

# The 2025 Update to the OECD Model Tax Convention: focus on transfer pricing and dispute resolution

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## Introduction

On 18 November 2025, the OECD Council approved the contents of the 2025 Update to the OECD Model Tax Convention on Income and on Capital (the “**2025 Update**”), following the approval by the Committee on Fiscal Affairs on 13 October 2025. The 2025 Update introduces significant amendments to the OECD Model Tax Convention, its Commentary, and the positions of member and non-member economies.

This Alert provides an overview of the most significant amendments introduced by the 2025 Update affecting transfer pricing and mutual agreement procedures (“**MAP**”), with a focus on:

- Changes to the Commentary on Article 9 and related changes to the Commentary on Article 7;
- Changes to Article 25 and its Commentary.

## I **Commentary on Article 9 (Associated enterprises) and on Article 7 (Business profits)**

The 2025 Update significantly refines the interaction between Article 9 and the OECD Transfer Pricing Guidelines (“**OECD TP Guidelines**”) with particular emphasis on financial transactions and interest deductibility.

The 2025 Update does not mirror the amendments proposed by the 2021 OECD Report “Proposed changes to Commentaries in the OECD Model Tax Convention on Article 9 and on related articles”.<sup>1</sup>

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<sup>1</sup> <https://www.oecd.org/en/events/public-consultations/2021/03/proposed-changes-commentaries-oecd-mtc-article-9-related.html>.

The revised Commentary on Article 9 reiterates the interpretative value of the OECD TP Guidelines in the application of transfer pricing adjustments – whether primary or corresponding – made under the arm’s length principle.

The Commentary also recognizes that countries may differ in how they apply Article 9 to assess the debt-to-equity ratio within a multinational group. Some rely on the OECD TP Guidelines to determine whether a transaction is a loan or another form of funding (e.g., contribution to equity capital), while others employ domestic law or judicial doctrines. Under both approaches, the Commentary stresses that the question of whether the nature of a purported loan is respected shall precede any pricing analysis. Once characterized as a loan, Chapters I, II, III, and X of the OECD TP Guidelines must be taken into account.

The 2025 Update articulates the long-standing interplay between Article 9 and thin capitalisation rules, clarifying that:

- After profits are allocated according to the arm’s length principle, each State’s domestic law determines if and how the related income is taxed, since Article 9 does not address whether expenses are deductible for taxable income purposes. Examples of domestic rules limiting deductions include entertainment expenses and interest expenses (e.g., fixed ratio, group ratio rules from OECD/G20 BEPS Action 4).
- Similar guidance applies for Article 7 on Business profits (as noted in paragraphs 30–31 of the related Commentary).
- Expense deductibility is determined by domestic law, subject to the limitations set forth by the OECD Model Tax Convention, especially Article 24(4).

The 2025 Update further refines the conditions for corresponding adjustments, which shall be made only to the extent the other State considers that the primary adjustment correctly reflects arm’s length results. In this context, it is clarified that the denial of a deduction under domestic law does not, in and of itself, trigger any obligation for a counterparty jurisdiction to make a corresponding adjustment.

It is also worth noting that the 2025 Update includes specific observations and reservations of Australia, New Zealand, Colombia and Türkiye on the application of the OECD Amount B guidance developed under OECD BEPS Pillar 1 and incorporated as an annex to Chapter IV of the OECD TP Guidelines.<sup>2</sup>

With reference to Article 7, the 2025 Update introduces a footnote reiterating that the 2008 update of the OECD Model Tax Convention concerning the attribution of profits to permanent establishments is applicable to the interpretation and application of treaties signed before or after 2008 that include the version of Article 7 as it read before the 2010 update of the OECD Model Convention.

In this context, and in accordance with the amendments to the Commentary on Article 9 described above, it is clarified that a State is committed to make an appropriate corresponding

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<sup>2</sup> Australia and New Zealand placed a specific observation to the Commentary on Article 9 to clarify that they do not deem Amount B as an automatic substitute for the arm’s length principle. Their observation mirrors footnote 48 of the Amount B Annex: the simplified approach only applies where both competent authorities agree or where both jurisdictions elect to use it for the specific case. Otherwise, taxpayers must rely on the general OECD TP Guidelines. Their commitment to potentially apply Amount B is limited to covered jurisdictions and only until 31 December 2029. In addition, Australia, Colombia and New Zealand reserve the right not to apply a correlative adjustment in all cases falling within Article 9(2) where the Amount B has been used as the basis for, or as a source of support for, the primary adjustment. Similarly, Türkiye reserves the right not to apply a corresponding adjustment in all cases (except where its Inclusive Framework political commitment with respect to covered jurisdictions is applied) under Article 9(2) where the Amount B is employed as the basis for, or as a source of support for, the primary adjustment.

adjustment if it considers the primary adjustment both justified in principle and correctly reflecting the amount of profits that would have been computed under the rules of the Authorized OECD Approach (as provided by Article 7(2)). Moreover, it is also clarified that when Contracting States consult through the MAP and reach agreement on the adjustment, the State that made the primary adjustment shall align the profits attributed to the permanent establishment with the agreed amount. This ensures that the profits are consistently attributed in both States and that double taxation is eliminated.

It is worth noting that Italy withdraw its reservation on Article 9(2), which required that corresponding adjustments can be made only in accordance with a MAP under the relevant treaty.

## II **New Article 25(6) (Mutual Agreement Procedure – MAP) and Commentary on Article 25**

The 2025 Update introduces a new paragraph 6 in Article 25, clarifying the role of competent authorities in determining whether a matter falls within the scope of a tax treaty for purposes of the dispute-resolution mechanisms under the General Agreement on Trade in Services (“GATS”). Indeed, under the GATS - a WTO treaty that sets rules for liberalizing trade in services - disputes are resolved through the WTO’s binding dispute settlement procedures. Therefore, whether the GATS provisions or the treaty provisions apply in relation to a dispute is a key issue to be addressed. In this respect the 2025 Update provides the following amendments. In particular:

- subparagraph (a) of the new paragraph 6 provides that a measure “falls within the scope” of the tax treaty only if it is a measure to which Article 24 (non-discrimination) applies, thereby limiting the overlap between treaty-based remedies and GATS dispute mechanisms;
- subparagraph (b) of the new paragraph 6 clarifies that any dispute between Contracting States regarding whether a measure is within treaty scope must be resolved exclusively through MAP under Article 25(3) or through another mutually agreed procedure and therefore not through GATS consultation procedures.

Building on this, the revised Commentary contains substantive clarifications.

Albeit the footnote to Article XXII(3) GATS applies only to treaties “existing” on 1 January 1995, the Commentary specifies that paragraph 6 neutralises this distinction by ensuring a uniform rule for all treaties containing it, thereby preventing GATS disputes concerning tax measures from bypassing the MAP, unless both States agree.

The Commentary acknowledges that Article XXII(3) of the GATS employs an ambiguous notion of “falls within the scope”. Paragraph 6(a) addresses this issue by pointing out that a tax measure falls within treaty scope only when Article 24 applies, relying on the fact that Article 24 extends to taxes “of every kind and description”. The effect is to channel national-treatment disputes involving tax measures into the MAP rather than GATS panels, unless both States explicitly choose otherwise.

Finally, the Commentary outlines how Contracting States may tailor paragraph 6 in bilateral negotiations. Available options include: (i) limiting the “falls within the scope” test to Article 2 covered taxes, thereby leaving indirect taxes within the reach of Article XVII of the GATS; (ii)

incorporating a GATS-consistent definition of “measure” to increase legal certainty; (iii) omitting paragraph 6 altogether where Article 24 is not included; or (iv) extending bilaterally the Article XXII(3) of the GATS footnote so that recourse to the Council for Trade in Services requires mutual consent in all cases. The Commentary further confirms that subparagraph (b) grants competent authorities the power to resolve in-scope disputes allowing them, where mutually agreed, to refer the matter either to the Council for Trade in Services or to arbitration mechanism.

Importantly, the Commentary on Article 25 has been revised to clarify that, in cross-border transfer pricing disputes concerning the profits of associated enterprises under Article 9, both taxpayers and competent authorities shall rely on the guidance provided in the OECD Report on Amount B and incorporated as an annex to Chapter IV of the OECD TP Guidelines.

This guidance should be considered when assessing MAP requests or determining possible resolutions, including arbitration of unresolved MAP cases. It is also acknowledged that some jurisdictions entering into MAP proceedings may have chosen not to apply or accept the Amount B guidelines. Furthermore, jurisdictions remain free to grant corresponding adjustments reflecting the outcome of Amount B on a case-by-case basis.

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## **Contacts**

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