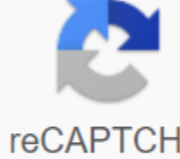


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The Organisation for Economic Co-operation and Development (OECD) has announced the publication of the tenth edition of the full version of the OECD Model Tax Convention on Income and Capital. The logo and name KPMG are trademarks of KPMG International. KPMG International is a Swiss cooperative that acts as a coordinating organization for a network of independent member firms. KPMG International does not provide audit or other client services. Such services are provided exclusively by member firms in their respective geographical areas. KPMG International and its member firms are legally separate and separate organizations. They are not and nothing contained in the present should be interpreted in the place of these persons in the relationship of parents, subsidiaries, agents, partners or joint ventures. No member firm has any authority (actual, obvious, implied or otherwise) to oblige or bind KPMG International or any member firm in any way. The information contained in this present is general and is not intended to address the circumstances of any particular person or organization. While we seek to provide accurate and timely information, there can be no guarantee that such information is accurate at the date of receipt or that it will remain accurate in the future. No one should act on the basis of such information without appropriate professional advice after careful consideration of a particular situation. For more information, contact the Federal Tax and Regulatory Group of KPMG on 1 202 533 4366, 1801 K Street NW, Washington, D.C. 20006. Why does it work for Jeffrey Owens and Mary Bennett of the OECD Centre for Tax Policy and Administration (CTP) can the OECD Model Tax Convention, which is 50 years old this year, continue to fulfill its role, helping to make international taxation fairer and more manageable? Probably yes, although there are problems. Half a century ago, the Finance Committee of the Organization for European Economic Cooperation (OECD), which later became the OECD, published the first draft of a contribution on what a model international tax treaty might look like. The world economy was beginning to become increasingly integrated in the 1950s, and the aim was to help businesses and governments avoid double taxation and prevent tax evasion. The question that needs to be addressed is simple enough: how can governments claim their legal taxation from growing international businesses without leaving corporations concerned that they are unfairly taxed in the various jurisdictions in which they operate? The OECD Model Tax Convention was born. It was an interesting child. The London and Mexican models of the League of Nations are clearly in the family tree, but the immediate parents were those high-ranking tax officials from European countries who in 1956 launched a collective project aimed at developing uniformity of uniformity contractual provisions under the auspices of the EEC. Like all parents, they didn't know what their child was going to be like. In those days, the pace of life was more joyous. Delegates will come to Paris several times a year for weekly editorial sessions. By the middle of the week exhaustion will be set in, so every Wednesday a trip to the countryside was organized. The updated delegates will then return to their labors. A full draft had been prepared by 1963, although it was not until 1977 that a model of the Convention on the Avoidance of Double Taxation was published. The 1963 draft is essentially a consolidation of four previous drafts, the first of which was published in 1958. That is why we believe that the birth of the OECD model was 1 July 1958. At from the beginning, there were fewer than 15 countries involved in the development of the first text; by 1963, the OECD had expanded to 20 countries. The model was introduced primarily by OECD countries, but since 1996 we have opened this process to non-OECD countries, and every year in September the OECD hosts a global forum of government officials from around the world working on tax treaties. We have also set up a global network of tax centres for non-OECD officials to teach treaty negotiation skills and how to apply them: more than 1,000 tax officials from around the world have completed these courses. Today, there are more than 3,000 OECD tax treaties in the world. About 30 countries are not members of the OECD, having made their positions on this model. We don't always agree with each other, but at least we know where we disagree. Simply put, the OECD model has proven to be a means of addressing the most common problems arising from international taxation. By providing some harmonization of double taxation treaties, it sends bilateral negotiations and helps to resolve disputes on a unified basis. Consider avoiding double taxation. If a U.S. company sells its products in the U.S. and receives income from these activities, it will pay taxes in the U.S. If the same company sells its products also in France, it may well have to pay tax on the same income in both France and the United States. But how much tax should the company pay and to what tax authority? The pernicious effects of improper double taxation on international trade, investment and confidence are obvious. Obviously, neither business nor government want to be out of pocket or feel discouraged or discriminated against. Double taxation treaties help solve these riddles by providing agreed rules for the distribution of tax rights to cross-border income between the two countries so that the U.S. company is free from double taxation of its income. The OECD tax model helps to address such although it is not legally binding. Rather, the OECD issues a recommendation based on a common position who, in turn, undertake to follow the model and its comments, taking during the adoption during its reservations, when concluding or reviewing bilateral tax treaties. The extensive and regularly updated comments accompanying the model provide recommendations on generally accepted interpretations of the main text and have become a very useful reference to taxpayers, tax authorities and the courts, whether in OECD countries or elsewhere in the world. In order for this soft right approach to work, adaptability and transparency are needed. Changes to the model are always published in the draft in advance, and member countries have time to discuss and decide whether further changes are needed. Ongoing dialogue with business and non-members is key in establishing proper international tax rules, and the model has always been based on the contribution of tax authorities and the changing business experience over the years. Since 1991, the Financial Affairs Committee has periodically and in a more timely manner updated and amended without waiting for a full review. To date there have been updates in 1992, 1994, 1995, 1997, 2000, 2003, 2005 and 2008. Take 2008 update that has just been approved by a number of interesting changes based on reports issued by the OECD over the past couple of years. For example, it introduces a binding, binding arbitration provision to resolve complex outstanding issues through the so-called mutual consent procedure with expanded and refined comments on how the mutual consent procedure itself should operate. We have explained the methodology for determining profits related to a permanent institution (e.g. a branch) through which a resident of one country conducts business in another country, which is of particular interest to businesses operating in the financial sector. And we have also made clarifications regarding the thorny notion of place effective governance, which is a tie-break test to address cases where corporations have dual residence for tax purposes, and have provided an alternative provision that departs from the place of effective test management and refers the case to a mutual agreement procedure. What about the next 50? The OECD model tax convention has its own conundrum to solve: how to stay firm, adapting to new circumstances at an even greater rate. True, we met new challenges before we responded as e-commerce should be taxed across borders, for example, but new challenges continue to emerge, such as sovereign wealth funds, amid heightened expectations from governments, international businesses and the public. Can the OECD Model Tax Convention continue to respond to such challenges? We think it can, but here's a wish list of ten items that could actually make a positive difference in next 50 50 Make arbitration provisions the norm in contracts. It is likely to be rarely used, indicating that the procedure is working as intended, as the parties have reached agreement without the need for binding arbitration. 2. Ensure a more consistent application of tax treaties. 3. Start work on a multilateral document on value-added tax (VAT). It is noteworthy that 141 countries of the world have VAT, but there is no agreement on many important issues, such as the place of consumption. 4. Find a way to speed up the process of updating contracts based on the model. 5. Give greater recognition to the fact that treaties also involve the elimination of tax evasion, not just the abolition of double taxation. 6. Encourage greater participation by senior decision-makers in treaties. The treaties are too important to be left to (younger) negotiators. 7. To provide greater coordination among OECD countries in relation to new countries that are entering into treaty work for the first time (e.g. Hong Kong, China). 8. An overview of the nature of the reservations and comments in the Model and how they relate to the production of minority representations in the Comments. 9. Increase the involvement of non-OECD countries and give them more work to give them a place at the negotiating table. 10. Finally, none of this would happen unless Governments contributed more resources to national departments responsible for international affairs. Links OECD (2008), Model Tax Convention on Income and Capital, Seventh Edition of the Condensed Version, Paris, August 2008. For more information on tax treaties, see www.oecd.org/ctp/tt See also www.oecd.org/ctpSpecial a note on transfer pricing: The Transfer Pricing Project Aspects of Business Restructuring are currently online for discussion on www.oecd.org/ctp/tpr. Please submit comments on 19 February 2009. ©OECD Observer No 269 October 2008 2008 oecd model tax convention 2020 pdf. oecd model tax convention commentary 2020

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