

## **POSITIONS ON ARTICLE 26 (EXCHANGE OF INFORMATION) AND ITS COMMENTARY**

### **Positions on the Article**

1. *(Deleted on 22 July 2010; see HISTORY)*
2. *India reserves the right to include documents or certified copies of the documents within the scope of this Article.  
(Added on 17 July 2008; see HISTORY)*
- 2.1 *Morocco and Thailand reserve the right not to include the words “The exchange of information is not restricted by Articles 1 and 2” in paragraph 1.  
(Added on 15 July 2005; see HISTORY)*
- 2.2 *(Deleted on 22 July 2010; see HISTORY)*
- 2.3 *(Deleted on 22 July 2010; see HISTORY)*
- 2.4 *(Deleted on 22 July 2010; see HISTORY)*

### **Position on the Commentary**

3. *As regards paragraph 10.3 of the Commentary, Hong Kong, China wishes to clarify its position on the exchange of information that existed prior to the entry into force of the bilateral agreement. In view of its domestic law requirements, Hong Kong, China will only exchange information relating to taxable periods after the agreement came into operation.  
(Added on 22 July 2010; see HISTORY)*
4. *(Deleted on 22 July 2010; see HISTORY)*
5. *(Deleted on 15 July 2005; see HISTORY)*
6. *(Deleted on 15 July 2005; see HISTORY)*

### **HISTORY**

**Paragraph 1:** 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 15 July 2005 and until 22 July 2010, paragraph 1 read as follows:

“1. *Brazil reserves the right not to include the word “public” in the last sentence of paragraph 2 in its conventions.*”

Paragraph 1 was amended 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 not to include the last sentence of paragraph 1 in its conventions.*”

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:** 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 as it read before 15 July 2005 was deleted 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, Malaysia and Thailand* reserve the right not to include the words “The exchange of information is not restricted by Article 1” in 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:** Amended on 15 July 2005, by adding Thailand 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 2.1 read as follows:

“2.1 *Morocco* reserves the right not to include the words “The exchange of information is not restricted by Articles 1 and 2” in paragraph 1.”

Paragraph 2.1 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 2.2:** 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 15 July 2005 and until 22 July 2010, paragraph 2.2 read as follows:

“2.2 *Malaysia and Thailand* reserve the right not to include paragraph 4 in their conventions.”

Paragraph 2.2 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 2.3:** 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 17 July 2008 and until 22 July 2010, paragraph 2.3 read as follows:

“2.3 *Brazil, Malaysia, Romania, Serbia and Thailand* reserve the right not to include paragraph 5 in their conventions.”

Paragraph 2.3 was 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 2.3 read as follows:

“2.3 *Brazil, Malaysia, Romania, Serbia and Montenegro* and *Thailand* reserve the right not to include paragraph 5 in their conventions.”

Paragraph 2.3 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 2.4:** 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 17 July 2008 and until 22 July 2010, paragraph 2.4 read as follows:

“2.4 *Chile* can generally supply information held by banks and other financial institutions but reserves the right not to supply certain information for civil tax purposes, such as information regarding transfer of funds, transactions carried out on checking accounts and account balances, which are confidential under Chilean law.”

Paragraph 2.4 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 3:** 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 3 as it read before 15 July 2005 was deleted 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 3 read as follows:

“3. *Brazil* wishes to indicate that with respect to paragraph 11 of the Commentary, it would be difficult for it, in view of its strict domestic laws and administrative practice as to the procedure to make public the information obtained under the domestic laws, to provide information requested unless a requesting State has comparable domestic laws and administrative practice as to this procedure.”

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:** 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 4 read as follows:

“4. *Malaysia* wishes to indicate that with respect to paragraph 11 of the Commentary, it would be difficult for it, in view of its strict domestic laws and administrative practice as to the procedure to make public certain information obtained under the domestic laws, to provide information requested.”

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:** 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 5 read as follows:

“5. Contrary to the interpretation put forward in paragraphs 14 to 16 of the Commentary, *Brazil* takes the view that the Article imposes no obligation on it to carry out enquiries on behalf of a Contracting State in cases where no liability to its own tax is at issue, since to carry out such enquiries would be contrary to its laws and administrative practice.”

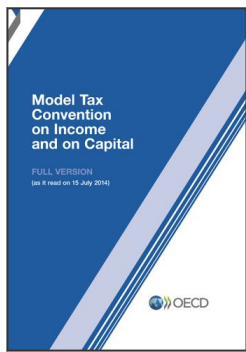
Paragraph 5 was included when this section was added in 1997 by the report entitled “The 1997 Update to the Model Tax Convention”, adopted by the OECD Council on 23 October 1997.

**Paragraph 6:** 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 6 read as follows:

“6. Contrary to the interpretation put forward in paragraphs 14 to 16 of the Commentary, *Malaysia* takes the view that the Article imposes no obligation on it to carry out enquiries on behalf of a Contracting State in cases where no liability to its own tax is at issue.”

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.





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