

POSITIONS ON ARTICLE 9 (ASSOCIATED ENTERPRISES) AND ITS COMMENTARY

Positions on the Article

1. *Brazil, Thailand and Vietnam* reserve the right not to insert paragraph 2 in their conventions.

(Amended on 15 July 2014; see HISTORY)

2. *Bulgaria, Lithuania, Russia and South Africa* reserve the right to replace “shall” by “may” in the first sentence of paragraph 2 in their conventions.

(Amended on 17 July 2008; see HISTORY)

3. *Azerbaijan, Malaysia and Serbia* reserve the right to specify in paragraph 2 that a correlative adjustment will be made if the adjustment is considered to be justified.

(Amended on 15 July 2014; see HISTORY)

4. *Ivory Coast, Morocco and Tunisia* reserve the right not to insert paragraph 2 in their conventions unless the commitment to make an adjustment does not apply in the case of fraud, wilful default or neglect. In such a case Tunisia reserves the right to limit the adjustment to periods not covered by its internal statute of limitation.

(Added on 28 January 2003; see HISTORY)

5. *Russia* reserves the right not to insert paragraph 2 in its conventions but is prepared in the course of negotiations to accept this paragraph based on the understanding that the other Contracting State is only obliged to make an adjustment to the amount of tax to the extent that it agrees, unilaterally or in a mutual agreement procedure, with the adjustment of profits by the first-mentioned State.

(Replaced on 15 July 2014; see HISTORY)

6. *Argentina* reserves its right to insert a provision according to which any appropriate adjustment to the amount of the tax charged therein on those profits shall be implemented only within the time limits, or other procedural limitations, provided for in its domestic laws, and that the commitment to make an adjustment does not apply in the case of fraud, wilful default or neglect.

(Added on 15 July 2014; see HISTORY)

HISTORY

Paragraph 1: Amended on 15 July 2014, by deleting Russia from 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 15 July 2005 and until 15 July 2014, paragraph 1 read as follows:

“1. *Brazil, Russia, Thailand and Vietnam* reserve the right not to insert paragraph 2 in their conventions.”

Paragraph 1 was previously amended on 15 July 2005, by deleting Malaysia 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 1 read as follows:

“1. *Brazil, Malaysia, Russia, Thailand and Vietnam* reserve the right not to insert paragraph 2 in their 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: Amended on 17 July 2008, by adding Lithuania 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 28 January 2003 and until 17 July 2008, paragraph 2 read as follows:

“2. *Bulgaria and South Africa* reserve the right to replace “shall” by “may” in the first sentence of paragraph 2 in their conventions.”

Paragraph 2 was previously amended on 28 January 2003, by adding Bulgaria 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 2 read as follows:

“2. *South Africa* reserves the right to replace “shall” by “may” in the first sentence of paragraph 2 in their 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 3: Amended on 15 July 2014, by adding Azerbaijan 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 3 read as follows:

“3. *Malaysia and Serbia* reserve the right to specify in paragraph 2 that a correlative adjustment will be made if the adjustment is considered to be justified.”

Paragraph 3 was previously amended on 22 July 2010, by deleting Slovenia as a country indicating the position, 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 3 read as follows:

“3. *Malaysia, Serbia and Slovenia* reserve the right to specify in paragraph 2 that a correlative adjustment will be made if the adjustment is considered to be justified.”

Paragraph 3 was previously amended on 17 July 2008, by replacing Serbia and Montenegro with Serbia as a country indicating the position, 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 3 read as follows:

“3. Malaysia, Serbia and Montenegro and Slovenia reserve the right to specify in paragraph 2 that a correlative adjustment will be made if the adjustment is considered to be justified.”

Paragraph 3 was previously 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 28 January 2003 and until 15 July 2005, paragraph 3 read as follows:

“3. Slovenia reserves the right to specify in paragraph 2 that a correlative adjustment will be made if the adjustment is considered to be justified.”

Paragraph 3 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.

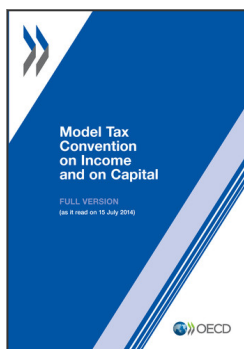
Paragraph 4: Paragraph 4 was added on 28 January 2003 by the report entitled “The 2002 Update to the Model Tax Convention”, adopted by the OECD Council on 28 January 2003.

Paragraph 5: Replaced on 15 July 2014 when paragraph 5 was deleted and a new paragraph 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 5 read as follows:

“5. Israel reserves its right to insert a provision according to which any appropriate adjustment to the amount of the tax charged therein on those profits shall be implemented notwithstanding any time limits or other procedural limitations in the domestic law of the Contracting States, except such limitations as apply to claims made in pursuance of such an agreement.”

Paragraph 5 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 6: 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.



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