

POSITIONS ON ARTICLE 7 (BUSINESS PROFITS) AND ITS COMMENTARY

Positions on the Article

1. *Argentina, Brazil, Indonesia, Latvia, Malaysia, Romania, Serbia, South Africa, Thailand and Hong Kong, China* reserve the right to use the previous version of Article 7, i.e. the version that was included in the Model Tax Convention immediately before the 2010 Update, subject to their positions on that previous version (see annex below).

(Replaced on 22 July 2010; see HISTORY)

1.1 *India* reserves the right to use the previous version of Article 7, i.e. the version that was included in the Model Tax Convention immediately before the 2010 update, subject to its positions on that previous version (see annex below). It does not agree with the approach to the attribution of profits to permanent establishments in general that is reflected in the revised Article, in its Commentary and in the consequential changes to the Commentary on other Articles (i.e. paragraph 21 of the Commentary on Article 8, paragraph 32.1 and 32.2 of the Commentary on Article 10, paragraph 25.1 and 25.2 of the Commentary on Article 11, paragraph 21.1 and 21.2 of the Commentary on Article 12, paragraph 27.1 and 27.2 of the Commentary on Article 13, paragraph 7.2 of the Commentary on Article 15, paragraph 5.1 and 5.2 of the Commentary on Article 21, paragraph 3.1 and 3.2 of the Commentary on Article 22 and subparagraph 40 a) of the Commentary on Article 24).

(Added on 22 July 2010; see HISTORY)

1.2 *Argentina and Indonesia* reserve the right to include a special provision in the Convention that will permit them to apply their domestic law in relation to the taxation of the profits of an insurance and re-insurance enterprise.

(Renumbered and amended on 22 July 2010; see HISTORY)

1.3 Whilst the *People's Republic of China* understands and respects the separate and independent enterprise principle underlying the new version of Article 7, due to its tax administration capacity it reserves the right to adopt the previous version of the Article and, in some cases, to resort to simpler methods for calculating the profits attributable to a permanent establishment.

(Added on 28 January 2003; see HISTORY)

2. *Malaysia, Thailand and Ukraine* reserve the right to add a provision to the effect that, if the information available to the competent authority of a Contracting State is inadequate to determine the profits to be attributed to the permanent establishment of an enterprise, the competent authority may

apply to that enterprise the provisions of the taxation law of that State, subject to the qualification that such law will be applied, so far as the information available to the competent authority permits, in accordance with the principles of this Article.

(Amended on 17 July 2008; see HISTORY)

2.1 *Albania, Argentina, Brazil, Croatia, Gabon, Indonesia, Ivory Coast, Malaysia, Morocco, the People's Republic of China, Russia, Serbia, Thailand, Tunisia and Vietnam* reserve the right to maintain in their conventions a specific article dealing with the taxation of "independent personal services". Accordingly, reservation is also made with respect to all the corresponding modifications in the Articles and the Commentaries, which have been modified as a result of the elimination of Article 14.

(Amended on 22 July 2010; see HISTORY)

2.2 *Bulgaria* reserves the right to propose in bilateral negotiations the replacement, in this Article, of the term "profits" with the term "business profits", provided that it is defined in Article 3.

(Added on 28 January 2003; see HISTORY)

2.3 *Tunisia* reserves the right to propose in bilateral negotiations to add a criterion for the taxation in the Source State of the independent personal services, under the former Article 14, based on the amount (to be established through bilateral negotiations) of the remuneration paid.

(Added on 28 January 2003; see HISTORY)

3. *Argentina, Morocco and Thailand* reserve the right to tax in the State where the permanent establishment is situated business profits derived from the sale of goods or merchandise which are the same as or of a similar kind to the ones sold through a permanent establishment situated in that State or from other business activities carried on in that State of the same or similar kind as those effected through that permanent establishment. They will apply this rule only as a safeguard against abuse and not as a general "force of attraction principle". Thus, the rule will not apply when the enterprise proves that the sales or activities have been carried out for reasons other than obtaining a benefit under the Convention.

(Amended on 28 January 2003; see HISTORY)

3.1 *Indonesia* reserves the right to tax, in the State where the permanent establishment is situated, business profits derived from the sale of goods or merchandise which are the same as or of a similar kind to the ones sold through that permanent establishment or from other business activities

carried on in that State of the same or similar kind as those carried on through that permanent establishment.

(Added on 22 July 2010; see HISTORY)

4. Albania and Vietnam reserve the right to tax in the State where the permanent establishment is situated business profits derived from the sale of goods or merchandise which are the same as or of a similar kind to the ones sold through a permanent establishment situated in that State or from other business activities carried on in that State of the same or similar kind as those effected through that permanent establishment.

(Amended on 17 July 2008; see HISTORY)

4.1 Morocco and the Philippines reserve the right to adopt a length of stay and fixed base criteria in determining whether an individual rendering personal services is taxable.

(Amended on 28 January 2003; see HISTORY)

4.2 The United Arab Emirates reserves the right to include a special provision in its conventions that will permit its domestic law to apply to all activities that are related to the exploration, extraction or exploitation of natural resources, including petroleum activities as well as rendering services in connection with these activities, when these activities are carried out on its territory.

(Replaced on 22 July 2010; see HISTORY)

5. Argentina reserves the right to provide that a Contracting State shall not be obliged to allow the deduction of expenses incurred abroad which are not reasonably attributable to the activity carried on by the permanent establishment, taking into account the general principles contained in its domestic legislation concerning executive and administrative expenses for assistance services.

(Amended on 22 July 2010; see HISTORY)

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

7. Armenia, Lithuania and Serbia reserve the right to add to paragraph 2 a clarification that expenses to be allowed as deductions by a Contracting State shall include only expenses that are deductible under the domestic laws of that State.

(Amended on 22 July 2010; see HISTORY)

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

8. Serbia reserves the right to specify that a potential adjustment will be made only if it is considered justified.

(Replaced on 22 July 2010; see HISTORY)

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

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

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

Position on the Commentary

12. Argentina, Brazil, Indonesia, Latvia, Malaysia, Romania, Serbia, South Africa, Thailand and Hong Kong, China will interpret Article 7 as it read before the 2010 Update in line with the relevant Commentary as it stood prior to that update.

(Replaced on 22 July 2010; see HISTORY)

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

ANNEX

POSITIONS ON THE PREVIOUS VERSION OF ARTICLE 7 AND ITS COMMENTARY

The following is the text of the non-OECD economies' positions on Article 7 and its Commentary as it read before 22 July 2010. That previous version of the positions on Article 7 and its Commentary is provided for historical reference as it will continue to be relevant for the application and interpretation of bilateral tax conventions that use the previous version of the Article.

Positions on the Article

1. Argentina and Chile reserve the right to include a special provision in the Convention that will permit them to apply their domestic law in relation to the taxation of the profits of an insurance and re-insurance enterprise.

2. Malaysia, Thailand and Ukraine reserve the right to add a provision to the effect that, if the information available to the competent authority of a Contracting State is inadequate to determine the profits to be attributed to the permanent establishment of an enterprise, the competent authority may apply to that enterprise the provisions of the taxation law of that State, subject to the qualification that such law will be applied, so far as the information available to the competent authority permits, in accordance with the principles of this Article.

2.1 Albania, Argentina, Brazil, Chile, Croatia, Gabon, India, Ivory Coast, Malaysia, Morocco, the People's Republic of China, Russia, Serbia, Tunisia and Vietnam reserve the right to maintain in their conventions a specific article dealing with the taxation of

“independent personal services”. Accordingly, reservation is also made with respect to all the corresponding modifications in the Articles and the Commentaries, which have been modified as a result of the elimination of Article 14.

2.2 *Bulgaria* reserves the right to propose in bilateral negotiations the replacement, in this Article, of the term “profits” with the term “business profits”, provided that it is defined in Article 3.

2.3 *Tunisia* reserves the right to propose in bilateral negotiations to add a criterion for the taxation in the Source State of the independent personal services, under the former Article 14, based on the amount (to be established through bilateral negotiations) of the remuneration paid.

Paragraphs 1 and 2

3. *Argentina, Morocco and Thailand* reserve the right to tax in the State where the permanent establishment is situated business profits derived from the sale of goods or merchandise which are the same as or of a similar kind to the ones sold through a permanent establishment situated in that State or from other business activities carried on in that State of the same or similar kind as those effected through that permanent establishment. They will apply this rule only as a safeguard against abuse and not as a general “force of attraction principle”. Thus, the rule will not apply when the enterprise proves that the sales or activities have been carried out for reasons other than obtaining a benefit under the Convention.

4. *Albania and Vietnam* reserve the right to tax in the State where the permanent establishment is situated business profits derived from the sale of goods or merchandise which are the same as or of a similar kind to the ones sold through a permanent establishment situated in that State or from other business activities carried on in that State of the same or similar kind as those effected through that permanent establishment.

4.1 *Morocco and the Philippines* reserve the right to adopt a length of stay and fixed base criteria in determining whether an individual rendering personal services is taxable.

4.2. *Chile and India* reserve the right to amend Article 7 to provide that, in applying paragraphs 1 and 2 of the Article, any income or gain attributable to a permanent establishment during its existence may be taxable by the Contracting State in which the permanent establishment exists even if the payments are deferred until after the permanent establishment has ceased to exist. Furthermore, *India* also reserves the right to apply such a rule under Articles 11, 12, 13 and 21.

Paragraph 3

5. With respect to paragraph 3, *Argentina* reserves the right to provide that a Contracting State shall not be obliged to allow the deduction of expenses incurred abroad which are not reasonably attributable to the activity carried on by the permanent establishment, taking into account the general principles contained in domestic legislation concerning executive and administrative expenses for assistance services.

6. *Brazil* reserves its position on the words “whether in the State in which the permanent establishment is situated or elsewhere” found in paragraph 3.

7. *Armenia, India, Lithuania and Slovenia* reserve the right to add to paragraph 3 a clarification that expenses to be allowed as deductions by a Contracting State shall include only expenses that are deductible under the domestic laws of that State.

7.1 *Estonia and Latvia* reserve the right to add to paragraph 3 a clarification that expenses to be allowed as deductions by a Contracting State shall include only expenses that would be deductible if the permanent establishment were a separate enterprise of that Contracting State.

8. *Ukraine and Vietnam* reserve the right to add to paragraph 3 a clarification to the effect that the paragraph refers to actual expenses incurred by the enterprise (other than interest in the case of a banking enterprise).

Paragraph 4

9. *Brazil* reserves the right not to adopt paragraph 4.

Paragraph 5

10. *Vietnam* reserves the right not to adopt paragraph 5.

Paragraph 6

11. *Brazil* reserves the right not to adopt paragraph 6.

Positions on the Commentary

12. *India* does not agree with the interpretation given in paragraph 25.

13. As regards paragraphs 41-50 of the Commentary on Article 7, *Chile* does not adhere to the specific methods provided as the rules on the amount of profit attributable to a permanent establishment; these must be established in and follow domestic law (including foreign exchange legislation).

HISTORY

Paragraph 1: Replaced paragraph 1 as it read before 22 July 2010. On 22 July 2010 paragraph 1 was renumbered as paragraph 1.2 (see history of paragraph 1.2) and a new paragraph 1 was added by the report entitled “The 2010 Update to the Model Tax Convention”, adopted by the OECD Council on 22 July 2010.

Paragraph 1.1: 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 1.2: Corresponds to paragraph 1 as it read before 22 July 2010. On 22 July 2010 paragraph 1 was amended, by changing the list of countries indicating the position by adding Indonesia and deleting Chile, and renumbered as paragraph 1.2 by the report entitled “The 2010 Update to the Model Tax Convention”, adopted by the OECD Council on 22 July 2010. After 17 July 2008 and until 22 July 2010, paragraph 1 read as follows:

“1. *Argentina and Chile* reserve the right to include a special provision in the Convention that will permit them to apply their domestic law in relation to the taxation of the profits of an insurance and re-insurance enterprise.”

Paragraph 1 was previously amended on 17 July 2008, by adding Chile as country indicating the position and by making other minor amendments, by the report entitled “The 2008 Update to the Model Tax Convention”, adopted by the OECD

Council on 17 July 2008. After 23 October 1997 and until 17 July 2008, paragraph 1 read as follows:

“1. *Argentina* reserves the right to include a special provision in the Protocol to the Convention that will permit it to apply its domestic law in relation to the taxation of the profits of an insurance and re-insurance enterprise.”

Paragraph 1 was included when this section was added in 1997 by the report entitled “The 1997 Update to the Model Tax Convention”, adopted by the OECD Council on 23 October 1997.

Paragraph 1.3: Added on 22 July 2010 by the report entitled the “2010 Update to the Model Tax Convention” adopted by the OECD Council on 22 July 2010.

Paragraph 2: Amended on 17 July 2008, by deleting *Vietnam* from the list of countries indicating the position, by the report entitled “The 2008 Update to the Model Tax Convention”, adopted by the OECD Council on 17 July 2008. After 23 October 1997 and until 17 July 2008, paragraph 2 read as follows:

“2. *Malaysia, Thailand, Ukraine and Vietnam* reserve the right to add a provision to the effect that, if the information available to the competent authority of a Contracting State is inadequate to determine the profits to be attributed to the permanent establishment of an enterprise, the competent authority may apply to that enterprise the provisions of the taxation law of that State, subject to the qualification that such law will be applied, so far as the information available to the competent authority permits, in accordance with the principles of this Article.”

Paragraph 2 was included when this section was added in 1997 by the report entitled “The 1997 Update to the Model Tax Convention”, adopted by the OECD Council on 23 October 1997.

Paragraph 2.1: Amended on 22 July 2010, by changing the list of countries indicating the position by adding *Indonesia and Thailand* and deleting *Chile and India*, by the report entitled “The 2010 Update to the Model Tax Convention”, adopted by the OECD Council on 22 July 2010. After 17 July 2008 and until 22 July 2010, paragraph 2.1 read as follows:

“2.1 *Albania, Argentina, Brazil, Chile, the People’s Republic of China, Croatia, Gabon, India, Ivory Coast, Malaysia, Morocco, Russia, Serbia, Tunisia and Vietnam* reserve the right to maintain in their conventions a specific article dealing with the taxation of “independent personal services”. Accordingly, reservation is also made with respect to all the corresponding modifications in the Articles and the Commentaries, which have been modified as a result of the elimination of Article 14.”

Paragraph 2.1 was previously amended on 17 July 2008, by changing the list of countries indicating the position by adding *Chile, India, Russia and Vietnam*, replacing “China” with “the People’s Republic of China”, and by replacing *Serbia and Montenegro* with *Serbia*, by the report entitled “The 2008 Update to the Model Tax Convention”, adopted by the OECD Council on 17 July 2008. After 15 July 2005 and until 17 July 2008, paragraph 2.1 read as follows:

“2.1 *Albania, Argentina, Brazil, Croatia, Gabon, Ivory Coast, Malaysia, Morocco, Serbia and Montenegro, and Tunisia* reserve the right to maintain in their conventions a specific article dealing with the taxation of “independent personal services”. Accordingly, reservation is also made with respect to all the corresponding modifications in the Articles and the Commentaries, which have been modified as a result of the elimination of Article 14.”

Paragraph 2.1 was previously amended on 15 July 2005, by adding *Serbia and Montenegro* to the list of countries indicating the position, by the report entitled “The

2005 Update to the Model Tax Convention”, adopted by the OECD Council on 15 July 2005. After 28 January 2003 and until 15 July 2005, paragraph 2.1 read as follows:

“2.1 *Albania, Argentina, Brazil, Croatia, Gabon, Ivory Coast, Malaysia, Morocco and Tunisia* reserve the right to maintain in their conventions a specific article dealing with the taxation of “independent personal services”. Accordingly, reservation is also made with respect to all the corresponding modifications in the Articles and the Commentaries, which have been modified as a result of the elimination of Article 14.”

Paragraph 2.1 was amended, by changing the list of countries indicating the position by adding Albania, Croatia, Gabon, Ivory Coast, Morocco and Tunisia and deleting Lithuania, by the report entitled “The 2002 Update to the Model Tax Convention”, adopted by the OECD Council on 28 January 2003.

After 29 April 2000 and until 28 January 2003, paragraph 2.1 read as follows:

“2.1 *Argentina, Brazil, Lithuania and Malaysia*, reserve the right to maintain in their conventions a specific article dealing with the taxation of “independent personal services”. Accordingly, reservation is also made with respect to all the corresponding modifications in the Articles and the Commentaries, which have been modified as a result of the elimination of Article 14.”

Paragraph 2.1 was added on 29 April 2000 by the report entitled “The 2000 Update to the Model Tax Convention”, adopted by the OECD Council on 29 April 2000.

Paragraph 2.2: 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 2.3: 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 3: The heading preceding paragraph 3 was deleted on 22 July 2010 by the report entitled “The 2010 Update to the Model Tax Convention”, adopted by the OECD Council on 22 July 2010. After 17 July 2008 and until 22 July 2010, the heading preceding paragraph 3 read as follows:

“*Paragraphs 1 and 2*”

The heading preceding paragraph 3 was amended on 17 July 2008, by replacing “Paragraph 1” with “Paragraphs 1 and 2”, by the report entitled “The 2008 Update to the Model Tax Convention”, adopted by the OECD Council on 17 July 2008. In 1997, when this section was added and until 17 July 2008, the heading preceding paragraph 3 read as follows:

“*Paragraph 1*”

Paragraph 3 was previously amended on 28 January 2003, by adding Morocco to the list of countries indicating the position, by the report entitled “The 2002 Update to the Model Tax Convention”, adopted by the OECD Council on 28 January 2003. After 23 October 1997 and until 28 January 2003, paragraph 3 read as follows:

“3. *Argentina and Thailand* reserve the right to tax in the State where the permanent establishment is situated business profits derived from the sale of goods or merchandise which are the same as or of a similar kind to the ones sold through a permanent establishment situated in that State or from other business activities carried on in that State of the same or similar kind as those effected through that permanent establishment. They will apply this rule only as a safeguard against abuse and not as a general “force of attraction principle”. Thus, the rule will not apply when the enterprise proves that the sales or activities have been carried out for reasons other than obtaining a benefit under the Convention.”

Paragraph 3 was included when this section was added in 1997 by the report entitled “The 1997 Update to the Model Tax Convention”, adopted by the OECD Council on 23 October 1997.

Paragraph 3.1: 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 4: Amended on 17 July 2008, by changing the list of countries indicating the position by adding Vietnam and deleting Estonia, Latvia and Lithuania, by the report entitled “The 2008 Update to the Model Tax Convention”, adopted by the OECD Council on 17 July 2008. After 28 January 2003 and until 17 July 2008, paragraph 4 read as follows:

“4. *Albania, Estonia, Latvia and Lithuania* reserve the right to tax in the State where the permanent establishment is situated business profits derived from the sale of goods or merchandise which are the same as or of a similar kind to the ones sold through a permanent establishment situated in that State or from other business activities carried on in that State of the same or similar kind as those effected through that permanent establishment.”

Paragraph 4 was previously amended on 28 January 2003, by adding Albania to the list of countries indicating the position, by the report entitled “The 2002 Update to the Model Tax Convention”, adopted by the OECD Council on 28 January 2003. After 23 October 1997 and until 28 January 2003, paragraph 4 read as follows:

“4. *Estonia, Latvia and Lithuania* reserve the right to tax in the State where the permanent establishment is situated business profits derived from the sale of goods or merchandise which are the same as or of a similar kind to the ones sold through a permanent establishment situated in that State or from other business activities carried on in that State of the same or similar kind as those effected through that permanent establishment.”

Paragraph 4 was included when this section was added in 1997 by the report entitled “The 1997 Update to the Model Tax Convention”, adopted by the OECD Council on 23 October 1997.

Paragraph 4.1: Amended on 28 January 2003, by adding Morocco as a country indicating the position, by the report entitled “The 2002 Update to the Model Tax Convention”, adopted by the OECD Council on 28 January 2003. After 29 April 2000 and until 28 January 2003, paragraph 4.1 read as follows:

“4.1 *The Philippines* reserves the right to adopt a length of stay and fixed base criteria in determining whether an individual rendering personal services is taxable.”

Paragraph 4.1 was added on 29 April 2000 by the report entitled “The 2000 Update to the Model Tax Convention”, adopted by the OECD Council on 29 April 2000

Paragraph 4.2: Replaced on 22 July 2010 by the report entitled “The 2010 Update to the Model Tax Convention”, adopted by the OECD Council on 22 July 2010. After 17 July 2008 and until 22 July 2010, paragraph 4.2 read as follows:

“4.2 *Chile and India* reserve the right to amend Article 7 to provide that, in applying paragraphs 1 and 2 of the Article, any income or gain attributable to a permanent establishment during its existence may be taxable by the Contracting State in which the permanent establishment exists even if the payments are deferred until after the permanent establishment has ceased to exist. Furthermore, *India* also reserves the right to apply such a rule under Articles 11, 12, 13 and 21.”

Paragraph 4.2 was added on 17 July 2008 by the report entitled “The 2008 Update to the Model Tax Convention”, adopted by the OECD Council on 17 July 2008.

Paragraph 5: 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. At the same time the heading preceding paragraph was deleted. After 23 October 1997 and until 22 July 2010, paragraph 5 and the preceding heading read as follows:

“*Paragraph 3*

5. With respect to paragraph 3, *Argentina* reserves the right to provide that a Contracting State shall not be obliged to allow the deduction of expenses incurred abroad which are not reasonably attributable to the activity carried on by the permanent establishment, taking into account the general principles contained in domestic legislation concerning executive and administrative expenses for assistance services.”

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

Paragraph 6: Deleted on 22 July 2010 by the report entitled “The 2010 Update to the Model Tax Convention”, adopted by the OECD Council on 22 July 2010. After 17 July 2008 and until 22 July 2010, paragraph 6 read as follows:

“6. *Brazil* reserves its position on the words “whether in the State in which the permanent establishment is situated or elsewhere” found in paragraph 3.”

Paragraph 6 was included when this section was added in 1997 by the report entitled “The 1997 Update to the Model Tax Convention”, adopted by the OECD Council on 23 October 1997.

Paragraph 7: Amended on 22 July 2010, by changing the list of countries indicating the position by adding Serbia and deleting India and Slovakia, 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 7 read as follows:

“7. *Armenia, India, Lithuania* and *Slovenia* reserve the right to add to paragraph 3 a clarification that expenses to be allowed as deductions by a Contracting State shall include only expenses that are deductible under the domestic laws of that State.”

Paragraph 7 was previously amended on 17 July 2008, by changing the list of countries indicating the position by adding Armenia and India and deleting Estonia and Latvia, by the report entitled “The 2008 Update to the Model Tax Convention”, adopted by the OECD Council on 17 July 2008. After 15 July 2005 and until 17 July 2008, paragraph 7 read as follows:

“7. *Estonia, Latvia, Lithuania* and *Slovenia* reserve the right to add to paragraph 3 a clarification that expenses to be allowed as deductions by a Contracting State shall include only expenses that are deductible under the domestic laws of that State.”

Paragraph 7 was previously amended on 15 July 2005, by deleting Romania from the list of countries indicating the position, by the report entitled “The 2005 Update to the Model Tax Convention”, adopted by the OECD Council on 15 July 2005. After 28 January 2003 and until 15 July 2005, paragraph 7 read as follows:

“7. *Estonia, Latvia, Lithuania, Romania* and *Slovenia* reserve the right to add to paragraph 3 a clarification that expenses to be allowed as deductions by a Contracting State shall include only expenses that are deductible under the domestic laws of that State.”

Paragraph 7 was previously amended on 28 January 2003, by adding Slovenia to the list of countries indicating the position, by the report entitled “The 2002 Update to the Model Tax Convention”, adopted by the OECD Council on 28 January 2003. After 23 October 1997 and until 28 January 2003, paragraph 7 read as follows:

“7. Estonia, Latvia, Lithuania and Romania reserve the right to add to paragraph 3 a clarification that expenses to be allowed as deductions by a Contracting State shall include only expenses that are deductible under the domestic laws of that State.”

Paragraph 7 was included when this section was added in 1997 by the report entitled “The 1997 Update to the Model Tax Convention”, adopted by the OECD Council on 23 October 1997.

Paragraph 7.1: 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 17 July 2008 and until 22 July 2010, paragraph 7.1 read as follows:

“7.1 Latvia and Estonia reserve the right to add to paragraph 3 a clarification that expenses to be allowed as deductions by a Contracting State shall include only expenses that would be deductible if the permanent establishment were a separate enterprise of that Contracting State.”

Paragraph 7.1 was added on 17 July 2008 by the report entitled “The 2008 Update to the Model Tax Convention”, adopted by the OECD Council on 17 July 2008.

Paragraph 8: Replaced on 22 July 2010 by the report entitled “The 2010 Update to the Model Tax Convention”, adopted by the OECD Council on 22 July 2010. After 23 October 1997 and until 22 July 2010, paragraph 8 read as follows:

“8. Ukraine and Vietnam reserve the right to add to paragraph 3 a clarification to the effect that the paragraph refers to actual expenses incurred by the enterprise (other than interest in the case of a banking enterprise).”

Paragraph 8 was included when this section was added in 1997 by the report entitled “The 1997 Update to the Model Tax Convention”, adopted by the OECD Council on 23 October 1997.

Paragraph 9: Deleted together with the preceding heading on 22 July 2010 by the report entitled “The 2010 Update to the Model Tax Convention”, adopted by the OECD Council on 22 July 2010. After 23 October 1997 and until 22 July 2010, paragraph 9 and the preceding heading read as follows:

“Paragraph 4

9. Brazil reserves the right not to adopt paragraph 4.”

Paragraph 9 was included when this section was added in 1997 by the report entitled “The 1997 Update to the Model Tax Convention”, adopted by the OECD Council on 23 October 1997.

Paragraph 10: Deleted together with the preceding heading on 22 July 2010 by the report entitled “The 2010 Update to the Model Tax Convention”, adopted by the OECD Council on 22 July 2010. After 23 October 1997 and until 22 July 2010, paragraph 10 and the preceding heading read as follows:

“Paragraph 5

10. Vietnam reserves the right not to adopt paragraph 5.”

Paragraph 10 was added together with the preceding heading on 17 July 2008 by the report entitled “The 2008 Update to the Model Tax Convention”, adopted by the OECD Council on 17 July 2008.

Paragraph 10 was previously deleted on 29 April 2000 by the report entitled “The 2000 Update to the Model Tax Convention”, adopted by the OECD Council on 29 April 2000. After 23 October 1997 and until 29 April 2000, paragraph 10 read as follows:

“10. Estonia reserves the right to include a provision that will permit resort to domestic law in relation to the taxation of an insurance enterprise.”

Paragraph 10 was included when this section was added in 1997 by the report entitled “The 1997 Update to the Model Tax Convention”, adopted by the OECD Council on 23 October 1997.

Paragraph 11: Deleted together with the preceding heading on 22 July 2010 by the report entitled “The 2010 Update to the Model Tax Convention”, adopted by the OECD Council on 22 July 2010. After 23 October 1997 and until 22 July 2010, paragraph 11 and the preceding heading read as follows:

“*Paragraph 6*

11. *Brazil reserves the right not to adopt paragraph 6.*”

Paragraph 11 was included when this section was added in 1997 by the report entitled “The 1997 Update to the Model Tax Convention”, adopted by the OECD Council on 23 October 1997.

Paragraph 12: Replaced on 22 July 2010 by the report entitled “The 2010 Update to the Model Tax Convention”, adopted by the OECD Council on 22 July 2010. After 17 July 2008 but 22 July 2010, paragraph 12 read as follows:

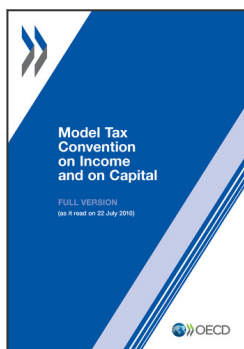
“12. *India does not agree with the interpretation given in paragraph 25.*”

Paragraph 12 was added together with the heading preceding it on 17 July 2008 by the report entitled “The 2008 Update to the Model Tax Convention”, adopted by the OECD Council on 17 July 2008.

Paragraph 13: Deleted on 22 July 2010 by the report entitled “The 2010 Update to the Model Tax Convention”, adopted by the OECD Council on 22 July 2010. After 17 July 2008 and until 22 July 2010, paragraph 13 read as follows:

“13. *As regards paragraphs 41-50 of the Commentary on Article 7, Chile does not adhere to the specific methods provided as the rules on the amount of profit attributable to a permanent establishment; these must be established in and follow domestic law (including foreign exchange legislation).*”

Paragraph 13 was added on 17 July 2008 by the report entitled “The 2008 Update to the Model Tax Convention”, adopted by the OECD Council on 17 July 2008.



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