COMMENTARY ON ARTICLE 10
CONCERNING THE TAXATION OF DIVIDENDS

I. Preliminary remarks

1. By "dividends" is generally meant the distribution of profits to the shareholders by companies limited by shares,[1] limited partnerships with share capital,[2] limited liability companies[3] or other joint stock companies.[4] Under the laws of the OECD member countries, such joint stock companies are legal entities with a separate juridical personality distinct from all their shareholders. On this point, they differ from partnerships insofar as the latter do not have juridical personality in most countries.

(Amended on 11 April 1977; see HISTORY)

2. The profits of a business carried on by a partnership are the partners' profits derived from their own exertions; for them they are business profits. So the partner is ordinarily taxed personally on his share of the partnership capital and partnership profits.

(Amended on 29 April 2000; see HISTORY)

3. The position is different for the shareholder; he is not a trader and the company's profits are not his; so they cannot be attributed to him. He is personally taxable only on those profits which are distributed by the company (apart from the provisions in certain countries' laws relating to the taxation of undistributed profits in special cases). From the shareholders' standpoint, dividends are income from the capital which they have made available to the company as its shareholders.

(Added on 30 July 1963; see HISTORY)

II. Commentary on the provisions of the Article

Paragraph 1

4. Paragraph 1 does not prescribe the principle of taxation of dividends either exclusively in the State of the beneficiary's residence or exclusively in the State of which the company paying the dividends is a resident.

(Renumbered and amended on 11 April 1977; see HISTORY)

5. Taxation of dividends exclusively in the State of source is not acceptable as a general rule. Furthermore, there are some States which do not have

1 *Sociétés anonymes.*
2 *Sociétés en commandite par actions.*
3 *Sociétés à responsabilité limitée.*
4 *Sociétés de capitaux.*

taxation of dividends at the source, while as a general rule, all the States tax residents in respect of dividends they receive from non-resident companies.

(Renumbered on 11 April 1977; see HISTORY)

6. On the other hand, taxation of dividends exclusively in the State of the beneficiary's residence is not feasible as a general rule. It would be more in keeping with the nature of dividends, which are investment income, but it would be unrealistic to suppose that there is any prospect of it being agreed that all taxation of dividends at the source should be relinquished.

(Renumbered and amended on 11 April 1977; see HISTORY)

7. For this reason, paragraph 1 states simply that dividends may be taxed in the State of the beneficiary's residence. The term "paid" has a very wide meaning, since the concept of payment means the fulfilment of the obligation to put funds at the disposal of the shareholder in the manner required by contract or by custom.

(Renumbered and amended on 11 April 1977; see HISTORY)

8. The Article deals only with dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State. It does not, therefore, apply to dividends paid by a company which is a resident of a third State or to dividends paid by a company which is a resident of a Contracting State which are attributable to a permanent establishment which an enterprise of that State has in the other Contracting State (for these cases, see paragraphs 4 to 6 of the Commentary on Article 21).

(Replaced on 11 April 1977; see HISTORY)

Paragraph 2

9. Paragraph 2 reserves a right to tax to the State of source of the dividends, *i.e.* to the State of which the company paying the dividends is a resident; this right to tax, however, is limited considerably. The rate of tax is limited to 15 per cent, which appears to be a reasonable maximum figure. A higher rate could hardly be justified since the State of source can already tax the company's profits.

(Renumbered and amended on 11 April 1977; see HISTORY)

10. On the other hand, a lower rate (5 per cent) is expressly provided in respect of dividends paid by a subsidiary company to its parent company. If a company of one of the States owns directly a holding of at least 25 per cent in a company of the other State, it is reasonable that payments of profits by the subsidiary to the foreign parent company should be taxed less heavily to avoid recurrent taxation and to facilitate international investment. The realisation of this intention depends on the fiscal treatment of the dividends in the State

of which the parent company is a resident (see paragraphs 49 to 54 of the Commentary on Articles 23 A and 23 B).

(Renumbered and amended on 11 April 1977; see HISTORY)

11. If a partnership is treated as a body corporate under the domestic laws applying to it, the two Contracting States may agree to modify subparagraph *a)* of paragraph 2 in a way to give the benefits of the reduced rate provided for parent companies also to such partnership.

(Renumbered and amended on 11 April 1977; see HISTORY)

12. The requirement of beneficial ownership was introduced in paragraph 2 of Article 10 to clarify the meaning of the words "paid ... to a resident" as they are used in paragraph 1 of the Article. It makes plain that the State of source is not obliged to give up taxing rights over dividend income merely because that income was paid direct to a resident of a State with which the State of source had concluded a convention.

(Amended on 15 July 2014; see HISTORY)

12.1 Since the term "beneficial owner" was added to address potential difficulties arising from the use of the words "paid to … a resident" in paragraph 1, it was intended to be interpreted in this context and not to refer to any technical meaning that it could have had under the domestic law of a specific country (in fact, when it was added to the paragraph, the term did not have a precise meaning in the law of many countries). The term "beneficial owner" is therefore not used in a narrow technical sense (such as the meaning that it has under the trust law of many common law countries[1]), rather, it should be understood in its context, in particular in relation to the words "paid … to a resident", and in light of the object and purposes of the Convention, including avoiding double taxation and the prevention of fiscal evasion and avoidance.

(Replaced on 15 July 2014; see HISTORY)

12.2 Where an item of income is paid to a resident of a Contracting State acting in the capacity of agent or nominee it would be inconsistent with the object and purpose of the Convention for the State of source to grant relief or exemption merely on account of the status of the direct recipient of the income as a resident of the other Contracting State. The direct recipient of the income in this situation qualifies as a resident but no potential double

1 For example, where the trustees of a discretionary trust do not distribute dividends earned during a given period, these trustees, acting in their capacity as such (or the trust, if recognised as a separate taxpayer), could constitute the beneficial owners of such income for the purposes of Article 10 even if they are not the beneficial owners under the relevant trust law.

taxation arises as a consequence of that status since the recipient is not treated as the owner of the income for tax purposes in the State of residence.

(Renumbered and amended on 15 July 2014; see HISTORY)

12.3 It would be equally inconsistent with the object and purpose of the Convention for the State of source to grant relief or exemption where a resident of a Contracting State, otherwise than through an agency or nominee relationship, simply acts as a conduit for another person who in fact receives the benefit of the income concerned. For these reasons, the report from the Committee on Fiscal Affairs entitled "Double Taxation Conventions and the Use of Conduit Companies"[1] concludes that a conduit company cannot normally be regarded as the beneficial owner if, though the formal owner, it has, as a practical matter, very narrow powers which render it, in relation to the income concerned, a mere fiduciary or administrator acting on account of the interested parties.

(Added on 15 July 2014; see HISTORY)

12.4 In these various examples (agent, nominee, conduit company acting as a fiduciary or administrator), the direct recipient of the dividend is not the "beneficial owner" because that recipient's right to use and enjoy the dividend is constrained by a contractual or legal obligation to pass on the payment received to another person. Such an obligation will normally derive from relevant legal documents but may also be found to exist on the basis of facts and circumstances showing that, in substance, the recipient clearly does not have the right to use and enjoy the dividend unconstrained by a contractual or legal obligation to pass on the payment received to another person. This type of obligation would not include contractual or legal obligations that are not dependent on the receipt of the payment by the direct recipient such as an obligation that is not dependent on the receipt of the payment and which the direct recipient has as a debtor or as a party to financial transactions, or typical distribution obligations of pension schemes and of collective investment vehicles entitled to treaty benefits under the principles of paragraphs 6.8 to 6.34 of the Commentary on Article 1. Where the recipient of a dividend does have the right to use and enjoy the dividend unconstrained by a contractual or legal obligation to pass on the payment received to another person, the recipient is the "beneficial owner" of that dividend. It should also be noted that Article 10 refers to the beneficial owner of a dividend as opposed to the owner of the shares, which may be different in some cases.

(Added on 15 July 2014; see HISTORY)

1 Reproduced in Volume II at page R(6)-1.

12.5 The fact that the recipient of a dividend is considered to be the beneficial owner of that dividend does not mean, however, that the limitation of tax provided for by paragraph 2 must automatically be granted. This limitation of tax should not be granted in cases of abuse of this provision (see also paragraphs 17 and 22 below). As explained in the section on "Improper use of the Convention" in the Commentary on Article 1, there are many ways of addressing conduit company and, more generally, treaty shopping situations. These include specific anti-abuse provisions in treaties, general anti-abuse rules and substance-over-form or economic substance approaches. Whilst the concept of "beneficial owner" deals with some forms of tax avoidance (*i.e.* those involving the interposition of a recipient who is obliged to pass on the dividend to someone else), it does not deal with other cases of treaty shopping and must not, therefore, be considered as restricting in any way the application of other approaches to addressing such cases.

(Added on 15 July 2014; see HISTORY)

12.6 The above explanations concerning the meaning of "beneficial owner" make it clear that the meaning given to this term in the context of the Article must be distinguished from the different meaning that has been given to that term in the context of other instruments[1] that concern the determination of the persons (typically the individuals) that exercise ultimate control over entities or assets. That different meaning of "beneficial owner" cannot be applied in the context of the Article. Indeed, that meaning, which refers to natural persons (*i.e.* individuals), cannot be reconciled with the express wording of subparagraph 2 *a*), which refers to the situation where a company is the beneficial owner of a dividend. In the context of Article 10, the term

1 See, for example, *Financial Action Task Force, International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation – The FATF Recommendations* (OECD-FATF, Paris, 2012), which sets forth in detail the international anti-money laundering standard and which includes the following definition of beneficial owner (at page 110): "the natural person(s) who ultimately owns or controls a customer and/or the person on whose behalf a transaction is being conducted. It also incorporates those persons who exercise ultimate effective control over a legal person or arrangement." Similarly, the 2001 report of the OECD Steering Group on Corporate Governance, *Behind the Corporate Veil: Using Corporate Entities for Illicit Purposes* (OECD, Paris, 2001), defines beneficial ownership as follows (at page 14):

> In this Report, "beneficial ownership" refers to ultimate beneficial ownership or interest by a natural person. In some situations, uncovering the beneficial owner may involve piercing through various intermediary entities and/or individuals until the true owner who is a natural person is found. With respect to corporations, ownership is held by shareholders or members. In partnerships, interests are held by general and limited partners. In trusts and foundations, beneficial ownership refers to beneficiaries, which may also include the settlor or founder.

"beneficial owner" is intended to address difficulties arising from the use of the words "paid to" in relation to dividends rather than difficulties related to the ownership of the shares of the company paying these dividends. For that reason, it would be inappropriate, in the context of that Article, to consider a meaning developed in order to refer to the individuals who exercise "ultimate effective control over a legal person or arrangement."[1]

(Added on 15 July 2014; see HISTORY)

12.7 Subject to other conditions imposed by the Article, the limitation of tax in the State of source remains available when an intermediary, such as an agent or nominee located in a Contracting State or in a third State, is interposed between the beneficiary and the payer but the beneficial owner is a resident of the other Contracting State (the text of the Model was amended in 1995 and in 2014 to clarify this point, which has been the consistent position of all member countries).

(Renumbered and amended on 15 July 2014; see HISTORY)

13. The tax rates fixed by the Article for the tax in the State of source are maximum rates. The States may agree, in bilateral negotiations, on lower rates or even on taxation exclusively in the State of the beneficiary's residence. The reduction of rates provided for in paragraph 2 refers solely to the taxation of dividends and not to the taxation of the profits of the company paying the dividends.

(Renumbered and amended on 11 April 1977; see HISTORY)

13.1 Under the domestic laws of many States, pension funds and similar entities are generally exempt from tax on their investment income. In order to achieve neutrality of treatment as regards domestic and foreign investments by these entities, some States provide bilaterally that income, including dividends, derived by such an entity resident of the other State shall be exempt from source taxation. States wishing to do so may agree bilaterally on a provision drafted along the lines of the provision found in paragraph 69 of the Commentary on Article 18.

(Added on 15 July 2005; see HISTORY)

13.2 Similarly, some States refrain from levying tax on dividends paid to other States and some of their wholly-owned entities, at least to the extent that such dividends are derived from activities of a governmental nature. Some States are able to grant such an exemption under their interpretation of the sovereign immunity principle (see paragraphs 6.38 and 6.39 of the Commentary on Article 1); others may do it pursuant to provisions of their

1 See the Financial Action Task Force's definition quoted in the previous note.

domestic law. States wishing to do so may confirm or clarify, in their bilateral conventions, the scope of these exemptions or grant such an exemption in cases where it would not otherwise be available. This may be done by adding to the Article an additional paragraph drafted along the following lines:

> Notwithstanding the provisions of paragraph 2, dividends referred to in paragraph 1 shall be taxable only in the Contracting State of which the recipient is a resident if the beneficial owner of the dividends is that State or a political subdivision or local authority thereof.

(Added on 22 July 2010; see HISTORY)

14. The two Contracting States may also, during bilateral negotiations, agree to a holding percentage lower than that fixed in the Article. A lower percentage is, for instance, justified in cases where the State of residence of the parent company, in accordance with its domestic law, grants exemption to such a company for dividends derived from a holding of less than 25 per cent in a non-resident subsidiary.

(Renumbered and amended on 11 April 1977; see HISTORY)

15. In subparagraph *a)* of paragraph 2, the term "capital" is used in relation to the taxation treatment of dividends, *i.e.* distributions of profits to shareholders. The use of this term in this context implies that, for the purposes of subparagraph *a)*, it should be used in the sense in which it is used for the purposes of distribution to the shareholder (in the particular case, the parent company).

a) As a general rule, therefore, the term "capital" in subparagraph *a)* should be understood as it is understood in company law. Other elements, in particular the reserves, are not to be taken into account.

b) Capital, as understood in company law, should be indicated in terms of par value of all shares which in the majority of cases will be shown as capital in the company's balance sheet.

c) No account need be taken of differences due to the different classes of shares issued (ordinary shares, preference shares, plural voting shares, non-voting shares, bearer shares, registered shares, etc.), as such differences relate more to the nature of the shareholder's right than to the extent of his ownership of the capital.

d) When a loan or other contribution to the company does not, strictly speaking, come as capital under company law but when on the basis of internal law or practice ("thin capitalisation", or assimilation of a loan to share capital), the income derived in respect thereof is treated as dividend under Article 10, the value of such loan or contribution is also to be taken as "capital" within the meaning of subparagraph *a)*.

e) In the case of bodies which do not have a capital within the meaning of company law, capital for the purpose of subparagraph *a)* is to be taken as meaning the total of all contributions to the body which are taken into account for the purpose of distributing profits.

In bilateral negotiations, Contracting States may depart from the criterion of "capital" used in subparagraph *a)* of paragraph 2 and use instead the criterion of "voting power".

(Replaced on 11 April 1977; see HISTORY)

16. Subparagraph *a)* of paragraph 2 does not require that the company receiving the dividends must have owned at least 25 per cent of the capital for a relatively long time before the date of the distribution. This means that all that counts regarding the holding is the situation prevailing at the time material for the coming into existence of the liability to the tax to which paragraph 2 applies, *i.e.* in most cases the situation existing at the time when the dividends become legally available to the shareholders. The primary reason for this resides in the desire to have a provision which is applicable as broadly as possible. To require the parent company to have possessed the minimum holding for a certain time before the distribution of the profits could involve extensive inquiries. Internal laws of certain OECD member countries provide for a minimum period during which the recipient company must have held the shares to qualify for exemption or relief in respect of dividends received. In view of this, Contracting States may include a similar condition in their conventions.

(Replaced on 11 April 1977; see HISTORY)

17. The reduction envisaged in subparagraph *a)* of paragraph 2 should not be granted in cases of abuse of this provision, for example, where a company with a holding of less than 25 per cent has, shortly before the dividends become payable, increased its holding primarily for the purpose of securing the benefits of the above-mentioned provision, or otherwise, where the qualifying holding was arranged primarily in order to obtain the reduction. To counteract such manoeuvres Contracting States may find it appropriate to add to subparagraph *a*) a provision along the following lines:

provided that this holding was not acquired primarily for the purpose of taking advantage of this provision.

(Replaced on 22 July 2010; see HISTORY)

18. Paragraph 2 lays down nothing about the mode of taxation in the State of source. It therefore leaves that State free to apply its own laws and, in

particular, to levy the tax either by deduction at source or by individual assessment.

(Renumbered and amended on 11 April 1977; see HISTORY)

19. The paragraph does not settle procedural questions. Each State should be able to use the procedure provided in its own laws. It can either forthwith limit its tax to the rates given in the Article or tax in full and make a refund (see, however, paragraph 26.2 of the Commentary on Article 1). Specific questions arise with triangular cases (see paragraph 71 of the Commentary on Article 24).

(Amended on 17 July 2008; see HISTORY)

20. It does not specify whether or not the relief in the State of source should be conditional upon the dividends being subject to tax in the State of residence. This question can be settled by bilateral negotiations.

(Renumbered and amended on 11 April 1977; see HISTORY)

21. The Article contains no provisions as to how the State of the beneficiary's residence should make allowance for the taxation in the State of source of the dividends. This question is dealt with in Articles 23 A and 23 B.

(Renumbered and amended on 11 April 1977; see HISTORY)

22. Attention is drawn generally to the following case: the beneficial owner of the dividends arising in a Contracting State is a company resident of the other Contracting State; all or part of its capital is held by shareholders resident outside that other State; its practice is not to distribute its profits in the form of dividends; and it enjoys preferential taxation treatment (private investment company, base company). The question may arise whether in the case of such a company it is justifiable to allow in the State of source of the dividends the limitation of tax which is provided in paragraph 2. It may be appropriate, when bilateral negotiations are being conducted, to agree upon special exceptions to the taxing rule laid down in this Article, in order to define the treatment applicable to such companies.

(Renumbered and amended on 11 April 1977; see HISTORY)

Paragraph 3

23. In view of the great differences between the laws of OECD member countries, it is impossible to define "dividends" fully and exhaustively. Consequently, the definition merely mentions examples which are to be found in the majority of the member countries' laws and which, in any case, are not treated differently in them. The enumeration is followed up by a general formula. In the course of the revision of the 1963 Draft Convention, a thorough study has been undertaken to find a solution that does not refer to domestic

laws. This study has led to the conclusion that, in view of the still remaining dissimilarities between member countries in the field of company law and taxation law, it did not appear to be possible to work out a definition of the concept of dividends that would be independent of domestic laws. It is open to the Contracting States, through bilateral negotiations, to make allowance for peculiarities of their laws and to agree to bring under the definition of "dividends" other payments by companies falling under the Article.

(Amended on 23 July 1992; see HISTORY)

24. The notion of dividends basically concerns distributions by companies within the meaning of subparagraph *b)* of paragraph 1 of Article 3. Therefore the definition relates, in the first instance, to distributions of profits the title to which is constituted by shares, that is holdings in a company limited by shares (joint stock company). The definition assimilates to shares all securities issued by companies which carry a right to participate in the companies' profits without being debt-claims; such are, for example, "jouissance" shares or "jouissance" rights, founders' shares or other rights participating in profits. In bilateral conventions, of course, this enumeration may be adapted to the legal situation in the Contracting States concerned. This may be necessary in particular, as regards income from "jouissance" shares and founders' shares. On the other hand, debt-claims participating in profits do not come into this category (see paragraph 19 of the Commentary on Article 11); likewise interest on convertible debentures is not a dividend.

(Amended on 23 July 1992; see HISTORY)

25. Article 10 deals not only with dividends as such but also with interest on loans insofar as the lender effectively shares the risks run by the company, *i.e.* when repayment depends largely on the success or otherwise of the enterprise's business. Articles 10 and 11 do not therefore prevent the treatment of this type of interest as dividends under the national rules on thin capitalisation applied in the borrower's country. The question whether the contributor of the loan shares the risks run by the enterprise must be determined in each individual case in the light of all the circumstances, as for example the following:

— the loan very heavily outweighs any other contribution to the enterprise's capital (or was taken out to replace a substantial proportion of capital which has been lost) and is substantially unmatched by redeemable assets;

— the creditor will share in any profits of the company;

— repayment of the loan is subordinated to claims of other creditors or to the payment of dividends;

— the level or payment of interest would depend on the profits of the company;

— the loan contract contains no fixed provisions for repayment by a definite date.

(Replaced on 23 July 1992; see HISTORY)

26. The laws of many of the States put participations in a *société à responsabilité limitée* (limited liability company) on the same footing as shares. Likewise, distributions of profits by co-operative societies are generally regarded as dividends.

(Renumbered on 23 July 1992; see HISTORY)

27. Distributions of profits by partnerships are not dividends within the meaning of the definition, unless the partnerships are subject, in the State where their place of effective management is situated, to a fiscal treatment substantially similar to that applied to companies limited by shares (for instance, in Belgium, Portugal and Spain, also in France as regards distributions to *commanditaires* in the *sociétés en commandite simple*). On the other hand, clarification in bilateral conventions may be necessary in cases where the taxation law of a Contracting State gives the owner of holdings in a company a right to opt, under certain conditions, for being taxed as a partner of a partnership, or, vice versa, gives the partner of a partnership the right to opt for taxation as the owner of holdings in a company.

(Renumbered on 23 July 1992; see HISTORY)

28. Payments regarded as dividends may include not only distributions of profits decided by annual general meetings of shareholders, but also other benefits in money or money's worth, such as bonus shares, bonuses, profits on a liquidation or redemption of shares (see paragraph 31 of the Commentary on Article 13) and disguised distributions of profits. The reliefs provided in the Article apply so long as the State of which the paying company is a resident taxes such benefits as dividends. It is immaterial whether any such benefits are paid out of current profits made by the company or are derived, for example, from reserves, *i.e.* profits of previous financial years. Normally, distributions by a company which have the effect of reducing the membership rights, for instance, payments constituting a reimbursement of capital in any form whatever, are not regarded as dividends.

(Amended on 15 July 2014; see HISTORY)

29. The benefits to which a holding in a company confer entitlement are, as a general rule, available solely to the shareholders themselves. Should, however, certain of such benefits be made available to persons who are not

shareholders within the meaning of company law, they may constitute dividends if:

— the legal relations between such persons and the company are assimilated to a holding in a company ("concealed holdings"); and

— the persons receiving such benefits are closely connected with a shareholder; this is the case, for example, where the recipient is a relative of the shareholder or is a company belonging to the same group as the company owning the shares.

(Renumbered on 23 July 1992; see HISTORY)

30. When the shareholder and the person receiving such benefits are residents of two different States with which the State of source has concluded conventions, differences of views may arise as to which of these conventions is applicable. A similar problem may arise when the State of source has concluded a convention with one of the States but not with the other. This, however, is a conflict which may affect other types of income, and the solution to it can be found only through an arrangement under the mutual agreement procedure.

(Renumbered on 23 July 1992; see HISTORY)

Paragraph 4

31. Certain States consider that dividends, interest and royalties arising from sources in their territory and payable to individuals or legal persons who are residents of other States fall outside the scope of the arrangement made to prevent them from being taxed both in the State of source and in the State of the beneficiary's residence when the beneficiary has a permanent establishment in the former State. Paragraph 4 is not based on such a conception which is sometimes referred to as "the force of attraction of the permanent establishment". It does not stipulate that dividends flowing to a resident of a Contracting State from a source situated in the other State must, by a kind of legal presumption, or fiction even, be related to a permanent establishment which that resident may have in the latter State, so that the said State would not be obliged to limit its taxation in such a case. The paragraph merely provides that in the State of source the dividends are taxable as part of the profits of the permanent establishment there owned by the beneficiary which is a resident of the other State, if they are paid in respect of holdings forming part of the assets of the permanent establishment or otherwise effectively connected with that establishment. In that case, paragraph 4 relieves the State of source of the dividends from any limitations under the Article. The foregoing explanations accord with those in the

Commentary on Article 7.

(Renumbered on 23 July 1992; see HISTORY)

32. It has been suggested that the paragraph could give rise to abuses through the transfer of shares to permanent establishments set up solely for that purpose in countries that offer preferential treatment to dividend income. Apart from the fact that such abusive transactions might trigger the application of domestic anti-abuse rules, it must be recognised that a particular location can only constitute a permanent establishment if a business is carried on therein and, as explained below, that the requirement that a shareholding be "effectively connected" to such a location requires more than merely recording the shareholding in the books of the permanent establishment for accounting purposes.

(Amended on 22 July 2010; see HISTORY)

32.1 A holding in respect of which dividends are paid will be effectively connected with a permanent establishment, and will therefore form part of its business assets, if the "economic" ownership of the holding is allocated to that permanent establishment under the principles developed in the Committee's report entitled *Attribution of Profits to Permanent Establishments*[1] (see in particular paragraphs 72 to 97 of Part I of the report) for the purposes of the application of paragraph 2 of Article 7. In the context of that paragraph, the "economic" ownership of a holding means the equivalent of ownership for income tax purposes by a separate enterprise, with the attendant benefits and burdens (*e.g.* the right to the dividends attributable to the ownership of the holding and the potential exposure to gains or losses from the appreciation or depreciation of the holding).

(Added on 22 July 2010; see HISTORY)

32.2 In the case of the permanent establishment of an enterprise carrying on insurance activities, the determination of whether a holding is effectively connected with the permanent establishment shall be made by giving due regard to the guidance set forth in Part IV of the Committee's report with respect to whether the income on or gain from that holding is taken into account in determining the permanent establishment's yield on the amount of investment assets attributed to it (see in particular paragraphs 165 to 170 of Part IV). That guidance being general in nature, tax authorities should consider applying a flexible and pragmatic approach which would take into account an enterprise's reasonable and consistent application of that

1 *Attribution of Profits to Permanent Establishments*, OECD, Paris, 2010.

guidance for purposes of identifying the specific assets that are effectively connected with the permanent establishment.

(Added on 22 July 2010; see HISTORY)

Paragraph 5

33. The Article deals only with dividends paid by a company which is a resident of a Contracting State to a resident of the other State. Certain States, however, tax not only dividends paid by companies resident therein but even distributions by non-resident companies of profits arising within their territory. Each State, of course, is entitled to tax profits arising in its territory which are made by non-resident companies, to the extent provided in the Convention (in particular in Article 7). The shareholders of such companies should not be taxed as well at any rate, unless they are residents of the State and so naturally subject to its fiscal sovereignty.

(Renumbered on 23 July 1992; see HISTORY)

34. Paragraph 5 rules out the extra-territorial taxation of dividends, *i.e.* the practice by which States tax dividends distributed by a non-resident company solely because the corporate profits from which the distributions are made originated in their territory (for example, realised through a permanent establishment situated therein). There is, of course, no question of extra-territorial taxation when the country of source of the corporate profits taxes the dividends because they are paid to a shareholder who is a resident of that State or to a permanent establishment situated in that State.

(Amended on 29 April 2000; see HISTORY)

35. Moreover, it can be argued that such a provision does not aim at, or cannot result in, preventing a State from subjecting the dividends to a withholding tax when distributed by foreign companies if they are cashed in its territory. Indeed, in such a case, the criterion for tax liability is the fact of the payment of the dividends, and not the origin of the corporate profits allotted for distribution. But if the person cashing the dividends in a Contracting State is a resident of the other Contracting State (of which the distributing company is a resident), he may under Article 21 obtain exemption from, or refund of, the withholding tax of the first-mentioned State. Similarly, if the beneficiary of the dividends is a resident of a third State which had concluded a double taxation convention with the State where the dividends are cashed, he may, under Article 21 of that convention, obtain exemption from, or refund of, the withholding tax of the last-mentioned State.

(Renumbered on 23 July 1992; see HISTORY)

36. Paragraph 5 further provides that non-resident companies are not to be subjected to special taxes on undistributed profits.

(Renumbered on 23 July 1992; see HISTORY)

37. It might be argued that where the taxpayer's country of residence, pursuant to its controlled foreign companies legislation or other rules with similar effect seeks to tax profits which have not been distributed, it is acting contrary to the provisions of paragraph 5. However, it should be noted that the paragraph is confined to taxation at source and, thus, has no bearing on the taxation at residence under such legislation or rules. In addition, the paragraph concerns only the taxation of the company and not that of the shareholder.

(Amended on 28 January 2003; see HISTORY)

38. The application of such legislation or rules may, however, complicate the application of Article 23. If the income were attributed to the taxpayer then each item of the income would have to be treated under the relevant provisions of the Convention (business profits, interest, royalties). If the amount is treated as a deemed dividend then it is clearly derived from the base company thus constituting income from that company's country. Even then, it is by no means clear whether the taxable amount is to be regarded as a dividend within the meaning of Article 10 or as "other income" within the meaning of Article 21. Under some of these legislation or rules the taxable amount is treated as a dividend with the result that an exemption provided for by a tax convention, *e.g.* an affiliation exemption, is also extended to it. It is doubtful whether the Convention requires this to be done. If the country of residence considers that this is not the case it may face the allegation that it is obstructing the normal operation of the affiliation exemption by taxing the dividend (in the form of "deemed dividend") in advance.

(Amended on 28 January 2003; see HISTORY)

39. Where dividends are actually distributed by the base company, the provisions of a bilateral convention regarding dividends have to be applied in the normal way because there is dividend income within the meaning of the convention. Thus, the country of the base company may subject the dividend to a withholding tax. The country of residence of the shareholder will apply the normal methods for the elimination of double taxation (*i.e.* tax credit or tax exemption is granted). This implies that the withholding tax on the dividend should be credited in the shareholder's country of residence, even if the distributed profit (the dividend) has been taxed years before under controlled foreign companies legislation or other rules with similar effect. However, the obligation to give credit in that case remains doubtful. Generally the dividend as such is exempted from tax (as it was already taxed under the

relevant legislation or rules) and one might argue that there is no basis for a tax credit. On the other hand, the purpose of the treaty would be frustrated if the crediting of taxes could be avoided by simply anticipating the dividend taxation under counteracting legislation. The general principle set out above would suggest that the credit should be granted, though the details may depend on the technicalities of the relevant legislation or rules) and the system for crediting foreign taxes against domestic tax, as well as on the particularities of the case (*e.g.* time lapsed since the taxation of the "deemed dividend"). However, taxpayers who have recourse to artificial arrangements are taking risks against which they cannot fully be safeguarded by tax authorities.

(Amended on 28 January 2003; see HISTORY)

III. Effects of special features of the domestic tax laws of certain countries

40. Certain countries' laws seek to avoid or mitigate economic double taxation *i.e.* the simultaneous taxation of the company's profits at the level of the company and of the dividends at the level of the shareholder. There are various ways of achieving this:

— company tax in respect of distributed profits may be charged at a lower rate than that on retained profits;

— relief may be granted in computing the shareholder's personal tax;

— dividends may bear only one tax, the distributed profits not being taxed at the level of the company.

The Committee on Fiscal Affairs has examined the question whether the special features of the tax laws of the member countries would justify solutions other than those contained in the Model Convention.

(Renumbered and amended on 23 July 1992; see HISTORY)

A. *Dividends distributed to individuals*

41. In contrast to the notion of juridical double taxation, which has, generally, a quite precise meaning, the concept of economic double taxation is less certain. Some States do not accept the validity of this concept and others, more numerously, do not consider it necessary to relieve economic double taxation at the national level (dividends distributed by resident companies to resident shareholders). Consequently, as the concept of economic double taxation was not sufficiently well defined to serve as a basis for the analysis, it seemed appropriate to study the problem from a more general economic standpoint, *i.e.* from the point of view of the effects which the various systems for alleviating such double taxation can have on the international flow of

capital. For this purpose, it was necessary to see, among other things, what distortions and discriminations the various national systems could create; but it was necessary to have regard also to the implications for States' budgets and for effective fiscal verification, without losing sight of the principle of reciprocity that underlies every convention. In considering all these aspects, it became apparent that the burden represented by company tax could not be wholly left out of account.

(Renumbered on 23 July 1992; see HISTORY)

1. *States with the classical system*

42. The Committee has recognised that economic double taxation need not be relieved at the international level when such double taxation remains unrelieved at the national level. It therefore considers that in relations between two States with the classical system, *i.e.* States which do not relieve economic double taxation, the respective levels of company tax in the Contracting States should have no influence on the rate of withholding tax on the dividend in the State of source (rate limited to 15 per cent by subparagraph *b)* of paragraph 2 of Article 10). Consequently, the solution recommended in the Model Convention remains fully applicable in the present case.

(Renumbered and amended on 23 July 1992; see HISTORY)

2. *States applying a split rate company tax*

43. These States levy company tax at different rates according to what the company does with its profits: the high rate is charged on any profits retained and the lower rate on those distributed.

(Renumbered and amended on 23 July 1992; see HISTORY)

44. None of these States, in negotiating double taxation conventions, has obtained, on the grounds of its split rate of company tax, the right to levy withholding tax of more than 15 per cent (see subparagraph *b)* of paragraph 2 of Article 10) on dividends paid by its companies to a shareholder who is an individual resident in the other State.

(Renumbered on 23 July 1992; see HISTORY)

45. The Committee considered whether such a State (State B) should not be recognised as being entitled to levy withholding tax exceeding 15 per cent on dividends distributed by its companies to residents of a State with a classical system (State A), with the proviso that the excess over 15 per cent, which would be designed to offset, in relation to the shareholder concerned, the effects of the lower rate of company tax on distributed profits of companies of

State B, would not be creditable against the tax payable by the shareholder in State A of which he is a resident.

(Renumbered and amended on 23 July 1992; see HISTORY)

46. Most member countries considered that in State B regard should be had to the average level of company tax, and that such average level should be considered as the counterpart to the charge levied in the form of a single-rate tax on companies resident of State A. The levy by State B of an additional withholding tax not credited in State A would, moreover, create twofold discrimination: on the one hand, dividends, distributed by a company resident of State B would be more heavily taxed when distributed to residents of State A than when distributed to residents of State B, and, on the other hand, the resident of State A would pay higher personal tax on his dividends from State B than on his dividends from State A. The idea of a "balancing tax" was not, therefore, adopted by the Committee.

(Renumbered and amended on 23 July 1992; see HISTORY)

3. *States which provide relief at the shareholder's level*

47. In these States, the company is taxed on its total profits, whether distributed or not, and the dividends are taxed in the hands of the resident shareholder (an individual); the latter, however, is entitled to relief, usually as a tax credit against his personal tax, on the grounds that — in the normal course at least — the dividend has borne company tax as part of the company's profits.

(Renumbered and amended on 23 July 1992; see HISTORY)

48. Internal law of these States does not provide for the extension of the tax relief to the international field. Relief is allowed only to residents and only in respect of dividends of domestic sources. However, as indicated below, some States have, in some conventions, extended the right to the tax credit provided for in their legislation to residents of the other Contracting State.

(Renumbered and amended on 23 July 1992; see HISTORY)

49. In many States that provide relief at the shareholder's level, the resident shareholder receives a credit in recognition of the fact that the profits out of which the dividends are paid have already been taxed in the hands of the company. The resident shareholder is taxed on his dividend grossed up by the tax credit; this credit is set off against the tax payable and can possibly give rise to a refund. In some double taxation conventions, some countries that apply this system have agreed to extend the credit to shareholders who are residents of the other Contracting State. Whilst most States that have agreed to such extensions have done so on a reciprocal basis, a few countries have

concluded conventions where they unilaterally extend the benefits of the credit to residents of the other Contracting State.

(Renumbered and amended on 23 July 1992; see HISTORY)

50. Some States that also provide relief at the shareholder's level claim that under their systems the company tax remains in its entirety a true company tax, in that it is charged by reference solely to the company's own situation, without any regard to the person and the residence of the shareholder, and in that, having been so charged, it remains appropriated to the Treasury. The tax credit given to the shareholder is designed to relieve his personal tax liability and in no way constitutes an adjustment of the company's tax. No refund, therefore, is given if the tax credit exceeds that personal tax.

(Renumbered and amended on 23 July 1992; see HISTORY)

51. The Committee could not reach a general agreement on whether the systems of the States referred to in paragraph 50 above display a fundamental difference that could justify different solutions at the international level.

(Renumbered and amended on 23 July 1992; see HISTORY)

52. Some member countries were of the opinion that such a fundamental difference does not exist. This opinion leaves room for the conclusion that the States referred to in paragraph 50 above should agree to extend the tax credit to non-resident shareholders, at least on a reciprocal basis, in the same way as some of the countries referred to in paragraph 49 above do. Such a solution tends to ensure neutrality as regards dividends distributed by companies of these countries, the same treatment being given to resident and non-resident shareholders. On the other hand, it would in relation to shareholders who are residents of a Contracting State (a State with a classical system in particular) encourage investment in a State that provides relief at the shareholder's level since residents of the first State would receive a tax credit (in fact a refund of company tax) for dividends from the other State while they do not receive one for dividends from their own country. However, these effects are similar to those which present themselves between a State applying a split rate company tax and a State with a classical system or between two States with a classical system one of which has a lower company tax rate than the other (paragraphs 42 and 43 to 46 above).

(Renumbered and amended on 23 July 1992; see HISTORY)

53. On the other hand, many member countries stressed the fact that a determination of the true nature of the tax relief given under the systems of the States referred to in paragraph 50 above reveals a mere alleviation of the shareholder's personal income tax in recognition of the fact that his dividend will normally have borne company tax. The tax credit is given once and for all

(*forfaitaire*) and is therefore not in exact relation to the actual company tax appropriate to the profits out of which the dividend is paid. There is no refund if the tax credit exceeds the personal income tax.

(Renumbered and amended on 23 July 1992; see HISTORY)

54. As the relief in essence is not a refund of company tax but an alleviation of the personal income tax, the extension of the relief to non-resident shareholders who are not subject to personal income tax in the countries concerned does not come into consideration. On the other hand, however, on this line of reasoning, the question whether States which provide relief at the shareholder's level should give relief against personal income tax levied from resident shareholders on foreign dividends deserves attention. In this respect it should be observed that the answer is in the affirmative if the question is looked at from the standpoint of neutrality as regards the source of the dividends; otherwise, residents of these States will be encouraged to acquire shares in their own country rather than abroad. But such an extension of the tax credit would be contrary to the principle of reciprocity: not only would the State concerned thereby be making a unilateral budgetary sacrifice (allowing the tax credit over and above the withholding tax levied in the other State), but it would do so without receiving any economic compensation, since it would not be encouraging residents of the other State to acquire shares in its own territory.

(Renumbered and amended on 23 July 1992; see HISTORY)

55. To overcome these objections, it might be a conceivable proposition, amongst other possibilities, that the State of source — which will have collected company tax on dividends distributed by resident companies — should bear the cost of the tax credit that a State which provides relief at the shareholder's level would allow, by transferring funds to that State. As, however, such transfers are hardly favoured by the States this might be more simply achieved by means of a "compositional" arrangement under which the State of source would relinquish all withholding tax on dividends paid to residents of the other State, and the latter would then allow against its own tax, not the 15 per cent withholding tax (abolished in the State of source) but a tax credit similar to that which it gives on dividends of domestic source.

(Renumbered and amended on 23 July 1992; see HISTORY)

56. When everything is fully considered, it seems that the problem can be solved only in bilateral negotiations, where one is better placed to evaluate the sacrifices and advantages which the Convention must bring for each Contracting State.

(Renumbered on 23 July 1992; see HISTORY)

57. *(Deleted on 31 March 1994; see HISTORY)*

58. *(Deleted on 31 March 1994; see HISTORY)*

B. *Dividends distributed to companies*

59. Comments above relating to dividends paid to individuals are generally applicable to dividends paid to companies which hold less than 25 per cent of the capital of the company paying the dividends. The treatment of dividends paid to collective investment vehicles raises particular issues which are addressed in paragraphs 6.8 to 6.34 of the Commentary on Article 1.

(Amended on 22 July 2010; see HISTORY)

60. In respect of dividends paid to companies which hold at least 25 per cent of the capital of the company paying the dividends, the Committee has examined the incidence which the particular company taxation systems quoted in paragraphs 42 and following have on the tax treatment of dividends paid by the subsidiary.

(Renumbered and amended on 23 July 1992; see HISTORY)

61. Various opinions were expressed in the course of the discussion. Opinions diverge even when the discussion is limited to the taxation of subsidiaries and parent companies. They diverge still more if the discussion takes into account more general economic considerations and extends to the taxation of shareholders of the parent company.

(Renumbered on 23 July 1992; see HISTORY)

62. In their bilateral conventions States have adopted different solutions, which were motivated by the economic objectives and the peculiarities of the legal situation of those States, by budgetary considerations, and by a whole series of other factors. Accordingly, no generally accepted principles have emerged. The Committee did nevertheless consider the situation for the more common systems of company taxation.

(Renumbered on 23 July 1992; see HISTORY)

1. *Classical system in the State of the subsidiary* (paragraph 42 above)

63. The provisions of the Convention have been drafted to apply when the State of which the distributing company is a resident has a so-called "classical" system of company taxation, namely one under which distributed profits are not entitled to any benefit at the level either of the company or of

the shareholder (except for the purpose of avoiding recurrent taxation of inter-company dividends).

(Renumbered and amended on 23 July 1992; see HISTORY)

2. *Split-rate company tax system in the State of the subsidiary* (paragraphs 43 to 46 above)

64. States of this kind collect company tax on distributed profits at a lower rate than on retained profits which results in a lower company tax burden on profits distributed by a subsidiary to its parent company. In view of this situation, most of these States have obtained, in their conventions, rates of tax at source of 10 or 15 per cent, and in some cases even above 15 per cent. It has not been possible in the Committee to get views to converge on this question, the solution of which is left to bilateral negotiations.

(Renumbered and amended on 23 July 1992; see HISTORY)

3. *Imputation system in the State of the subsidiary* (paragraphs 47 and following)

65. In such States, a company is liable to tax on the whole of its profits, whether distributed or not; the shareholders resident of the State of which the distributing company is itself a resident are subject to tax on dividends distributed to them, but receive a tax credit in consideration of the fact that the profits distributed have been taxed at company level.

(Renumbered on 23 July 1992; see HISTORY)

66. The question has been considered whether States of this kind should extend the benefit of the tax credit to the shareholders of parent companies resident of another State, or even to grant the tax credit directly to such parent companies. It has not been possible in the Committee to get views to converge on this question, the solution of which is left to bilateral negotiations.

(Renumbered and amended on 23 July 1992; see HISTORY)

67. If, in such a system, profits, whether distributed or not, are taxed at the same rate, the system is not different from a "classical" one at the level of the distributing company. Consequently, the State of which the subsidiary is a resident can only levy a tax at source at the rate provided in subparagraph *a)* of paragraph 2.

(Renumbered on 23 July 1992; see HISTORY)

IV. Distributions by Real Estate Investment Trusts

67.1 In many States, a large part of portfolio investment in immovable property is done through Real Estate Investment Trusts (REITs). A REIT may be

loosely described as a widely held company, trust or contractual or fiduciary arrangement that derives its income primarily from long-term investment in immovable property, distributes most of that income annually and does not pay income tax on the income related to immovable property that is so distributed. The fact that the REIT vehicle does not pay tax on that income is the result of tax rules that provide for a single-level of taxation in the hands of the investors in the REIT.

(Added on 17 July 2008; see HISTORY)

67.2 The importance and the globalisation of investments in and through REITs have led the Committee on Fiscal Affairs to examine the tax treaty issues that arise from such investments. The results of that work appear in a report entitled "Tax Treaty Issues Related to REITS."[1]

(Added on 17 July 2008; see HISTORY)

67.3 One issue discussed in the report is the tax treaty treatment of cross-border distributions by a REIT. In the case of a small investor in a REIT, the investor has no control over the immovable property acquired by the REIT and no connection to that property. Notwithstanding the fact that the REIT itself will not pay tax on its distributed income, it may therefore be appropriate to consider that such an investor has not invested in immovable property but, rather, has simply invested in a company and should be treated as receiving a portfolio dividend. Such a treatment would also reflect the blended attributes of a REIT investment, which combines the attributes of both shares and bonds. In contrast, a larger investor in a REIT would have a more particular interest in the immovable property acquired by the REIT; for that investor, the investment in the REIT may be seen as a substitute for an investment in the underlying property of the REIT. In this situation, it would not seem appropriate to restrict the source taxation of the distribution from the REIT since the REIT itself will not pay tax on its income.

(Added on 17 July 2008; see HISTORY)

67.4 States that wish to achieve that result may agree bilaterally to replace paragraph 2 of the Article by the following:

> 2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State (other than a beneficial owner of dividends paid by a company which is a REIT in which such person holds, directly or indirectly, capital that represents at least 10 per cent of the value of all the capital in that company), the tax so charged shall not exceed:

1 Reproduced in Volume II at R(23)-1.

a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 25 per cent of the capital of the company paying the dividends (other than a paying company that is a REIT);

b) 15 per cent of the gross amount of the dividends in all other cases.

According to this provision, a large investor in a REIT is an investor holding, directly or indirectly, capital that represents at least 10 per cent of the value of all the REIT's capital. States may, however, agree bilaterally to use a different threshold. Also, the provision applies to all distributions by a REIT; in the case of distributions of capital gains, however, the domestic law of some countries provides for a different threshold to differentiate between a large investor and a small investor entitled to taxation at the rate applicable to portfolio dividends and these countries may wish to amend the provision to preserve that distinction in their treaties. Finally, because it would be inappropriate to restrict the source taxation of a REIT distribution to a large investor, the drafting of subparagraph *a)* excludes dividends paid by a REIT from its application; thus, the subparagraph can never apply to such dividends, even if a company that did not hold capital representing 10 per cent or more of the value of the capital of a REIT held at least 25 per cent of its capital as computed in accordance with paragraph 15 above. The State of source will therefore be able to tax such distributions to large investors regardless of the restrictions in subparagraphs *a)* and *b)*.

(Added on 17 July 2008; see HISTORY)

67.5 Where, however, the REITs established in one of the Contracting States do not qualify as companies that are residents of that Contracting State, the provision will need to be amended to ensure that it applies to distributions by such REITs.

(Added on 17 July 2008; see HISTORY)

67.6 For example, if the REIT is a company that does not qualify as a resident of the State, paragraphs 1 and 2 of the Article will need to be amended as follows to achieve that result:

1. Dividends paid by a company which is a resident, or a REIT organised under the laws, of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may also be taxed in, and according to the laws of, the Contracting State of which the company paying the dividends is a resident or, in the case of a REIT, under the laws of which it has been organised, but if the beneficial owner of the dividends is a resident of the other Contracting State (other than a beneficial owner of dividends paid by a company which is a REIT in which such person holds, directly or

indirectly, capital that represents at least 10 per cent of the value of all the capital in that company), the tax so charged shall not exceed:

a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 25 per cent of the capital of the company paying the dividends (other than a paying company that is a REIT);

b) 15 per cent of the gross amount of the dividends in all other cases.

(Added on 17 July 2008; see HISTORY)

67.7 Similarly, in order to achieve that result where the REIT is structured as a trust or as a contractual or fiduciary arrangement and does not qualify as a company, States may agree bilaterally to add to the alternative version of paragraph 2 set forth in paragraph 67.4 above an additional provision drafted along the following lines:

For the purposes of this Convention, where a REIT organised under the laws of a Contracting State makes a distribution of income to a resident of the other Contracting State who is the beneficial owner of that distribution, the distribution of that income shall be treated as a dividend paid by a company resident of the first-mentioned State.

Under this additional provision, the relevant distribution would be treated as a dividend and not, therefore, as another type of income (*e.g.* income from immovable property or capital gain) for the purposes of applying Article 10 and the other Articles of the Convention. Clearly, however, that would not change the characterisation of that distribution for purposes of domestic law so that domestic law treatment would not be affected except for the purposes of applying the limitations imposed by the relevant provisions of the Convention.

(Added on 17 July 2008; see HISTORY)

Observations on the Commentary

68. *Canada* and the *United Kingdom* do not adhere to paragraph 24 above. Under their law, certain interest payments are treated as distributions, and are therefore included in the definition of dividends.

(Renumbered and amended on 23 July 1992; see HISTORY)

68.1 *Belgium* cannot share the views expressed in paragraph 37 of the Commentary. Belgium considers that paragraph 5 of Article 10 is a particular application of a general principle underlying various provisions of the Convention (paragraph 7 of Article 5, paragraph 1 of Article 7, and paragraphs 1 and 5 of Article 10), which is the prohibition for a Contracting State, except in exceptional cases expressly provided for in the Convention, to

levy a tax on the profits of a company which is a resident of the other Contracting State. Paragraph 5, which deals with taxation where the income has its source, confirms this general prohibition and provides that the prohibition applies even where the undistributed profits derived by the entity that is a resident of the other Contracting State arise from business carried out in the State of source. Paragraph 5 prohibits the taxation of the undistributed profits of the foreign entity even where the State where those profits arise taxes them in the hands of a resident shareholder. The fact that a Contracting State taxes one of its residents on profits that are beneficially owned by a resident of the other State cannot change the nature of the profits, their beneficiary and, therefore, the allocation of the taxing rights on these profits.

(Added on 28 January 2003; see HISTORY)

68.2 With reference to paragraph 37, *Ireland* notes its general observation in paragraph 27.5 of the Commentary on Article 1.

(Added on 28 January 2003; see HISTORY)

Reservations on the Article

Paragraph 2

69. *(Deleted on 22 July 2010; see HISTORY)*

70. *(Deleted on 29 April 2000; see HISTORY)*

71. *(Deleted on 29 April 2000; see HISTORY)*

72. The *United States* reserves the right to provide that shareholders of certain pass-through entities, such as Regulated Investment Companies and Real Estate Investment Trusts, will not be granted the direct dividend investment rate, even if they would qualify based on their percentage ownership.

(Amended on 29 April 2000; see HISTORY)

73. *(Deleted on 22 July 2010; see HISTORY)*

74. In view of its particular taxation system, *Chile* retains its freedom of action with regard to the provisions in the Convention relating to the rate and form of distribution of profits by companies.

(Added on 22 July 2010; see HISTORY)

75. *Israel*, *Mexico*, *Portugal* and *Turkey* reserve their positions on the rates of tax in paragraph 2.

(Amended on 15 July 2014; see HISTORY)

76. *Estonia* reserves the right not to include the requirement for the competent authorities to settle by mutual agreement the mode of application of paragraph 2.

(Added on 15 July 2014; see HISTORY)

77. *Poland* reserves its position on the minimum percentage for the holding (25 per cent) and the rates of tax (5 per cent and 15 per cent).

(Added on 23 October 1997; see HISTORY)

Paragraph 3

78. *Belgium* reserves the right to broaden the definition of dividends in paragraph 3 so as to cover expressly income — even when paid in the form of interest — which is subjected to the same taxation treatment as income from shares by its internal law.

(Amended on 31 March 1994; see HISTORY)

79. *Denmark* reserves the right, in certain cases, to consider as dividends the selling price derived from the sale of shares.

(Replaced on 23 July 1992; see HISTORY)

80. *France* and *Mexico* reserve the right to amplify the definition of dividends in paragraph 3 so as to cover all income subjected to the taxation treatment of distributions.

(Amended on 15 July 2005; see HISTORY)

81. *Canada* and *Germany* reserve the right to amplify the definition of dividends in paragraph 3 so as to cover certain interest payments which are treated as distributions under their domestic law.

(Amended on 22 July 2010; see HISTORY)

81.1 *Portugal* reserves the right to amplify the definition of dividends in paragraph 3 so as to cover certain payments, made under profit participation arrangements, which are treated as distributions under its domestic law.

(Added on 31 March 1994; see HISTORY)

81.2 *Chile* and *Luxembourg* reserve the right to expand the definition of dividends in paragraph 3 in order to cover certain payments which are treated as distributions of dividends under their domestic law.

(Amended on 22 July 2010; see HISTORY)

82. *Israel* reserves the right to exclude payments made by a Real Estate Investment Trust which is a resident of Israel from the definition of dividends in paragraph 3 and to tax those payments according to its domestic law.

(Added on 15 July 2014; see HISTORY)

82.1 *Estonia* reserves the right to replace, in paragraph 3, the words "income from other corporate rights" by "income from other rights".

(Added on 15 July 2014; see HISTORY)

Paragraph 5

83. *Canada* and the *United States* reserve the right to impose their branch tax on the earnings of a company attributable to a permanent establishment situated in these countries. Canada also reserves the right to impose this tax on profits attributable to the alienation of immovable property situated in Canada by a company carrying on a trade in immovable property.

(Amended on 28 January 2003; see HISTORY)

84. *(Deleted on 21 September 1995; see HISTORY)*

85. *Turkey* reserves the right to tax, in a manner corresponding to that provided by paragraph 2 of the Article, the part of the profits of a company of the other Contracting State that carries on business through a permanent establishment situated in Turkey that remains after taxation pursuant to Article 7.

(Replaced on 23 July 1992; see HISTORY)

86. *(Deleted on 29 April 2000; see HISTORY)*

HISTORY

Paragraph 1: Amended, and the preceding heading was deleted, when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 1 and the heading preceding it read as follows:

> "A. THE PROBLEMS
>
> 1. By "dividends" is generally meant the distributions of profits to the shareholders or members by companies limited by shares[1], limited partnerships with share capital[2], limited liability companies[3] or other joint stock companies[4]. Under the laws of O.E.C.D. Member countries, such joint stock companies are legal entities with a separate juridical personality distinct from all their shareholders or members. On this point, they differ from partnerships in so far as the latter do not have juridical personality in most countries."

Paragraph 2: Amended on 29 April 2000 by the report entitled "The 2000 Update to the Model Tax Convention", adopted by the OECD Committee on Fiscal Affairs on 29 April 2000 on the basis of the Annex of another report entitled "Issues Related to Article 14 of the OECD Model Tax Convention" (adopted by the OECD Committee on Fiscal Affairs on 27 January 2000). In the 1977 Model Convention and until 29 April 2000, paragraph 2 read as follows:

> "2. The profits of a business carried on by a partnership are the partners' profits derived from their own exertions; for them they are industrial or commercial profits. So the partner is ordinarily taxed personally on his share of the partnership capital and partnership profits."

Paragraph 2 was previously amended when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 2 read as follows:

> "2. The profits of a business carried on by a partnership are the partners' profits derived from their own exertions: for them they are industrial or commercial profits. So the partner is ordinarily taxed personally on his share of the partnership capital and partnership profits."

Paragraph 3: Unchanged since the adoption of the 1963 Model Convention by the OECD Council on 30 July 1963.

Paragraph 4: Corresponds to paragraph 22 of the 1963 Draft Convention. Paragraph 4 and the preceding heading of the 1963 Draft Convention were deleted when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At the same time, paragraph 22 of the 1963 Draft Convention was amended and renumbered as paragraph 4 and the preceding headings were moved with it. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 22 read as follows:

> "22. The first paragraph of the Article does not prescribe the principle of taxation of dividends exclusively in the State of the recipient's residence or exclusively in the State of which the company paying the dividends is a resident."

Paragraph 4 and the preceding heading of the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) until they were deleted when the 1977 Model Convention was adopted, read as follows:

> "B. TAXATION OF COMPANIES LIMITED BY SHARES AND OF DIVIDENDS
>
> 4. The results of an enquiry made into the taxation of dividends as at 30th June, 1963, are summarised in the attached table which gives an overall picture of the situation at the time."

Paragraph 5: Corresponds to paragraph 23 of the 1963 Draft Convention. Paragraph 5 and the preceding headings of the 1963 Draft Convention were deleted and paragraph 23 of the 1963 Draft Convention was renumbered as paragraph 5 when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977.

Paragraph 5 and the preceding headings of the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) until they were deleted when the 1977 Model Convention was adopted, read as follows:

> "*a) Taxation of resident companies*
>
> *i) Taxation of the company's profits*
>
> 5. In all the States, companies are taxed on their profits. The taxes paid by companies are generally of a particular kind, that is, they are distinct from those paid by individuals."

Paragraph 6: Corresponds to paragraph 24 of the 1963 Draft Convention. Paragraph 6 of the 1963 Draft Convention was deleted when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At the same time, paragraph 24 of the 1963 Draft Convention was amended and renumbered as paragraph 6. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 24 read as follows:

> "24. On the other hand, taxation of dividends exclusively in the State of the recipient's residence is not feasible as a general rule. It would be more in keeping with the nature of dividends, which are investment income, but it would be unrealistic to suppose that there is any prospect of its being agreed that all taxation of dividends at the source should be relinquished."

Paragraph 6 and the preceding headings of the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) until they were deleted when the 1977 Model Convention was adopted, read as follows:

"6. In most of the States, a company's total profits are taxed uniformly. In taxing a company's profits, four States make a distinction according to whether the profits are distributed or not:

— Belgium: the rate of company tax in respect of distributed profits is always 30 percent. The rate of company tax in respect of undistributed profits is generally 30 per cent also; it is 25 per cent in respect of any profits placed to reserve and expenditure not allowed as business expenses, where these items of taxable income total not more than 1000,000 Belgian Francs; it is 35 per cent in respect of any excess of profits placed to reserve over 5 million Belgian Francs, but the surcharge of 5 per cent is repaid to the company if such profits are subsequently distributed.

— Germany: the rate of the company tax for distributed profits is lower than that for undistributed profits (15 per cent instead of 51 per cent).

— Greece: profits distributed by the company are not taxed at all.

— Iceland: profits distributed by the company to the amount of 10 per cent of its capital stock are not taxed.

In the Netherlands, the Government has introduced a Bill which proposes a rate on distributed profits of 30 per cent, while the rate on undistributed profits would remain at 45 per cent."

Paragraph 7: Corresponds to paragraph 25 of the 1963 Draft Convention. Paragraph 7 and the preceding heading of the 1963 Draft Convention were deleted when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At the same time, paragraph 25 of the 1963 Draft Convention was amended and renumbered as paragraph 7. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 25 read as follows:

"25. For this reason, the first paragraph states simply that dividends may be taxed in the State of the recipient's residence."

Paragraph7 and the preceding heading of the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) until they were deleted when the 1977 Model Convention was adopted, read as follows:

"ii) Taxation of the company's capital and reserves

7. Six States (Austria, Germany, Italy, Luxembourg, Norway and Switzerland) tax the capital and reserves of companies limited by shares."

Paragraph 8: Replaced when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At that time, paragraph 8 and the preceding headings of the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) were deleted and a new paragraph 8 was added. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 8 and the preceding headings read as follows:

"b) Taxation of shareholders of a Resident Company

i) Taxes at the source

8. Many States impose taxes at the source on dividends from resident companies. In most cases such taxes are borne by all the shareholders (Austria, Belgium, Germany, France, Italy, Luxembourg, the Netherlands, Portugal, Spain, Switzerland, Turkey); in Belgium the tax at the source is charged at the rate of 15

per cent on 85/70ths of the gross dividend declared, the object here being to take account of a tax credit allowed to the shareholder of 15/70ths of the dividend declared. In some cases the tax at the source is only payable by non-resident shareholders (Norway, Sweden) or non-resident alien shareholders (United States, Italy). Two States do not charge a tax at the source on dividends but make the company distributing the dividends pay taxes on its profits, leaving it the right to recover tax by deduction from dividends paid out of those profits to shareholders: this is the case in the United Kingdom and the Republic of Ireland as regards their income taxes: Denmark does not tax non-resident shareholders at all. Italy imposes a tax at the source of 15 per cent. This tax will be definitively levied as tax on distributed profits in the case where the shareholder is not liable to the complementary tax ("imposta complementare") or to the Italian company tax ("imposta sulle societa")."

Paragraph 9: Corresponds to paragraph 26 of the 1963 Draft Convention. Paragraph 9 and the preceding heading of the 1963 Draft Convention were deleted when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At the same time, paragraph 26 of the 1963 Draft Convention was amended and renumbered as paragraph 9 and the preceding heading was moved with it. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 26 read as follows:

"26. Paragraph 2 reserves a right to tax to the State of source of the dividends, *i.e.* to the State of which the company paying the dividends is a resident; this right to tax, however, is limited considerably. The rate of tax is limited to 15 per cent, which appears to be a reasonable maximum figure. A higher rate could hardly be justified since the State of source can already tax the company's profits."

Paragraph 9 and the preceding heading of the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) until they were deleted when the 1977 Model Convention was adopted, read as follows:

"*ii) Taxation of resident shareholders*

9. In all the States dividends paid by resident companies are included in the taxable income of a resident shareholder, in some of the States as to their net amount, in the others as to their gross amount. Tax levied at the source by the same State is generally credited against the general income tax. Exceptions to this rule are: Spain as regards its "dividends tax", and Switzerland as regards its "coupon tax"."

Paragraph 10: Corresponds to the first three sentences of paragraph 27 of the 1963 Draft Convention. Paragraph 10 of the 1963 Draft Convention was deleted when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At the same time, the first three sentences of paragraph 27 of the 1963 Draft Convention were amended and renumbered as paragraph 10. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 27 read as follows:

"27. On the other hand, a lower rate of 5 per cent is expressly provided in respect of dividends paid by subsidiary companies. If a company of one of the States owns directly a holding of at least 25 per cent in a company of the other State, it is reasonable that payments of profits by the subsidiary to the foreign parent company should be taxed less heavily, to facilitate international investment and to avoid recurrent taxation. The realisation of the latter intention depends, of course, on the fiscal treatment provided for parent companies in their State of residence. Some laws and Conventions already contain similar provisions. If a partnership is treated as a body corporate under the national law applying to it, the two

Contracting States may agree to modify paragraph 2 (a) in a way to give the benefits of the reduced rate provided for parent companies also to such partnerships."

Paragraph 10 of the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) until it was deleted when the 1977 Model Convention was adopted, read as follows:

"10. Some States give certain relief to resident shareholders:

— In the United Kingdom and the Republic of Ireland, the income tax paid by the company on its profits also counts as the shareholder's tax on its dividends he receives. The shareholder is entitled to have the personal allowances and reliefs he may claim taken into account in calculating his income tax on the dividends. This can result in a part of the tax paid by the company on its profits being refunded to the shareholder. The gross amount of the dividend is included in the shareholder's total income for the purposes of the surtax.

— In certain States the recipient is not further liable on his dividends to tax already charged on the profits of the company paying the dividends. Thus in the United Kingdom and the Republic of Ireland, the profits tax is not charged again; the same holds good in Italy for the "imposta sul reddito di ricchezza mobile". In Belgium, dividends received by resident individuals, which have already borne company tax and tax at the source, are added as to 85/70ths of their gross amount to the shareholder's other taxable income an charged to personal income tax; against the personal income tax are set off the tax charged at the source and the tax credit of 15 per cent referred to in paragraph 8 above. Dividends received by resident companies go to constitute their profits, but, on the principle "non bis in idem", the net dividend received is excluded from the taxable profits to the extent that it forms part of such profits and so escapes company tax, it is deemed, before all other income, to form part, of the distributed profits of the recipient company and when distributed is not charged to tax at the source.

— In most of the States the law gives preferential treatment, on one form or another, to holding companies.

— In Norway, companies are not taxed on dividends paid by resident companies. Resident individuals are neither liable to local income tax (varying from 16 to 19 per cent) nor to local capital tax (generally 4 per mille) on dividends paid by and shares held in resident companies."

Paragraph 11: Corresponds to the last sentence of paragraph 27 of the 1963 Draft Convention. Paragraph 11 and the preceding heading of the 1963 Draft Convention were deleted when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At the same time, the last sentence of paragraph 27 of the 1963 Draft Convention was amended and renumbered as paragraph 11 (see history of paragraph 27 in paragraph 10).

Paragraph 11 and the preceding heading of the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) until they were deleted when the 1977 Model Convention was adopted, read as follows:

"*iii) Taxation of non-resident shareholders*

11. In seven States non-resident individuals who are shareholders of resident companies are liable to a graduated tax on total income: The United Kingdom and the Republic of Ireland (surtax), Greece (income tax), Iceland, Italy ("imposta complementare"), the United States in the case of a non-resident alien shareholder whose income from United States sources exceeds $15,400, and Spain if the

income from Spanish sources exceeds 100,000 pesetas per year. In Belgium, such persons are liable to a graduated tax on their total income of Belgian origin, if they possess an establishment or dwelling in Belgium or receive there certain income in the capacity of a partner or director performing actual whole time service; non-resident companies which are shareholders of resident companies are subject to a flat rate tax if the possess an establishment in Belgium. In both cases economic double taxation is avoided in the same manner as in the case of resident shareholders (see paragraph 10 above). In Greece and Iceland, non-resident companies which are shareholders of resident companies are liable to a flat rate tax."

Paragraph 12: Amended on 15 July 2014, by moving the last sentence to a new paragraph 12.1 and replacing the words "immediately received by" with "paid direct to", 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 12 read as follows:

"12. The requirement of beneficial ownership was introduced in paragraph 2 of Article 10 to clarify the meaning of the words "paid ... to a resident" as they are used in paragraph 1 of the Article. It makes plain that the State of source is not obliged to give up taxing rights over dividend income merely because that income was immediately received by a resident of a State with which the State of source had concluded a convention. The term "beneficial owner" is not used in a narrow technical sense, rather, it should be understood in its context and in light of the object and purposes of the Convention, including avoiding double taxation and the prevention of fiscal evasion and avoidance."

Paragraph 12 was replaced on 28 January 2003 when it was amended and renumbered as paragraph 12.2 (see history of paragraph 12.2) and a new paragraph 12 was added by the report entitled "The 2002 Update to the Model Tax Convention", adopted by the OECD Council on 28 January 2003, on the basis of another report entitled "Restricting the Entitlement to Treaty Benefits" (adopted by the OECD Committee on Fiscal Affairs on 7 November 2002).

Paragraph 12.1: Replaced on 15 July 2014 when paragraph 12.1 was renumbered and amended as paragraph 12.2 (see history of paragraph 12.2) and a new paragraph 12.1 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. New paragraph 12.1 incorporated the final sentence of paragraph 12 as it read before 15 July 2014 (see history of paragraph 12).

Paragraph 12.2: Corresponds to paragraph 12.1 as it read before 15 July 2014. On that date paragraph 12.2 was renumbered as paragraph 12.7 (see history of paragraph 12.7) and paragraph 12.1 was amended and renumbered as paragraph 12.2 by the report entitled "The 2014 Update to the Model Tax Convention", adopted by the OECD Council on 15 July 2014. At that time, the last two sentences of paragraph 12.1 were removed and incorporated into new paragraph 12.3. After 28 January 2003 and until 15 July 2014, paragraph 12.1 and its footnote read as follows:

"12.1 Where an item of income is received by a resident of a Contracting State acting in the capacity of agent or nominee it would be inconsistent with the object and purpose of the Convention for the State of source to grant relief or exemption merely on account of the status of the immediate recipient of the income as a resident of the other Contracting State. The immediate recipient of the income in this situation qualifies as a resident but no potential double taxation arises as a consequence of that status since the recipient is not treated as the owner of the income for tax purposes in the State of residence. It would be equally inconsistent with the object and purpose of the Convention for the State of source to grant relief

or exemption where a resident of a Contracting State, otherwise than through an agency or nominee relationship, simply acts as a conduit for another person who in fact receives the benefit of the income concerned. For these reasons, the report from the Committee on Fiscal Affairs entitled "Double Taxation Conventions and the Use of Conduit Companies"[1] concludes that a conduit company cannot normally be regarded as the beneficial owner if, though the formal owner, it has, as a practical matter, very narrow powers which render it, in relation to the income concerned, a mere fiduciary or administrator acting on account of the interested parties.

1. *Reproduced in Volume II at page R(6)-1."*

Paragraph 12.1 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, on the basis of another report entitled "Restricting the Entitlement to Treaty Benefits" (adopted by the OECD Committee on Fiscal Affairs on 7 November 2002).

Paragraph 12.3: 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 12.3 corresponds to the last two sentences of paragraph 12.1 as they read before 15 July 2014 (see history of paragraph 12.2).

Paragraph 12.4: 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 12.5: 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 12.6: 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.

Paragraph 12.7: Corresponds to paragraph 12.2 as it read before 15 July 2014. On that date paragraph 12.2 was amended and renumbered as paragraph 12.7 by the report entitled "The 2014 Update to the Model Tax Convention", adopted by the OECD Council on 15 July 2014. After 28 January 2003 and until 15 July 2014, paragraph 12.2 read as follows:

"12.2 Subject to other conditions imposed by the Article, the limitation of tax in the State of source remains available when an intermediary, such as an agent or nominee located in a Contracting State or in a third State, is interposed between the beneficiary and the payer but the beneficial owner is a resident of the other Contracting State (the text of the Model was amended in 1995 to clarify this point, which has been the consistent position of all member countries). States which wish to make this more explicit are free to do so during bilateral negotiations."

Paragraph 12.2 as it read after 28 January 2003 corresponded to paragraph 12. On 28 January 2003 paragraph 12 was amended and renumbered as paragraph 12.2 by the report entitled "The 2002 Update to the Model Tax Convention", adopted by the OECD Council on 28 January 2003, on the basis of another report entitled "Restricting the Entitlement to Treaty Benefits" (adopted by the OECD Committee on Fiscal Affairs on 7 November 2002). After 21 September 1995 and until 28 January 2003, paragraph 12 read as follows:

"12. Under paragraph 2, the limitation of tax in the State of source is not available when an intermediary, such as an agent or nominee, is interposed between the beneficiary and the payer, unless the beneficial owner is a resident of the other Contracting State. (The text of the Model was amended in 1995 to clarify this point, which has been the consistent position of all member countries.) States which wish to make this more explicit are free to do so during bilateral negotiations."

Paragraph 12 was amended on 21 September 1995 by the report entitled "The 1995 Update to the Model Tax Convention", adopted by the OECD Council on

21 September 1995. In the 1977 Model Convention and until 21 September 1995, paragraph 12 read as follows:

> "12. Under paragraph 2, the limitation of tax in the State of source is not available when an intermediary, such as an agent or nominee, is interposed between the beneficiary and the payer, unless the beneficial owner is a resident of the other Contracting State. States which wish to make this more explicit are free to do so during bilateral negotiations."

Paragraph 12 and the preceding heading of the 1963 Draft Convention were replaced when the 1977 Model Convention was adopted on 11 April 1977. At that time, paragraph 12 and the preceding heading of the 1963 Draft Convention were deleted and a new paragraph 12 was added. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until they were deleted when the 1977 Model Convention was adopted, paragraph 12 and the preceding heading read as follows:

> *"c) Taxation of resident shareholders in respect of dividends from a non-resident company*
>
> 12. Dividends paid to a shareholder resident in a State by a non-resident company are subject in that State to the general taxes on income and profits. The following peculiarities should be mentioned:
>
> — In Italy, individuals, as a rule, are taxed on foreign dividends only if these are remitted to Italy ("goduto in Italia"). Italy charges the "imposta sul reddito di ricchezza mobile" on certain foreign dividends only. Dividends received by companies are included in their taxable income for the purposes of the Italian Company tax ("imposta sulle società"). In any case a withholding tax of 15 per cent is imposed on the dividends paid by foreign companies when these dividends are paid by banksor credit institutes. This withholding tax is, however, credited if the beneficiary of the dividends is liable to the complementary tax (imposta sulle societa");
>
> — Spain has, in addition, a tax at the source. It is charged on only so much of the dividends as corresponds to the proportion that the profits made in Spain bear to the total profits, furthermore, it is charged on the dividends from foreign sources actually paid in Spain;
>
> — In Belgium, dividends paid by foreign companies are charged on their entry into Belgium to a tax at the source or prelevy ("precompte mobilier") of 15 per cent. In the case of resident individuals this pre-levy is credited against the personal income tax, as also is a fixed quota of 15 per cent which is deemed to represent the foreign tax. In the case of resident companies double taxation is avoided in the same manner as in the case of dividends paid by resident companies (see paragraph 10 above);
>
> — The United States and the United Kingdom give credit for foreign taxes against their own income taxes. Germany and Denmark only give credit for the tax charged on the dividends;
>
> — Portugal levies, in addition, a tax at the source on dividends actually paid in Portugal."

Paragraph 13: Corresponds to paragraph 28 of the 1963 Draft Convention. Paragraph 13 of the 1963 Draft Convention was deleted and paragraph 28 of the 1963 Draft Convention was amended and renumbered as paragraph 13 when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 28 read as follows:

> "28. The tax rates fixed by the Article for the tax in the State of source are maximum rates. The States may agree, in bilateral negotiations, on lower rates or even on taxation exclusively in the State of the recipient's residence. The reduction

of rates provided for in paragraph 2 refers solely to the taxation of dividends and not to the taxation of the profits of the company paying the dividends."

Paragraph 13 of the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) until it was deleted when the 1977 Model Convention was adopted, read as follows:

"13. In some States the preferential treatment given to holding companies in respect of dividends arising in such States does not apply to dividends received from foreign companies.

[table on page following paragraph 13 is not reproduced]"

Paragraph 13.1: 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 13.2: 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 14: Corresponds to paragraph 29 of the 1963 Draft Convention. Paragraph 14 and the preceding headings of the 1963 Draft Convention were deleted when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At the same time, paragraph 29 of the 1963 Draft Convention was amended and renumbered as paragraph 14. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 29 read as follows:

"29. The two Contracting States may also, in bilateral negotiations, agree to a holding percentage lower than that fixed in the Article."

Paragraph 14 and the preceding headings of the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) until they were deleted when the 1977 Model Convention was adopted, read as follows:

"II. SOLUTIONS

A. WORK OF THE INTERNATIONAL ORGANISATIONS

14. In this matter of dividends, differences between taxation laws and conflicts of interests have an inhibiting effect that is not apparent in any other part of international fiscal law. Many States feel unable to relinquish the right to tax dividends paid by resident companies to non-resident shareholders, either because their taxation systems are based on the principle of territoriality, or because they fear that to do so would mean a loss of tax revenue."

Paragraph 15: Replaced when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At that time, paragraph 15 of the 1963 Draft Convention was deleted and a new paragraph 15 was added. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 15 read as follows:

"15. The League of Nations took up the problems of international double taxation at a comparatively early date. A commission of four economists stated, in a report dated 5th April, 1923, that the right to tax movable property (including shares in companies and debt claims) should belong to the State of the taxpayer's residence. A second committee of seven taxation experts, in a report dated 7th February, 1925, formulated other proposals which the General Meeting of Government Experts on Double Taxation adopted in its report of 31st October, 1928, but not without modifying them on certain points and adding two further proposals, so that the proposals of the League of Nations in 1928 consisted of the following variants:

Variant A: Imposition of impersonal taxes by the State in which the enterprise has its effective place of management, and imposition of personal taxes exclusively in the State of the shareholder's residence;

Variant B: Taxation exclusively in the State of the shareholder's residence;

Variant C: Taxation in the State of the shareholder's residence, with a reservation in favour of taxes charged at the source in the other State; it is recommended to the Contracting States that they should avoid or mitigate any resulting double taxation by arrangements for the full or part refund of the taxes levied in the State of source, or for giving credit for the taxes charged at the source against the taxes imposed in the State of the shareholder's residence."

Paragraph 16: Replaced when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At that time, paragraph 16 of the 1963 Draft Convention was deleted and a new paragraph 16 was added. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 16 read as follows:

"16. From 1929 to 1939 no further solutions to the problem of dividend taxation were devised by the Fiscal Committee of the League of Nations. On the other hand, the drafts prepared at later conferences, in Mexico in 1943 and in London in 1946, contain provisions which differ essentially from the proposals contained in the 1928 draft. The Mexico and London drafts give the right to tax dividends to the State in which the capital is invested or in which the company has its fiscal domicile. It is only where a company has a "dominant participation" in the management or capital of the company paying the dividends that the London draft allows an exemption in the country where that company has its fiscal domicile. The proposals of the London and Mexico Model Convention regarding dividends have not been adopted by the O.E.C.D. Member countries."

Paragraph 17: Replaced paragraph 17 when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At that time, paragraph 17 and the preceding heading of the 1963 Draft Convention were deleted and a new paragraph 17 was added. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 17 and the preceding heading read as follows:

"B. THE CONVENTIONS CONCLUDED BY THE O.E.C.D. MEMBER COUNTRIES

17. The Conventions for the avoidance of double taxation concluded between the Member countries of the O.E.C.D. contain the following solutions:

a) In a first category of Conventions, dividends are taxable only in the State of the recipient's residence (Convention between France and Sweden of 1936-1950).

b) Other Conventions provide for dividends to be taxed in the State of the recipient's residence; but they contain an unlimited reservation in favour of taxes charged at the source in the other State (Conventions concluded by Germany and Sweden in 1928).

c) In a third category, the right to tax dividends is conferred on the State of the recipient's residence; a reservation is made in favour of taxes imposed at the source in the other State, but such taxes are not to be levied, or must be refunded fully or in part if the shareholder satisfies certain conditions (Conventions concluded by Switzerland with Sweden in 1948, with the Netherlands in 1951, with Austria in 1953, and with France in 1953).

d) In a last category, both States may tax dividends. But the State of the shareholder's residence undertakes to give credit for the tax levied in the State of source (which tax may or may not be limited to a certain rate) against its own taxes on the same income (Conventions concluded between Germany and Austria in 1954, between Sweden and Norway in 1947, by France with Norway in 1953 and with Germany in 1959, and by Italy with the

United States in 1955, with Sweden in 1956, with France in 1958, and with the United Kingdom in 1960)."

Paragraph 18: Corresponds to paragraph 30 of the 1963 Draft Convention. Paragraph 18 and the preceding heading of the 1963 Draft Convention were deleted when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At the same time, paragraph 30 of the 1963 Draft Convention was amended and renumbered as paragraph 18. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 30 read as follows:

"30. Paragraph 2 says nothing about the mode of taxation. Each State is free to apply its own laws. The State of source may levy, not only taxes at the source, but also taxes charged by direct assessment."

Paragraph 18 and the preceding heading of the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) until they was deleted when the 1977 Model Convention was adopted, read as follows:

"C. SOLUTION RECOMMENDED BY THE FISCAL COMMITTEE OF THE O.E.C.D.

18. The solution recommended by the Committee is not new. It takes into account the work of the international organisations and the Conventions concluded up to now. The Committee has submitted a text which should be acceptable to the great majority of the O.E.C.D. Member countries."

Paragraph 19: Amended on 17 July 2008, by replacing the cross-reference to "paragraph 53" of the Commentary on Article 24" by "paragraph 71", by the report entitled "The 2008 Update to the Model Tax Convention", adopted by the OECD Council on 17 July 2008, on the basis of another report entitled "The Application and Interpretation of Article 24 (Non-Discrimination)" (adopted by the OECD Committee on Fiscal Affairs on 20 June 2008). After 28 January 2003 and until 17 July 2008, paragraph 19 read as follows:

"19. The paragraph does not settle procedural questions. Each State should be able to use the procedure provided in its own laws. It can either forthwith limit its tax to the rates given in the Article or tax in full and make a refund (see, however, paragraph 26.2 of the Commentary on Article 1). Specific questions arise with triangular cases (see paragraph 71 of the Commentary on Article 24)."

Paragraph 19 was previously amended 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. After 23 July 1992 and until 28 January 2003, paragraph 19 read as follow:

"19. The paragraph does not settle procedural questions. Each State should be able to use the procedure provided in its own laws. It can either forthwith limit its tax to the rates given in the Article or tax in full and make a refund. Specific questions arise with triangular cases (see paragraph 53 of the Commentary on Article 24)."

Paragraph 19 was previously amended on 23 July 1992 by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992, on the basis of paragraph 60 of another report entitled "Triangular Cases" (adopted by the OECD Council on 23 July 1992). In the 1977 Model Convention and until 23 July 1992, paragraph 19 read as follows:

"19. The paragraph does not settle procedural questions. Each State should be able to use the procedure provided in its own laws. It can either forthwith limit its tax to the rates given in the Article or tax in full and make a refund."

Paragraph 19 of the 1977 Model Convention corresponded to paragraph 31 of the 1963 Draft Convention. Paragraph 19 of the 1963 Draft Convention was deleted and paragraph 31 of the 1963 Draft Convention was amended and renumbered as paragraph 19 when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 31 read as follows:

> "31. Paragraph 2 does not settle procedural questions. Each State should be able to use the procedure provided in its own law. It can either forthwith limit its tax to the rates given in the Article or tax in full and make a repayment."

Paragraph 19 of the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) until it was deleted when the 1977 Model Convention was adopted, read as follows:

> "19. The Article states that dividends shall be taxable in the State of the shareholder's residence, but it confers a limited concurrent right to tax on the State of source."

Paragraph 20: Corresponds to paragraph 32 of the 1963 Draft Convention. Paragraph 20 of the 1963 Draft Convention was deleted and paragraph 32 of the 1963 Draft Convention was amended and renumbered as paragraph 20 when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 32 read as follows:

> "32. It has not been determined whether a relief in a State of source should be given only where the recipient is subject to tax in respect of the dividends in the State of residence. The formula chosen may be supplemented accordingly by bilateral agreement."

Paragraph 20 of the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) until it was deleted when the 1977 Model Convention was adopted on 11 April 1977, read as follows:

> "20. The Article deals with the relationship between itself and the provisions of Article 7 concerning the taxation of business profits and it defines the term "dividends"."

Paragraph 21: Corresponds to paragraph 33 of the 1963 Draft Convention. Paragraph 21 of the 1963 Draft Convention was deleted and paragraph 33 of the 1963 Draft Convention was amended and renumbered as paragraph 21 when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 33 read as follows:

> "33. The Article says nothing on how the State of the recipient's residence should make allowance for the taxation in the State of source. This question is considered in the Articles 23(A) and 23(B) concerning methods of avoiding double taxation in the State of residence."

Paragraph 21 of the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) until it was deleted when the 1977 Model Convention was adopted on 11 April 1977, read as follows:

> "21. The Committee has confined itself to settling principles. Particular questions, in particular the manner in which the State of source must reduce its taxes, are not dealt with. Nor is the manner in which allowance is to be made for the peculiarities of certain countries' laws. There are too many possible solutions, so that it appears impossible to find a single formula which can satisfy all the

States. There is still vast scope for bilateral negotiations without subtracting from the value of the proposed provisions."

Paragraph 22: Corresponds to paragraph 34 of the 1963 Draft Convention. Paragraph 22 of the 1963 Draft Convention was amended and renumbered as paragraph 4 (see history of paragraph 4) and the preceding headings were moved with it when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At the same time, paragraph 34 of the 1963 Draft Convention was amended and renumbered as paragraph 22 of the 1977 Model Convention. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 34 read as follows:

"34. Attention is drawn generally to the following case: the recipient of the dividends arising in a Contracting State is a company resident in the other Contracting State; all or part of its capital is held by shareholders resident outside that other State; its practice is not to distribute its profits in the form of dividends; and it enjoys preferential taxation treatment ("private investment company", "base company"). The question may arise whether in the case of such a company it is justifiable to allow in the State of source of the dividends the restriction of tax which is provided in paragraph 2 of the Article. It may be appropriate, when bilateral negotiations are being conducted, to agree upon special exceptions to the taxing rule laid down in this Article, in order to define the treatment applicable to such companies."

Paragraph 23: Amended on 23 July 1992, by replacing the words "it does not yet appear to be possible" by "it did not appear possible", in the fifth sentence, by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992. In the 1977 Model Convention and until 23 July 1992, paragraph 23 read as follows:

"23. In view of the great differences between the laws of OECD Member countries, it is impossible to define "dividends" fully and exhaustively. Consequently, the definition merely mentions examples which are to be found in the majority of the Member countries' laws and which, in any case, are not treated differently in them. The enumeration is followed up by a general formula. In the course of the revision of the 1963 Draft Convention, a thorough study has been undertaken to find a solution that does not refer to domestic laws. This study has led to the conclusion that, in view of the still remaining dissimilarities between Member countries in the field of company law and taxation law, it does not yet appear to be possible to work out a definition of the concept of dividends that would be independent of domestic laws. It is open to the Contracting States, through bilateral negotiations, to make allowance for peculiarities of their laws and to agree to bring under the definition of "dividends" other payments by companies falling under the Article."

Paragraph 23 of the 1977 Model Convention corresponded to paragraph 35 of the 1963 Draft Convention. Paragraph 23 of the 1963 Draft Convention was renumbered as paragraph 5 (see history of paragraph 5) when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At the same time, paragraph 35 of the 1963 Draft Convention was amended and renumbered as paragraph 23 of the 1977 Model Convention and the preceding heading was moved with it. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 35 read as follows:

"35. In view of the great differences between the laws of the O.E.C.D. Member countries, it is impossible to define "dividends" fully and exhaustively. Consequently, the definition merely mentions examples which are to be found in the majority of the Member countries' laws and which, in any case, are not treated differently in them. The enumeration is followed up by a general formula. It is open

to the Contracting States, through bilateral negotiations, to make allowance for the peculiarities of their laws and to agree to bring other distributions of profits within the Article."

Paragraph 24: Amended on 23 July 1992 by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992, by replacing the reference therein to paragraph 18 of the Commentary on Article 11 by a reference to paragraph 19 of that Commentary. In the 1977 Model Convention and until 23 July 1992, paragraph 24 read as follows:

"24. The notion of dividends basically concerns distributions by companies within the meaning of subparagraph *b)* of paragraph 1 of Article 3. Therefore the definition relates, in the first instance, to distributions of profits the title to which is constituted by shares, that is holdings in a company limited by shares (joint stock company). The definition assimilates to shares all securities issued by companies which carry a right to participate in the companies' profits without being debt-claims; such are, for example, "jouissance" shares or "jouissance" rights, founders' shares or other rights participating in profits. In bilateral conventions, of course, this enumeration may be adapted to the legal situation in the Contracting States concerned. This may be necessary in particular, as regards income from "jouissance" shares and founders' shares. On the other hand, debt-claims participating in profits do not come into this category; (see paragraph 18 of the Commentary on Article 11); likewise interest on convertible debentures is not a dividend."

Paragraph 24 of the 1977 Model Convention corresponded to paragraph 36 of the 1963 Draft Convention. Paragraph 24 of the 1963 Draft Convention was amended and renumbered as paragraph 6 (see history of paragraph 6) when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At the same time, paragraph 36 of the 1963 Draft Convention was amended and renumbered as paragraph 24 of the 1977 Model Convention. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 36 read as follows:

"36. The Article relates, basically, to distributions of profits the title to which is constituted by shares, that is holdings in a company limited by shares ("Société anonyme"). The Article assimilates to shares all securities issued by companies limited by shares which carry a right to participate in the profits without being debt claims; such are, for example, "jouissance" shares or "jouissance" rights, founders' shares or other rights participating in profits. On the other hand, debt claims participating in profits do not come into this category. Likewise, interest on convertible debentures is not dividend."

Paragraph 25: Replaced on 23 July 1992 when paragraph 25 of the 1977 Model Convention was renumbered as paragraph 26 (see history of paragraph 26) and a new paragraph 25 added by the report entitled "The Revision of the Model Convention", adopted by the Council of the OECD on 23 July 1992, on the basis of paragraph 29 of a previous report entitled "Thin Capitalisation" (adopted by the OECD Council on 26 November 1986).

Paragraph 26: Corresponds to paragraph 25 of the 1977 Model Convention as it read before 23 July 1992. On that date paragraph 26 of the 1977 Model Convention was renumbered as paragraph 27 (see history of paragraph 27) and paragraph 25 was renumbered as paragraph 26 by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992.

Paragraph 25 of the 1977 Model Convention corresponded to paragraph 37 of the 1963 Draft Convention. Paragraph 25 of the 1963 Draft Convention was amended and renumbered as paragraph 7 (see history of paragraph 7) when the 1977 Model

Convention was adopted by the OECD Council on 11 April 1977. At the same time, paragraph 37 of the 1963 Draft Convention was amended and renumbered as paragraph 26 of the 1977 Model Convention. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 37 read as follows:

> "37. The laws of many of the States put participations in a "Société à responsabilité limitée" (limited liability companies) on the same footing as shares. Again, distributions of profits by co-operative societies are generally regarded as dividends."

Paragraph 27: Corresponds to paragraph 26 of the 1977 Model Convention as it read before 23 July 1992. On that date paragraph 27 of the 1977 Model Convention was renumbered as paragraph 28 (see history of paragraph 28) and paragraph 26 was renumbered as paragraph 27 by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992.

Paragraph 26 of the 1977 Model Convention corresponded to paragraph 38 of the 1963 Draft Convention. Paragraph 26 of the 1963 Draft Convention was amended and renumbered as paragraph 9 (see history of paragraph 9) and the preceding heading was moved with it when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At the same time, paragraph 38 of the 1963 Draft Convention was amended and renumbered as paragraph 26 of the 1977 Model Convention. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 38 read as follows:

> "38. Distributions of profits by partnerships of individuals are not dividends. French law, however, makes certain exceptions to this principle."

Paragraph 28: 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 23 July 1992 and until 15 July 2014, paragraph 28 read as follows:

> "28. Payments regarded as dividends may include not only distributions of profits decided by annual general meetings of shareholders, but also other benefits in money or money's worth, such as bonus shares, bonuses, profits on a liquidation and disguised distributions of profits. The reliefs provided in the Article apply so long as the State of which the paying company is a resident taxes such benefits as dividends. It is immaterial whether any such benefits are paid out of current profits made by the company or are derived, for example, from reserves, *i.e.* profits of previous financial years. Normally, distributions by a company which have the effect of reducing the membership rights, for instance, payments constituting a reimbursement of capital in any form whatever, are not regarded as dividends."

Paragraph 28 as it read after 23 July 1992 corresponded to paragraph 27 of the 1977 Model Convention. On 23 July 1992 paragraph 28 of the 1977 Model Convention was renumbered as paragraph 29 (see history of paragraph 29) and paragraph 27 was renumbered as paragraph 28 by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992.

Paragraph 27 of the 1977 Model Convention corresponded to paragraph 39 of the 1963 Draft Convention. Paragraph 27 of the 1963 Draft Convention was amended and incorporated into paragraphs 10 and 11 (see history of paragraph 10) when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At the same time, paragraph 39 of the 1963 Draft Convention was amended and renumbered as paragraph 27 of the 1977 Model Convention. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 39 read as follows:

"39. Payments regarded as dividends may include not only distributions of profits by annual resolutions of general meetings of shareholders, but also other benefits in money or money's worth, such as bonus shares, bonuses, profits on a liquidation and disguised distributions of profits. The reliefs provided in the Article apply so long as the State of which the paying company is a resident taxes such benefits as dividends."

Paragraph 29: Corresponds to paragraph 28 of the 1977 Model Convention as it read before 23 July 1992. On that date paragraph 29 of the 1977 Model Convention was renumbered as paragraph 30 (see history of paragraph 30) and paragraph 28 was renumbered as paragraph 29 by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992.

Paragraph 28 was replaced when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At that time, paragraph 28 of the 1963 Draft Convention was amended and renumbered as paragraph 13 (see history of paragraph 13) and a new paragraph 28 was added.

Paragraph 30: Corresponds to paragraph 29 of the 1977 Model Convention as it read before 23 July 1992. On that date paragraph 30 of the 1977 Model Convention was renumbered as paragraph 31 (see history of paragraph 31), the heading preceding paragraph 30 was moved with it and paragraph 29 was renumbered as paragraph 30 by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992.

Paragraph 29 was replaced when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At that time, paragraph 29 of the 1963 Draft Convention was amended and renumbered as paragraph 14 (see history of paragraph 14) and a new paragraph 29 was added.

Paragraph 31: Corresponds to paragraph 30 of the 1977 Model Convention as it read before 23 July 1992. On that date paragraph 31 of the 1977 Model Convention was renumbered as paragraph 32 (see history of paragraph 32), paragraph 30 was renumbered as paragraph 31 and the heading preceding paragraph 30 was moved with it by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992.

Paragraph 30 of the 1977 Model Convention corresponded to paragraph 40 of the 1963 Draft Convention. Paragraph 30 of the 1963 Draft Convention was amended and renumbered as paragraph 18 (see history of paragraph 18) when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At the same time, paragraph 40 of the 1963 Draft Convention was amended and renumbered as paragraph 30 of the 1977 Model Convention and the preceding heading was moved with it. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 40 read as follows:

"40. Certain States consider that dividends, interest and royalties arising from sources in their territory and payable to individuals or legal persons who are residents of other States fall outside the scope of the arrangement made to prevent them from being taxed both in the State of source and in the State of the recipient's residence when the recipient possesses a permanent establishment in the former State. Paragraph 4 of the Article is not based on such a conception which is sometimes referred to as "the force of attraction of the permanent establishment". It does not stipulate that dividends arising to a resident of a Contracting State from a source situated in the territory of the other State must, by a kind of legal presumption, or fiction even, be related to a permanent establishment which that resident may happen to possess in the latter State, so that the said State would not be obliged to limit its taxation in such a case. The paragraph merely provides that in the State of source the dividends are taxable as part of the profits of the

permanent establishment there owned by the recipient residing in the other State, if they are paid in respect of holdings forming part of the assets of the permanent establishment or otherwise effectively connected with that establishment. In that case, paragraph 4 relieves the State of source of the dividends from any limitations under the Article. The foregoing explanations accord with those in the Commentaries on Article 7 on the taxation of business profits."

Paragraph 32: Amended 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 28 January 2003 and until 22 July 2010, paragraph 32 read as follows:

"32. It has been suggested that the paragraph could give rise to abuses through the transfer of shares to permanent establishments set up solely for that purpose in countries that offer preferential treatment to dividend income. Apart from the fact that such abusive transactions might trigger the application of domestic anti-abuse rules, it must be recognised that a particular location can only constitute a permanent establishment if a business is carried on therein and, also, that the requirement that a shareholding be "effectively connected" to such a location requires that the shareholding be genuinely connected to that business"

Paragraph 32 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 2002, on the basis of another report entitled "Issues Arising under Article 5 (Permanent Establishment) of the Model Tax Convention" (adopted by the OECD Committee on Fiscal Affairs on 7 November 2002).

Paragraph 32 was deleted on 29 April 2000 by the report entitled "The 2000 Update to the Model Tax Convention", adopted by the OECD Committee on Fiscal Affairs on 29 April 2000 on the basis of the Annex of another report entitled "Issues Related to Article 14 of the OECD Model Tax Convention" (adopted by the OECD Committee on Fiscal Affairs on 27 January 2000). After 23 July 1992 and until 29 April 2000, paragraph 32 read as follows:

"32. The rules set out above also apply where the beneficiary of the dividends has in the other Contracting State, for the purpose of performing any of the kinds of independent personal services mentioned in Article 14, a fixed base with which the holding in respect of which the dividends are paid is effectively connected."

Paragraph 32, as it read after 23 July 1992, corresponded to paragraph 31 of the 1977 Model Convention. On 23 July 1992 paragraph 32 of the 1977 Model Convention was renumbered as paragraph 33 (see history of paragraph 33), the heading preceding paragraph 32 was moved with it and paragraph 31 was renumbered as paragraph 32 by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992.

Paragraph 31 of the 1963 Draft Convention was replaced when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At that time, paragraph 31 of the 1963 Draft Convention was amended and renumbered as paragraph 19 (see history of paragraph 19) and a new paragraph 31 was added.

Paragraph 32.1: 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 32.2: 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 33: Corresponds to paragraph 32 of the 1977 Model Convention as it read before 23 July 1992. On that date paragraph 33 of the 1977 Model Convention was renumbered as paragraph 34 (see history of paragraph 34), paragraph 32 was renumbered as paragraph 33 and the heading preceding paragraph 32 was moved

with it by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992.

Paragraph 32 of the 1977 Model Convention corresponded to paragraph 41 of the 1963 Draft Convention. Paragraph 32 of the 1963 Draft Convention was amended and renumbered as paragraph 20 (see history of paragraph 20) when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At the same time, paragraph 41 of the 1963 Draft Convention was amended and renumbered as paragraph 32 of the 1977 Model Convention and the preceding heading was moved with it. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 41 read as follows:

> "41. The Article deals only with dividends paid by a company resident in one of the States to a resident of the other State. Certain States, however, tax not only dividends paid by companies resident in them but even distributions by non-resident companies of profits arising in them. Each State, of course, is entitled to tax profits arising in its territory which are made by non-resident companies, to the extent provided in the Convention (in particular in Article 7 concerning the taxation of business profits). The shareholders of such companies should not be taxed as well at any rate unless they are resident in the State and so naturally subject to its fiscal sovereignty."

Paragraph 34: Amended on 29 April 2000, by deleting the words "or fixed base", by the report entitled "The 2000 Update to the Model Tax Convention", adopted by the OECD Committee on Fiscal Affairs on 29 April 2000 on the basis of the Annex of another report entitled "Issues Related to Article 14 of the OECD Model Tax Convention" (adopted by the OECD Committee on Fiscal Affairs on 27 January 2000). After 23 July 1992 and until 29 April 2000, paragraph 34 read as follows:

> "34. Paragraph 5 rules out the extra-territorial taxation of dividends, *i.e.* the practice by which States tax dividends distributed by a non-resident company solely because the corporate profits from which the distributions are made originated in their territory (for example, realised through a permanent establishment situated therein). There is, of course, no question of extra-territorial taxation when the country of source of the corporate profits taxes the dividends because they are paid to a shareholder who is a resident of that State or to a permanent establishment or fixed base situated in that State."

Paragraph 34 as it read after 23 July 1992 corresponded to paragraph 33 of the 1977 Model Convention. On 23 July 1992 paragraph 34 of the 1977 Model Convention was renumbered as paragraph 35 (see history of paragraph 35) and paragraph 33 was renumbered as paragraph 34 by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992.

Paragraph 33 was replaced when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At that time, paragraph 33 of the 1963 Draft Convention was amended and renumbered as paragraph 21 (see history of paragraph 21) and a new paragraph 33 was added.

Paragraph 35: Corresponds to paragraph 34 of the 1977 Model Convention as it read before 23 July 1992. On that date paragraph 35 of the 1977 Model Convention was renumbered as paragraph 36 (see history of paragraph 36) and paragraph 34 was renumbered as paragraph 35 by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992.

Paragraph 34 was replaced when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At that time, paragraph 34 of the 1963 Draft Convention was amended and renumbered as paragraph 22 (see history of paragraph 22) and a new paragraph 34 was added.

Paragraph 36: Corresponds to paragraph 35 of the 1977 Model Convention as it read before 23 July 1992. On that date paragraph 36 of the 1977 Model Convention was amended and renumbered as paragraph 40 (see history of paragraph 40), the heading preceding paragraph 36 was moved with it and paragraph 35 was renumbered as paragraph 36 by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992.

Paragraph 35 of the 1977 Model Convention corresponded to paragraph 42 of the 1963 Draft Convention. Paragraph 35 of the 1963 Draft Convention was amended and renumbered as paragraph 23 (see history of paragraph 23) and the preceding heading was moved with it when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At the same time, paragraph 42 of the 1963 Draft Convention was amended and renumbered as paragraph 35 of the 1977 Model Convention. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 42 read as follows:

> "42. Paragraph 5 adopts a provision already contained in a number of Conventions. It rules out extraterritorial taxation of dividends and further provides that non-resident companies are not to be subjected to special taxes on undistributed profits."

Paragraph 37: Amended 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. After 23 July 1992 and until 28 January 2003, paragraph 37 read as follows:

> "37. It might be argued that where the taxpayer's country of residence, pursuant to its counteracting measures (such as sub-Part F legislation in the United States), seeks to tax profits which have not been distributed it is acting contrary to the provisions of paragraph 5. However, it should be noted that the paragraph is confined to taxation at source and, thus, has no bearing on the taxation at residence under a counteracting legislation. In addition, the paragraph concerns only the taxation of the company and not that of the shareholder."

Paragraph 37 was replaced on 23 July 1992 when paragraph 37 of the 1977 Model Convention was renumbered as paragraph 41 (see history of paragraph 41), the heading preceding paragraph 37 was moved with it and a new paragraph 37 added by the report entitled "The Revision of the Model Convention", adopted by the Council of the OECD on 23 July 1992, on the basis of paragraph 49 of a previous report entitled "Double Taxation Conventions and the Use of Base Companies" (adopted by the Council of the OECD on 27 November 1986).

Paragraph 38: Amended 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. After 23 July 1992 and until 28 January 2003, paragraph 38 read as follows:

> "38. The application of counteracting legislation may, however, pose some difficulties. If the income is attributed to the taxpayer then each item of the income would have to be treated under the relevant provisions of the Convention (business profits, interest, royalties). If the amount is treated as a deemed dividend then it is clearly derived from the base company thus constituting income from that company's country. Even then, it is by no means clear whether the taxable amount is to be regarded as a dividend within the meaning of Article 10 or as "other income" within the meaning of Article 21. Under some counteracting measures the taxable amount is treated as a dividend with the result that an exemption provided for by a tax convention, *e.g.* an affiliation exemption, is also extended to it (for instance, in Germany). It is doubtful whether the Convention requires this to be done. If the country of residence considers that this is not the case it may face the allegation that it is obstructing the normal operation of the affiliation exemption by taxing the dividend (in the form of "deemed dividend") in advance."

Paragraph 38 was replaced on 23 July 1992 when paragraph 38 of the 1977 Model Convention was amended and renumbered as paragraph 42 (see history of paragraph 42), the heading preceding paragraph 38 was amended and moved with it and new paragraph 38 was added by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992, on the basis of paragraph 50 of a previous report entitled "Double Taxation Conventions and the Use of Base Companies" (adopted by the OECD Council on 27 November 1986).

Paragraph 39: Amended 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. After 23 July 1992 and until 28 January 2003, paragraph 39 read as follows:

> "39. Where dividends are actually distributed by the base company, the provisions of a bilateral convention regarding dividends have to be applied in the normal way because there is dividend income within the meaning of the convention. Thus, the country of the base company may subject the dividend to a withholding tax. The country of residence of the shareholder will apply the normal methods for the elimination of double taxation (*i.e.* tax credit or tax exemption is granted). This implies that the withholding tax on the dividend should be credited in the shareholder's country of residence, even if the distributed profit (the dividend) has been taxed years before under counteracting legislation. However, the obligation to give credit in that case remains doubtful. Generally the dividend as such is exempted from tax (as it was already taxed under the counteracting legislation) and one might argue that there is no basis for a tax credit. On the other hand, the purpose of the treaty would be frustrated if the crediting of taxes could be avoided by simply anticipating the dividend taxation under counteracting legislation. The general principle set out above would suggest that the credit should be granted, though the details may depend on the technicalities of the counteracting measures and the system for crediting foreign taxes against domestic tax, as well as on the particularities of the case (*e.g.* time lapsed since the taxation of the "deemed dividend"). However, taxpayers who have recourse to artificial arrangements are taking risks against which they cannot fully be safeguarded by tax authorities."

Paragraph 39 was replaced on 23 July 1992 when paragraph 39 of the 1977 Model Convention was amended and renumbered as paragraph 43 (see history of paragraph 43), the heading preceding paragraph 39 was amended and moved with it and a new paragraph 39 was added by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992, on the basis of paragraph 51 of a previous report entitled "Double Taxation Conventions and the Use of Base Companies" (adopted by the Council of the OECD on 27 November 1986).

Paragraph 40: Corresponds to paragraph 36 of the 1977 Model Convention as it read before 23 July 1992. On that date paragraph 40 of the 1977 Model Convention was renumbered as paragraph 44 (see history of paragraph 44) and paragraph 36 was amended and renumbered as paragraph 40 by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992. At the same time, the heading preceding paragraph 36 was moved with it and the footnote off the heading was deleted. In the 1977 Model Convention and until 23 July 1992, the footnote to the heading and paragraph 36 read as follows:

> "1 This Section reflects the position as of 1st January, 1977.
>
> 36. Certain countries' laws seek to avoid or mitigate economic double taxation, *i.e.* the simultaneous taxation of the company's profits at the level of the company and of the dividends at the level of the shareholder. There are various ways of achieving this:

— company tax in respect of distributed profits is charged at a lower rate than that on retained profits (Austria, Finland, Germany, Iceland, Japan, Norway);

— the tax paid by the company on the distributed profits is partly set off against the shareholder's personal tax (Belgium; Canada; Denmark, from 1977; France; Germany, from 1977; Ireland, from 1976; Turkey; United Kingdom);

— dividends bear only one tax, the distributed profits not being taxed at the level of the company (Greece).

The Committee on Fiscal Affairs has examined the question whether the special features of the tax laws of such countries would justify solutions other than those contained in the Model Convention."

Paragraph 36 of the 1977 Model Convention corresponded to paragraph 43 of the 1963 Draft Convention. Paragraph 36 of the 1963 Draft Convention was amended and renumbered as paragraph 24 (see history of paragraph 24) when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At the same time, paragraph 43 of the 1963 Draft Convention was amended and renumbered as paragraph 36 of the 1977 Model Convention and the preceding headings were replaced. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 43 and the preceding headings read as follows:

"IV. SPECIAL POSITION OF CERTAIN COUNTRIES DUE TO PECULIARITIES OF THE NATIONAL TAX LAWS

A. GENERAL

43. Certain laws seek to avoid or mitigate economic double taxation, that is the simultaneous taxation of the company's profits in its hands and of the distributed profits in the hands of the shareholder. There are various ways of achieving this:

— the shareholder is not taxed in respect of the dividends paid to him by the company, the company having already been taxed in respect of the profits distributed; the tax paid by the company is allowed to be recovered from the shareholder (United Kingdom, Ireland: see C below);

— the shareholder pays the bulk or the whole of the tax on the profits distributed, while in respect of those same profits the company either pays a considerably reduced tax or is even exempted from tax (Germany, Greece and proposed legislation in the Netherlands: see D below).

— Part of the tax paid by the company on its distributed profits is credited against the tax payable by the shareholder (Belgium: see B below)."

Paragraph 41: Corresponds to paragraph 37 of the 1977 Model Convention as it read before 23 July 1992. On that date paragraph 41 of the 1977 Model Convention was renumbered as paragraph 45 (see history of paragraph 45), paragraph 37 was renumbered as paragraph 41 and the heading preceding paragraph 37 was moved with it by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992.

Paragraph 37 was previously replaced when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At that time, paragraph 37 of the 1963 Draft Convention was amended and renumbered as paragraph 25 (see history of paragraph 25) and a new paragraph 37 and heading were added.

Paragraph 42: Corresponds to paragraph 38 of the 1977 Model Convention as it read before 23 July 1992. On that date paragraph 42 of the 1977 Model Convention was renumbered as paragraph 46 (see history of paragraph 46) and paragraph 38 was

renumbered as paragraph 42 and amended, by replacing, in the last line thereof, the words "in 1963" with "in the Model Convention". At the same time, the heading preceding paragraph 38 was moved with it and amended, by deleting the part of it and the footnote to it, by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992. In the 1977 Model Convention and until 23 July 1992, the heading, the footnote and paragraph 38 read as follows:

"1. *States with the classical system*

(no relief of economic double taxation: All member countries not referred to in paragraph 36 above[1]; hereinafter called type A States)

1 The Italian system in force as from 1st January, 1974, may be considered as close to the classical system although it will be noted that economic double taxation is mitigated to a certain extent by the fact that the shareholder is not subject to local tax on the income he receives."

"38. The Committee has recognised that economic double taxation need not be relieved at the international level when such double taxation remains unrelieved at the national level. It therefore considers that in relations between two States with the classical system, *i.e.* States which do not relieve economic double taxation, the respective levels of company tax in the Contracting States should have no influence on the rate of withholding tax on the dividend in the State of source (rate limited to 15 per cent by subparagraph *b)* of paragraph 2 of Article 10). Consequently, the solution recommended in 1963 remains fully applicable in the present case."

Paragraph 38 was replaced when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At that time, paragraph 38 of the 1963 Draft Convention was amended and renumbered as paragraph 26 (see history of paragraph 26) and a new paragraph 38 and heading were added.

Paragraph 43: Corresponds to paragraph 39 of the 1977 Model Convention as it read before 23 July 1992. On that date paragraph 43 of the 1977 Model Convention was renumbered as paragraph 47 (see history of paragraph 47), the heading preceding paragraph 43 was amended and moved with it and paragraph 39 was amended and renumbered as paragraph 43. In addition, the heading preceding paragraph 39 was moved with it and amended, by deleting part of it and the footnote to it by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992. In the 1977 Model Convention and until 23 July 1992, paragraph 39 and the heading preceding it read as follows:

"2. *States applying a split rate company tax*

(Austria; Finland; Germany; Iceland[2]; Japan; Norway; hereinafter called type B States)

2 The effects of the Icelandic corporation tax system are similar to those of a split-rate system, insofar as dividends paid out during the fiscal year are deductible from net income in that year, to a maximum of 10 per cent of the nominal value of capital stock."

"39. These States levy company tax at different rates according to what the company does with its profits: the high rate is charged on any profits retained and the lower rate on those distributed. These rates are, respectively, in Austria, 55 and 27.5 per cent (maximum rates); in Germany, 56 and 36 per cent; in Japan, 40 and 30 percent (maximum rates) and in Norway 50.8 and 23 per cent. Finland should be considered among the split rate countries as it grants in the state income taxation a deduction calculated at 40 per cent on profits distributed. While undistributed profits are taxed at the rate of 43 per cent distributed profits are taxed at a correspondingly lower effective rate Therefore, the effects of this deduction are similar to those of the normal split rate system."

Paragraph 39 was replaced when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At that time, paragraph 39 of the 1963 Draft Convention was amended and renumbered as paragraph 27 (see history of paragraph 27) and a new paragraph 39 and heading were added when the 1977 Model Convention was adopted.

Paragraph 44: Corresponds to paragraph 40 of the 1977 Model Convention as it read before 23 July 1992. On that date paragraph 44 of the 1977 Model Convention was amended and renumbered as paragraph 48 (see history of paragraph 48) and paragraph 40 was renumbered as paragraph 44 by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992.

Paragraph 40 was replaced when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At that time, paragraph 40 of the 1963 Draft Convention was amended and renumbered as paragraph 30 (see history of paragraph 30), the preceding heading was moved with it and a new paragraph 40 was added.

Paragraph 45: Corresponds to paragraph 41 of the 1977 Model Convention as it read before 23 July 1992. On that date paragraph 45 of the 1977 Model Convention was amended and renumbered as paragraph 49 (see history of paragraph 49), the heading preceding paragraph 45 was deleted (see history of paragraph 49) and paragraph 41 was amended and renumbered as paragraph 45 by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992. In the 1977 Model Convention and until 23 July 1992, paragraph 41 read as follows:

> "41. The Committee considered whether States in that group should not be recognised as being entitled to levy withholding tax exceeding 15 per cent on dividends distributed by their companies to residents of the other State (type A), with the proviso that the excess over 15 per cent, which would be designed to offset, in relation to the shareholder concerned, the effects of the lower rate of company tax on distributed profits of companies of State B, would not be creditable against the tax payable by the shareholder in the type A State of which he is a resident."

Paragraph 41 was replaced when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At that time, paragraph 41 of the 1963 Draft Convention was amended and renumbered as paragraph 32 (see history of paragraph 32), the preceding heading was moved with it and a new paragraph 41 was added.

Paragraph 46: Corresponds to paragraph 42 of the 1977 Model Convention as it read before 23 July 1992. On that date paragraph 46 of the 1977 Model Convention was deleted and paragraph 42 was amended and renumbered as paragraph 46 by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992. At the same time, the heading preceding paragraph 46 was deleted. In the 1977 Model Convention and until 23 July 1992, paragraph 42 read as follows:

> "42. Most members considered that in a type B State regard should be had to the average level of company tax, and that such average level should be considered as the counterpart to the charge levied in the form of a single-rate tax on companies resident of State A. The levy by State B of an additional withholding tax not credited in State A would, moreover, create twofold discrimination: on the one hand, dividends, distributed by a company resident of State B would be more heavily taxed when distributed to residents of State A than when distributed to residents of State B, and, on the other hand, the resident of State A would pay higher personal tax on his dividends from State B than on his dividends from State A. The idea of a "balancing tax" was not, therefore, adopted by the Committee."

Paragraph 42 was replaced when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At that time, paragraph 42 of the 1963 Draft Convention was amended and renumbered as paragraph 35 (see history of paragraph 35) and a new paragraph 42 was added.

In the 1977 Model Convention and until they were deleted on 23 July 1992, paragraph 46 and the heading preceding it read as follows:

> "*Case of Turkey*
>
> 46. Certain features of the Turkish system suggest that it should be regarded as analogous to the French and British systems. The Turkish Delegation has pointed out that account ought to be taken of the requirements of Turkey's economic and fiscal policy; for this reason, Turkey would not consider extending in a bilateral convention the tax credit (set off for additional withholding tax levy) to non-resident shareholders. The Turkish Delegation furthermore considers that this problem can be dealt with only in bilateral negotiations where the sacrifices and advantages which the convention entails for each Contracting State may be best appreciated."

Paragraph 46 and the preceding heading of the 1963 Draft Convention were replaced when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At that time, paragraph 46 and the preceding heading of the 1963 Draft Convention were deleted and a new paragraph 46 was added. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 46 and the preceding heading read as follows:

> "B. BELGIUM
>
> 46. In Belgium, the company distributing the dividends is normally charged to company tax on its distributed profits. In the hands of a shareholder who is an individual the dividends are charged to personal income tax, but the shareholder has a tax credit equal to one-half of the tax paid by the company. In the hands of a company the net amount of the dividends received is excluded from the taxable profits to the extent that it forms part of such profits and so escapes company tax. As the share holder receives a tax credit equal to half of the amount of the company tax, Belgium considers that this tax credit should not be taken into consideration with regard to the 15 per cent limit and that the base taxable at the rate of 15 per cent should include this tax credit ("impôt de distribution" calculated at 15 per cent on 85/70 ths of the dividend paid)."

Paragraph 47: Corresponds to paragraph 43 of the 1977 Model Convention as it read before 23 July 1992. On that date paragraph 47 of the 1977 Model Convention was amended and renumbered as paragraph 50 (see history of paragraph 50) and the heading preceding paragraph 47 was deleted (see history of paragraph 50) by the report entitled "The Revision of the Model Convention", adopted by the Council of the OECD on 23 July 1992. At the same time, paragraph 43 of the 1977 Model Convention was renumbered as paragraph 47 and the heading preceding paragraph 43 was amended . In the 1977 Model Convention and until 23 July 1992, this heading preceding paragraph 43 read as follows:

> "3. *States which allow a part of company tax against the shareholder's tax*
>
> (Belgium; Canada; Denmark, from 1977; France; Germany, from 1977; Ireland, from 1976; Turkey; the United Kingdom; hereinafter called type C States)"

Paragraph 43 of the 1963 Draft Convention was replaced when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At that time, paragraph 43 of the 1963 Draft Convention was amended and renumbered as

paragraph 36, the preceding headings were amended and moved with it (see history of paragraph 36) and a new paragraph 43 was added.

Paragraph 48: Corresponds to paragraph 44 of the 1977 Model Convention as it read before 23 July 1992. On that date paragraph 48 of the 1977 Model Convention was amended and renumbered as paragraph 51 (see history of paragraph 51), by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992. At the same time, paragraph 44 was amended and renumbered as paragraph 48 and the footnote to paragraph 44 was deleted. In the 1977 Model Convention and until 23 July 1992, paragraph 44 and its footnote read as follows:

> "44. The rate of this tax credit, in terms of the dividend declared, is 46 per cent in Belgium (where it is called the "crédit d'impôt"), 33 1/3 per cent in Canada, about 15 per cent in Denmark, 50 per cent in France (where it is called the "avoir fiscal"), 9/16 in Germany, 7/13 in Ireland, 15/60 in Turkey and 35/65 in the United Kingdom. Internal law of States in this group does not provide for the extension of the tax credit to the international field. This credit is allowed only to residents and only in respect of dividends of domestic sources[1]. However, in recent conventions, some States extended the right to the tax credit to residents of the other Contracting States.
>
> 1 In Ireland and in the United Kingdom, however, the right to the tax credit is given to shareholders who are not residents of those States but are nationals of the States."

Paragraph 44 of the 1963 Draft Convention was replaced when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At that time, paragraph 44 of the 1963 Draft Convention was deleted and a new paragraph 44 was added. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 44 read as follows:

> "44. In the first case, the tax is paid by the company and is then regarded as borne by the shareholder; such treatment of the tax confers a dual character on it. The tax falls on the company's profits but enters into the computation of the shareholder's tax liability as well. This dual character becomes particularly apparent when the tax is charged only on the profits distributed. The above observation still applies even in the case where, besides the tax paid by the company and then regarded as borne by the shareholder, the recipient of the dividend, if an individual, has to pay other taxes (United Kingdom and Republic of Ireland: surtax)."

Paragraph 49: Corresponds to paragraph 45 of the 1977 Model Convention as it read before 23 July 1992. On that date paragraph 49 of the 1977 Model Convention was amended and renumbered as paragraph 52 (see history of paragraph 52) and paragraph 45 was amended and renumbered as paragraph 49 by the report entitled "The Revision of the Model Convention", adopted by the Council of the OECD on 23 July 1992. In the 1977 Model Convention and until 23 July 1992, paragraph 45 and the heading preceding it read as follows:

> *"Case of France and the United Kingdom*
>
> 45. Under the French "avoir fiscal" system and the United Kingdom tax credit system, the resident shareholder receives a credit in recognition of the fact that the profits out of which the dividends are paid have already been taxed in the hands of the company. The resident shareholder is taxed on his dividend grossed up by the "avoir fiscal" or tax credit; this "avoir fiscal" or tax credit is set against the tax payable and can possibly give rise to refund. These imputation systems differ in structure from the split rate systems of type B States, but both these types of systems may, if the conditions are comparable, have a similar result, provided that the shareholder of the company in the type B State reports his dividends. In double taxation conventions France and the United Kingdom have respectively given the

"avoir fiscal" and the tax credit to shareholders who are residents of the other Contracting States."

Paragraph 45 of the 1963 Draft Convention was replaced when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At that time, paragraph 45 of the 1963 Draft Convention was deleted and a new paragraph 45 was added. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of 1977 Model Convention, paragraph 45 read as follows:

"45. In the second case, the taxation in question comes within the Article on the taxation of dividends. However, the reduction of such tax as provided in the present Article would cause difficulties for Germany, the Netherlands and Greece, owing to the peculiarities of their national tax laws."

Paragraph 50: Corresponds to paragraph 47 of the 1977 Model Convention as it read before 23 July 1992. On that date paragraph 50 of the 1977 Model Convention was amended and renumbered as paragraph 53 (see history of paragraph 53), paragraph 47 was amended and renumbered as paragraph 50 and the heading preceding paragraph 47 was deleted by the report entitled "The Revision of the Model Convention", adopted by the Council of the OECD on 23 July 1992. In the 1977 Model Convention and until 23 July 1992, paragraph 47 and the heading preceding it read as follows:

"Case of Belgium and Canada

47. These States claim that under their systems the company tax remains in its entirety a true company tax, in that it is charged by reference solely to the company's own situation, without any regard to the person and the residence of the shareholder, and in that, having been so charged, it remains appropriated to the Treasury. The tax credit given to the shareholder is designed to relieve his personal tax liability and in no way constitutes an adjustment of the company's tax. No refund, therefore, is given if the tax credit exceeds that personal tax."

Paragraph 47 of the 1963 Draft Convention was replaced when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At that time, paragraph 47 of the 1963 Draft Convention and the preceding heading were deleted and a new paragraph 47 and heading were added. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 47 and the preceding heading read as follows:

"C. UNITED KINGDOM, IRELAND

47. The United Kingdom and Ireland could not envisage the repayment to non-resident shareholders of the tax charged on the company, with a view to reducing the tax indirectly borne by them to the amount provided for in the Article. In bilateral Conventions the United Kingdom and the Republic of Ireland commonly give up surtax payable by non-resident shareholders. The United Kingdom and the Republic of Ireland are further prepared to give non-resident individuals the relief provided in Section 227 of the United Kingdom's Income Tax Act, 1952, and Section 8 of the Republic of Ireland's Finance Act, 1935, respectively (proportionate personal allowances). Non-resident bodies corporate which are shareholders of companies resident in the United Kingdom or in Ireland cannot, however, obtain relief in respect of taxes indirectly borne by them."

Paragraph 51: Corresponds to paragraph 48 of the 1977 Model Convention as it read before 23 July 1992. On that date paragraph 51 of the 1977 Model Convention was amended and renumbered as paragraph 54 (see history of paragraph 54) and paragraph 48 was amended and renumbered as paragraph 51 by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992. In the 1977 Model Convention and until 23 July 1992, paragraph 48 read as follows:

"48. The Committee could not reach a general agreement on whether these two countries' systems and the French or British system display a fundamental difference that could justify different solutions at the international level."

Paragraph 48 of the 1963 Draft Convention was replaced when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At that time, paragraph 48 and the preceding heading of the 1963 Draft Convention were deleted and a new paragraph 48 was added. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of 1977 Model Convention, paragraph 48 and the preceding heading read as follows:

"D. GERMANY, GREECE AND ICELAND

48. The solution proposed in paragraph 2 of the Article is based on the hypothesis that the purpose of a double taxation Convention is not to prevent the economic double taxation that occurs when a State taxes not only in the hands of the company its total industrial or commercial profits, but also, in addition, the profits distributed as dividends in the hands of the shareholder. If a State mitigates or abolishes such double taxation by charging on the company only a very low tax or no tax at all in respect of the part of profits to be distributed (because it fully taxes the profit distribution in the hands of resident shareholders), it must have the right to tax, at a higher rate than those mentioned in paragraph 2, the dividends received by a non-resident shareholder. The imposition of a higher tax at the source would thus be compensation for the fact that the distributed profits have not been taxed, or have been taxed at a reduced rate, in the hands of the company. In this case, it may also be necessary to charge a higher tax at the source than those mentioned in paragraph 2 in order to ensure that non-resident shareholders (or certain categories of shareholders, *e.g.* non-resident parent companies) are not in a more favourable tax position than resident shareholders. A number of States which have concluded Conventions with these countries have taken this peculiarity in their laws into account."

Paragraph 52: Corresponds to paragraph 49 of the 1977 Model Convention as it read before 23 July 1992. On that date paragraph 52 of the 1977 Model Convention was amended and renumbered as paragraph 55 (see history of paragraph 55) and paragraph 49 was amended and renumbered as paragraph 52 by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992. In the 1977 Model Convention and until 23 July 1992, paragraph 49 read as follows:

"49. Some members were of the opinion that such a fundamental difference does not exist. This opinion leaves room for the conclusion that the two countries concerned should — like France and the United Kingdom (paragraph 45 above) — extend the tax credit to non-resident shareholders. Such a solution tends to ensure neutrality as regards dividends distributed by companies of these countries the same treatment being given to resident and non-resident shareholders. On the other hand, it would in relation to shareholders who are residents of a Contracting State (a type A State in particular) encourage investment in a type C State; residents of State A receive a tax credit (in fact a refund of company tax) for dividends from State C while they do not receive one for dividends from their own country. However, these effects, which also occur in the case of France and the United Kingdom, are similar to those which present themselves between a type B and a type A State or between two type A States one of which has a lower company tax rate than the other (paragraphs 38 and 39 to 42 above)."

Paragraph 49 of the 1963 Draft Convention was replaced when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At that time, paragraph 49 and the preceding heading of the 1963 Draft Convention were deleted and a new paragraph 49 and heading were added. In the 1963 Draft Convention

(adopted by the OECD Council on 30 July 1963) and until the adoption of 1977 Model Convention, paragraph 49 and the preceding heading read as follows:

> "E. APPRECIATION OF THE POSITION
>
> 49. Different views may be taken as to the exact nature of taxes (in the United Kingdom and Ireland) which, though not levied directly on the shareholder, are regarded as borne by him. Whatever these views may be, however, States negotiating double taxation Conventions with the United Kingdom or Ireland should have the opportunity to decide, in each particular case, whether they are prepared to reduce their own taxes to the rate specified in the present Article, taking into account the other concessions which these two countries can offer."

Paragraph 53: Corresponds to paragraph 50 of the 1977 Model Convention as it read before 23 July 1992. On that date paragraph 53 of the 1977 Model Convention was renumbered as paragraph 56 (see history of paragraph 56) and paragraph 50 was amended and renumbered as paragraph 53 by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992. In the 1977 Model Convention and until 23 July 1992, paragraph 50 read as follows:

> "50. On the other hand, many members stressed the fact that a determination of the true nature of the tax relief given under these two countries' systems, reveals a mere alleviation of the shareholder's personal income tax in recognition of the fact that his dividend will normally have borne company tax. The tax credit is given once and for all (forfaitaire) and is therefore not in exact relation to the actual company tax appropriate to the profits out of which the dividend is paid. There is no refund if the tax credit exceeds the personal income tax."

Paragraph 50 of the 1963 Draft Convention was replaced when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At that time, paragraph 50 of the 1963 Draft Convention was deleted and a new paragraph 50 was added. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 50 read as follows:

> "50. With regard to the position in Belgium, Germany, Greece and Iceland, the Committee considers that a final settlement should be reached through bilateral negotiations."

Paragraph 54: Corresponds to paragraph 51 of the 1977 Model Convention as it read before 23 July 1992. On that date paragraph 54 of the 1977 Model Convention and the heading preceding it were deleted and paragraph 51 was amended and renumbered as paragraph 54 by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992. In the 1977 Model Convention and until 23 July 1992, paragraph 51 read as follows:

> "51. As the relief in essence is not a refund of company tax but an alleviation of the personal income tax, the extension of the relief to non-resident shareholders who are not subject to personal income tax in the countries concerned does not come into consideration. On the other hand, however, on this line of reasoning, the question whether a type C State should give relief against personal income tax levied from resident shareholders on foreign dividends deserves attention. In this respect it should be observed that the answer is in the affirmative if the question is looked at from the standpoint of neutrality as regards the source of the dividends; otherwise, residents of State C will be encouraged to acquire shares in their own country rather than abroad. But such an extension of the tax credit would be contrary to the principle of reciprocity: not only would the State concerned thereby be making a unilateral budgetary sacrifice (allowing the tax credit over and above the withholding tax levied in the other State), but it would do so without receiving any economic compensation, since it would not be encouraging residents of the other State to acquire shares in its own territory."

Paragraph 51 and the preceding headings of the 1963 Draft Convention were replaced when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At that time, paragraph 51 and the preceding headings of the 1963 Draft Convention were deleted and a new paragraph 49 and heading were added. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 51 and the preceding headings read as follows:

> "V. RESERVATION ON THE ARTICLE
>
> *Paragraph 2, sub-paragraph a) (Holdings)*
>
> 51. The *Netherlands* has entered a reservation respecting the rate of 5 per cent, since it considers that transfers of profits within a group of enterprises should be entirely exempted from tax at the source."

In the 1977 Model Convention and until 23 July 1992, paragraph 54 and the heading preceding it read as follows:

> "*Case of Denmark, Germany and Ireland*
>
> 54. Denmark and Ireland have company tax systems similar to the French and British ones. The German company tax system as it is in effect from 1977, differs from the other systems insofar as it combines the economic effects of a split rate system and a credit system. The rate of tax on company profits is 56 per cent, but it is reduced by 20 percentage points in respect to profits distributed, which are therefore taxed at a rate of 36 per cent (see paragraph 39 above). Moreover, resident shareholders of a German company (individuals and companies) are entitled to a tax credit of 9/16 of the cash dividends received from the company with the effect that the whole company tax on profits distributed to such shareholders is credited against the latter's tax on income. If the tax on income is lower than the credit to be given the excess part is reimbursed. As their systems have been introduced very recently, these countries wish to leave to bilateral negotiations the question whether the special features of their tax laws would justify solutions other than those contained in the Model Convention.[1]
>
> 1 Since the introduction in Ireland of the imputation system of company taxation, that country has concluded only one double taxation convention, namely, that with the United Kingdom. The convention provides for giving the tax credit to United Kingdom portfolio investors but this is not regarded by Ireland as constituting a guideline for future conventions."

Paragraph 54 of the 1963 Draft Convention was replaced when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At that time, paragraph 54 of the 1963 Draft Convention was deleted and a new paragraph 54 and heading were added. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 54 read as follows:

> "54. *France* wishes to retain its freedom of judgment, both as regards the limit on the tax and the determination of the minimum percentage for the holding."

Paragraph 55: Corresponds to paragraph 52 of the 1977 Model Convention as it read before 23 July 1992. On that date paragraph 55 of the 1977 Model Convention was renumbered as paragraph 57 (see history of paragraph 57), the heading preceding paragraph 55 was moved with it and paragraph 52 was amended and renumbered as paragraph 55 by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992. In the 1977 Model Convention and until 23 July 1992, paragraph 52 read as follows:

> "52. To overcome these objections, it might be a conceivable proposition, amongst other possibilities, that State A — which will have collected company tax on dividends distributed by resident companies — should bear the cost of the tax

credit that State C would allow, by transferring funds to that State. As, however, such transfers are hardly favoured by the States this might be more simply achieved by means of a "compositional" arrangement under which State A would relinquish all withholding tax on dividends paid to residents of State C, and the latter would then allow against its own tax, not the 15 per cent withholding tax (abolished in State A) but a tax credit similar to that which it gives on dividends of domestic source."

Paragraph 52 of the 1963 Draft Convention was replaced when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until it was deleted when the 1977 Model Convention was adopted, paragraph 52 read as follows:

"52. *Spain* and *Italy* have a reservation concerning the percentage envisaged for the holding (25 per cent). They can only agree to a rate of tax of 5 per cent for a direct holding of at least 51 per cent."

Paragraph 56: Corresponds to paragraph 53 of the 1977 Model Convention as it read before 23 July 1992. On that date paragraph 56 of the 1977 Model Convention was renumbered as paragraph 58 (see history of paragraph 58) and paragraph 53 was renumbered as paragraph 56 by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992.

Paragraph 53 of the 1963 Draft Convention was replaced when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At that time, paragraph 53 of the 1963 Draft Convention was deleted and a new paragraph 53 was added. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 53 read as follows:

"53. *Portugal* has a reservation regarding the rate of tax of 5 per cent. It can only accept in the Article itself a rate of 10 per cent, but might consider reducing this percentage in bilateral negotiations."

Paragraph 57: Deleted together with the preceding heading on 31 March 1994 by the report entitled "1994 Update to the Model Tax Convention", adopted by the OECD Council on 31 March 1994. After 23 July 1992 and until 31 March 1994, paragraph 57 and the heading preceding it read as follows:

"4. *State with a special system*

(Greece)

57. Under the Greek system, a company's profits are taxed at the level of the company, but any part of them which is distributed — whether immediately or subsequently — to the shareholders is taxed once only, the tax paid by the company on this part of its profits being refunded to it."

Paragraph 57 as it read after 23 July 1992 corresponded to paragraph 55 of the 1977 Model Convention. On 23 July 1992 paragraph 57 of the 1977 Model Convention was amended and renumbered as paragraph 59 (see history of paragraph 59), the heading preceding paragraph 57 was moved with it, paragraph 55 was renumbered as paragraph 57 and the heading preceding paragraph 55 was moved with it by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992.

Paragraph 55 of the 1963 Draft Convention was replaced when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At that time, paragraph 55 of the 1963 Draft Convention was deleted and a new paragraph 55 was added. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 55 read as follows:

"55. *Germany* enters a reservation concerning the application of subparagraph (*a*) in certain cases where it does not seem necessary to reduce its tax at the source below 15 per cent in order to avoid substantial recurrent taxation."

Paragraph 58: Deleted on 31 March 1994 by the report entitled "1994 Update to the Model Tax Convention", adopted by the OECD Council on 31 March 1994. After 23 July 1992 and until 31 March 1994, paragraph 58 read as follows:

"58. Since *Greece* does not tax distributed profits at the level of the company, the Committee recognises this State's right to tax at source profits distributed by its companies at a higher rate than those specified in paragraph 2. The maximum rate must in this case be fixed by bilateral negotiations, regard being had to the special features of each situation, *e.g.* the respective levels of the taxes in the two States, the budgetary sacrifices accepted by the two States, etc."

Paragraph 58 as it read after 23 July 1992 corresponded to paragraph 56 of the 1977 Model Convention. On 23 July 1992 paragraph 58 of the 1977 Model Convention was amended and renumbered as paragraph 60 (see history of paragraph 60) and paragraph 56 was renumbered as paragraph 58 by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992.

Paragraph 56 of the 1963 Draft Convention was replaced when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At that time, paragraph 56 of the 1963 Draft Convention was deleted and a new paragraph 56 was added. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 56 read as follows:

"56. *Belgium* has a reservation on sub-paragraph (a) because, as regards the treatment of subsidiaries, it has not up to now made any special concession in the case of holdings of less than 90 per cent. Belgium's Conventions with the United Kingdom and Sweden contain a special (fairly complicated) solution for the benefit of subsidiaries controlled as to at least 90 per cent; where a British or Swedish company owns at least 90 per cent of the share capital of a Belgian company, the total charge to the "taxe mobilière" and the "contribution nationale de crise" in respect of the dividends distributed to the parent company is restricted to a sum equal to the additional "taxe professionnelle" which would have been payable had there been no distribution of dividends. In addition, owing to the changes introduced by the new Law of 20th November, 1962, Belgium wishes to retain its freedom of action with regard to the treatment of holdings (parent companies and subsidiaries)."

Paragraph 59: Amended 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 July 1992 and until 22 July 2010, paragraph 59 read as follows:

"59. Comments above relating to dividends paid to individuals are generally applicable to dividends paid to companies which hold less than 25 per cent of the capital of the company paying the dividends. Moreover, the Committee on Fiscal Affairs has not covered in the Commentary the special problem of dividends paid to collective investment institutions (investment companies or investment funds)."

Paragraph 59 as it read after 23 July 1992 corresponded to paragraph 57 of the 1977 Model Convention. On 23 July 1992 paragraph 59 of the 1977 Model Convention was renumbered as paragraph 61 (see history of paragraph 61), paragraph 57 was amended, by deleting a footnote to it, and renumbered as paragraph 59 and the heading preceding paragraph 57 was moved with it by the Report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992. In the 1977 Model Convention and until 23 July 1992, the footnote to paragraph 57 read as follows:

"1 This problem is the subject of other work by the Committee on Fiscal Affairs."

Paragraph 57 and the preceding heading of the 1963 Draft Convention were replaced when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At that time, paragraph 57 and the preceding heading of the 1963 Draft Convention were deleted and a new paragraph 57 was added. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 57 and the preceding heading read as follows:

"Paragraph 2, sub-paragraphs (a) and (b)

57. *Turkey* cannot accept a rate of tax which is lower than 20 per cent."

Paragraph 60: Corresponds to paragraph 58 of the 1977 Model Convention as it read before 23 July 1992. On that date paragraph 60 of the 1977 Model Convention was renumbered as paragraph 62 (see history of paragraph 62) and paragraph 58 was renumbered as paragraph 60 and amended, by replacing the reference therein to paragraph 39 with a reference to paragraph 42, by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992. In the 1977 Model Convention and until 23 July 1992, paragraph 58 read as follows:

"58. In respect of dividends paid to companies which hold at least 25 per cent of the capital of the company paying the dividends, the Committee has examined the incidence which the particular company taxation systems quoted in paragraphs 39 and following have on the tax treatment of dividends paid by the subsidiary."

Paragraph 58 of the 1963 Draft Convention was replaced when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At that time, paragraph 58 of the 1963 Draft Convention was amended and renumbered as paragraph 70 (see history of paragraph 70), the preceding heading was moved with it and a new paragraph 58 was added.

Paragraph 61: Corresponds to paragraph 59 of the 1977 Model Convention as it read before 23 July 1992. On that date paragraph 61 of the 1977 Model Convention was renumbered as paragraph 63 (see history of paragraph 63), the heading preceding paragraph 61 was amended and moved with it and paragraph 59 was renumbered as paragraph 61 by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992.

Paragraph 59 of the 1963 Draft Convention was replaced when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At that time, paragraph 59 of the 1963 Draft Convention was deleted, a new paragraph 59 was added and the heading preceding paragraph 59 was moved immediately before paragraph 77. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 59 read as follows:

"59. With respect to paragraph 3 of the Article, *Belgium* in view of the fact that the income tax reform Law on 20th November, 1962, excludes liquidation bonuses from the category of income from movable property and subjects them to special levy in lieu of company tax, reserves its position as regards:

a) the special levy imposed by the new law in the case of the redemption of their shares or stock by companies limited by shares and limited partnerships with share capital or by any companies, associations establishments or bodies constituted in Belgium otherwise than in one of the forms specified in the Commercial Code;

b) the special levy imposed by the same law in the case of the division of the assets of such legal persons as are mentioned in sub-paragraph a) above or of partnerships of individuals not opting for their profits to be charged to personal income tax in the name of the partners.

This reservation is dictated by the consideration that these special levies on the company, etc., are really in the nature of a composition satisfying all personal taxes that would be due from the shareholders or partners on the capital gains or distributions of profits in question. Belgium considers that the limitations provided for in the case of distribution taxes on dividends do not apply to these special levies."

Paragraph 62: Corresponds to paragraph 60 of the 1977 Model Convention as it read before 23 July 1992. On that date paragraph 62 of the 1977 Model Convention was renumbered as paragraph 64 (see history of paragraph 64), the heading preceding paragraph 62 was amended and moved with it and paragraph 60 was renumbered as paragraph 62 by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992.

Paragraph 60 of the 1963 Draft Convention was replaced when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At that time, paragraph 60 of the 1963 Draft Convention was amended and renumbered as paragraph 79 (see history of paragraph 79), the preceding heading was moved with it and a new paragraph 60 was added.

Paragraph 63: Corresponds to paragraph 61 of the 1977 Model Convention as it read before 23 July 1992. On that date paragraph 63 of the 1977 Model Convention was renumbered as paragraph 65 (see history of paragraph 65) and paragraph 61 was renumbered as paragraph 63 by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992. At the same time, the heading preceding paragraph 63 was amended and moved with it and the heading preceding paragraph 61 was amended moved with it. In the 1977 Model Convention and until 23 July 1992, the heading preceding paragraph 61 read as follows:

"1. *Classical system in the State of the subsidiary*

(Type A States — paragraph 38 above)."

Paragraph 61 of the 1963 Draft Convention was replaced when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At that time, paragraph 61 of the 1963 Draft Convention was amended and renumbered as paragraph 81 (see history of paragraph 81), the heading preceding paragraph 61 was moved immediately before paragraph 80 and a new paragraph 61 was added.

Paragraph 64: Corresponds to paragraph 62 of the 1977 Model Convention as it read before 23 July 1992. On that date paragraph 64 of the 1977 Model Convention was renumbered as paragraph 66 (see history of paragraph 66), paragraph 62 was renumbered as paragraph 64 and the heading preceding paragraph 62 was amended and moved with it by the OECD Council on 23 July 1992. In the 1977 Model Convention and until 23 July 1992, the heading preceding paragraph 62 read as follows:

"2. *Split-rate company tax system in the State of the subsidiary*

(Type B States — paragraphs 39 to 42 above)."

Paragraph 62 and the preceding heading were added when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977.

Paragraph 65: Corresponds to paragraph 63 of the 1977 Model Convention as it read before 23 July 1992. On that date paragraph 65 of the 1977 Model Convention was renumbered as paragraph 67 (see history of paragraph 67), paragraph 63 was renumbered as paragraph 65 and the heading preceding paragraph 63 was amended and moved with it by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992. In the 1977 Model Convention and until 23 July 1992, the heading preceding paragraph 63 read as follows:

"3. *Imputation system in the State of the subsidiary*

(Type C States — paragraphs 43 and following)."

Paragraph 63 and the preceding heading were added when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977.

Paragraph 66: Corresponds to paragraph 64 of the 1977 Model Convention as it read before 23 July 1992. On that date paragraph 66 of the 1977 Model Convention was deleted, the heading preceding paragraph 66 was moved immediately before paragraph 68 and paragraph 64 was amended by deleting a footnote to it and renumbered as paragraph 66 by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992. In the 1977 Model Convention and until 23 July 1992, the footnote to paragraph 64 read as follows:

"1 This solution is provided for in a Draft Directive presented on 1st August, 1975 by the Commission of the European Communities. According to this draft, the State in which the parent company is resident should, when shareholders resident in its territory are taxed, wholly or partly offset the company tax levied in the State in which the subsidiary is a resident. The draft also provides for compensation for the tax burden resulting from offsetting between the State in which the parent company is a resident and that in which the subsidiary is a resident."

Paragraph 64 was added when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977.

Paragraph 66 of the 1977 Model Convention was deleted on 23 July 1992 by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992. In the 1977 Model Convention and until 23 July 1992, paragraph 66 read as follows:

"66. *Portugal* makes the following observations as regards paragraph 27 above. Indeed gains from the increase in capital of companies with a head office or place of effective management in Portugal, when the increase results from the capitalisation of reserves or the issue of shares, are taxed under the Portuguese domestic law as capital gains. In bilateral conventions, Portugal usually inserts in Article 13 a provision allowing it to tax such gains."

Paragraph 66 and the preceding heading were added when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977.

Paragraph 67: Corresponds to paragraph 65 of the 1977 Model Convention as it read before 23 July 1992. On that date paragraph 67 of the 1977 Model Convention was amended and renumbered as paragraph 68 (see history of paragraph 68) and paragraph 65 was renumbered as paragraph 67 by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992.

Paragraph 65 was added when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977.

Paragraph 67.1: 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, on the basis of another report entitled "Tax Treaty Issues Relating to REITs" (adopted by the OECD Committee on Fiscal Affairs on 20 June 2008).

Paragraph 67.2: 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, on the basis of another report entitled "Tax Treaty Issues Relating to REITs" (adopted by the OECD Committee on Fiscal Affairs on 20 June 2008).

Paragraph 67.3: 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, on the basis of another report entitled "Tax Treaty Issues Relating to REITs" (adopted by the OECD Committee on Fiscal Affairs on 20 June 2008).

Paragraph 67.4: 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, on the basis of another report entitled "Tax Treaty Issues Relating to REITs" (adopted by the OECD Committee on Fiscal Affairs on 20 June 2008).

Paragraph 67.5: 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, on the basis of another report entitled "Tax Treaty Issues Relating to REITs" (adopted by the OECD Committee on Fiscal Affairs on 20 June 2008).

Paragraph 67.6: 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, on the basis of another report entitled "Tax Treaty Issues Relating to REITs" (adopted by the OECD Committee on Fiscal Affairs on 20 June 2008).

Paragraph 67.7: 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, on the basis of another report entitled "Tax Treaty Issues Relating to REITs" (adopted by the OECD Committee on Fiscal Affairs on 20 June 2008).

Paragraph 68: Corresponds to paragraph 67 of the 1977 Model Convention as it read before 23 July 1992. On that date paragraph 68 of the 1977 Model Convention was amended and renumbered as paragraph 69 (see history of paragraph 69), the headings preceding paragraph 68 were moved with it, the heading preceding paragraph 66 was moved immediately before paragraph 68 and paragraph 67 was amended and renumbered as paragraph 68 by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992. In the 1977 Model Convention and until 23 July 1992, paragraph 67 read as follows:

> "67. The *United Kingdom* does not adhere to paragraph 24 above. Under United Kingdom law, certain interest payments are treated as distributions, and are therefore included by the United Kingdom in the definition of dividends."

Paragraph 67 was added when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977.

Paragraph 68.1: 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 68.2: 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 69: 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 69 read as follows:

> "69. *New Zealand* reserves the right to tax, at a rate of 15 per cent, dividends paid by a company that is a resident of New Zealand."

Paragraph 69 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 29 April 2000 and until 15 July 2005, paragraph 69 read as follows:

> "69. *New Zealand* reserves the right to tax, at a rate of 15 per cent, dividends paid by a company that is a resident of New Zealand for purposes of its tax."

Paragraph 69 was replaced on 29 April 2000 when it was deleted and a new paragraph 69 was added by the report entitled "The 2000 Update to the Model Tax Convention", adopted by the OECD Committee on Fiscal Affairs on 29 April 2000. After 31 March 1994 and until 29 April 2000, paragraph 69 read as follows:

> "69. *Australia* reserves the right to tax, at a rate of not less than 15 per cent, dividends paid by a company that is a resident of Australia for purposes of its tax."

Paragraph 69 was amended on 31 March 1994, by deleting the word "always" from the reservation, by the report entitled "1994 Update to the Model Tax Convention", adopted by the OECD Council on 31 March 1994. After 23 July 1992 and until 31 March 1994, paragraph 69 read as follows:

> "69. *Australia* reserves the right always to tax, at a rate of not less than 15 per cent, dividends paid by a company which is a resident of Australia for purposes of its tax."

Paragraph 69 as it read after to 23 July 1992 corresponded to paragraph 68 of the 1977 Model Convention. On 23 July 1992 paragraph 69 of the 1977 Model Convention was amended and renumbered as paragraph 70 (see history of paragraph 70), paragraph 68 was renumbered as paragraph 69 and the headings preceding paragraph 68 were moved with it by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992.

Paragraph 68 and the preceding heading were added when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977.

Paragraph 70: Deleted on 29 April 2000 by the report entitled "The 2000 Update to the Model Tax Convention", adopted by the OECD Committee on Fiscal Affairs on 29 April 2000. After 23 July 1992 and until 29 April 2000, paragraph 70 read as follows:

> "70. *New Zealand* reserves its positions on subparagraph *a)* because it wishes to retain its freedom of action with regard to the treatment of holding (parent companies and subsidiaries)."

Paragraph 70 as it read after 23 July 1992 corresponded to paragraph 69 of the 1977 Model Convention. On 23 July 1992 paragraph 70 of the 1977 Model Convention was amended and renumbered as paragraph 71 (see history of paragraph 71) and paragraph 69 was amended and renumbered as paragraph 70 by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992. In the 1977 Model Convention and until 23 July 1992, paragraph 69 read as follows:

> "69. *Belgium*, *Japan* and *New Zealand* reserve their positions on subparagraph *a)* because they wish to retain their freedom of action with regard to the treatment of holding (parent companies and subsidiaries)."

Paragraph 69 was added when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977.

Paragraph 71: Deleted on 29 April 2000 by the report entitled "The 2000 Update to the Model Tax Convention", adopted by the OECD Committee on Fiscal Affairs on 29 April 2000. After 23 July 1992 and until 29 April 2000, paragraph 71 read as follows:

> "71. *Canada* reserves the right to apply a 10 per cent rate of tax at source in the case of holdings (parent companies and subsidiaries)."

Paragraph 71 as it read after 23 July 1992 corresponded to paragraph 70 of the 1977 Model Convention. On 23 July 1992 paragraph 71 of the 1977 Model Convention was deleted and paragraph 70 was renumbered as paragraph 71 and amended by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992. In the 1977 Model Convention and until 23 July 1992, paragraph 70 read as follows:

> "70. *Canada* reserves the right to apply a 15 per cent rate of tax at source on dividends paid to non-residents without regard to the relation between the company paying the dividends and the beneficial owner."

Paragraph 70 of the 1977 Model Convention corresponded to paragraph 58 of the 1963 Draft Convention, adopted by the OECD Council on 30 July 1963. Paragraph 58 of the 1963 Draft Convention was amended and renumbered as paragraph 70 when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. In the 1963

Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 58 read as follows:

> "58. *Canada* reserves its position on the second paragraph of this Article."

Paragraph 71 as it read in the 1977 Model Convention was deleted on 23 July 1992 by the Report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992. In the 1977 Model Convention paragraph 71 read as follows:

> "71. *Germany*, with a view to its system of company taxation, reserves its position on paragraph 2."

Paragraph 71 was added when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977.

Paragraph 72: Amended on 29 April 2000 by the report entitled "The 2000 Update to the Model Tax Convention", adopted by the OECD Committee on Fiscal Affairs on 29 April 2000. After 23 July 1992 and until 29 April 2000, paragraph 72 read as follows:

> "72. The *United States* reserves the right to provide that shareholders of pass-through entities will not be granted the direct dividend investment rate, even if they would qualify (based on their percentage of ownership)."

Paragraph 72 was replaced on 23 July 1992 when paragraph 72 of the 1977 Model Convention was renumbered as paragraph 73 (see history of paragraph 73) and a new paragraph 72 was added by the Report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992.

Paragraph 73: 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 July 1992 and until 22 July 2010, paragraph 73 read as follows:

> "73. *Italy* reserves its position concerning the percentage envisaged for the holding (25 per cent) and can only agree to a rate of tax of 5 per cent for a direct holding of more than 50 per cent."

Paragraph 73 as it read after 23 July 1992 corresponded to paragraph 72 of the 1977 Model Convention. On 23 July 1992 paragraph 73 of the 1977 Model Convention was renumbered as paragraph 74 (see history of paragraph 74) and paragraph 72 was renumbered as paragraph 73 by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992.

Paragraph 72 was added when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977.

Paragraph 74: 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 74 was deleted 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. After 23 July 1992 and until 28 January 2003, paragraph 74 read as follow:

> "74. *The Netherlands* reserves its position on the rate of 5 per cent, since it considers that transfers of profits within a group of enterprises should be entirely exempted from tax at the source."

Paragraph 74 as it read after 23 July 1992 corresponded to paragraph 73 of the 1977 Model Convention. On 23 July 1992 paragraph 74 of the 1977 Model Convention was renumbered as paragraph 75 (see history of paragraph 75) and paragraph 73 of the 1977 Model was renumbered as paragraph 74 by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992.

Paragraph 73 was added when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977.

Paragraph 75: Amended on 15 July 2014, by adding Israel to the list of countries making the reservation, by the Report entitled "The 2014 Update to the Model Tax Convention", adopted by the Council of the OECD on 15 July 2014. After 29 April 2000 and until 15 July 2014, paragraph 75 read as follows:

> "75. *Mexico*, *Portugal* and *Turkey* reserve their positions on the rates of tax in paragraph 2."

Paragraph 75 was previously amended on 29 April 2000, by deleting the second sentence, by the report entitled "The 2000 Update to the Model Tax Convention", adopted by the OECD Committee on Fiscal Affairs on 29 April 2000. After 21 September 1995 and until 29 April 2000, paragraph 75 read as follows:

> "75. *Portugal*, *Mexico* and *Turkey* reserve their positions on the rates of tax in paragraph 2. *Mexico* will seek a zero tax rate for all dividends, because it does not levy tax on profits in the hands of the shareholders but taxes profits only at the corporate level."

Paragraph 75 was previously amended on 21 September 1995 by the report entitled "The 1995 Update to the Model Tax Convention", adopted by the OECD Council on 21 September 1995. After 23 July 1992 and until 21 September 1995, paragraph 75 read as follows:

> "75. *Portugal* reserves its position on the rates of tax in paragraph 2."

Paragraph 75 as it read before 23 July 1992 corresponded to paragraph 74 of the 1977 Model Convention. Paragraph 75 of the 1977 Model Convention was renumbered as paragraph 76 (see history of paragraph 76) and paragraph 74 was renumbered as paragraph 75 by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992.

Paragraph 74 was added when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977.

Paragraph 76: 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 76 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 23 July 1992 and until 22 July 2010, paragraph 76 read as follows:

> "76. *Spain* reserves its position on the rate of tax of 5 per cent and the determination of the minimum percentage for the holding."

Paragraph 76 as it read after 23 July 1992 corresponded to paragraph 75 of the 1977 Model Convention. On 23 July 1992 paragraph 76 of the 1977 Model Convention was amended and renumbered as paragraph 77 (see history of paragraph 77) and paragraph 75 was renumbered as paragraph 76 by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992.

Paragraph 75 was added when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977.

Paragraph 77: Added on 23 October 1997 by the report entitled "The 1997 Update to the Model Tax Convention", adopted by the OECD Council on 23 October 1997.

Paragraph 77 was deleted on 21 September 1995 by the report entitled "The 1995 Update to the Model Tax Convention", adopted by the OECD Council on 21 September 1995. After 23 July 1992 and until 21 September 1995, paragraph 77 read as follows:

> "77. *Turkey* reserves its position on the rate of tax in paragraph 2."

Paragraph 77 as it read after 23 July 1992 corresponded to paragraph 76 of the 1977 Model Convention. On 23 July 1992 paragraph 77 of the 1977 Model Convention was

amended and renumbered as paragraph 78 (see history of paragraph 78), the heading preceding paragraph 77 was moved with it and paragraph 76 was amended and renumbered as paragraph 77 by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992. In the 1977 Model Convention and until 23 July 1992, paragraph 76 read as follows:

> "76. *Turkey* cannot accept a rate of tax which is lower than 20 per cent."

Paragraph 76 was added when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977.

Paragraph 78: Amended on 31 March 1994 by the report entitled "1994 Update to the Model Tax Convention", adopted by the OECD Council on 31 March 1994. After 23 July 1992 and until 31 March 1994, paragraph 78 read as follows:

> "78. *Belgium* reserves the right to amplify the definition of dividends in paragraph 3 so as to cover expressly income from capital invested by partners in Belgian partnerships even when this income is paid in the form of interest."

Paragraph 78 as it read after 23 July 1992 corresponded to paragraph 77 of the 1977 Model Convention. On 23 July 1992 paragraph 78 of the 1977 Model Convention was deleted and paragraph 77 was amended and renumbered as paragraph 78 and the heading preceding paragraph 77 was moved with it by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992. In the 1977 Model Convention and until 23 July 1992, paragraph 77 read as follows:

> "77. *Belgium* reserves the right to amplify the definition of dividends in paragraph 3 so as to cover expressly income — even when paid in the form of interest — which is taxable as income from capital invested by partners in Belgian partnerships which have not opted for their profits to be charged to personal income tax in the names of such partners individually."

Paragraph 77 was added when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977 and the heading preceding paragraph 59 was moved immediately before it.

Paragraph 78 as it read in the 1977 Model Convention was deleted on 23 July 1992 by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992. In the 1977 Model Convention and until 23 July 1992, paragraph 78 read as follows:

> "78. In view, moreover, of the fact that Belgian law excludes distributions of liquidation surpluses from the movable capital income category ("revenus mobiliers") and subjects them to a compositional charge to company tax which relieves the individual shareholders or partners from any liability to personal tax, *Belgium* reserves the right to levy, in accordance with its internal law, such "special contributions", either in the case of the redemption of its own shares or partnership shares by a company or partnership resident in Belgium or on the division of its assets by such a company or partnership among its shareholders or members. Such special contributions fall neither under the restrictions provided in paragraph 2, as regards distribution tax charged on dividends, nor under any other restrictive provision whatever of the Convention (paragraph 4 of Article 13; paragraph 1 of Article 21, etc.)."

Paragraph 78 was added when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977.

Paragraph 79: Replaced on 23 July 1992 when paragraph 79 of the 1977 Model Convention was renumbered as paragraph 82 (see history of paragraph 82) and a new paragraph 79 was added by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992. At the same time, the heading preceding paragraph 79 was moved with it.

Paragraph 80: Amended on 15 July 2005, by adding Mexico as a country making the reservation, by the report entitled "The 2005 Update to the Model Tax Convention", adopted by the OECD Council on 15 July 2005. After 23 July 1992 and until 15 July 2005, paragraph 80 read as follows:

> "80. *France* reserves the right to amplify the definition of dividends in paragraph 3 so as to cover all income subjected to the taxation treatment of distributions."

Paragraph 80 as it read after 23 July 1992 replaced paragraph 80 of the 1977 Model Convention. On 23 July 1992 paragraph 80 of the 1977 Model Convention was deleted, a new paragraph 80 was added and the heading preceding paragraph 80 was moved immediately before paragraph 83 by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992. In the 1977 Model Convention and until 23 July 1992, paragraph 80 read as follows:

> "80. *Australia* reserves the right to impose tax on the undistributed Australian income of a private (close) company which is a resident of the other State."

Paragraph 80 was added when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977.

Paragraph 81: Amended on 22 July 2010, by deleting Spain from the list of countries making the reservation, 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 81 read as follows:

> "81. *Canada*, *Germany* and *Spain* reserve the right to amplify the definition of dividends in paragraph 3 so as to cover certain interest payments which are treated as distributions under their domestic law."

Paragraph 81 was previously amended on 17 July 2008, by deleting Ireland from the list of countries making the reservation, by the report entitled "The 2008 Update to the Model Tax Convention", adopted by the OECD Council on 17 July 2008. After 31 March 1994 and until 17 July 2008, paragraph 81 read as follows:

> "81. *Canada*, *Germany*, *Ireland* and *Spain* reserve the right to amplify the definition of dividends in paragraph 3 so as to cover certain interest payments which are treated as distributions under their domestic law."

Paragraph 81 was previously amended on 31 March 1994, by deleting Portugal from the list of countries making the reservation, by the report entitled "1994 Update to the Model Tax Convention", adopted by the OECD Council on 31 March 1994. After 23 July 1992 and until 31 March 1994, paragraph 81 read as follows:

> "81. *Canada*, *Germany*, *Ireland*, *Portugal* and *Spain* reserve the right to amplify the definition of dividends in paragraph 3 so as to cover certain interest payments which are treated as distributions under their domestic law."

Paragraph 81 as it read after 23 July 1992 replaced paragraph 81 of the 1977 Model Convention. On 23 July 1992 paragraph 81 of the 1977 Model Convention was amended and renumbered as paragraph 84 (see history of paragraph 84) and a new paragraph 81 was added by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992.

Paragraph 81.1: Added on 31 March 1994 by the report entitled "1994 Update to the Model Tax Convention", adopted by the OECD Council on 31 March 1994.

Paragraph 81.2: Amended on 22 July 2010, by adding Chile as a country making the reservation, by the report entitled "The 2010 Update to the Model Tax Convention", adopted by the OECD Council on 22 July 2010. After 28 January 2003 and until 22 July 2010, paragraph 81.2 read as follows:

"81.2 *Luxembourg* reserves the right to expand the definition of dividends in paragraph 3 in order to cover certain payments which are treated as distributions of dividends under its domestic law."

Paragraph 81.2 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 82: 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 82 as it read before 22 July 2010 was deleted, together with the heading that preceded it, by the report entitled "The 2010 Update to the Model Tax Convention", adopted by the OECD Council on 22 July 2010. After 23 July 1992 and until 22 July 2010, paragraph 82 and the preceding heading read as follows:

"*Paragraph 4*

82. *Italy* reserves the right to subject dividends to the taxes imposed by its law whenever the recipient thereof has a permanent establishment in Italy, even if the holding on which the dividends are paid is not effectively connected with such permanent establishment."

Paragraph 82 as it read after 23 July 1992 corresponded to paragraph 79 of the 1977 Model Convention. On 23 July 1992 paragraph 82 of the 1977 Model Convention was deleted and paragraph 79 was renumbered as paragraph 82 and the heading preceding paragraph 79 was moved with it by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992.

Paragraph 79 of the 1977 Model Convention corresponded to paragraph 60 of the 1963 Draft Convention, adopted by the OECD Council on 30 July 1963. Paragraph 60 of the 1963 Draft Convention was amended and renumbered as paragraph 79 and the preceding heading was moved with it when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 60 read as follows:

"60. Italy reserves the right to subject dividends to the taxes imposed by its law whenever the recipient thereof has a permanent establishment in Italy, even if the holding on which the dividends are paid is not effectively connected with such permanent establishment."

Paragraph 82 as it read in the 1977 Model Convention was deleted on 23 July 1992 by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992. In the 1977 Model Convention and until 23 July 1992, paragraph 82 read as follows:

"82. *Spain* cannot adhere without a reservation to the provisions of this paragraph owing to the structure of its fiscal law which provides that permanent establishments in Spain of foreign companies are to be taxed under the same conditions as Spanish companies."

Paragraph 82 was added when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977.

Paragraph 82.1: 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 83: Amended on 28 January 2003, by adding a second sentence, by the report entitled "The 2002 Update to the Model Tax Convention" adopted by the OECD Council on 28 January 2003. After 31 March 1994 and until 28 January 2003, paragraph 83 read as follow:

"83. *Canada* and the *United States* reserve the right to impose their branch tax on the earnings of a company attributable to a permanent establishment situated in these countries."

Paragraph 83 was previously amended on 31 March 1994, by adding the United States as a country making the reservation, by the report entitled "1994 Update to the Model Tax Convention", adopted by the OECD Council on 31 March 1994. After 23 July 1992 and until 31 March 1994, paragraph 83 read as follows:

"83. *Canada* reserves its right to impose its branch tax on the earnings of a company attributable to a permanent establishment in Canada."

Paragraph 83 was replaced on 23 July 1992 when paragraph 83 of the 1977 Model Convention was deleted, the heading preceding paragraph 80 was moved immediately before paragraph 83 and a new paragraph 83 was added by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992. In the 1977 Model Convention and until 23 July 1992, paragraph 83 read as follows:

"83. The *United States* believes that the text should clarify that the prohibition of paragraph 5 will apply regardless of whether the company derives profits or income from the other Contracting State."

Paragraph 83 was added when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977.

Paragraph 84: Deleted on 21 September 1995 by the report entitled "The 1995 Update to the Model Tax Convention", adopted by the OECD Council on 21 September 1995. After 23 July 1992 and until 21 September 1995, paragraph 84 read as follows:

"84. In order to align the tax treatment of permanent establishments and subsidiaries, *France* wishes to retain the possibility of applying the provisions in its laws according to which profits made in France by foreign companies are deemed to be distributed to non-resident shareholders and are taxed accordingly. France is prepared, however, to reduce in bilateral conventions the rate provided for in its domestic laws."

Paragraph 84 as it read after 23 July 1992 corresponded to paragraph 81 of the 1977 Model Convention. On 23 July 1992 paragraph 84 of the 1977 Model Convention was renumbered as paragraph 86 (see history of paragraph 86) and paragraph 81 was amended and renumbered as paragraph 84 by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992. In the 1977 Model Convention and until 23 July 1992, paragraph 81 read as follows:

"81. *France* cannot adhere to the provisions of this paragraph. France wishes to retain the possibility of applying the provisions in its laws according to which profits made in France by foreign companies are deemed to be distributed to non-resident shareholders and are taxed accordingly. France is prepared, however, to reduce in bilateral conventions the rate provided for in its domestic laws."

Paragraph 81 of the 1977 Model Convention corresponded to paragraph 61 of the 1963 Draft Convention. Paragraph 61 of the 1963 Draft Convention was amended and renumbered as paragraph 81 and the preceding heading was moved immediately before paragraph 80 when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 61 read as follows:

"61. France cannot adhere without a reservation to the provisions of this paragraph owing to the structure of its fiscal law which provides that permanent establishments in France of foreign companies are to be taxed under the same conditions as French companies."

Paragraph 85: Replaced on 23 July 1992 when paragraph 85 of the 1977 Model Convention was deleted and new paragraph 85 was added by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992. In the 1977 Model Convention and until 23 July 1992, paragraph 85 read as follows:

> "85. The *United States* reserves the right to apply its dividend withholding tax to dividends paid by a company which is incorporated outside the United States, if at least one half of the company's income consists of profits attributable to a permanent establishment in the United States."

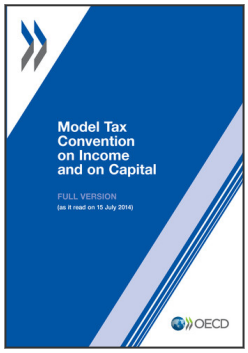
Paragraph 85 was added when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977.

Paragraph 86: Deleted on 29 April 2000 by the report entitled "The 2000 Update to the Model Tax Convention", adopted by the OECD Committee on Fiscal Affairs on 29 April 2000. After 23 July 1992 and until 29 April 2000, paragraph 86 read as follows:

> "86. *The United States* reserves the right to impose its accumulated earnings tax and personal holding company tax, to prevent tax avoidance."

Paragraph 86 as it read after 23 July 1992 corresponded to paragraph 84 of the 1977 Model Convention. On 23 July 1992 paragraph 84 of the 1977 Model Convention was renumbered as paragraph 86 by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992.

Paragraph 84 was added when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977.



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