

**POSITIONS ON ARTICLE 4
(RESIDENT)
AND ITS COMMENTARY**

Positions on the Article

Paragraph 1

1. *Albania, Armenia, Azerbaijan, Belarus, Bulgaria, Colombia, Indonesia, Latvia, Lithuania, Russia, Thailand, Ukraine and Vietnam* reserve the right to include the place of incorporation or a similar criterion (registration for Belarus and Vietnam) in paragraph 1.

(Amended on 15 July 2014; see HISTORY)

2. The *United Arab Emirates* reserves the right to adopt its own definition of residence in its bilateral conventions and not necessarily follow Article 4.

(Added on 22 July 2010; see HISTORY)

2.1 *Hong Kong, China* reserves the right to modify the definition of “resident” in its bilateral agreements because it is not a sovereign state and it taxes on a territorial basis.

(Added on 22 July 2010; see HISTORY)

3. *Brazil* reserves the right not to include the second sentence of paragraph 1 in its conventions as the position of diplomatic staff is dealt with under its domestic law.

(Added on 23 October 1997; see HISTORY)

3.1 *Malaysia and Singapore* reserve the right not to include the second sentence of paragraph 1 in their agreements.

(Added on 15 July 2014; see HISTORY)

4. *India and Russia* reserve the right to amend the Article in their tax conventions in order to specify that their partnerships must be considered as residents of their respective countries in view of their legal and tax characteristics.

(Amended on 17 July 2008; see HISTORY)

4.1 *Gabon, Ivory Coast, Morocco and Tunisia* do not agree with the general principle according to which if tax owed by a partnership is determined on the basis of the personal characteristics of the partners, these partners are entitled to the benefits of tax conventions entered into by the States of which they are residents as regards income that “flows through” that partnership. Under their domestic law, a partnership is considered to be liable to tax even though, technically, that tax is collected from the partners or in the case of

Morocco from the principal partner; for that reason, Gabon, Ivory Coast, Morocco and Tunisia reserve the right to amend the Article in their tax conventions in order to specify that their partnerships must be considered as residents of their country in view of their legal and tax characteristics.

(Added on 28 January 2003; see HISTORY)

4.2 *(Deleted on 22 July 2010; see HISTORY)*

Paragraph 3

5. *Armenia, Bulgaria, Russia, Thailand and Vietnam* reserve the right to use the place of incorporation (registration for Vietnam) as the test for paragraph 3.

(Amended on 22 July 2010; see HISTORY)

6. *Azerbaijan* reserves the right to use either “registration (incorporation)” or “place of effective management” as the criterion for determining the residence of a person in paragraph 3.

(Added on 15 July 2014; see HISTORY)

7. *Argentina* reserves the right to use a place of incorporation test for determining the residence of a company and, failing that, to deny dual resident companies benefits under the Convention.

(Replaced on 15 July 2014; see HISTORY)

8. *India, Kazakhstan and Singapore* reserve the right to include a provision that will refer to a mutual agreement procedure for determination of the country of residence in case of a dual resident person other than an individual if the State in which its effective place of management is situated cannot be determined.

(Amended on 15 July 2014; see HISTORY)

8.1 *Bulgaria* reserves the right to include a provision that will refer to the State of derivation of the legal status and, in case this State could not be determined, to the mutual agreement procedure, for the determination of the country of residence in the case of a dual resident person other than an individual and a company and, in the absence of such an agreement, it will deny benefits under the Convention to this person.

(Added on 28 January 2003; see HISTORY)

8.2 *Colombia* reserves the right to deny benefits under the Convention to dual resident persons other than individuals.

(Added on 15 July 2014; see HISTORY)

Positions on the Commentary

Paragraph 2

9. In the opinion of *Vietnam* the personal relations and economic relations mentioned in paragraphs 14 and 15 of the Commentary should be separated and one given priority over the other. For *Vietnam*, economic relations, particularly the criterion of the country where employment is exercised, is more important to determine the country of residence for treaty purposes in the case of a dual resident individual.

(Added on 23 October 1997; see HISTORY)

9.1 In the case of *Gabon*, since the phrase “and economic relations” used in paragraphs 13, 14 and 15 of the Commentary is ambiguous, these two types of relations should be distinguished and one type may have priority over the other. The State in which employment is exercised should therefore prevail over the personal relations for purposes of determining the State of residence of an individual.

(Added on 28 January 2003; see HISTORY)

9.2 *Kazakhstan* reserves the right to replace subparagraph *d*) by: “*d*) if the individual’s status cannot be determined by reason of subparagraphs *a*) to *c*) of this paragraph, the competent authorities of the Contracting States shall settle the question by mutual agreement.”

(Added on 17 July 2008; see HISTORY)

9.3 *Indonesia* is of the opinion that in considering the dual residence of an individual, economic relations shall have priority over personal relations.

(Added on 22 July 2010; see HISTORY)

9.4 *Singapore* reserves the right to replace subparagraph *d*) by: “*d*) in any other case, the competent authorities of the Contracting States shall settle the question by mutual agreement.”

(Added on 15 July 2014; see HISTORY)

Paragraph 3

10. The interpretation by *Argentina, Armenia, Bulgaria, Russia, Ukraine* and *Vietnam* of the term “place of effective management” is practical day to day management, irrespective of where the overriding control is exercised.

(Amended on 15 July 2014; see HISTORY)

11. *India* does not adhere to the interpretation given in paragraph 24 that the place of effective management is the place where key management and commercial decisions that are necessary for the conduct of the entity’s

business as a whole are in substance made. It is of the view that the place where the main and substantial activity of the entity is carried on is also to be taken into account when determining the place of effective management.

(Added on 17 July 2008; see HISTORY)

12. Brazil does not adhere to the interpretation given in paragraph 24 of the Commentary since it considers that such definition is an issue to be dealt with by domestic law and domestic court decisions.

(Added on 17 July 2008; see HISTORY)

HISTORY

Paragraph 1: Amended on 15 July 2014, by changing the list of countries indicating the position by adding Azerbaijan, Bulgaria and Colombia 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 1 read as follows:

“1. Albania, Belarus, Armenia, Estonia, Indonesia, Latvia, Lithuania, Russia, Thailand, Ukraine and Vietnam reserve the right to include the place of incorporation or a similar criterion (registration for Belarus and Vietnam) in paragraph 1.”

Paragraph 1 was previously 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 17 July 2008 and until 22 July 2010, paragraph 1 read as follows:

“1. Armenia, Albania, Belarus, Estonia, Latvia, Lithuania, Russia, Thailand, Ukraine and Vietnam reserve the right to include the place of incorporation or a similar criterion (registration for Belarus and Vietnam) in paragraph 1.”

Paragraph 1 was previously amended on 17 July 2008, by adding Armenia to the list of countries indicating the position and by making other minor amendments, 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 1 read as follows:

“1. Albania, Belarus, Estonia, Latvia, Lithuania, Russia, Thailand, Ukraine and Vietnam reserve the right to include the place of incorporation (registration for Belarus) or a similar criterion in paragraph 1.”

Paragraph 1 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 1 read as follows:

“1. Belarus, Estonia, Latvia, Lithuania, Russia, Thailand, Ukraine and Vietnam reserve the right to include the place of incorporation (registration for Belarus) or a similar criterion 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: 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 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. As *South Africa* does not have a concept of residence for tax purposes in view of its territorial tax system, it reserves the right to use the terms “ordinarily resident” and “place of effective management” in paragraph 1 for the purposes of identifying residents of *South Africa*.”

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 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: 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: Amended on 17 July 2008, by adding *India* 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 4 read as follows:

“4. *Russia* reserves the right to amend the Article in its tax conventions in order to specify that *Russian* partnerships must be considered as residents of *Russia* in view of their legal and tax characteristics.”

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 4.1: 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 4.2: Deleted on 22 July 2010 together with the preceding heading, 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 4.2 and the preceding heading read as follows:

“*Paragraph 2*

4.2 *Israel* reserves the right to reorder the hierarchy of the residence tie-breaker tests for individuals by placing centre of vital interests before the permanent home available criteria.”

Paragraph 4.2 was added on 15 July 2005 together with the preceding heading, by the report entitled “The 2005 Update to the Model Tax Convention”, adopted by the OECD Council on 15 July 2005.

Paragraph 5: Amended on 22 July 2010, by deleting *Belarus* 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 5 read as follows:

“5. *Armenia, Belarus, Bulgaria, Russia, Thailand* and *Vietnam* reserve the right to use the place of incorporation (registration for *Belarus* and *Vietnam*) as the test for paragraph 3.”

Paragraph 5 was previously amended on 17 July 2008, by adding *Armenia* and *Russia* to the list of countries indicating the position and other minor amendments, 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 5 read as follows:

“5. *Belarus, Bulgaria, Thailand and Vietnam* reserve the right to use the place of incorporation (registration for Belarus) as the test for paragraph 3.”

Paragraph 5 was previously amended on 28 January 2003, by adding 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 23 October 1997 and until 28 January 2003, paragraph 5 read as follows:

“5. *Belarus, Thailand and Vietnam* reserve the right to use the place of incorporation (registration for Belarus) as the test for paragraph 3.”

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: Added 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.

Paragraph 6 as it read before 22 July 2010 was deleted 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 6 read as follows:

“6. *The People’s Republic of China* reserves its position on the provisions in this and other articles of the Convention which refer directly or indirectly to the place of effective management. Instead of the term “place of effective management”, the People’s Republic of China wishes to use in its conventions the term “head office.”

Paragraph 6 was 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 6 read as follows:

“6. *China* reserves its position on the provisions in this and other articles of the Convention which refer directly or indirectly to the place of effective management. Instead of the term “place of effective management”, China wishes to use in its conventions the term “head office.”

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: Replaced on 15 July 2014 when it was deleted and a new paragraph 7 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 22 July 2010 and until 15 July 2014, paragraph 7 read as follows:

“7. *Israel* reserves the right to include a separate provision regarding a trust that is a resident of both Contracting States.”

Paragraph 7 was replaced on 22 July 2010 when it was deleted and a new paragraph 7 was added 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 7 read as follows:

“7. *Belarus* reserves the right to replace paragraph 3 (if the other Contracting State does not agree to the use of the place of registration in this paragraph) by a provision that will refer to the mutual agreement procedure for the determination of the country of residence in the case of a dual resident person other than an individual.”

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 8: 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 8 read as follows:

“8. *India and Kazakhstan* reserve the right to include a provision that will refer to a mutual agreement procedure for determination of the country of residence in case of a dual resident person other than an individual if the State in which its effective place of management is situated cannot be determined.”

Paragraph 8 was replaced on 17 July 2008 when it was deleted and a new paragraph 8 was added 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. *Estonia, Latvia, Lithuania, Malaysia and Serbia and Montenegro* reserve the right to replace paragraph 3 by a provision that will refer to the mutual agreement procedure for the determination of the country of residence in the case of a dual resident person other than an individual and, in the absence of such an agreement, that will deny benefits under the Convention to this person.”

Paragraph 8 was amended on 15 July 2005, by adding Malaysia and 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 23 October 1997 and until 15 July 2005, paragraph 8 read as follows:

“8. *Estonia, Latvia and Lithuania* reserve the right to replace paragraph 3 by a provision that will refer to the mutual agreement procedure for the determination of the country of residence in the case of a dual resident person other than an individual and, in the absence of such an agreement, that will deny benefits under the Convention to this person.”

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: 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 8.2: Added 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.

Paragraph 8.2 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 15 July 2005 and until 17 July 2008, paragraph 8.2 read as follows:

“8.2 *Malaysia* reserves the right to replace paragraph 3 by a provision that will refer to the mutual agreement procedure for the determination of the country of residence in the case of a dual resident person other than an individual.”

Paragraph 8.2 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 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 9.1: 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 9.2: 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 9.3: 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 9.4: 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 10: Amended on 15 July 2014, by adding 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 17 July 2008 and until 15 July 2014, paragraph 10 read as follows:

“10. The interpretation by *Argentina, Russia, Armenia, Ukraine and Vietnam* of the term “place of effective management” is practical day to day management, irrespective of where the overriding control is exercised.”

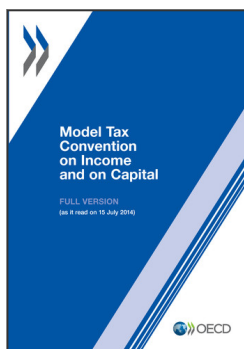
Paragraph 10 was previously amended on 17 July 2008, by adding Armenia and Russia to the list of countries indicating the position, by the report entitled “The 2008 Update to the Model Tax Convention”, adopted by the OECD Council on 17 July 2008. After 23 October 1997 and until 17 July 2008, paragraph 10 read as follows:

“10. The interpretation by *Argentina, Ukraine and Vietnam* of the term “place of effective management” is practical day to day management, irrespective of where the overriding control is exercised.”

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: 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: 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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