NEWSALERT

TAX

# The 2025 Update to the OECD Model Tax Convention: Overview of Key Changes

## 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.

## I New Article 25(6) (Mutual Agreement Procedure – MAP)

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"). In particular:

- subparagraph (a) establishes a principled test whereby a measure is deemed to "fall within the scope" of the Convention if Article 24 (Non-Discrimination) applies to that measure.
- subparagraph (b) allocates decisional authority to the treaty's competent authorities: any dispute concerning the scope of the Convention is to be resolved pursuant to Article 25(3), or, failing agreement under that procedure, under any alternative procedure agreed to by both Contracting States.

## II Commentary on Article 5 (Permanent Establishment)

*Updated Framework for Home-Office Permanent Establishments in Modern Working Models*

The 2025 Update amends the Commentary on Article 5, replacing the guidance in prior paragraphs 18 and 19, related to the circumstances under which a home office could constitute a permanent establishment (PE). The new guidance emphasizes a fact-specific approach, considering the regularity, continuity, and nature of business activities at a given location. In particular:

- the mere fact that a place is used by an individual (*e.g.*, an employee) to carry out activities related to the business of an enterprise should not lead to the automatic conclusion that that place is a place of business of that enterprise. The existence of a PE is determined by the facts and circumstances of each case.
- generally, if an individual works from a home or other relevant place for less than 50% of his total working time for the enterprise in any twelve-month period, that location will not be considered a PE. If the threshold is met or exceeded, further analysis is required.
- a key consideration is whether there is a commercial reason to perform activities in the other Contracting State, namely where the presence of the individual in that other Contracting State will facilitate the carrying on of the business of the employer.
- where an individual is the sole or primary person conducting the business of an enterprise from a home office in another State (*e.g.,* a non-resident consultant), that home office may constitute a PE.

For further details on the changes to the Commentary on Article 5 relating to home-office PEs, see the dedicated newsalert.

*Alternative Provision for Activities Involving Extractible Natural Resources*

The 2025 Update introduces into the Commentary on Article 5 an optional alternative provision addressing activities related to the exploration and exploitation of extractible natural resources. It includes:

- A reduced PE threshold, under which a PE is deemed to exist if a non-resident enterprise conducts "relevant activities" in the source State for more than a bilaterally agreed period within any rolling twelve-month timeframe. The length of this threshold remains subject to negotiation (current treaty practice ranges from 30 to 183 days).
- Two alternative definitions of "relevant activities":
  (i) an "Offshore-only" version (limited to the seabed, subsoil, and related natural resources); and
  (ii) an "Offshore-and-onshore" version (extending to onshore finite natural resources and specified ancillary or specialised activities carried out in connection with them).
- The allocation of taxing rights to the Source State with respect to gains derived from immovable property (including exploration and exploitation rights), from relevant movable property forming part of a PE's business property, and from shares or interests that derive more than 50 per cent of their value, directly or indirectly, from such property (considered individually or collectively) at any time during the 365 days preceding the alienation.
- An anti-contract-splitting rule, designed to address the fragmentation of activities among closely related enterprises.

*Observations to the OECD Commentary*

It is worth mentioning that Italy withdrew its observation to paragraphs 97 (Commentary on Article 5(5)), 116, 117 and 118 (Commentary on Article 5(7)), according to which "*its jurisprudence is not to be ignored in the interpretation of cases falling in the above paragraphs*". This observation was lodged after the well-known Philip Morris decisions of the Italian Supreme Court.

# III Commentary on Article 9 (Associated Enterprises)

The 2025 Update substantially revises the Commentary on Article 9 to address the transfer pricing aspects of financial transactions, drawing on the guidance in Chapter X of the OECD Transfer Pricing Guidelines. The amendments clarify the scope and application of Article 9, including its interaction with domestic interest-deductibility rules inspired by BEPS Action 4. Specifically, the 2025 Update specifies that:

(i) Article 9 only governs the allocation of profits between associated enterprises under the arm's length principle and does **not** extend to:

- the deductibility of interest and other expenses, which remains exclusively a matter of domestic law, provided such rules are applied consistently with the Convention;
- the compatibility of special procedural rules that some jurisdictions apply to controlled transactions, which is instead a matter falling under Article 24 (Non-Discrimination); nor
- the general computation of taxable income. In particular, a denial of interest deductions under a domestic interest-limitation regime does not, in itself, give rise to economic double taxation requiring a mandatory corresponding adjustment under Article 9(2);

(ii) jurisdictions may adopt different approaches to determine whether an intra-group financing arrangement should be characterized as debt or equity, either through the accurate delineation of the transaction under the OECD Transfer Pricing Guidelines or pursuant to domestic law, provided such characterization is established before applying the arm's-length principle to price the transaction.

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

# IV Commentary on Article 25 (MAP)

The 2025 Update references specific paragraphs contained in the OECD's Consolidated Report on Amount B, adopted by the Inclusive Framework in February 2024. These paragraphs set out the conditions under which the simplified and streamlined approach may or may not be considered in MAP proceedings, and acknowledge that jurisdictions may nonetheless grant corresponding adjustments on a case-by-case basis. The guidance must now be taken into account by taxpayers when making submissions in support of a MAP request, and by the Competent Authorities when assessing the requests or considering possible resolutions, including in the context of arbitration.

# V Commentary on Article 26 (Exchange of Information)

The 2025 Update addresses the scope of confidentiality obligations, taxpayer access to exchanged information, and the use of information with respect to other taxpayers. Specifically:

- the confidentiality obligation in paragraph 2 encompasses "reflective non-taxpayer-specific information", meaning information about, or derived from, data received through exchange of information. Disclosure to third parties is permitted only where (i) the information does not directly or indirectly identify any taxpayer, (ii) the competent authorities have consulted, and (iii) both States conclude that disclosure will not impair tax administration in either State;
- where exchanged information concerns multiple taxpayers, a taxpayer may access such information solely to the extent that the information has a bearing on the outcome of a tax matter concerning that particular taxpayer;
- exchanged information may be used for tax matters relating to persons other than those to whom the information initially pertained, without notification to or authorization from the sending State, provided the confidentiality requirements of paragraph 2 are respected.

**Contacts**

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