
OECD issues draft content of the 2017 update to the Model Tax Convention - Invites comments on selected points by 10 August, 2017

July 14, 2017

In brief

On 11 July 2017, the Organisation for Economic Co-operation and Development (OECD) issued the draft contents of the 2017 update to the Model Tax Convention and has invited comments by 10 August 2017 in respect to the four identified changes that have not previously been released for comments. Primarily, the changes are in line with the approved OECD/ G20 Base Erosion and Profit Shifting (BEPS) Action Plans.

In detail

- The OECD Model Tax Convention and Commentary provides guidance to address the most common problems that usually arise in the field of international taxation on a uniform basis. With the rapidly changing business environment and the constant challenges *inter alia* posed by new technological advancements, the Convention requires regular updation to address new tax issues that arise with the evolution of global economy.
- In line with its objective of publishing the next update post 2014, the OECD has

released draft updates for stakeholder comments. However, considering that a significant portion of the draft have been approved as part of the BEPS Project (Action Plans 2¹, 6², 7³ and 14⁴), comments are being sought only for those updates that have not been previously released. The consolidated updated draft would be submitted for the approval of the Committee on Fiscal Affairs and the OECD Council later in 2017.

- The OECD has also indicated that as part of the 2017 update, there would be a number of changes and additions to the observations, reservations and positions of OECD

member and non-member countries. These changes and additions are in the process of being formulated and will be included in the final version of the 2017 update.

The OECD has invited comments on the following draft changes:

- Changes to paragraph 13 of Article 4 (Resident) relating to tie-breaker rule and the issue of whether a house rented to an unrelated person can be considered to be a “permanent home” available to the landlord for the purposes of Article 4(2)(a). It has been added as an example in paragraph 13 that a rented house

¹ BEPS Action Plan 2 - Neutralizing the Effects of Hybrid Mismatch Arrangements

² BEPS Action Plan 6 - Preventing the Granting of Treaty Benefits in Inappropriate Circumstances

³ BEPS Action Plan 7 - Preventing the Artificial Avoidance of Permanent Establishment Status

⁴ BEPS Action Plan 14 - Making Dispute Resolution Mechanisms More Effective

(effectively handed over to an unrelated party) cannot be considered to be available to the individual owner;

- Changes/ addition to paragraphs 17, 19 and 19.1 to the Commentary on Article 4. The test of “habitual abode” in tie-breaker rule in Article 4(2)(c) has been elaborated with examples., It is now being provided that the test of habitual stay will not be satisfied by simply determining the number of days. The test of habitual stay will also take into account frequency, duration and regularity of stays that are part of the settled routine of an individual’s life.
- Changes to Article 5 clarifying that the treatment for Value Added Tax (VAT) or Goods and Service Tax (GST) purposes should not draw any reference for the purpose of interpretation of definition of Permanent Establishment

(PE) under Article 5. It has been clarified that the requirement of registrations under Indirect Tax Laws of a country regardless of whether the foreign enterprise has a fixed place of business or not would not be relevant in interpreting PE of the said foreign enterprise.

- Changes to subparagraph 2(a) of Article 10 whereby reference to the term “other than a partnership” has been deleted. This will ensure that the reduced rate of source taxation of dividends is available in a situation where the dividend paid to a transparent entity would be considered to be income of a resident of a Contracting State because it is taxed either in the hands of the entity itself or in the hands of its member.

The takeaways

- The draft content of the 2017 update primarily incorporates the agreements reached under

the BEPS Project. Thus, various changes as agreed under Action Plans to prevent tax evasion and avoidance are being incorporated in this draft update.

- Certain aspects of tie-breaker rules have been further clarified. The change related to the interpretation of PE on account of treatment under VAT/ GST laws should provide relief in situations where registrations are required in the source country despite there not being a fixed place of business in that country. In the Indian context, this is a welcome change in view of the recently introduced GST law that has increased the tax implications for foreign enterprises undertaking business with India.

Let’s talk

For a deeper discussion of how this issue might affect your business, please contact your local PwC advisor

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