

POSITIONS ON ARTICLE 24 (NON-DISCRIMINATION) AND ITS COMMENTARY

Positions on the Article

Paragraph 1

1. *(Deleted on 15 July 2005; see HISTORY)*
2. *Brazil, Colombia, Romania, Russia, Singapore, Thailand and Vietnam reserve their position on the second sentence of paragraph 1.*

(Amended on 15 July 2014; see HISTORY)

- 2.1 *Bulgaria reserves the right to omit the words “other or” in the first sentence of paragraph 1.*

(Added on 28 January 2003; see HISTORY)

- 2.2 *Indonesia, Malaysia and Tunisia reserve the right to restrict the scope of the Article to residents of the Contracting States.*

(Amended on 22 July 2010; see HISTORY)

- 2.3 *Singapore reserves the right to add a provision to state that the granting of tax incentives to its nationals designed to promote economic or social developments shall not be construed as discriminatory.*

(Added on 15 July 2014; see HISTORY)

Paragraph 2

3. *(Deleted on 17 July 2008; see HISTORY)*
4. *Albania, Bulgaria, India, Malaysia, the Philippines, Russia, Serbia, Singapore and Vietnam reserve the right not to insert paragraph 2 in their conventions.*

(Amended on 15 July 2014; see HISTORY)

Paragraph 3

5. *Argentina reserves the right to apply a branch profits tax.*

(Added on 23 October 1997; see HISTORY)

6. *Brazil reserves its position on paragraph 3 since royalties paid by a permanent establishment situated in Brazil to its head office abroad are not deductible under its law.*

(Added on 23 October 1997; see HISTORY)

7. Thailand reserves the right to apply a profit remittance tax and a special taxation regime in respect of agricultural production activities.

(Amended on 17 July 2008; see HISTORY)

7.1 Morocco reserves the right to add a paragraph stating that nothing in this article can be interpreted as prohibiting Morocco to apply its branch tax, its domestic thin-capitalisation and transfer-pricing legislation.

(Added on 28 January 2003; see HISTORY)

7.2 Argentina reserves the right to provide in paragraph 3 that no exemptions or concession provided for in its internal laws shall be granted as long as that would result in a transfer of taxes to foreign tax administrations.

(Amended on 15 July 2014; see HISTORY)

7.3 Colombia reserves the right to impose its tax on the transfer of profits attributable to permanent establishments.

(Added on 15 July 2014; see HISTORY)

Paragraph 4

8. Vietnam reserves its position on this paragraph in the case of interest paid to non-residents that is not subject to a withholding tax.

(Added on 23 October 1997; see HISTORY)

8.1 Malaysia reserves its position on this paragraph in the case of interest, royalties, or fees for technical services paid to non-residents where withholding tax has not been deducted.

(Added on 15 July 2005; see HISTORY)

8.2 Singapore reserves its position on this paragraph in the case of interest paid to non-residents where withholding tax has not been deducted.

(Added on 15 July 2014; see HISTORY)

8.3 Argentina reserves the right not to include paragraph 4 of Article 24.

(Added on 15 July 2014; see HISTORY)

Paragraph 5

9. Brazil reserves the right to include, after the words “other similar enterprises of the first-mentioned State”, the words “whose capital is totally or partially, directly or indirectly, held or controlled by one or several residents of a third State”.

(Added on 23 October 1997; see HISTORY)

Paragraph 6

10. Albania, Argentina, Brazil, Bulgaria, Colombia, Malaysia, the Philippines, Romania, Serbia, Singapore, Thailand, Tunisia, Vietnam and Ukraine reserve the right to restrict the scope of the Article to the taxes covered by the Convention.

(Amended on 15 July 2014; see HISTORY)

Positions on the Commentary

11. India, Malaysia and Singapore reserve their position on the interpretation set out in paragraph 44.

(Amended on 15 July 2014; see HISTORY)

11.1 Argentina does not agree with the interpretation in paragraph 44 because Argentina considers that paragraph 3 of Article 24 does not preclude a State to establish, on any ground, a preferential tax regime that only residents are able to apply for.

(Added on 15 July 2014; see HISTORY)

12. India reserves the right to add a paragraph to clarify that this provision can neither be construed as preventing a Contracting State from charging the profits of a permanent establishment which a company of the other Contracting State has in the first-mentioned State at a rate of tax which is higher than that imposed on the profits of a similar company of the first-mentioned Contracting State, nor as being in conflict with the provisions of paragraph 3 of Article 7 (as it read before the 2010 update to the Model Tax Convention).

(Amended on 22 July 2010; see HISTORY)

HISTORY

Paragraph 1: Deleted 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. After 23 October 1997 and until 15 July 2005, paragraph 1 read as follows:

“1. Brazil reserves the right to omit the words “in particular with respect to residence” in paragraph 1.”

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: Amended on 15 July 2014, by adding Colombia and Singapore 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 22 July 2010 and until 15 July 2014, paragraph 2 read as follows:

“2. Brazil, Romania, Russia, Thailand and Vietnam reserve their position on the second sentence of paragraph 1.”

Paragraph 2 was previously amended on 22 July 2010, by deleting Chile from the list of countries 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 2 read as follows:

“2. *Brazil, Chile, Romania, Russia, Thailand and Vietnam* reserve their position on the second sentence of paragraph 1.”

Paragraph 2 was previously amended on 17 July 2008, by adding Brazil and Chile 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 15 July 2005 and until 17 July 2008, paragraph 2 read as follows:

“2. *Romania, Russia, Thailand and Vietnam* reserve their position on the second sentence of paragraph 1.”

Paragraph 2 was previously amended on 15 July 2005 by deleting Brazil from 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 23 October 1997 and until 15 July 2005, paragraph 2 read as follows:

“2. *Brazil, Romania, Russia, Thailand and Vietnam* reserve their position on the second sentence of paragraph 1.”

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 2.1: 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 2.2: Amended on 22 July 2010, by adding Indonesia to the list of countries 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 15 July 2005 and until 22 July 2010, paragraph 2.2 read as follows:

“2.2 *Malaysia and Tunisia* reserve the right to restrict the scope of the Article to residents of the Contracting States.”

Paragraph 2.2 was previously amended on 15 July 2005, by adding Malaysia as a country 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 2.2 read as follows:

“2.2 *Tunisia* reserves the right to restrict the scope of the Article to residents of the Contracting States.”

Paragraph 2.2 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 2.3: 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 3: 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 23 October 1997 and until 17 July 2008, paragraph 3 read as follows:

“3. *Brazil* reserves the right to omit the words “in particular with respect to residence” in paragraph 2.”

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: Amended on 15 July 2014, by changing the list of countries indicating the position by adding 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 4 read as follows:

“4. Albania, Bulgaria, Estonia, India, Malaysia, the Philippines, Russia, Serbia and Vietnam reserve the right not to insert paragraph 2 in their conventions.”

Paragraph 4 was previously amended on 22 July 2010, by deleting Chile from the list of countries 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 4 read as follows:

“4. Albania, Bulgaria, Chile, Estonia, India, Malaysia, the Philippines, Russia, Serbia and Vietnam reserve the right not to insert paragraph 2 in their conventions.”

Paragraph 4 was previously amended on 17 July 2008, by changing the list of countries indicating the position by adding Chile and India and replacing Serbia and Montenegro with Serbia, 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 4 read as follows:

“4. Albania, Bulgaria, Estonia, Malaysia, the Philippines, Russia, Serbia and Montenegro and Vietnam reserve the right not to insert paragraph 2 in their conventions.”

Paragraph 4 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 4 read as follows:

“4. Albania, Bulgaria, Estonia, Malaysia, the Philippines, Russia and Vietnam reserve the right not to insert paragraph 2 in their conventions.”

Paragraph 4 was previously amended on 28 January 2003, by adding Albania and Bulgaria 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 29 April 2000 and until 28 January 2003, paragraph 4 read as follows:

“4. Estonia, Malaysia, the Philippines, Russia and Vietnam reserve the right not to insert paragraph 2 in their conventions.”

Paragraph 4 was previously amended on 29 April 2000, by adding Estonia to the list of countries indicating the position, by the report entitled “The 2000 Update to the Model Tax Convention”, adopted by the OECD Council on 29 April 2000. After 23 October 1997 and until 29 April 2000, paragraph 4 read as follows:

“4. Malaysia, the Philippines, Russia and Vietnam reserve the right not to insert paragraph 2 in their conventions.”

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 5: 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: 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 17 July 2008, by deleting Vietnam 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 23 October 1997 and until 17 July 2008, paragraph 7 read as follows:

“7. Thailand and Vietnam reserve the right to apply a profit remittance tax and a special taxation regime in respect of agricultural production activities.”

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: Replaced on 15 July 2014 when paragraph 7.2 was deleted and a new paragraph 7.2 was added by the Report entitled “The 2014 Update to the Model Tax Convention”, adopted by the Council of the OECD on 15 July 2014. After 15 July 2005 and until 15 July 2014, paragraph 7.2 read as follows:

“7.2 South Africa reserves the right to add a paragraph stating that nothing in the Article will prevent South Africa from imposing on the profits attributable to a permanent establishment in South Africa of a company that is not a resident, a tax at a rate that does not exceed the rate of normal tax on companies by more than five percentage points.”

Paragraph 7.2 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 7.3: 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: 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: 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 2014 by the report entitled “The 2014 Update to the Model Tax Convention” adopted by the Council on 15 July 2014.

Paragraph 8.3: 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 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 adding Argentina, Colombia and Singapore 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 22 July 2010 and until 15 July 2014, paragraph 10 read as follows:

“10. Albania, Brazil, Bulgaria, Malaysia, the Philippines, Romania, Serbia, Thailand, Tunisia, Vietnam and Ukraine reserve the right to restrict the scope of the Article to the taxes covered by the Convention.”

Paragraph 10 was previously amended on 22 July 2010, by deleting Chile from the list of countries 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 10 read as follows:

“10. Albania, Brazil, Bulgaria, Chile, Malaysia, the Philippines, Romania, Serbia, Thailand, Tunisia, Vietnam and Ukraine reserve the right to restrict the scope of the Article to the taxes covered by the Convention.”

Paragraph 10 was previously amended on 17 July 2008, by changing the list of countries indicating the position by adding Chile, deleting Russia and replacing Serbia and Montenegro with Serbia, 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 10 read as follows:

“10. *Albania, Brazil, Bulgaria, Malaysia, the Philippines, Romania, Russia, Serbia and Montenegro, Thailand, Tunisia, Vietnam and Ukraine* reserve the right to restrict the scope of the Article to the taxes covered by the Convention.”

Paragraph 10 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 10 read as follows:

“10. *Albania, Brazil, Bulgaria, Malaysia, the Philippines, Romania, Russia, Thailand, Tunisia, Vietnam and Ukraine* reserve the right to restrict the scope of the Article to the taxes covered by the Convention.”

Paragraph 10 was previously amended on 28 January 2003, by adding Albania, Bulgaria 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 10 read as follows:

“10. *Brazil, Malaysia, the Philippines, Romania, Russia, Thailand, Vietnam and Ukraine* reserve the right to restrict the scope of the Article to the taxes covered by the Convention.”

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 11: Amended on 15 July 2014, by adding Singapore 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 22 July 2010 and until 15 July 2014, paragraph 11 read as follows:

“11. *India and Malaysia* reserve their position on the interpretation set out in paragraph 44.”

Paragraph 11 was previously 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 11 read as follows:

“11. *India* reserves its position on the interpretation set out in paragraph 44.”

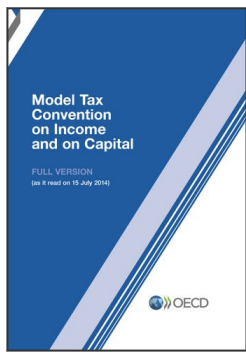
Paragraph 11 was added together with the heading preceding it on 17 July 2008 by the report entitled “The 2008 Update to the Model Tax Convention”, adopted by the OECD Council on 17 July 2008.

Paragraph 11.1: 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 12: Amended 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 17 July 2008 and until 22 July 2010, paragraph 12 read as follows:

“12. *India* reserves the right to add a paragraph to clarify that this provision can neither be construed as preventing a Contracting State from charging the profits of a permanent establishment which a company of the other Contracting State has in the first mentioned State at a rate of tax which is higher than that imposed on the profits of a similar company of the first mentioned Contracting State, nor as being in conflict with the provisions of paragraph 3 of Article 7.”

Paragraph 12 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.



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