

## POSITIONS ON ARTICLE 3 (GENERAL DEFINITIONS) AND ITS COMMENTARY

### Positions on the Article

1. With respect to the definition of “company”, *Albania* and *Belarus* reserve the right to replace the concept of “body corporate”, which does not exist in their domestic law, by “any legal person or any entity which is treated as a separate entity for tax purposes”.

*(Amended on 28 January 2003; see HISTORY)*

2. *(Deleted on 15 July 2014; see HISTORY)*

3. With respect to the definition of “national”, *Albania*, *Romania* and *Russia* reserve the right to replace the term “nationality” by “citizenship” as the term “nationality” does not mean “citizenship” under their law.

*(Amended on 28 January 2003; see HISTORY)*

4. *Bulgaria* reserves the right to propose in bilateral negotiations the insertion of the word “also” between the words “business” and “includes” in subparagraph h) of paragraph 1 of the Article.

*(Amended on 15 July 2014; see HISTORY)*

4.1 *Argentina*, *Azerbaijan*, *Brazil*, *Lithuania* and *Singapore* reserve the right not to include the definitions of “enterprise” and “business” in paragraph 1 of Article 3 because they reserve the right to include an article concerning the taxation of independent personal services.

*(Amended on 15 July 2014; see HISTORY)*

5. With respect to the definition of “international traffic”, *Bulgaria* and *Croatia* reserve the right to extend the scope of the definition to cover road and railway transportation in bilateral conventions.

*(Added on 28 January 2003; see HISTORY)*

6. *Serbia* reserves the right to extend the scope of the definition of “international traffic” to cover road transportation in bilateral conventions.

*(Amended on 17 July 2008; see HISTORY)*

7. *Thailand* reserves the right to include in the definition of “person” any entity treated as a taxable unit under the taxation laws in force in either Contracting State.

*(Added on 22 July 2010; see HISTORY)*

8. India and South Africa reserve the right to include in the definition of “person” only those entities which are treated as taxable unit under the taxation laws in force in the respective Contracting States.

(Amended on 15 July 2014; see HISTORY)

9. India reserves the right to include definitions of “tax” and “fiscal year”.

(Added on 17 July 2008; see HISTORY)

10. Colombia and Hong Kong, China reserve the right to omit the phrase “operated by an enterprise that has its place of effective management in a Contracting State” from the definition of “international traffic” in subparagraph e) of paragraph 1.

(Amended on 15 July 2014; see HISTORY)

11. Hong Kong, China reserves its position with respect to the definition of “national” in subparagraph g) of paragraph 1, because Hong Kong, China is not a sovereign state. Where the term “national” appears in Articles 4, 19, 24 and 25, Hong Kong, China reserves the right to use alternative provisions based on the concepts of “right of abode” and “incorporated or constituted in”.

(Replaced on 22 July 2010; see HISTORY)

## HISTORY

**Paragraph 1:** Amended on 28 January 2003, by adding Albania 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. With respect to the definition of “company”, Belarus reserves the right to replace the concept of “body corporate”, which does not exist in its domestic law, by “any legal person or any entity which is treated as a separate entity for tax purposes”.”

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 15 July 2014 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. Israel reserves the right to include a trust within the definition of a “person”.”

Paragraph 2 was 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 2 as it read before 17 July 2008 was deleted 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 2 read as follows:

“2. With respect to the definition of “national”, Lithuania reserves the right to include in that definition the words “or other entity” to cover all entities deriving their status from the laws in force in Lithuania.”

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 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 1 read as follows:

“3. With respect to the definition of “national”, *Romania* and *Russia* reserve the right to replace the term “nationality” by “citizenship” as the term “nationality” does not mean “citizenship” under their law.”

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 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 4 read as follows:

“4. *Bulgaria* reserves the right to propose in bilateral negotiations to include a definition of the term “business profits”, which covers both profits of a company and income of an individual, derived from carrying on of a business through a permanent establishment. This inclusion is a consequence of the deletion of Article 14 and results in the possibility of applying Article 7 in conformity with Bulgarian internal legislation as regards income, derived by individuals.”

Paragraph 4 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 4.1:** Amended on 15 July 2014, by adding Argentina, Azerbaijan, Lithuania and Singapore as 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 4.1 read as follows:

“4.1 *Brazil* reserves the right not to include the definitions of “enterprise” and “business” in paragraph 1 of Article 3 because it reserves the right to include an article concerning the taxation of independent personal services”

Paragraph 4.1 was 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 4.1 as it read before 17 July 2008 was deleted 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 4.1 read as follows:

“4.1 *Serbia and Montenegro* reserves the right not to include the definitions in subparagraph 1 c) and h) (“enterprise” and “business”) because it reserves the right to include an article concerning the taxation of independent personal services.”

Paragraph 4.1 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 5:** 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 6:** 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 6 read as follows:

“6. *Serbia and Montenegro* reserves the right to extend the scope of the definition of “international traffic” to cover road transportation in bilateral conventions.”

Paragraph 6 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:** 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 7 as it read before 17 July 2008 was deleted 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 7 read as follows:

“7. *Serbia and Montenegro* reserves the right to propose in bilateral negotiations to include a definition of the term “political subdivisions”, which in the state community *Serbia and Montenegro*, means Member States.”

Paragraph 7 was added by the report entitled “The 2005 Update to the Model Tax Convention”, adopted by the OECD Council on 15 July 2005.

**Paragraph 8:** Amended on 15 July 2014, by adding South Africa 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 8 read as follows:

“8. *India* reserves the right to include in the definition of “person” only those entities which are treated as taxable unit under the taxation laws in force in the respective Contracting States.”

Paragraph 8 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 9:** 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 10:** Amended on 15 July 2014, by adding Colombia 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 10 read as follows:

“10. *Hong Kong, China* reserves the right to omit the phrase “operated by an enterprise that has its place of effective management in a Contracting State” from the definition of “international traffic” in subparagraph e) of paragraph 1.”

Paragraph 10 was previously amended on 22 July 2010, by changing the countries indicating the position by adding Hong Kong, China 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 10 read as follows:

“10. *Chile* reserves the right to omit the phrase “operated by an enterprise that has its place of effective management in a Contracting State” from the definition of “international traffic” in subparagraph e) of paragraph 1.”

Paragraph 10 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:** Replaced on 22 July 2010 when paragraph 11 and the preceding heading were deleted and a new paragraph 11 was added 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 and the preceding heading read as follows:

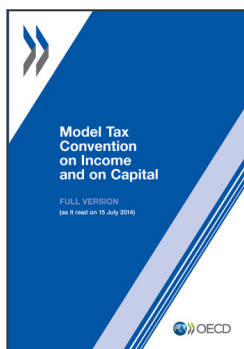
“Position on the Commentary

11. With respect to paragraph 11, *Chile* is of the view that the Commentary to the OECD Model Convention is an important reference for the Chilean Tax authority when interpreting Chilean treaties with equal or similar wording to the Model.

When interpreting a particular treaty, however, the view held by the Tax authority is that only that edition of the Commentary which was applicable at the time of the treaty's completion can be used as guidance. A newer Commentary that is merely clarifying what had been the correctly understood meaning should in this context be distinguished from wording that attempts to alter the previous meaning of the Commentary.”

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.





**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 3 (General Definitions) and its commentary", in *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris.

DOI: <https://doi.org/10.1787/9789264239081-68-en>

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