

POSITIONS ON ARTICLE 25 (MUTUAL AGREEMENT PROCEDURE) AND ITS COMMENTARY

Positions on the Article

Paragraph 1

1. *Brazil, the Philippines and Thailand* reserve their positions on the last sentence of paragraph 1.

(Amended on 17 July 2008; see HISTORY)

1.1 *Kazakhstan* reserves its position on the second sentence of paragraph 1 and reserves its right to supplement the paragraph with the following sentence: “In the case of judicial proceedings, a court decision cannot be reconsidered by the competent authority of Kazakhstan.”

(Added on 17 July 2008; see HISTORY)

Paragraph 2

2. *Argentina, Brazil, Bulgaria, the Philippines and Thailand* reserve their positions on the second sentence of paragraph 2. These countries consider that the implementation of reliefs and refunds following a mutual agreement ought to remain linked to time limits prescribed by their domestic laws.

(Amended on 15 July 2014; see HISTORY)

Paragraph 3

3. *Brazil, Thailand, Tunisia and Ukraine* reserve their position on the second sentence of paragraph 3 on the grounds that they have no authority under their respective laws to eliminate double taxation in cases not provided for in the Convention.

(Amended on 28 January 2003; see HISTORY)

Paragraph 4

4. *Brazil, Malaysia, the People’s Republic of China, the Philippines, Singapore, Thailand and Ukraine* reserve the right to omit the words “including through a joint commission consisting of themselves or their representatives”.

(Amended on 15 July 2014; see HISTORY)

Positions on the Commentary

5. *Brazil and India* do not agree with the interpretation given in paragraphs 11 and 12; they are of the view that in the absence of paragraph 2

in Article 9, economic double taxation arising from transfer pricing adjustments does not fall within the scope of mutual agreement procedure set up in Article 25.

(Added on 17 July 2008; see HISTORY)

6. *Argentina* considers that paragraph 1 of the Article does not bind the competent authorities to commence or accept a mutual agreement procedure case where the taxpayer alleges that taxation is not in accordance with the Convention in respect of a hypothetical case, rather than an actual case.

(Replaced on 15 July 2014; see HISTORY)

7. In relation to paragraph 25, *India* is of the view that the competent authorities can reach an agreement under Article 25 during pendency of domestic law action. However, the taxpayer has an option to either accept or reject the resolution order. If the taxpayer accepts the resolution order, he has to withdraw domestic law action.

(Added on 17 July 2008; see HISTORY)

8. *India* does not agree with the view expressed in paragraph 42 that a taxpayer may be permitted to defer acceptance of the solution agreed upon as a result of the mutual agreement procedure until the court had delivered its judgement in that suit.

(Added on 17 July 2008; see HISTORY)

HISTORY

Paragraph 1: Amended on 17 July 2008, by deleting *Russia* 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 1 read as follows:

“1. *Brazil*, the *Philippines*, *Russia*, and *Thailand* reserve their positions on the last sentence of 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 1.1: 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 2: Amended on 15 July 2014, by adding *Argentina* and *Bulgaria* 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*, the *Philippines* and *Thailand* reserve their positions on the second sentence of paragraph 2. These countries consider that the implementation of reliefs and refunds following a mutual agreement ought to remain linked to time limits prescribed by their domestic laws.”

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, the Philippines and Thailand* reserve their positions on the second sentence of paragraph 2. These countries consider that the implementation of relieves and refunds following a mutual agreement ought to remain linked to time-limits prescribed by their domestic laws.”

Paragraph 2 was previously amended on 17 July 2008, by adding 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 28 January 2003 and until 17 July 2008, paragraph 2 read as follows:

“2. *Brazil, the Philippines and Thailand* reserve their positions on the second sentence of paragraph 2. These countries consider that the implementation of relieves and refunds following a mutual agreement ought to remain linked to time-limits prescribed by their domestic laws.”

Paragraph 2 was previously amended on 28 January 2003, by deleting Slovakia from 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 2 read as follows:

“2. *Brazil, the Philippines, Slovakia and Thailand* reserve their positions on the second sentence of paragraph 2. These countries consider that the implementation of relieves and refunds following a mutual agreement ought to remain linked to time-limits prescribed by their domestic laws.”

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 28 January 2003, by adding 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. *Brazil, Thailand and Ukraine* reserve their position on the second sentence of paragraph 3 on the grounds that they have no authority under their respective laws to eliminate double taxation in cases not provided for in the Convention.”

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 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 17 July 2008 and until 15 July 2014, paragraph 4 read as follows:

“4. *Brazil, Malaysia, the People’s Republic of China, the Philippines, Thailand and Ukraine* reserve the right to omit the words “including through a joint commission consisting of themselves or their representatives”.”

Paragraph 4 was previously amended on 17 July 2008, by replacing “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 23 October 1997 and until 17 July 2008, paragraph 4 read as follows:

“4. Brazil, China, Malaysia, the Philippines, Thailand and Ukraine reserve the right to omit the words “including through a joint commission consisting of themselves or their representatives.”

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: 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.

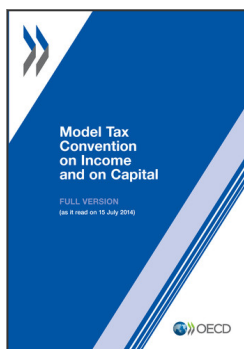
Paragraph 6: Replaced on 15 July 2014 when paragraph 6 was deleted and a new paragraph 6 was added by the Report entitled “The 2014 Update to the Model Tax Convention”, adopted by the Council of the OECD on 15 July 2014. After 17 July 2008 and until 15 July 2014, paragraph 6 read as follows:

“6. Concerning paragraph 14, Argentina reserves its right not to commence or accept a mutual agreement procedure case if taxation not in accordance with the Convention has not been charged or notified to the taxpayer.”

Paragraph 6 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 7: 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 8: 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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