report entitled “The 2008 Update to the Model Tax Convention”, adopted by the OECD Council on 17 July 2008. After 15 July 2005 and until 17 July 2008, paragraph 8 read as follows:

“8. *Albania, Belarus, Bulgaria, China, Latvia, Lithuania, Malaysia, the Philippines, Romania and Serbia and Montenegro* reserve the right to include in the definition of royalties payments for the use of, or the right to use, industrial, commercial or scientific equipment. Bulgaria intends to propose in bilateral negotiations source taxation of royalties on industrial, commercial or scientific equipment at a lower rate than the rate applied to the rest of the royalty payments.”

Paragraph 8 was previously amended on 15 July 2005, by changing the list of countries indicating the position by adding Malaysia and Serbia and Montenegro and deleting Estonia, by the report entitled “The 2005 Update to the Model Tax Convention”, adopted by the OECD Council on 15 July 2005. After 28 January 2003 and until 15 July 2005, paragraph 8 read as follows:

“8. *Albania, Belarus, Bulgaria, China, Estonia, Latvia, Lithuania, the Philippines, and Romania* reserve the right to include in the definition of royalties payments for the use of, or the right to use, industrial, commercial or scientific equipment. Bulgaria intends to propose in bilateral negotiations source taxation of royalties on industrial, commercial or scientific equipment at a lower rate than the rate applied to the rest of the royalty payments.”

Paragraph 8 was previously amended on 28 January 2003, by changing the list of countries indicating the position by adding Albania and Bulgaria and deleting Slovakia, by the report entitled “The 2002 Update to the Model Tax Convention”, adopted by the OECD Council on 28 January 2003. After 23 October 1997 and until 28 January 2003, paragraph 8 read as follows:

“8. *Belarus, China, Estonia, Latvia, Lithuania, the Philippines, Romania and Slovakia* reserve the right to include in the definition of royalties payments for the use of, or the right to use, industrial, commercial or scientific equipment.”

Paragraph 8 was included when this section was added in 1997 by the report entitled “The 1997 Update to the Model Tax Convention”, adopted by the OECD Council on 23 October 1997.

Paragraph 8.1: Amended on 17 July 2008, by replacing Serbia and Montenegro with Serbia as a country indicating the position, by the report entitled “The 2008 Update to

the Model Tax Convention”, adopted by the OECD Council on 17 July 2008. After 15 July 2005 and until 17 July 2008, paragraph 8.1 read as follows:

“8.1 *Serbia and Montenegro* reserves the right to include in the definition of royalties income derived from the leasing of ships or aircraft on a bare boat charter basis and containers.”

Paragraph 8.1 was 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 8.2: 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 8.3: Renumbered on 22 July 2010 as paragraph 23 (see history of paragraph 23) by the report entitled “The 2010 Update to the Model Tax Convention”, adopted by the OECD Council on 22 July 2010.

Paragraph 9: Included when this section was added in 1997 by the report entitled “The 1997 Update to the Model Tax Convention”, adopted by the OECD Council on 23 October 1997.

Paragraph 10: Amended on 15 July 2014, by changing the list of countries indicating the position by adding Argentina and deleting Bulgaria, by the Report entitled “The 2014 Update to the Model Tax Convention”, adopted by the Council of the OECD on 15 July 2014. After 17 July 2008 and until 15 July 2014, paragraph 10 read as follows:

“10. *Brazil, Bulgaria, Morocco and Romania* reserve the right to include in the definition of the royalties payments for transmissions by satellite, cable, optic fibre or similar technology.”

Paragraph 10 was previously amended on 17 July 2008, by deleting Estonia, Latvia and Lithuania from the list of countries indicating the position, 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 10 read as follows:

“10. *Brazil, Bulgaria, Estonia, Latvia, Lithuania, Morocco and Romania* reserve the right to include in the definition of the royalties payments for transmissions by satellite, cable, optic fibre or similar technology.”

Paragraph 10 was previously amended on 28 January 2003, by adding Bulgaria and Morocco to the list of countries indicating the position, by the report entitled “The 2002 Update to the Model Tax Convention”, adopted by the OECD Council on 28 January 2003. After 23 October 1997 and until 28 January 2003, paragraph 10 read as follows:

“10. *Brazil, Estonia, Latvia, Lithuania and Romania* reserve the right to include in the definition of the royalties payments for transmissions by satellite, cable, optic fibre or similar technology.”

Paragraph 10 was included when this section was added in 1997 by the report entitled “The 1997 Update to the Model Tax Convention”, adopted by the OECD Council on 23 October 1997.

Paragraph 10.1: Amended on 15 July 2014, by adding Argentina as a country indicating the position, by the Report entitled “The 2014 Update to the Model Tax Convention”, adopted by the Council of the OECD on 15 July 2014. After 17 July 2008 and until 15 July 2014, paragraph 10.1 read as follows:

“10.1 *Vietnam* reserves the right to include in the definition of royalties, payments for the use of or the right to use of “films, tapes or digital media used for radio or television broadcasting”.”

Paragraph 10.1 was 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 11: Amended on 22 July 2010, by changing the list of countries indicating the position by adding Serbia and deleting Russia, by the report entitled “The 2010 Update to the Model Tax Convention”, adopted by the OECD Council on 22 July 2010. After 28 January 2003 and until 22 July 2010, paragraph 11 read as follows:

“11. Albania, Malaysia, Russia and Vietnam reserve the right to deal with fees for technical services in a separate Article similar to Article 12.”

Paragraph 11 was previously amended on 28 January 2003, by adding Albania to the list of countries indicating the position, by the report entitled “The 2002 Update to the Model Tax Convention”, adopted by the OECD Council on 28 January 2003. After 23 October 1997 and until 28 January 2003, paragraph 11 read as follows:

“11. Malaysia, Russia and Vietnam reserve the right to deal with fees for technical services in a separate Article similar to Article 12.”

Paragraph 11 was included when this section was added in 1997 by the report entitled “The 1997 Update to the Model Tax Convention”, adopted by the OECD Council on 23 October 1997.

Paragraph 12: Amended on 15 July 2014, by changing the list of countries indicating the position by adding Azerbaijan, Colombia and Singapore and deleting Estonia, by the Report entitled “The 2014 Update to the Model Tax Convention”, adopted by the Council of the OECD on 15 July 2014. After 22 July 2010 and until 15 July 2014, paragraph 12 read as follows:

“12. Albania, Argentina, Armenia, Belarus, Brazil, Bulgaria, Croatia, Estonia, Gabon, Indonesia, Ivory Coast, Kazakhstan, Latvia, Lithuania, Malaysia, Morocco, the People’s Republic of China, the Philippines, Romania, Serbia, South Africa, Thailand, Tunisia, Ukraine, Vietnam and Hong Kong, China reserve the right, in order to fill what they consider as a gap in the Article, to add a provision defining the source of royalties by analogy with the provisions of paragraph 5 of Article 11, which deals with the same issue in the case of interest.”

Paragraph 12 was previously amended on 22 July 2010, by changing the list of countries indicating the position by adding Indonesia and Hong Kong, China and deleting Chile and Slovenia, by the report entitled “The 2010 Update to the Model Tax Convention”, adopted by the OECD Council on 22 July 2010. After 17 July 2008 and until 22 July 2010, paragraph 12 read as follows:

“12. Albania, Argentina, Armenia, Belarus, Brazil, Bulgaria, Chile, Croatia, Estonia, Gabon, Ivory Coast, Kazakhstan, Latvia, Lithuania, Malaysia, Morocco, the People’s Republic of China, the Philippines, Romania, Serbia, Slovenia, South Africa, Thailand, Tunisia, Ukraine and Vietnam reserve the right, in order to fill what they consider as a gap in the Article, to add a provision defining the source of royalties by analogy with the provisions of paragraph 5 of Article 11, which deals with the same issue in the case of interest”

Paragraph 12 was previously amended on 17 July 2008, by changing the list of countries indicating the position by adding Armenia, Chile and Kazakhstan and replacing Serbia and Montenegro with Serbia and the reference to “China” with “the People’s Republic of China”, by the report entitled “The 2008 Update to the Model Tax Convention”, adopted by the OECD Council on 17 July 2008. After 15 July 2005 and until 17 July 2008, paragraph 12 read as follows:

“12. Albania, Argentina, Belarus, Brazil, Bulgaria, China, Croatia, Estonia, Gabon, Ivory Coast, Latvia, Lithuania, Malaysia, Morocco, the Philippines, Romania, Serbia and Montenegro, Slovenia, South Africa, Thailand, Tunisia, Ukraine and Vietnam reserve the right, in order to fill what they consider as a gap in the Article, to add a provision defining the source of royalties by analogy with the provisions of paragraph 5 of Article 11, which deals with the same issue in the case of interest.”

Paragraph 12 was previously amended on 15 July 2005, by adding Serbia and Montenegro to the list of countries indicating the position, by the report entitled “The 2005 Update to the Model Tax Convention”, adopted by the OECD Council on 15 July 2005. After 28 January 2003 and until 15 July 2005, paragraph 12 read as follows:

“12. Albania, Argentina, Belarus, Brazil, Bulgaria, China, Croatia, Estonia, Gabon, Ivory Coast, Latvia, Lithuania, Malaysia, Morocco, the Philippines, Romania, Slovenia, South Africa, Thailand, Tunisia, Ukraine and Vietnam reserve the right, in order to fill what they consider as a gap in the Article, to add a provision defining the source of royalties by analogy with the provisions of paragraph 5 of Article 11, which deals with the same issue in the case of interest.”

Paragraph 12 was previously amended on 28 January 2003, by adding Albania, Bulgaria, Croatia, Gabon, Ivory Coast, Morocco, Slovenia and Tunisia to the list of countries indicating the position, by the report entitled “The 2002 Update to the Model Tax Convention”, adopted by the OECD Council on 28 January 2003. After 23 October 1997 and until 28 January 2003, paragraph 12 read as follows:

“12. Argentina, Belarus, Brazil, China, Estonia, Latvia, Lithuania, Malaysia, the Philippines, Romania, South Africa, Thailand, Ukraine and Vietnam reserve the right, in order to fill what they consider as a gap in the Article, to add a provision defining the source of royalties by analogy with the provisions of paragraph 5 of Article 11, which deals with the same issue in the case of interest.”

Paragraph 12 was included when this section was added in 1997 by the report entitled “The 1997 Update to the Model Tax Convention”, adopted by the OECD Council on 23 October 1997.

Paragraph 12.1: 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 12.2: Amended on 22 July 2010, by adding Malaysia as a country indicating the position, by the report entitled “The 2010 Update to the Model Tax Convention”, adopted by the OECD Council on 22 July 2010. After 17 July 2008 and until 22 July 2010, paragraph 12.2 read as follows:

“12.2 The Democratic Republic of the Congo reserves its position on the treatment of software.”

Paragraph 12.2 was 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 12.3: 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 13: Amended on 17 July 2008, by replacing Serbia and Montenegro with Serbia as a country indicating the position, by the report entitled “The 2008 Update to the Model Tax Convention”, adopted by the OECD Council on 17 July 2008. After 15 July 2005 and until 17 July 2008, paragraph 13 read as follows:

“13. Argentina, Morocco, Serbia and Montenegro and Tunisia do not adhere to the interpretation in paragraphs 14 and 15 of the Commentary. They hold the view that payments relating to software fall within the scope of the Article where less than the full rights to software are transferred, either if the payments are in consideration for the right to use a copyright on software for commercial exploitation or if they relate to software acquired for the personal or business use of the purchaser.”

Paragraph 13 was previously amended on 15 July 2005, by adding Serbia and Montenegro to the list of countries indicating the position, by the report entitled “The 2005 Update to the Model Tax Convention”, adopted by the OECD Council on 15 July 2005. After 28 January 2003 and until 15 July 2005, paragraph 13 read as follows:

“13. *Argentina, Morocco and Tunisia* do not adhere to the interpretation in paragraphs 14 and 15 of the Commentary. They hold the view that payments relating to software fall within the scope of the Article where less than the full rights to software are transferred, either if the payments are in consideration for the right to use a copyright on software for commercial exploitation or if they relate to software acquired for the personal or business use of the purchaser.”

Paragraph 13 was previously amended on 28 January 2003, by changing the list of countries indicating the position by adding Morocco and Tunisia and deleting Slovakia, by the report entitled “The 2002 Update to the Model Tax Convention”, adopted by the OECD Council on 28 January 2003. After 23 October 1997 and until 28 January 2003, paragraph 13 read as follows:

“13. *Argentina and Slovakia* do not adhere to the interpretation in paragraphs 14 and 15 of the Commentary. They hold the view that payments relating to software fall within the scope of the Article where less than the full rights to software are transferred, either if the payments are in consideration for the right to use a copyright on software for commercial exploitation or if they relate to software acquired for the personal or business use of the purchaser.”

Paragraph 13 was included when this section was added in 1997 by the report entitled “The 1997 Update to the Model Tax Convention”, adopted by the OECD Council on 23 October 1997.

Paragraph 14: Included when this section was added in 1997 by the report entitled “The 1997 Update to the Model Tax Convention”, adopted by the OECD Council on 23 October 1997.

Paragraph 15: 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 16: 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 17: 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 17.1: 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.

Paragraph 18: 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 19: 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 20: Added on 22 July 2010 by the report entitled the “2010 Update to the Model Tax Convention” adopted by the OECD Council on 22 July 2010.

Paragraph 21: Added on 22 July 2010 by the report entitled the “2010 Update to the Model Tax Convention” adopted by the OECD Council on 22 July 2010.

Paragraph 22: Added on 22 July 2010 by the report entitled the “2010 Update to the Model Tax Convention” adopted by the OECD Council on 22 July 2010.

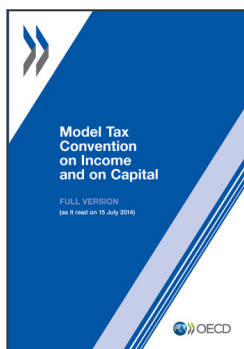
Paragraph 23: Amended on 15 July 2014, by adding Azerbaijan as a country indicating the position, by the Report entitled “The 2014 Update to the Model Tax Convention”, adopted by the Council of the OECD on 15 July 2014. After 22 July 2010 and until 15 July 2014, paragraph 23 read as follows:

“23. *The People’s Republic of China* does not adhere to the interpretation in paragraph 10.1 because it takes the view that some payments for the exclusive distribution rights of a product or a service in a given territory may be treated as royalties.”

Paragraph 23 as it read before 22 July 2010 corresponded to paragraph 8.3. On 22 July 2010 paragraph 8.3 was renumbered as paragraph 23 on 22 July 2010 by the report entitled “The 2010 Update to the Model Tax Convention”, adopted by the OECD Council on 22 July 2010.

Paragraph 8.3 was 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 24: 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), "Positions on Article 12 (Royalties) and its commentary", in *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris.

DOI: <https://doi.org/10.1787/9789264239081-77-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.